

CURD, GALINDO & SMITH, L.L.P.
JOSEPH D. CURD, SBN 115764
301 East Ocean Boulevard, Suite 1700
Long Beach, CA 90802
Telephone: (562) 624-1177
Facsimile: (562) 624-1178

Attorneys for Howard's Appliances. Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Assigned for All Purposes

Judge Nathan Scott

HOWARD'S APPLIANCES, INC., a
California corporation

Plaintiff,

vs.

NEW LEAF SERVICE CONTRACTS, LLC,
a Texas limited liability company; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01227447-CU-BC-CJC

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE
3. NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE
4. RESCISSION
5. COMMON COUNT - MONEY HAD
AND RECEIVED AND
RESTITUTION BASED ON UNJUST
ENRICHMENT

[Unlimited Action – Over \$25,000]

Plaintiff complains and alleges as follows:

1. Plaintiff Howard's Appliances, Inc. ("Howard's") is and at all times herein mentioned was a California corporation with its principal place of business in the City of La Habra, Orange County, California.

2. Plaintiffs are informed and believe and thereon allege that Defendant New Leaf Service Contracts, LLC ("New Leaf") is a Texas limited liability company located in the city of Irving, State of Texas, and doing business in the Orange County, California.

3. The act of which Plaintiff complains herein took place in California, and primarily in Orange County, California.

Department of Consumer Affairs. Such regulations are designed to protect California consumers and to help ensure the California consumer is not disadvantaged by unscrupulous warranty service contract providers. It is and has been of utmost importance to Howard's to have a properly licensed and insured, knowledgeable, competent, and honest company, dedicated to customer satisfaction, which would implement, maintain, and administer the Service Contracts for its customers. Howard's interest in selecting the proper warranty service contract provider is to protect its customers and to enhance its customer relations. If a service contract provider, such as New Leaf, does not properly support the customer and perform its obligations, Howard's relationship with its customers will be disrupted. Therefore, on or about January 26, 2016, Howard's contracted with New Leaf to implement, maintain, and administer the Service Contracts sold to Howard's customers, pursuant to which New Leaf, among other things, would investigate, process, and adjust claims covered by the Service Contracts and pay valid claims. A true and correct copy of such contract is attached hereto as **Exhibit 1** (the "Contract").

9. In entering into the Contract it was of the essence that faithful performance of the Contract would allow Howard's customers to buy with confidence and that Howard's customers would be protected in the event of appliance failure.

10. In order to perform Service Contracts for customers in the State of California, New Leaf was required to be licensed by the California Department of Consumer Affairs to perform such services. In addition, New Leaf was required to be registered and qualified to do business in the State of California. California regulations include, among others, the obligation of New Leaf to obtain a policy insuring its contractual obligations under the Service Contracts and/or to set aside portions of the monies paid by customers under the Service Contracts in a regulated escrow account to secure performance by New Leaf of its obligations under the Service Contracts.

11. Plaintiff alleges that New Leaf, at the time of entering into the Contract and at all times thereafter, was not registered or qualified to do business in the State of California and was not qualified to issue, implement, maintain, or administer, or perform duties under the Service Contracts for Howard's customers in California. Plaintiff also alleges that at the time of entering

1 into the Contract and at all times thereafter New Leaf neither obtained the required policy
2 insuring its contractual obligations under the Service Contracts, nor did it set up an escrow
3 account containing monies derived from the Service Contracts to ensure its faithful performance
4 of its obligations thereunder.

5 12. In or about August 2020, Howard's elected not to renew New Leaf's Contract.
6 Howard's also gave notice that it intended to terminate the Contract with New Leaf prior to its
7 then-expiration date of January 26, 2021. Howard's did in fact terminate the New Leaf Contract
8 effective December 31, 2020. Howard's terminated the Contract due to poor performance, non-
9 performance, and poor customer service by New Leaf under the Contract and the Service
10 Contracts. New Leaf's poor performance, lack of performance, and poor customer service
11 tarnished Howard's reputation with its customers who purchased the goods and the Service
12 Contracts directly from Howard's. New Leaf, as alleged in more detail below, antagonized
13 Howard's customers by refusing to live up to their obligations under the extended warranties and
14 service contracts provided to such customers, by imposing undue red tape on Howard's
15 customers who sought to pursue legitimate claims under their Service Contracts, and by
16 generally adopting a policy and practice of frustrating and wearing customers out to get them to
17 forego or drop their otherwise legitimate claims. In doing so, New Leaf preyed on customer
18 vulnerability in that customers who had non-working appliances and needed prompt fixes or
19 repairs could not get them from New Leaf and would often have to solve their problems on their
20 own in order to obtain prompt relief, foregoing the services purchased from New Leaf, and
21 which New Leaf agreed to perform under the Service Contracts.

