

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MFM REALTY, LLC
and
DUTCH MILLER OF CHARLESTON, INC.,

2016 SEP 21 PM 2:11
KARAWHA COUNTY CIRCUIT COURT
J. Gould

Plaintiffs,

v.

Civil Action No. 16-C-1442
Judge: King

CLENDENIN PLACE REALTY, LLC,

Defendant.

COMPLAINT

MFM Realty, LLC and Dutch Miller of Charleston, Inc., by undersigned counsel, Charles K. Gould and Jenkins Fenstermaker, PLLC, file the within Complaint and state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff MFM Realty, LLC ("MFM Realty") is a West Virginia limited liability company with principal place of business at 1100 Washington Avenue, Huntington, Cabell County, West Virginia.

2. ~~Plaintiff Dutch Miller of Charleston, Inc. ("Dutch Miller") is a West Virginia~~
corporation with principal place of business at 1100 Washington Avenue, Huntington, Cabell County, West Virginia.

3. Upon information and belief, Defendant, Clendenin Place Realty, LLC (hereinafter "Clendenin Place Realty") is a West Virginia limited liability company with principal place of business at #10 Dapplewood Road, South Charleston, Kanawha County, West Virginia.

4. This is an action for specific performance and breach of contract related to real property located in Kanawha County, West Virginia. Thus, this Court has jurisdiction over this action and venue is proper.

FACTS

5. In April of 2014, Dutch Miller acquired the assets of White Dodge, Inc. dba White Kia, a Charleston auto dealership owned by C. E. White (the "Dealership").

6. In connection with the purchase of the Dealership, MFM Realty and Dutch Miller entered into a Lease Agreement with Clendenin Place Realty in order to lease the real estate described in the lease (the "Lease"). *See* Ex. 1 incorporated herein.

7. A Memorandum of Lease was recorded in the Office of the Clerk of the Kanawha County Commission in Bonds Contracts and Lease Book No. 261, at page 899 on April 22, 2014. *See* Ex. 2 incorporated herein.

8. The real estate covered by the Lease included a 3.8 acre tract of real estate owned by Clendenin Place Realty and an access easement of 15,956 square feet servicing the 3.8 acre tract of real estate (together the "Leased Premises").

9. Clendenin Place Realty also had an option to acquire an additional 0.46 acres of real estate adjacent to the Leased Premises from FMC Corporation (the "FMC Property"). Under the Lease, if Clendenin Place Realty acquired the FMC Property, it would become a part of the Leased Premises under the lease.

10. Article 3 of the Lease provided MFM Realty and Dutch Miller an option to purchase the Leased Premises during the second, third, fourth and fifth years of the initial term of the Lease. This option also provided the right of MFM Realty and Dutch Miller to acquire the

option to purchase the FMC property, or an assignment of Clendenin's option on the FMC property, as part of the closing on the purchase of the Leased Premises.

11. Article 3(a) of the Lease defines the Purchase Price for the Leased Premises in the event the Option is exercised as follows:

(a) Purchase Price. The purchase price ("Purchase Price") of the Property shall be determined by an independent fair market appraisal at the time of the sale of the Property. The Purchase Price of the Property shall be equal to the fair market value of the Property as determined by a licensed appraiser selected and approved by the lending bank. The appraiser selected by the lending bank shall be instructed to perform a neutral and unbiased appraisal of the property.

12. MFM Realty and Dutch Miller attempted to exercise the option to purchase the Leased Premises in 2015 during the 2nd lease year. The appraisal obtained by MFM Realty's lending bank was in the amount of approximately \$4,000,000.00. Counsel for Clendenin Place Realty rejected the exercised option. MFM Realty did not agree with the position of Clendenin Place Realty but chose at this time not to declare a default under the Lease or seek the remedy of specific performance with respect to this breach. Rather, the parties engaged in certain discussion and negotiation but no resolution was reached.

13. As the beginning of the third lease year approached, MFM Realty decided that it would again seek to exercise the option to purchase the Leased Premises.

14. MFM Realty approached two institutions, Huntington National Bank and Branch Banking and Trust Company, to serve as the possible lending banks for the purchase of the Leased Premises.

15. Each bank obtained a neutral, unbiased, fair market appraisal of the Leased Premises. The appraiser chosen by BB&T was US Realty Consultants, Inc. US Realty Consultants issued an appraisal dated March 16, 2016 and found that the fair market value of the

Leased Premises was \$4,300,000.00. The appraiser chosen by Huntington National Bank was Cushman & Wakefield of Washington, D.C. Inc. Cushman & Wakefield issued an appraisal dated April 1, 2016 and found that the fair market value of the Leased Premises was \$5,675,000.00.

16. On June 3, 2016, during the third lease year, MFM Realty exercised the option to purchase the Leased Premises for the sum of \$5,675,000.00 by sending written notice pursuant to the Lease. *See* Ex. 3 incorporated herein.

17. Under Article 3(b) of the Lease, MFM Realty must exercise its option to purchase by giving notice to Clendenin Place Realty of its intention to purchase not less than thirty (30) days prior to the date the closing is to occur.

18. Under Article 3(c) of the Lease, upon the exercise of the option to purchase the Leased Premises, Clendenin Place Realty has the obligation to take all actions necessary to vest in MFM Realty title to the Leased Premises free and clear of all liens, leasehold interests and encumbrances, including, a release of any and all liens, mortgages and security interests other than those created by MFM Realty or Dutch Miller.

19. Under Article 3(c) of the Lease, the Leased Premises shall be conveyed to MFM Realty no later than thirty (30) days following the date upon which MFM Realty exercises its option to purchase. Therefore, closing on the sale of the Leased Premises was to occur on or before July 5, 2016.

20. By letter dated June 16, 2016, counsel to Clendenin Place Realty advised MFM Realty that it would not close on the sale of the Property for the fair market value determined by the appraisal of MFM Realty's lending bank, Huntington National Bank. *See* Ex. 4 incorporated herein.

21. MFM Realty secured all funding needed for the purchase by placing in its own account sufficient funds to purchase the property over and above those committed by its lending bank.

22. MFM Realty advised Clendenin Place Realty by letter dated June 22nd, that it would be ready, willing, and able to close on the purchase and sale of the Leased Premises in accordance with the provisions of the Lease. *See* Ex. 5 incorporated herein.

23. Clendenin Place Realty responded by letter dated July 1, 2016 advising that it would not close on the transaction at the price set forth in the appraisal obtained by MFM Realty's lending bank.

COUNT I – SPECIFIC PERFORMANCE

24. Plaintiffs hereby incorporate by reference herein all the allegations contained in Paragraphs 1 through 23 as if set forth fully herein.

25. The Lease, and purchase option incorporated therein, between the plaintiffs and defendant was prepared by counsel for each party, is in writing, and is supported by adequate consideration, as evidenced by the Lease.

26. The terms and provisions of the Lease are specific, certain and fair, were conducted at arm's length, and are between parties of relatively equal bargaining capacity. Moreover, the purchase price as set forth in the Lease and as agreed to by plaintiffs and defendant is clear and unequivocal.

27. At all times relevant hereto, the plaintiffs have complied fully and in good faith with all the terms and provisions of the Lease and stand ready to honor their obligations under the Lease to purchase of the Leased Premises.

