

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**1. Parties:** The parties to this Settlement Agreement and Mutual Release (“Agreement”) are First Interstate Bank, 1200 Main Street, P.O. Box 9, Sturgis, S.D. 57785-0009, (the “Bank”) and the City of Sturgis, a South Dakota municipality whose address is 1040 Harley Davidson Way, Sturgis, SD 57785, (“City”).

**2. Purpose:** The purpose of this Agreement is to settle the dispute which has arisen between the parties as to the Bank’s liquidation sale of certain trademarks of Sturgis Motorcycle Rally, Inc. (“SMRI) following default by SMRI in its obligations to the Bank and to define the terms and conditions under which the City agrees to purchase from the Bank the property described in Section 3.

**3. Property:** The trademarks and goodwill associated with the trademarks are described on Exhibit A (“the Property”). The Parties acknowledge that SMRI has surrendered the Property to the Bank, as senior lien holder of the Property. To transfer title to the property, the Bank will request SMRI to sign assignment documents to complete transfer to the City, and the Bank will release its lien, but if SMRI does not cooperate, the City understands that certain legal action may be required by the Bank in order to transfer title to the Property.

**4. Consideration:** The City agrees to pay the Bank the sum of \$75,000 for the purchase of the Property described in Section 3 upon completion of the contingency in Section 8.

**5. Auction Company Termination Fee:** In addition to the Consideration described in Section 4, the City agrees to pay to McPherson Auction & Realty Company a termination fee not to exceed Twenty percent (20%) of the consideration described in Section 4.

**6. Abandonment of Marks:** The Bank has released its lien upon the “Sturgis” trademark when used in connection with good or services related to Sturgis Motorcycle Rally event, or as set forth in U.S. Reg. Nos. 3923284 and 4440406, the “Black Hills” trademark when used in connection with goods or services related to the Sturgis Motorcycle Rally event or as set forth in U.S. Reg. Nos. 3955170 and 4301562; the “Sturgis Motorcycle Rally” trademark; and the “Sturgis Rally & Races” trademark; and makes no claim to such marks. It is the Bank’s understanding that these marks have been abandoned by SMRI.

**7. Other Parties Right to Bid:** The City and the Bank acknowledge that the Sturgis Area Chamber of Commerce, Sturgis Motorcycles, Inc., and Good Sports, Inc. have a right to participate in any sale or bid process related to the Property resulting from a default by SMRI in its loan obligations to the Bank pursuant to an agreement letter dated June 30, 2010.

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**8. Contingent on Consent:** This Agreement is contingent on the City obtaining written consent to this Agreement, or written waivers of the right to bid or participate in the sale, from the Sturgis Area Chamber of Commerce, Sturgis Motorcycles, Inc., and Good Sports, Inc. If such consents or waivers are not obtained on or before December 5, 2021, either party may terminate this Agreement upon written notice to the other Party and this Agreement will be null and void.

**9. Property Warranties:** The Bank makes no warranty, either express or implied, relating to title, possession, quiet enjoyment, or the like concerning the Property described in Section 3.

**10. Mutual Warranties:** The City and the Bank warrant and represent to each other Party that:

A. Authorization. They duly and validly executed and delivered this Agreement.

B. Enforceability. This Agreement constitutes the valid and binding obligation of each party and is enforceable according to its terms.

**11. Time:** Time is of the essence to this Agreement.

**12. Mutual Release:** In consideration of the payment described in Section 4, the terms and conditions of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Bank and the City, on behalf of themselves, as well as on behalf of their attorneys, agents, representatives, and assigns, hereby expressly release and forever discharge among themselves and each other, as well as their officers, employees, ex-employees, agents, attorneys, representatives, successors, assigns, insurers and affiliates from any and all claims, demands, causes of actions, damages, costs, attorney's fees, expenses and obligations of any kind or nature whatsoever that they have asserted or could have asserted against any other of them that arise from or relate to or refer to in any way to the Property described in Section 3, whether directly or indirectly, with the express exception of an action to enforce the terms of this Agreement.

**13. Jurisdiction and Venue.** The validity performance, and enforcement of this Agreement are governed by the laws of the State of South Dakota. Jurisdiction and venue of any legal proceeding involving





## **Exhibit A**

Trademarks with the following names to be sold with associated good will:

- Sturgis Bike Week (U.S. Reg. Nos. 5913578, 2070955, 3818703, 3825398, 3838171, 3911270 and 3923236), All Roads Lead to Sturgis Bike Week (common law trademark), Girls of Sturgis Bike Week (common law trademark) and Miss Sturgis Bike Week (common law trademark);
- Black Hills Motor Classic Sturgis Rally & Races Black Hills S.D. (also known as the “Monahan Mark”) (U.S. Reg. Nos. 1948097 and 6005493);
- Take the Ride to Sturgis (U.S. Reg. No. 2698677);
- The Legend Lives On (U.S. Reg. No. 2513621);
- 75<sup>th</sup> Sturgis Motorcycle Rally (U.S. Reg. No. 4899119);
- 75<sup>th</sup> Sturgis Motorcycle Rally 1938-2015 (U.S. Reg. No. 4871446);
- 2016 76<sup>th</sup> Sturgis Motorcycle Rally Est 1938(U.S. Reg. No. 5074466);
- The Legend Lives on 77<sup>th</sup> Est 1938 Sturgis Motorcycle Rally 2017 (U.S. Reg. Nos. 5252579, 5318376);
- Est. 1938 78<sup>th</sup> Sturgis Motorcycle Rally 2018 (U.S. Reg. Nos. 5470683)
- 79<sup>th</sup> Sturgis Motorcycle Rally 2019 Since 1938 The Legend Lives On (U.S. Reg. Nos. 5777738 and 5909457);
- 80<sup>th</sup> Sturgis Black Hills Rally 2020 Est. 1938 The Legend Lives On (U.S. Reg. No. 6070483);
- Spirit of Sturgis (U.S. Reg. No. 5186959)