22 13. Despite termination of the Contract, New Leaf remained obligated to perform
23 under the Service Contracts and to satisfy all of its obligations to customers for all previously
24 issued Service Contracts which had not yet expired. Millions of dollars' worth of Service
25 Contracts had not yet expired as of the termination of New Leaf by Howard's. New Leaf's
26 service of such contracts continued to be poor, with New Leaf continuing, through its failures, to
27 tarnish the reputation of Howard's with its customers, and continuing to antagonize, frustrate,
28 and wear out customers through their lack of performance. Once the Contract was terminated,

New Leaf's service became worse, with New Leaf promising to return customers' calls and stating they understood the urgency, and then failing to call the customers back, causing the customers to call Plaintiff to express their complaints and demand compensation. For this reason, after termination of the Contract, Howard's sought to perform service for its customers under the Service Contracts through its own service department. As alleged herein, Howard's was able to provide appropriate customer service for customers whose claims were not being satisfied by New Leaf. Upon termination of the Contract, Howard's entered into an agreement with New Leaf that Howard's could handle customer claims on Service Contracts, and that New Leaf would reimburse Howard's for sums expended in performing such obligations on New Leaf's behalf. Howard's did charge New Leaf for such services and New Leaf initially paid for some, but not all, of the charges incurred. Then, in about July 2021, New Leaf abruptly refused to allow Howard's to service customer escalations under the Service Contracts and stopped reimbursing Howard's for same. Howard's has terminated the New Leaf Contract, however, and does not wish New Leaf to provide services for its customers, or to further antagonize or frustrate Howard's customers, or to further tarnish Howard's reputation with its customers through New Leaf's lack of service.

14. Plaintiff has been forced to take action to mitigate damages done to it and to its customers by reason of New Leaf's conduct and New Leaf's failure to perform its warranties and Service Contracts with Plaintiff's customers as required by the Contract. In order to mitigate damages and protect its customers, Howard's has:

- a. Attempted to handle as many of the consumer claims and service issues as possible, guiding customers through red tape imposed by New Leaf;
- b. Established a loaner program for customers who were experiencing delays with New Leaf to service their damaged or malfunctioning appliances;
- c. Reimbursed customers for service expenses while they wait for their claims to be processed by New Leaf;
- d. Empowered its customer experience representatives to settle customer concerns which are not being resolved by New Leaf;

1 e. Monitored customer complaints against New Leaf on such sites as the
2 Better Business Bureau, Yelp, and Google, and because of the nature and number of complaints
3 Plaintiff had to assign staff to be dedicated to handling these complaints, and also had to offer
4 customers gift cards for new purchases to retain their business;

5 f. Engaged a new warranty partner who is now servicing warranties and
6 service contracts issued through Howard's effective from the end of January 2021;

7 g. Continued to urge New Leaf to honor its commitments to Plaintiff's
8 customers;

9 15. In connection with its above activities, Howard's has:

10 a. Stepped in to assist customers when New Leaf repeatedly failed to call a
11 customer or repeatedly failed to appear for repair services;

12 b. Replaced appliances New Leaf failed and refused to repair or replace after
13 many months;

14 c. Repaired appliances after New Leaf's inactivity or failure to do so after
15 many months;

16 d. Issued loaner appliances to customers who were experiencing extreme
17 delays in service by New Leaf; and

18 e. Issued partial refunds to customers to replace units where New Leaf
19 refused to honor their warranty.

20 16. By this Complaint, Howard's seeks to fully terminate and rescind any rights,
21 duties, or obligations of New Leaf to administer the Service Contracts, and to obtain a turnover
22 of all unexpired warranties and Service Contracts currently in effect with New Leaf, which
23 Howard's will then be solely responsible to perform. Howard's seeks to obtain assignment of all
24 such Service Contracts in accordance with California laws, rules, and regulations, which would
25 also require the assignment to Howard's of any policy of insurance, insuring performance of
26 obligations under the Service Contracts and/or any funds paid to and held by New Leaf under all
27 unpaid Service Contracts, as well as a constructive trust imposed over such funds. In addition,
28

Howard's seeks restitution of all unearned fees paid to New Leaf for unexpired Service Contracts which have not been used to perform under the Service Contracts.