28. But for defendant's wrongful, unjustified and material breach of the Lease and Plaintiffs' purchase option, the Lease and Plaintiffs' purchase option is fully capable of being performed by the plaintiffs and defendant.

29. There exists no other adequate remedy of law for plaintiffs because the real property at issue is unique.

30. Plaintiffs are seeking the remedy of specific performance in a timely fashion after being advised of defendant's wrongful, unjustified, and material breach of the Lease.

COUNT II – BREACH OF CONTRACT

31. Plaintiffs hereby incorporate by reference all of the allegations contained in Paragraphs 1 through 30 as if set forth fully herein.

32. Pursuant to the Lease Agreement, Defendant is obligated to sell the subject real property to the Plaintiffs for the sum of \$5,675,000.00.

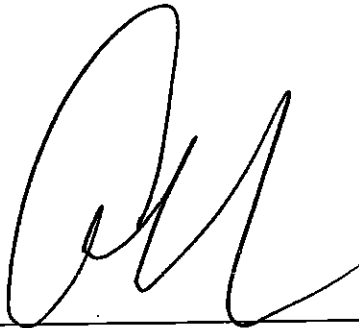
33. Through their words, oral and written, and through their actions, Defendant has materially breached the Contract by refusing, without justification, to sell the subject property to the Plaintiffs, who, at all times relevant hereto, have complied fully and in good faith with the Lease Agreement.

34. As a direct consequence of Defendant's material breach, Plaintiffs have suffered, and will continue to suffer, damages including, but not limited to, the expenses incurred by the Plaintiffs in seeking and securing financing which Plaintiffs lost as a result of Defendant's breach and damages associated with the rent Plaintiffs must pay as a result of Defendant's breach, or in the alternative, the loss of profits and expense Plaintiffs will incur in relocating its business operations as a result of Defendant's breach.

WHEREFORE, MFM Realty, LLC and Dutch Miller of Charleston, Inc. respectfully request that this Court order specific performance of the Lease Agreement previously entered in to by the Plaintiffs and Defendant and order the sale of the subject real property by Defendant to Plaintiffs for the sum of \$5,675,000.00, or in the alternative, that the Court award incidental and consequential damages to the Plaintiffs in an amount proven at trial, plus pre-judgment and post-judgment interest accrued thereon, and for Plaintiffs' costs, disbursements, attorney fees, and witness fees herein, and for such other and further relief as the Court may deem fair and equitable.

**MFM REALTY, LLC
and
DUTCH MILLER OF CHARLESTON, INC.**

By counsel



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4822-0586-2200, v. 2

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made this 11th day of April, 2014 by and between CLENDENIN PLACE REALTY, LLC, a West Virginia corporation, ("Lessor") and MFM REALTY, LLC, a West Virginia limited liability company ("MFM") and DUTCH MILLER OF CHARLESTON, INC ("Dutch Miller" and, together with MFM, collectively referred to herein as the "Lessee").

WHEREAS, by that certain deed dated April 10, 2014, from FMC Corporation to Lessor (the "Deed"), Lessor has obtained title to that certain tract or parcel of land situate and being in the City of South Charleston, South Charleston Corporation Tax District, Kanawha County, West Virginia (the "Leased Parcel"), together with a non-exclusive easement for ingress and egress (the "Access Easement"), all as more particularly described on Exhibit A attached hereto and made a part hereof. The Leased Parcel is designated as "AREA 1, 3.80 ACRES, FMC CORPORATION, P/O T.M. 9 Par. 1.1" on a subdivision map entitled "FMC EAST FINAL SUBDIVISION PLAT, CITY OF SOUTH CHARLESTON, SITUATED ON THE WATERS OF THE KANAWHA RIVER, KANAWHA COUNTY, WEST VIRGINIA", of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Map Book 75, at page 38 (the "Subdivision Map"). The above referenced 3.8-acre tract is subject to that certain access road designated as "13,956 SQ. FT. ACCESS EASEMENT" on the Subdivision Map. The Access Easement is designated as "Right of Way No. 3" on the on the Map entitled "Right of Way No. 3 Brownfield Way" attached hereto as Exhibit B (the Leased Parcel and the Access Easement shall be collectively referred to herein as the "Leased Premises"); and

WHEREAS, pursuant to the Deed, Lessor has obtained an option to purchase that certain tract or parcel of land situate and being in the City of South Charleston, South Charleston Corporation Tax District, Kanawha County, West Virginia designated as "Area 7 South - .046 AC" on the Subdivision Map (the "Option Tract"); and

WHEREAS, Lessee desires to rent and to lease from Lessor and Lessor desires to rent, demise and lease to Lessee the Leased Premises upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, WITNESS:

That for and inconsideration of the mutual covenants herein contained Lessor and Lessee agree as follows:

1. **GRANT.** Lessor does hereby LEASE, DEMISE and LET to Lessee and Lessee does hereby RENT and LEASE from Lessor the Leased Premises, provided, however, should Lessor exercise its right to purchase the Option Tract, the Option Tract shall automatically become part of the Leased Premises without further action by the parties.

2. **TERM; RENEWAL; CONVEYANCE OF LEASED PREMISES.** This Lease is for a term beginning on the date first written above and will continue for Five (5) Years ("Initial Term"), unless Lessee elects, between the start of the second year and end of the fifth year of the Initial Term, to exercise its option to purchase the Leased Premises on the terms and conditions set forth in Section 3 hereof, or unless sooner terminated as hereinafter provided. If Lessee does not exercise its option to purchase as provided herein in the Initial Term and provided Lessee has otherwise performed fully all of its obligations hereunder and is not in default, Lessee shall have the option to extend the term of this Lease, for successive extension terms of five (5) years ("Renewal Term"). In the event Lessee exercises one or more of the options for Lease extension, Lessee shall notify Lessor in writing of its intention to do so no later than ninety (90) days prior to the expiration of the Initial Term and each successive Renewal Term, as applicable. This Renewal Term extension(s) shall be upon the same terms and conditions as are herein contained.

3. **OPTION TO PURCHASE.** Provided that this Lease is then in full force and effect and Lessee is not then in default hereunder, Lessor grants to MFM, at MFM's option during the second, third, fourth and fifth years of the initial Term of the Lease, the right to purchase the fee simple interest of Lessor in and to the Leased Premises (the "Property"), provided, however, that if at such time Lessor has not exercised its option to purchase the Option Tract, Lessor shall assign such rights to purchase the Option Tract to MFM in accordance with the terms set forth in the Deed. The option to purchase the Property shall be upon the following terms and conditions:

(a) Purchase Price. The purchase price ("Purchase Price") of the Property shall be determined by an independent fair market appraisal at the time of the sale of the Property. The Purchase Price of the Property shall be equal to the fair market value of the Property as determined by a licensed appraiser selected and approved by the lending bank. The appraiser selected by the lending bank shall be instructed to perform a neutral unbiased appraisal of the Property.

(b) Exercise of Option. MFM shall exercise its option to purchase by giving notice to Lessor of its intention to purchase not less than thirty (30) days prior to the date on which

settlement is to occur, and shall deposit with Lessor on or before the settlement date an amount equal to the Purchase Price and any rent then due or past due.

(c) Transfer of Lessor's Interest. Upon exercise by MFM of its option to purchase and payments of all amounts due from MFM and Dutch Miller to Lessor, MFM and Dutch Miller shall have no further obligations under this Agreement and Lessor and its officers shall take all actions necessary to authorize, execute and deliver to MFM any and all documents necessary to vest in MFM, all of Lessor's right, title and interest in and to the Property, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens, mortgages or other security interest created under the provisions of this Lease or otherwise, except those created by MFM or Dutch Miller. The transfer of Lessor's interest shall be subject to the following terms and conditions:

(i) The Property shall be conveyed no later than thirty (30) days following the date upon which MFM exercises the option to purchase. Settlement shall be held during regular business hours at a time and place mutually agreed to by Lessor and MFM;

(ii) At the time of settlement and upon payment of all unpaid rent and other amounts due, Lessor shall convey the Property to MFM, free and clear of all liens and encumbrances but subject to covenants, conditions, easements and restrictions applicable to the Property as of the date of the execution of this Lease;

(iii) Taxes and rents shall be prorated as of the date of the settlement;

(iv) Lessor shall pay the cost of the preparation of a deed, the West Virginia Excise Tax on the transfer of real estate, if any, the cost of the survey and a recordable plat for the Property and Lessor's attorney's fees. MFM shall pay all other costs, including, but not limited to, the cost of all engineering studies, drawings and applications costs for road, water and sewer infrastructure, all financing costs, all soil and environmental studies, all title examination and title insurance costs, and MFM's attorney's fees.

(v) MFM acknowledges, covenants and agrees that upon exercise of its option to purchase, it shall accept the Property as is, where is with all faults and without any warranties of any type or nature concerning the quality, habitability and/or usability of any such

property, express or implied, based solely on an independent inspection, investigation and analysis by MFM, with respect to all aspects of the acquisition, condition, use, utilization, development, improvement and disposition of the Property comprising the same. MFM further acknowledges and agrees that it is not relying upon any representation, statement or warranty (oral or written, implied or express) of any officer, employee or agent of Lessor, or any salesperson or broker involved in this transaction as to the condition of the Property, including, but not limited to, any representations, statements, or warranties as to the physical condition or compliance of the Property with applicable building, zoning, subdivision, environmental or land use laws, codes, ordinances, rules or regulations.

(d) MFM's Right to Assign Option. MFM shall not have the right to assign this option to purchase without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

4. **OBLIGATIONS.** Lessee represents that Lessee has read the Lease; that Lessee agrees to assume and to be specifically bound and obligated to each and every term and condition of the Lease; and that Lessee will be solely responsible for any breach or default under the Lease which occurs on or after the date of this Lease.

5. **CONDITION.** Lessee has inspected the Leased Premises and accepts them in their present "as is" condition, without warranty, representation or guarantee other than Lessor's right to enter into this Lease.

6. **RENT.** Lessee will pay all charges, except real property taxes, relating to the Leased Premises, including without limitation, base rent of Thirty Five Thousand Dollars (\$35,000) per month, plus additional rent, which shall be comprised of payment for all insurance required under this Lease and payment for all utilities, personal property taxes, levies and other assessments, except real property taxes. For the first two (2) years of the Initial Term, Lessor shall be solely responsible for the real property taxes and agrees hereby to promptly pay all such taxes levied against the Leased Premises. At the beginning of the third year of the Initial Term, the real property taxes will be prorated between Lessor and Lessee and, thereafter Lessee shall be solely responsible to pay such taxes for the remaining three (3) years of the Initial Term, unless otherwise terminated as provided herein, and during any Renewal Term hereof. The base rent shall be payable in advance on the first day of the month for each month during the term of this Lease and the additional rent, insurance, utilities and other assessments shall be due and payable

within fifteen (15) days of receipt of notice from Lessor.

7. **REPAIRS BY LESSEE.** Lessee shall, at its own cost and expense, repair or replace any uninsured damage or injury done to the Leased Premises, or any part thereof, caused by Lessee or Lessee's agents, employees, invitees, or visitors, or occurring during the Lease Term; provided, however, if Lessee fails to make such repairs or replacements promptly, Lessor may, at its option, make repairs or replacements, and Lessee shall repay the cost thereof to the Lessor on demand.

8. **CARE OF LEASED PREMISES.** Lessee shall not to commit or allow any waste or damage to be committed on any portion of the Leased Premises, Lessee warrants and covenants that at the termination or cancellation of this Lease, by lapse of time or otherwise, to deliver the Leased Premises to Lessor in as good condition as at the date of possession by Lessee, ordinary wear and tear excepted, and upon such termination or cancellation of this Lease, Lessor shall have the right to reenter and resume possession of the Leased Premises.

9. **ALTERATIONS.** Lessee shall not make any additions, improvements or alterations, structural or otherwise, in or to the Leased Premises, without the prior written consent of Lessor. Any and all such improvements, alterations, physical additions, when made to the Leased Premises by Lessee, shall at once become the property of Lessor and shall be surrendered to Lessor upon termination or cancellation hereof; provided, however, this clause shall not apply to furniture, trade fixtures or equipment. Any and all furniture, trade fixtures or equipment shall be removed by Lessee upon the termination or cancellation hereof; provided, however, that any damage or disfigurement to the Leased Premises caused by the installation or removal thereof shall be repaired by Lessee at its own cost and expense. If Lessee fails or refuses to make such repairs, and such failure continues for thirty (30) days or such longer period as may be reasonably required for repairs, Lessor shall be entitled to recover from Lessee as Additional Rent to a sum equal to the reasonable cost of such repairs.

10. **USE.** Lessee may use and occupy the Leased Premises solely for the purpose of operating an automobile dealership and service center and related activities.

11. **TERMINATION.** This Lease will immediately terminate upon default by Lessee of any of the terms and conditions of this Lease or the closing of Lessee's purchase of the Leased Premises pursuant to the Buy-Sell Agreement.

12. **NOTICE.** Any notice by either party to the other shall be duly given only if

mailed by registered or certified mail, addressed as follows:

To Lessor: Clendenin Place Realty, LLC
P.O. Box 3885
Charleston, WV 25338
Attn: C.E. White

To Lessee: MFM Realty, LLC
P.O. Box 9069
Huntington, WV 25704-9069
Attn: Matthew Miller

Dutch Miller of Charleston, Inc.
P.O. Box 9069
Huntington, WV 25338
Attn: Christopher Miller

or to such other address as either party shall notify the other in writing from time to time.

13. **AUTHORITY.** Lessee will have no authority to bind, contract on behalf of, or to make any agreement which purports to bind Lessor regarding or related to the Leased Premises, or the conduct of Lessee's business.

14. **INSURANCE.** Lessee will obtain and maintain property, casualty and commercial liability insurance coverage from an "A" rated AM Best Insurance carrier authorized to write such coverage in West Virginia of not less than Five Million Dollars (\$5,000,000) per occurrence under each policy and to secure coverage for Lessor thereunder as a "Named Insured" and "Loss Payee" as applicable.

15. **INDEMNIFICATION.** Lessee agrees to pay and to protect, indemnify and save harmless Lessor from and against any and all liabilities, losses, damages, costs, expenses (including all reasonable attorney's fees and expenses of Lessor), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from or growing out of Lessee's use and occupancy of the Leased Premises and any activities or business conducted therein.