17. Plaintiff has given notice to New Leaf that it wishes to assume and take over the performance of all of the outstanding Service Contracts, but New Leaf has failed and refused to do so, has failed and refused to allow Howard's to service its own customers, and has sought to keep the obligation to perform under the Service Contracts, while failing to adequately provide such service to Howard's customers under the terms of both the Contract and the Service Contracts.

FIRST CAUSE OF ACTION

(Breach of Contract)

(Against All Defendants)

18. Plaintiff hereby incorporates by reference paragraphs 1 through 17 above as though set forth fully herein.

19. Plaintiff has performed all or substantially all of the significant things that the Contract required of it to do, except to the extent excused.

20. Defendant New Leaf failed to perform under the Contract and breached the Contract by:

a. Failing to implement, maintain and administer the Service Contracts by failing to perform the Service Contracts for the customers in the manner agreed or contemplated by such Service Contracts.

b. Failing to perform and failing to cause service centers in its network to perform customer service in accordance with proper quality of service standards;

c. Failing to investigate, process, and adjust claims covered by the Service Contracts and to pay valid claims;

d. Failing to provide services contemplated under the Contract at no cost or expense to Howard's;

e. Failing to pay Howard's the agreed-upon commission on net sales;

1 f. Failing to indemnify Howard's from claims, loss, liability costs, or
2 expense arising from New Leaf's negligence, willful misconduct, or breach of the Contract;

3 g. Failure to make Howard's an additional insured with respect to insurance
4 coverage for the Service Contracts, and failing to obtain an insurance policy insuring Howard's
5 obligations under the Service Contracts in violation of paragraphs 1A and 5G of the Contract;

6 h. Failing to obtain as contemplated by the Contract and regulations of the
7 State of California an appropriate policy of insurance insuring New Leaf's obligations under the
8 Service Contracts; and

9 i. On information and belief, assigning its obligations under the Contract
10 without Howard's prior written consent in violation of the Contract.

11 21. Implied in every contract is the covenant of good faith and fair dealing, which
12 prohibits a party from unfairly interfering with the other party's right to receive the benefits
13 under the Contract. One of the benefits to be obtained by Plaintiff under the Contract was to have
14 New Leaf provide extended warranties and so perform under its Service Contracts with
15 Plaintiff's customers, that Plaintiff's customers could buy with confidence and be protected in
16 the event of problems with the items purchased. New Leaf breached the implied covenant of
17 good faith and fair dealing by, among other things:

18 a. Failing to implement, maintain, and administer the Service Contracts in
19 good faith for the benefit of Howard's customers with the goal of achieving customer
20 satisfaction, improving customer confidence, and protecting the customer in the event they
21 experienced problems with their purchases;

22 b. Failing to obtain insurance for their obligations under the Service
23 Contracts;

24 c. Failing to be registered or qualified to do business in the state of
25 California;

26 d. Failing to set up an escrow account containing monies derived from the
27 sale of Service Contracts to ensure New Leaf's faithful performance of them;

1 e. Failing to comply with various regulations in the State of California
2 designed for the protection of California consumers, who New Leaf was servicing.

3 f. Failing to live up to the terms of its Service Contracts with Howard's
4 customers, not calling or showing for service appointments, blaming component failures on the
5 customers rather than treating them as warranted component failures, surprising customers with
6 unexpected services charges, refusing to pay for services covered under the warranties or Service
7 Contracts, and engaging in a pattern and practice of using tactics to discredit customer claims to
8 avoid its warranty commitments, and to frustrate customers into dropping otherwise legitimate
9 claims;

10 g. In addition, New Leaf has sought to void warranties issued to the customer
11 for spurious reasons, has misdirected customers to other parties, such as the manufacturer, to
12 make their claims or pursue their remedies and then, after the customer follows their instruction,
13 to deny the customer's claim as not being made timely to New Leaf;

14 h. Failing to ensure their repair technicians had the proper expertise;

15 i. Failing to take customer calls;