16. **LEGAL USE AND VIOLATIONS OF INSURANCE.** Lessee shall not occupy or use, or permit any portion of the Leased Premises to be occupied or used for any business or purpose which is unlawful, disreputable or deemed to be extra-hazardous on account of fire, or permit anything to be done which would in any way increase the rate of fire or liability or any other insurance coverage on the Leased Premises and/or its contents. Lessee shall comply with all laws,

ordinances, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction thereof) relating to the use, condition or occupancy of the Leased Premises. Each of Lessor and Lessee represents and warrants to the other that, to the best of its knowledge, on the Commencement Date, there will be no condition on, in or within the Premises caused by such party which violates or fails to comply with any applicable law, and if such violation or noncompliance is subsequently discovered and shown to have existed on the Commencement Date, the expense of rectifying same shall be the sole responsibility of such party, and the other party will not have any obligation or liability with respect thereto. Lessor believes the Leased Premises do not contain what is defined by any federal, state or local regulatory body having jurisdiction thereof as "Hazardous Materials". Lessee shall prohibit the installation or introduction of any Hazardous Materials in the Leased Premises. Lessee shall conduct its business and control its agents, employees, invitees, and visitors in such manner as not to create any nuisance, or interfere with, annoy or disturb other persons.

Lessee shall permit Lessor or its agents or representatives to enter into and upon part of the Leased Premises (a) at all reasonable hours to inspect the same as Lessor may deem necessary or desirable, and the Lessee shall not be entitled to any abatement or reduction of rent by reason thereof.

17. **LIMITATIONS.** Lessee agrees that only as provided in Section 3, hereof, shall Lessee have any option to purchase the Leased Premises.

18. **EMINENT DOMAIN.** If any portion of the Leased Premises are taken under the power of eminent domain or conveyed under threat of condemnation proceedings, all compensation awarded for any taking (or the proceeds of private sale in lieu of the taking) of the Leased Premises will be the property of Lessor and Lessee hereby assigns Lessee's interest in any award to Lessor; provided, however, Lessor will have no interest in any award made to Lessee for the taking of Lessee's fixtures and other property if a separate award of those items is made to Lessee. If the Leased Premises shall be taken by eminent domain proceedings, the Lessee shall have no further obligations to Lessor hereunder, except for those obligations of Lessee to Lessor which are owed on the date of such taking or sale.

19. **ASSIGNMENT AND SUBLETING.** Lessee may not assign this Lease, or any portion thereof, or sublet the Leased Premises, or any part thereof, without the prior written consent of Lessor, which consent shall be at the sole discretion of the Lessor. If Lessor consents to

an assignment by Lessee, any assignee of Lessee shall be subject to all the terms, covenants, agreements and conditions of this Lease, and Lessee shall not be relieved of liability thereunder by reason of any such assignment or subletting of the Leased Premises. Consent to any assignment or subletting shall not be construed as consent to any subsequent assignment or subletting by Lessee or Lessee's assignee or Lessee, and any assignment of the Lease entered into by Lessee or Lessee's assignees or Lessees shall expressly require the written approval of Lessor prior to any further assignment or subletting.

20. **DEFAULT.** If Lessee: (a) fails to make any payment of rent on the due date thereof and fails to cure such delinquency within ten (10) days after written notice thereof has been given by Lessor to Lessee; (b) breaches any covenant of this Lease other than the covenant for the payment of rent and fails to cure such breach within thirty (30) days after written notice thereof has been given by Lessor to Lessee; (c) becomes involved in a legal proceeding which results in the levy of execution on or the acquisition of Lessee's leasehold interest by a trustee in bankruptcy, receiver, assignee or other legal officer appointed in any insolvency or creditors' proceedings (d) vacates the Leased Premises and permits it to remain vacant for a period of thirty (30) days; (e) uses or permits the Leased Premises to be used for a purpose other than that purpose permitted under this Lease and fails to discontinue such unpermitted use within ten (10) days after receipt of written notice to do so; or, (f) Leases the Leased Premises or any part thereof or assigns this Lease other than as permitted herein, then, and in any of the foregoing events, Lessee shall be deemed to have committed an Event of Default under this Lease.

If Lessee commits an Event of Default, Lessor may, at any time thereafter, give written notice to Lessee specifying such Event of Default and stating that this Lease shall expire on the date specified in such notice, and upon the date specified in such notice this Lease and all rights of Lessee hereunder shall terminate.

If Lessor shall give notice as herein provided, then, after the date specified in such notice, it shall be lawful for Lessor, at its option, without formal demand or notice of any kind, to re-enter the Leased Premises and to remove Lessee therefrom without being liable for any damages therefor, and Lessee shall remain liable for all of Lessee's obligations for rent and all other payments required under this Lease, less the net proceeds received from any new lease given by Lessor for the Leased Premises after deducting all of Lessor's expenses in connection with giving such new lease, including without limitation all repossession costs, legal expenses, alteration costs

and expenses of preparing the Leased Premises for such new lease.

21. **SUBORDINATION.** This Lease is subject and subordinate to any mortgage or deed of trust which may now or hereafter encumber the Leased Premises and the improvements thereon and the appurtenances thereunto belonging and to all renewals, modifications, consolidations, replacements and extensions thereof. This paragraph shall be self-operative and no further instrument of subordination need be required by any mortgagee or lender. In confirmation of such subordination, however, Lessee shall, at Lessor's request, promptly execute any appropriate certificate or instrument that Lessor may request and deliver such to Lessor within fifteen (15) days following receipt by Lessee of such certificate or instrument. Lessee hereby constitutes and appoints Lessor as Lessee's attorney in fact to execute any such certificate or instrument and any such certificate or three-party agreement required for and on behalf of Lessee if Lessee shall not have delivered such certificate or instrument to Lessor as required above. Lessor shall not execute any certificate or instrument pursuant to the foregoing power of attorney that has not been first delivered to Lessee.

In the event of the enforcement by the trustee or the beneficiary under any such mortgage or deed of trust of the remedies provided for by law or by such mortgage or deed of trust, Lessee will, upon request of any person or party succeeding to the interest of Lessor as a result of such enforcement, automatically become the lessee of such successor in interest without change in the terms or other provisions of this Lease; provided, however, that such successor in interest shall not be bound by: (a) any payment of rent or additional rent for more than one month in advance except prepayments in the nature of security for the performance by Lessee of Lessee's obligations under this Lease; or, (b) any amendment or modification of this Lease made without the written consent of such trustee or such beneficiary or such successor in interest. Upon request by such successor in interest, Lessee shall execute and deliver an instrument or instruments confirming the atonement herein provided for.

22. **MUTUAL WAIVER OF SUBROGATION.** Lessor and Lessee agree to use their best efforts to have all fire and extended coverage and material damage insurance which may be carried by either of them endorsed with a clause providing that any release from liability of or waiver of claim for recovery from the other party or from Lessor entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder. To that end, Lessor and Lessee will employ their

respective diligent efforts to cause their respective insurance companies to endorse the affected property (fire and extended coverage, multiple peril) coverage with the waiver of subrogation. In the event that the waiver of subrogation is available only upon payment of additional premium, the party for whose benefit the waiver of subrogation is requested will bear such additional cost. Furthermore, in the event that either party is unable to secure the issuance of the waiver of subrogation, the party will immediately cause the other party to be named as an additional insured on its fire and extended coverage policy.

Without limiting any release or waiver of liability or recovery contained in any other section of this Lease, but rather in confirmation and furtherance thereof, each of the parties waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collected under such insurance policies.