16 j. Making customers incur long wait times to talk to New Leaf, then
17 dropping their calls before they could talk to a representative, causing the customer to call
18 Howard's and have Howard's call New Leaf on their behalf;

19 k. Telling customers with claims that New Leaf could not assist the
20 customer, and that the customer needed to call Howard's instead;

21 j. Offering little or no compensation to the customer for issues which they
22 did not or could not fix;

23 k. Poor communication or being unresponsive to customer outreach;

24 l. Disallowing legitimate claims or failing to service customers as required
25 by the Service Contracts;

26 m. Failing to have its technicians show up for appointments;

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1 n. Inadequately explaining to customers where their claims stood in the
2 process and providing no timeline on when claims would be resolved, and greatly delaying many
3 claims;

4 o. Shuffling customers around to different departments or personnel with no
5 solution for the customer;

6 p. Engaging in long product repair delays;

7 q. Lowballing customer claims;

8 r. Improperly blaming customers as a reason for not covering claims;

9 s. Refusing promised payout for unused warranties per New Leaf's own
10 stated policies;

11 t. Improperly charging customers service fees;

12 u. General inattention to customer service and sometimes actively depriving
13 the customer of the agreed-upon service;

14 22. Plaintiff was harmed by the conduct of New Leaf as alleged above and the
15 breaches by New Leaf alleged above were a substantial factor in causing Plaintiff's harm.

16 23. Plaintiff was harmed in an amount according to proof at time of trial but not less
17 than \$1,000,000.

18 24. In addition, in the alternative to a claim of damages, Plaintiff alleges Defendant
19 New Leaf has obtained payment both from Plaintiff and from customers for Service Contracts
20 for which New Leaf has performed no services, which Service Contracts are still outstanding,
21 and New Leaf holds such amounts in constructive trust for the benefit of Howard's to ensure
22 adequate performance of the obligations under the Service Contracts. Howard's, by reason of
23 this action, seeks to obtain and become the obligor under the Service Contracts for the benefit of
24 its customers and therefore would be entitled to the use of the funds paid for such Service
25 Contracts to assist in performing its obligations thereunder, which obligations, if such relief is
26 granted, New Leaf would not be obligated to perform and therefore Howard's, not New Leaf,
27 would justly be entitled to use of the funds under the unexpired Service Contracts. Howard's
28 seeks an Order, by reason of New Leaf's various breaches as alleged above, that all of such sums

received for the unexpired contracts be held in constructive trust for such purpose pending the proper performance and/or the expiration of all such Service Contracts. Howard's is informed and believes and thereon alleges that the amount for which the constructive trust should be imposed exceeds \$3,200,000.

25. Plaintiff seeks specific performance of Defendant New Leaf's obligation to insure Plaintiff's contractual obligations under the Service Contracts and to make Plaintiff an additional insured with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract. In addition, Howard's seeks restitution of all unearned fees paid to New Leaf for unexpired Service Contracts which have not been used to perform under the Service Contracts and indemnity from New Leaf for all expenses incurred by Howard's in performing under the Service Contracts in place of New Leaf.

26. The Contract provides for attorney's fees specifically and without limitation under section 3. Plaintiff has expended attorney's fees in pursuing this matter, and continues to expend them, and will seek an award of same to the extent allowed by law or contract.

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SECOND CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

(As to all Defendants)

27. Plaintiff hereby incorporates by reference paragraphs 1 through 26 above as though set forth fully herein.

28. Plaintiff claims that Defendant New Leaf intentionally interfered with its economic relationships between it and its customers, that probably would have resulted in an economic benefit to Plaintiff.

29. Defendant New Leaf knew of the relationship between Plaintiff and its customers and, in fact, knew that the basis of the Contract which it signed with Plaintiff was to foster such economic relationship between Plaintiff and its customers so Plaintiff's customers could buy goods from Plaintiff with confidence and so such customers would be protected in the event of a defect, malfunction, or other problem with items purchased.

32. Plaintiff was harmed, and New Leaf's conduct was a substantial factor in causing Plaintiff's harm. Plaintiff has suffered damages in an amount according to proof at time of trial.

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NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

34. Plaintiff hereby incorporates by reference paragraphs 1 through 32 above as though set forth fully herein.

35. New Leaf knew or should have known of the above-alleged relationship between Plaintiff and its customers.

36. Defendant New Leaf knew or should have known that the relationship between Plaintiff and its customers would be disrupted if it failed to act with reasonable care.