23. **MEMORANDUM OF LEASE.** Lessee agrees not to record this Lease, but each party shall on request of the other, execute a Memorandum of Lease in a form recordable and to comply with applicable West Virginia recording laws. In no event shall such document set forth the rent or other charges payable by Lessee under this Lease; and any such document shall ~~expressly state that it is executed pursuant to the provisions contained in this Lease, and is not~~ intended to vary the terms and conditions of this Lease.

24. **SIGNAGE; GRAPHICS.** Lessee, at its sole expense, shall comply with all signage and graphics mandated by the automobile manufacturers for the dealerships operated on and from the Leased Premises and Lessee may not use, apply, or install any additional signage or graphics at or on the Leased Premises without the prior written approval of Lessor, which may withhold such approval in its sole discretion

25. **MAINTENANCE.** Lessee takes the Leased Premises in its present condition, as is, and shall at its cost and expense keep, maintain and repair the Leased Premises (including, but not limited to, maintenance and repair of lights, light bulbs, light fixtures, furnace filters and glass windows). Lessor shall take reasonable steps to maintain the structural integrity of the Premises and all of its operating systems, including all heating, cooling, electrical and plumbing systems on the Leased Premises. Lessee has been afforded the opportunity to inspect the Leased Premises and Lessee finds the same adequate for Lessee's purposes. Without in any way limiting the generality of the foregoing Lessor is not responsible for any damage, delay or loss, foreseen or

unforeseen, caused by any damage to the Leased Premises, inventory and/or business of Lessee.

Lessee shall take good care of the Leased Premises and keep the same and all parts thereof in good order and condition, suffering no waste or injury, ordinary wear and tear excepted. Without in any way any limiting the generality of the foregoing, Lessee shall keep the Leased Premises in a safe, clean, healthful, sanitary condition and free from rubbish, explosives and inflammable materials, in accordance with all applicable ordinances, regulations and laws and the directions of proper public officials.

Any repairs, alterations or additions made by Lessee shall be treated as additions to the freehold and shall become part of the Leased Premises. All repairs, whether made by Lessee or Lessor, and any alterations or additions made by Lessee, shall be made and done in a good, substantial, first-class workmanlike manner, and in accordance with and subject to the requirements of the code of the applicable municipality or such other body, bureau or agency, including insurance bureaus and agencies, as may have jurisdiction in relation thereto, and all materials used shall be of first quality.

26. LIENS. The Premises shall not be subject to any lien caused by the acts of Lessee, and Lessee shall indemnify and save Lessor harmless from any and all costs and expenses resulting from the placing of any such lien on the Leased Premises. Notwithstanding the foregoing, Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any lien or claimed lien, if Lessee shall provide Lessor such security as may be reasonably satisfactory to Lessor and Lessor's title insurance company to assure payment thereof and any interest thereon and to prevent any foreclosure of the lien or sale of the Premises, the Premises by reason of nonpayment thereof; provided further, however, that on final determination of the lien or claim for lien, Lessee shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

27. DESTRUCTION. In the event the Leased Premises shall be destroyed or so damaged by fire or other casualty as to render it unfit for occupancy or use, Lessor shall have the right to elect whether it will rebuild or repair the Leased Premises and restore them to a condition similar to the pre-fire or other casualty, thus continuing this Agreement in full force and effect, or whether it will terminate this Agreement. Lessor shall notify Lessee in writing of its election within ten (10) days after the occurrence of the fire or casualty of its election. If Lessor shall elect to rebuild or repair the Leased Premises, Lessor shall provide Lessee with the notice and estimate

by a reputable contractor of the time required to rebuild or repair said premises. In the event the time needed to rebuild or repair the Leased Premises either is estimated to or in fact exceeds ninety (90) days, Lessee shall have the right to terminate this Agreement by giving Lessor notice in writing of its intention to terminate within ten (10) days after receiving Lessor's notice of Lessor's intention to rebuild or repair the Leased Premises. In the event Lessor elects to rebuild or repair the Leased Premises and Lessee does not elect to exercise its right set forth above to terminate this Agreement, Lessor agrees to prosecute the repairs or the rebuilding with due diligence. During such reconstruction or rebuilding, Base Rent and Additional Rent shall be abated during any period of time in which Lessee is unable to use the Leased Premises or reduced on a pro rata basis based upon the amount of the Leased Premises which Lessee is able to use.

28. CONDEMNATION. In the event all of the Leased Premises shall be taken by eminent domain proceedings of any type instituted by any public body or other entity having the right of eminent domain, or if such portion of the Leased Premises be so taken as to make it unreasonable for Lessee to use the remaining portion for the intended and permissible use, this Agreement shall terminate upon the receipt of notice in writing by Lessor from Lessee that Lessee intends to terminate this Agreement. Upon receipt of said notice of termination and if, because of such eminent domain proceedings Lessee's ability to use the remaining portion for the intended and permissible use, the obligation of Lessee to pay the rent hereinbefore reserved shall terminate. All of the proceeds derived from such eminent domain proceedings shall be payable entirely to Lessor. Lessee agrees to cooperate with Lessor in the defense of any such eminent domain proceedings in the event Lessee is requested to do so, but such cooperation shall not include the money for costs, fees or any other purpose incurred in any such litigation.

29. DISCLAIMER OF CONSEQUENTIAL DAMAGES. Notwithstanding anything stated or implied in this Lease to the contrary, neither party (nor such party's parent, affiliated or subsidiary corporations, members, managers, officers, directors, agents, employees or contractors), will be liable to the other party for, and each party waives and releases the other party from and against, any claims for any incidental, indirect, special, collateral, consequential, exemplary or punitive damages arising out of or related to this Lease, including, without limitation, loss of profit, loss of opportunity, loss of production or loss of use. The protection or limitation against liability afforded by this Section shall apply regardless of whether damages are sought based on contract, tort, statute or otherwise, and irrespective of whether sole, concurrent or

other negligence, whether active or passive, or strict liability is involved or is asserted. To the extent not prohibited by law, any statutory remedy inconsistent with the foregoing provision is hereby waived.

30. **FORCE MAJEURE.** Neither party will be deemed to be in default or breach of this Lease, in the event and to the extent that its delay or failure to perform (except for payments of any required amounts) as required under this Lease is prevented, delayed, or made impossible or impracticable as a result of any act of God, war, insurrection, riot, terrorist attack, civil disorder, unrest or disturbance, martial law or other governmental restrictions, including rationing, epidemics, fire, flood, earthquake or other casualty, failure of facilities or systems, any natural or man-made disaster or other cause of like nature that is beyond the reasonable control of such party, other than insolvency, lack or insufficiency of funds or unavailability of credit ("Force Majeure"). If either party to this Lease is rendered unable, wholly or in part, to carry out its obligations, hereunder due to any Force Majeure cause and without the fault or negligence on its part, the nonperforming party shall give prompt written notice to the other party of the Force Majeure with reasonably full particulars concerning same, and thereupon, the obligations of the party giving notice, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure. If any event of Force Majeure arises, the nonperforming party shall use its best efforts (such efforts to include the payment of overtime labor costs) to minimize the effects thereof and to find a reasonable solution or compensating alternative to offer or propose to the other party.