37. Defendant New Leaf failed to act with reasonable care.

38. New Leaf engaged in wrongful conduct by engaging in the conduct alleged above and failing to properly implement, maintain, and administer the warranties and Service Contracts for Plaintiff's customers, and failing to investigate, process, and adjust claims covered by the

1 Service Contracts and to pay valid claims in the manner provided by such Service Contracts, and
2 wrongfully denying customers the benefit of the Service Contracts for which the customers paid.

3 39. Plaintiff's relationship with many of its customers was in fact disrupted and
4 Plaintiff was harmed. New Leaf's wrongful conduct as alleged above was a substantial factor in
5 causing Plaintiff's harm. Plaintiff has been damaged in an amount according to proof at time of
6 trial.

7 **FOURTH CAUSE OF ACTION**

8 **RESCISSION**

9 (As to all Defendants)

10 40. Plaintiff hereby incorporates by reference paragraphs 1 through 32 and 35 through
11 39 above as though set forth fully herein.

12 41. As alleged above, Defendant New Leaf has failed and refused to perform its
13 various obligations to Plaintiff under the Contract, and in addition, has failed and refused to
14 perform all of its obligations to Plaintiff's customers under the various warranties and Service
15 Contracts which it issued to such customers.

16 42. While Plaintiff has already terminated the Contract, Defendant New Leaf has
17 failed and refused in addition to honor its agreement that Howard's would henceforth service its
18 customers and perform under the Service Contracts in lieu of New Leaf, contingent on New
19 Leaf's agreement to reimburse and indemnify Howard's for its costs incurred in connection
20 therewith. Howard's claims for indemnity with respect thereto have been refused.

21 43. While Plaintiff has already terminated the Contract with New Leaf, under
22 paragraph 5F of the Contract, New Leaf remains obligated to continue its administrative
23 functions and perform its obligations under the Contract for all Service Contracts issued prior to
24 the date of termination. Plaintiff seeks to rescind such provision and any obligation by New Leaf
25 to continue to perform under the Service Contracts because (i) the consideration to Plaintiff for
26 allowing Defendant New Leaf to continue to perform under such Service Contracts has failed,
27 and New Leaf has continually failed to honor its obligations under such Service Contracts in the
28 manner alleged above; and (ii) the public interest will be prejudiced by permitting New Leaf to

1 continue to perform under the Service Contracts; and (iii) New Leaf is not now nor has it ever
2 been during the pendency of the Contract registered or qualified to do business in the State of
3 California, nor has it complied with all of the rules and regulations of the California Department
4 of Consumer Affairs with respect to the administration of the Service Contracts, nor has it
5 obtained proper insurance in its name insuring its obligations under the Service Contracts.

6 44. In addition to rescission of any obligation by Defendant New Leaf to continue to
7 perform under the Service Contracts, Plaintiff Howard's seeks an order transferring such Service
8 Contracts to it for future performance, and further seeks an order enjoining New Leaf from
9 interfering with Howard's right to perform the Service Contracts for its customers.

10 45. In addition, Howard's seeks performance of New Leaf's obligations, which
11 expressly survive termination of the Contract, under paragraphs 1A and 5G to name Plaintiff as
12 an additional insured with respect to the policy of insurance insuring the performance of the
13 contractual obligations under the Service Contracts

14 46. In addition, in the alternative to a claim of damages, Plaintiff alleges Defendant
15 New Leaf has been paid sums under the Service Contracts which are still unexpired and which
16 Howard's will now service, and New Leaf holds such amounts in constructive trust for the
17 benefit of Howard's in the event Howard's incurs expenses performing under the Service
18 Contracts. Howard's, by reason of this action, seeks to obtain and become the obligor under the
19 Service Contracts for the benefit of its customers and therefore would be entitled to the use of the
20 funds paid for such Service Contracts to assist in performing its obligations thereunder, which
21 obligations, if such relief is granted, New Leaf would not be obligated to perform and therefore
22 Howard's, not New Leaf, would justly be entitled to use of the funds under the unexpired Service
23 Contracts. Howard's seeks an Order, by reason of New Leaf's various breaches as alleged above,
24 that all of such sums received for the unexpired contracts be held in constructive trust for such
25 purpose pending the proper performance and/or the expiration of all such Service Contracts.
26 Howard's is informed and believes and thereon alleges that the amount for which the
27 constructive trust should be imposed exceeds \$3,200,000.
28