31. **QUIET ENJOYMENT.** Lessor covenants and agrees with Lessee that Lessee upon paying the Base Rent and Additional Rent and performing all of the covenants herein contained on its behalf, shall and may peacefully and quietly have, hold and enjoy the Leased Premises as provided herein; that Lessor is the owner in fee simple of the Leased Premises and has full and sufficient rights to make this Lease Agreement and to perform hereunder.

32. **RELATIONSHIP BETWEEN PARTIES.** It is expressly understood that Lessor and Lessee shall not be held or construed to be partners, associates, agents, principals, co-owners, co-venturers or under any other relationship than Lessor and Lessee.

33. **GOVERNING LAW.** This Agreement shall be construed, governed and enforced in accordance with the laws of the State of West Virginia.

34. **SEPARABILITY.** If any provisions of this Agreement shall be held to be invalid,

void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired and such remaining provisions shall remain in full force and effect.

35. PARAGRAPH HEADINGS. The paragraph headings contained in this lease are inserted solely as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this lease.

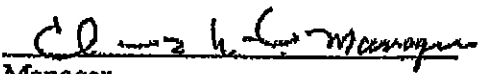
36. EXECUTION BY FACSIMILE. Facsimile signatures shall be binding upon the parties. The parties shall thereafter execute and exchange original copies of this Lease.

37. ENTIRE AGREEMENT; AMENDMENT; BINDING EFFECT. This Agreement contains all the agreements, conditions, understandings, representations and warranties made between the parties hereto with respect to the subject matter hereof, and may not be modified orally or in any manner other than by an agreement in writing signed by both parties. This Lease shall be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

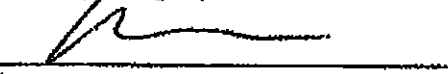
LESSOR:

CLENDENIN PLACE REALTY, LLC, a
West Virginia corporation

By: 
Manager

LESSEE:

MPM REALTY, LLC, a West Virginia
limited liability company

By: 
Manager

LESSEE:

DUTCH MILLER OF CHARLESTON,
INC., a West Virginia corporation


By: 
President

Exhibit A
Leased Premises Description

All that certain tract of land, together with the improvements thereon and the appurtenants thereunto belonging, situate in the City of South Charleston, South Charleston Tax District, Kanawha County, West Virginia and more particularly bounded and described as follows:

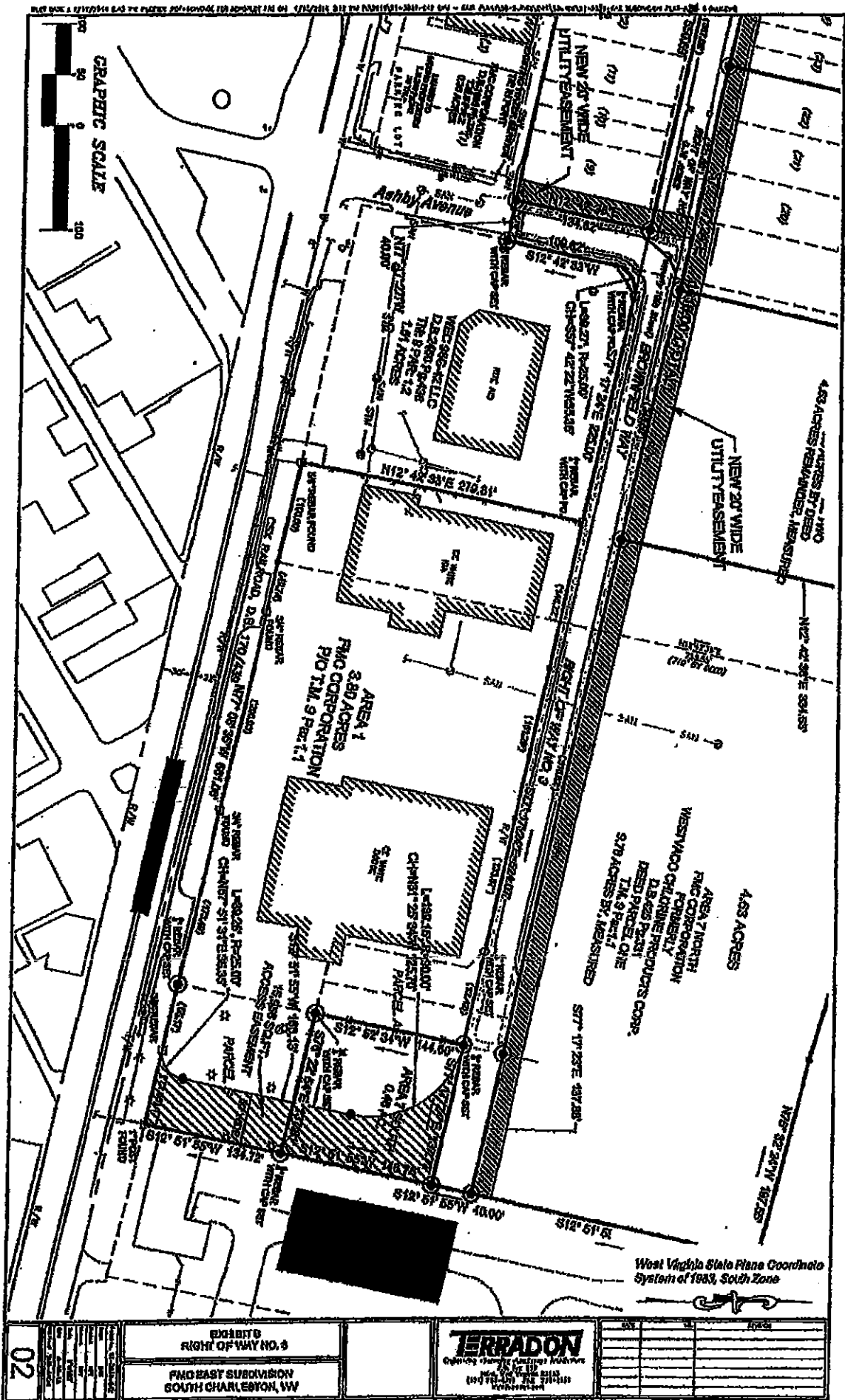
AREA 1 ("Leased Parcel"):

Beginning at a 5/8" rebar found, and being the southeasterly corner of a lot owned by Rite Aid of West Virginia, Inc.; thence with said Rite Aid lot, N. 12° 42' 33" E. 279.81 feet to a 5/8" rebar found; thence leaving said Rite Aid lot, S. 77° 17' 24" E. 431.65 feet to a 5/8" rebar with cap set; thence with the same S. 77° 17' 24" E. 92.42 feet to a 5/8" rebar with cap set; thence S. 12° 52' 34" W. 144.60 feet to a 5/8" rebar with cap set; thence S. 76° 22' 54" E. 137.81 feet to a 5/8" rebar with cap set; thence S. 12° 51' 55" W. 134.72 feet to a 1" post found, said post being in the northerly right of way line of MacCorkle Ave.; thence with MacCorkle Ave. N. 77° 08' 35" W, passing a 3/4" rebar found at 72.65 feet, passing a 5/8 rebar and cap set at 137.82 feet, passing a second 3/4" rebar found at 311.31', passing a fourth 3/4" rebar at 511.34 feet, a total distance of 661.08 feet to the place of beginning, containing 3.80 acres, more or less.

RIGHT OF WAY NO. 3 ("Access Easement"):

Commencing at a 5/8" rebar found, said rebar being the northeasterly corner of property now or formerly owned by WBC 98G-42, LLC; thence S. 74° 22' 27" W. 284.03 feet to a 5/8 rebar with cap set, said rebar being the true point of beginning; thence N. 77° 17' 27" W. 40.00 feet to a point; thence N. 12° 42' 36" E. 134.82 feet to a point; thence N. 12° 42' 36" E. 40.00 feet to a point; thence S. 77° 17' 24" E. 814.07 feet to a point; thence S. 12° 42' 36" W. 40.00 feet to a point; thence N. 77° 17' 24" W. 749.07 feet to a 5/8" rebar found; thence with a curve to the left having a radius of 25.00 feet, an arc length of 39.27 feet, and a chord bearing S. 57° 42' 33" W. 35.35 feet to a point; thence S. 12° 42' 35" W. 109.82 feet to the true point of beginning and containing 25,479.43 sq. ft. (0.59 ac), more or less.

Exhibit B
Map of Access Easement



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is dated this 11th day of April, 2014, by and between **CLENDENIN PLACE REALTY, LLC**, a West Virginia corporation ("Lessor") and **MFM REALTY, LLC**, a West Virginia limited liability Company ("MFM") and **DUTCH MILLER OF CHARLESTON, INC.** ("Dutch Miller" and, together with MFM, collectively referred to herein as the "Lessee"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Lease (as defined below).

WITNESSETH

This Memorandum of Lease is executed and to be placed of record pursuant Section 40-1-8 of the Code of West Virginia, as amended, to evidence that certain Lease Agreement dated April 11, 2014 by and between Lessor and Lessee ("Lease").

1. Property. The real estate subject to the Lease is that certain tract or parcel of land situate and being in the City of South Charleston, South Charleston Corporation Tax District, Kanawha County, West Virginia (the "Leased Parcel"), together with a non-exclusive easement for ingress and egress (the "Access Easement"), all as more particularly described on Exhibit A attached hereto and made a part hereof. The Leased Parcel is designated as "AREA 1, 3.80 ACRES, FMC CORPORATION, P/O T.M. 9 Par. 1.1" on a subdivision map entitled "FMC EAST FINAL SUBDIVISION PLAT, CITY OF SOUTH CHARLESTON, SITUATED ON THE WATERS OF THE KANAWHA RIVER, KANAWHA COUNTY, WEST VIRGINIA", of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Map Book 75, at page 38 (the "Subdivision Map"). The above referenced 3.8-acre tract is subject to that certain access road designated as "15,956 SQ. FT. ACCESS EASEMENT" on the Subdivision Map. The Access Easement is designated as "Right of Way No. 3" on the on the Map entitled "Right of Way No. 3 Brownfield Way" attached hereto as Exhibit B (the Leased Parcel and the Access Easement shall be collectively referred to herein as the "Leased Premises"). By deed dated April __, 2014, from FMC Corporation to Lessor, Lessor obtained an option to purchase that certain tract or parcel of land situate and being in the City of South Charleston, South Charleston Corporation Tax District, Kanawha County, West Virginia designated as "Area 7 South - .046 AC" on the Subdivision Map (the "Option Tract"). If and when Lessor exercises its option to purchase the Option Tract, the Option Tract automatically becomes part of the Leased Premises.

2. Lease Term and Renewal. The term of this Lease is for a period of five (5) commencing on April 11, 2014, with the right to renew the Lease for successive renewal terms of five (5) years, each upon giving Lessor notice of its intention to renew not less than ninety (90) days prior to the expiration of the applicable term.

3. Option to Purchase. Pursuant to the terms of the Lease, MFM has the option to purchase the Leased Premises after the start of the second lease year until the end of the Initial Term of the Lease.

LEASE 261 899
Recorded in Above Book and Page
04/11/2014 03:04:40 PM
Vera J. McConrath
County Clerk
Kanawha County, WV
Deed Tax 0.00
Recording Fee 13.00
TOTAL 13.00

4. Additional Information. This Memorandum of Lease is not a complete summary of the Lease and the statements contained herein shall not be used in interpreting the actual provisions of the Lease. In the event of conflict between this Memorandum of Lease and the Lease, the terms and provisions of the Lease shall control. Additional information concerning the terms of the Lease can be obtained from Lessor or Lessee at the addresses set forth below:

If to Lessor: Clendenin Place Realty, LLC.
P.O. Box 3885
Charleston, WV 25338
Attn: C. E. White

If to Lessee: MFM Realty, LLC
P.O. Box 9069
Huntington, WV 25704-9069
Attn: Matthew Miller

5. Counterparts. This Memorandum may be executed in one or more counterparts, any one or all of which shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed the above all as of the date and year first above written.

LESSOR:

CLENDENIN PLACE REALTY, LLC, a
West Virginia corporation

By: C. E. White
Its: Manager

LESSEE:

MPM REALTY, LLC, a West Virginia
limited liability company

By: [Signature]
Its: Manager

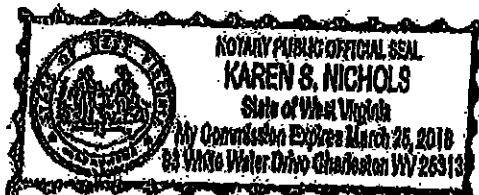
DUTCH MILLER OF CHARLESTON,
INC., a West Virginia corporation

By: [Signature]
Its: President

STATE OF WEST VIRGINIA,
COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me this 11th day of April, 2014, by C. E. White, Manager of Clendenin Place Realty, LLC, a West Virginia limited liability company, on behalf of the said limited liability company.

My commission expires March 25, 2018

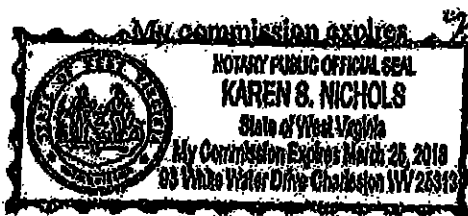


Karen S. Nichols
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me this 11th day of April, 2014, by Matt Miller, Manager of MFM Realty, LLC, a West Virginia limited liability company, on behalf of the said limited liability company.



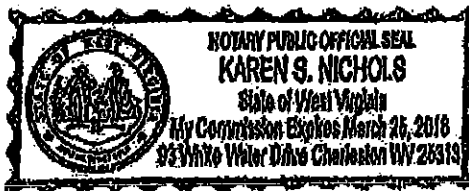
Karen S. Nichols
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me this 11th day of April, 2014, by Chris Miller, President of Dutch Miller of Charleston, Inc., a West Virginia corporation, on behalf of the said corporation.

My commission expires March 25, 2018



Karen S. Nichols
Notary Public

This Memorandum of Lease prepared by: Felicia P. Imbrogno, Esq., Jackson Kelly PLLC, 500 Lee Street, East Suite 1600, Charleston, West Virginia 25301-2302.

EXHIBIT A

Description of Leased Parcel and Access Easement

All that certain tract of land, together with the improvements thereon and the appurtenants thereunto belonging, situate in the City of South Charleston, South Charleston Tax District, Kanawha County, West Virginia and more particularly bounded and described as follows:

AREA 1:

Beginning at a 5/8" rebar found, and being the southeasterly corner of a lot owned by Rite Aid of West Virginia, Inc.; thence with said Rite Aid lot, N. 12° 42' 33" E. 279.81 feet to a 5/8" rebar found; thence leaving said Rite Aid lot, S. 77° 17' 24" E. 431.63 feet to a 5/8" rebar with cap set; thence with the same S. 77° 17' 24" E. 92.42 feet to a 5/8" rebar with cap set; thence S. 12° 52' 34" W. 144.60 feet to a 5/8" rebar with cap set; thence S. 76° 22' 54" E. 137.81 feet to a 5/8" rebar with cap set; thence S. 12° 51' 55" W. 134.72 feet to a 1" post found, said post being in the northerly right of way line of MacCorkle Ave.; thence with MacCorkle Ave. N. 77° 08' 35" W, passing a 3/4" rebar found at 72.65 feet, passing a 5/8" rebar and cap set at 137.82 feet, passing a second 3/4" rebar found at 311.31', passing a fourth 3/4" rebar at 511.34 feet, a total distance of 661.08 feet to the place of beginning, containing 3.80 acres, more or less.

RIGHT OF WAY NO. 3:

Commencing at a 5/8" rebar found, said rebar being the northeasterly corner of property now or formerly owned by WBC 98G-42, LLC; thence S. 74° 22' 27" W. 284.03 feet to a 5/8" rebar with cap set, said rebar being the true point of beginning; thence N. 77° 17' 27" W. 40.00 feet to a point; thence N. 12° 42' 36" E. 134.82 feet to a point; thence N. 12° 42' 36" E. 40.00 feet to a point; thence S. 77° 17' 24" E. 814.07 feet to a point; thence S. 12° 42' 36" W. 40.00 feet to a point; thence N. 77° 17' 24" W. 749.07 feet to a 5/8" rebar found; thence with a curve to the left having a radius of 25.00 feet, an arc length of 39.27 feet, and a chord bearing S. 57° 42' 33" W. 35.35 feet to a point; thence S. 12° 42' 35" W. 109.82 feet to the true point of beginning and containing 25,479.43 sq. ft. (0.59 ac), more or less.

EXHIBIT B

Map of Access Easement

June 3, 2016

File No.: 1904.0002

Stephen J. Golder
sjg@jenkinsfenstermaker.com

By Certified Mail and Return Receipt
Requested and Regular Mail

Clendenin Place Realty, LLC
P. O. Box 3885
Charleston, WV 25338
Attention: C.E. White

Re: Exercise of Option

Dear Mr. White:

We are counsel to MFM Realty, LLC. We are writing to you pursuant to the Lease Agreement dated April 11, 2014 between Clendenin Place Realty, LLC and MFM Realty, LLC. Please be advised that MFM Realty, LLC is exercising its option to purchase the leased premises pursuant to Paragraph 3 of the Lease for the sum of Five Million Six Hundred Seventy Five Thousand Dollars (\$5,675,000.00). Pursuant to the terms of the Lease, Huntington Banks obtained a neutral, unbiased appraisal of the property in this amount, a copy of which is enclosed. MFM Realty, LLC also requested the same be obtained from Branch Banking & Trust Company and this appraisal came back with a value of \$4.3 million dollars.

As required by the option, MFM Realty, LLC intends to be ready, willing and able to close on the above transaction within thirty (30) days of the date of this letter.

Sincerely,

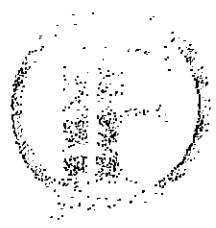


Stephen J. Golder

SJG/klt

Enclosure

Clendenin Place Realty, LLC
June 3, 2016
Page 2



cc: Shawn George, Esquire
George & Lorensen, PLLC
1526 Kanawha Boulevard East
Charleston, WV 25311



GEORGE & LORENSEN, PLLC

ATTORNEYS AT LAW & PROFESSIONAL LIMITED LIABILITY CORPORATION
1526 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

SHAWN P. GEORGE
CHARLES O. LORENSEN

TELEPHONE (304) 343-5555
FACSIMILE (304) 342-2513

June 16, 2016

Stephen J. Golder, Esquire
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WV 25726-2688

Re: MRM Realty, LLC Offer to Purchase Real Estate of Clendenin Place Realty, LLC

Dear Mr. Golder:

This responds to your letter of June 3, 2016 for MRM Realty, LLC to Clendenin Place Realty, LLC, c/o Mr. C. E. White and purported exercise of the option in the Lease Agreement. Consistent with my client's rejection of MRM Realty, LLC's offer of April 21, 2016, to purchase for \$5,000,000.00, the leasehold premises owned by Clendenin Place Realty, LLC, this letter confirms my client's rejection of the revised purchase offer and purported exercise of the option to purchase in the Lease Agreement. The Cushman Wakefield appraisal on which your client relies is seriously flawed and is not a neutral, unbiased, independent appraisal. Goldman & Associates appraised the property twice for Wesbanco, my client's lender. The first appraisal of January 29, 2013 (pre-closing) established the fair market value as \$7,000,000.00. Your client had and acknowledged this appraisal and value before entering into the transaction and Lease Agreement. The second appraisal of September 15, 2015, sets the value at \$7,050,000.00. Both appraisals were performed for a lender; each appraisal was independent and unbiased; and both identified the relevant comparative values, which have not declined.

I respectfully suggest that your client agree to pay the Goldman valuation if it seeks to exercise the option to purchase in the Lease Agreement. Otherwise,

Sincerely,

A handwritten signature in black ink that reads "Shawn P. George". The signature is written in a cursive, flowing style.
Shawn P. George



June 22, 2016

File No.: 1904.0002

Stephen J. Golder
sjg@jenkinsfenstermaker.com

Mr. Shawn P. George, Esquire
George and Lorensen, PLLC
1526 Kanawha Boulevard, E
Charleston, WV 25311

Re: MFM Realty, LLC Offer to Purchase Real Estate of Clendenin Place Realty, LLC

Dear Mr. George:

We are in receipt of your correspondence dated June 16, 2016.

Please accept this letter as a notice of default of Clendenin Place Realty, LLC under the Lease dated April 12, 2014 with MFM Realty, LLC and Dutch Miller of Charleston, Inc. In performing a title search in preparation for closing, we discovered that the real estate taxes for the year 2015 are unpaid and delinquent. Pursuant to Article 6 of the Lease, the 2015 taxes are the responsibility of Clendenin Place Realty, LLC. Please provide us with prompt evidence of the immediate payment of the 2015 real estate taxes.

Second, we consider your June 16 correspondence to be an anticipatory repudiation of our client's right to purchase the property under the Lease, and thus, a default under the Lease. We anticipate being ready, willing and able to close on the purchase of the property pursuant to the Lease on or before July 6, 2016.

We hope your client reconsiders its position in this regard and honors the agreement executed by the parties. If no closing occurs, our client is prepared to pursue all its legal rights and remedies.

Sincerely,


Stephen J. Golder

SJG/klt

Mr. Shawn P. George, Esquire
June 22, 2016
Page 2



cc: MFM Realty, LLC
P. O. Box 9069
Huntington, WV 25704-9069
Attention: Matt Miller

Dutch Miller of Charleston, Inc.
P. O. Box 9069
Huntington, WV 25704-9069
Attention: Christopher Miller

Charlie K. Gould, Esquire