1 47. Plaintiff has given written notice of its desire to rescind to New Leaf any
2 obligation by New Leaf to perform under the Service Contracts and to transfer same to Howard's.
3 Plaintiff also intends service of the Summons and Complaint in this action to serve as Notice of
4 Rescission of the above-alleged remaining obligations of New Leaf under the Contract and
5 hereby demands that Defendant New Leaf restore to Plaintiff the consideration furnished by
6 Plaintiff, specifically, the sums paid by Plaintiff to New Leaf for the performance of the Service
7 Contracts, for all remaining Service Contracts that have not yet been performed and expired,
8 which sum Plaintiff alleges is in an amount according to proof at time of trial but not less than
9 \$3,200,000. Plaintiff is entitled to restitution of such amounts to avoid unjust enrichment to
10 Defendant New Leaf.

11
12 FIFTH CAUSE OF ACTION
13 COMMON COUNT – MONEY HAD AND RECEIVED AND
14 RESTITUTION BASED ON UNJUST ENRICHMENT

15 (As to all Defendants)

16 48. Plaintiff hereby incorporates by reference paragraphs 1 through 32 and 35 through
17 47 above as though set forth fully herein.

18 49. Within the last two years Defendant New Leaf has become indebted to Plaintiff in
19 a sum for money had and received by Defendant New Leaf for the use and benefit of Plaintiff in
20 an amount according to proof but not less than \$3,200,000 for the performance of Service
21 Contracts which Defendant New Leaf has not in fact had to perform, and which Plaintiff has
22 performed and/or will perform in Defendant New Leaf's stead.

23 50. Neither the whole nor any part of this sum has been paid, although demand
24 therefore has been made, and interest on such sum has been accruing at the legal rate from
25 January 27, 2021.

26 51. As a proximate result of Defendant New Leaf's unlawful, negligent, and unfair
27 conduct, and conduct in breach of its Contract and the Service Contracts, Defendant New Leaf
28 has obtained revenues specifically paid to them for the performance of such Service Contracts,
by which they have become unjustly enriched at the expense of Plaintiff. Under the

circumstances alleged herein it would be unfair and inequitable for Defendant New Leaf to retain the monies and profits they have unjustly obtained at the expense of Plaintiff. Accordingly, Plaintiff seeks both restitution of such sums paid in an amount according to proof but not less than \$3,200,000, and also seeks an order establishing Defendant New Leaf as constructive trustees of the monies and profits that serve to unjustly enrich them, together with interest during the period in which Defendant has obtained such profits, and requiring Defendant to disgorge those profits to Plaintiff in a manner to be determined by the Court.

WHEREFORE, Plaintiff prays judgment as follows:

AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT:

1. For an Order that all sums received for the unexpired Service Contracts be held in constructive trust for such purpose pending the proper performance and/or the expiration of all such Service Contracts;

2. For specific performance of Defendant New Leaf's obligation to insure Plaintiff's contractual obligations under the Service Contracts and to make Plaintiff an additional insured with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract

3. For restitution of all unearned fees paid to New Leaf for unexpired Service Contracts which have not been used to perform under the Service Contracts according to proof but in excess of \$3,200,000;

4. For indemnity from New Leaf for customer claims and for all expenses incurred by Howard's in performing under the Service Contracts in place of New Leaf;

5. For an Order enjoining New Leaf from interfering with Howard's right to perform the Service Contracts for its customers;

6. For damages in an amount according to proof at time of trial but not less than \$1,000,000.

7. For interest thereon at the legal rate from a date or dates according to proof.

AS TO THE SECOND CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS:

1 1. For an Order that all sums received for the unexpired Service Contracts be held in
2 constructive trust for such purpose pending the proper performance and/or the expiration of all
3 such Service Contracts;

4 2. For specific performance of Defendant New Leaf's obligation to insure Plaintiff's
5 contractual obligations under the Service Contracts and to make Plaintiff an additional insured
6 with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract

7 3. For restitution of all unearned fees paid to New Leaf for unexpired Service
8 Contracts which have not been used to perform under the Service Contracts according to proof at
9 time of trial but in excess of \$3,200,000;

10 4. For indemnity from New Leaf for customer claims and for all expenses incurred
11 by Howard's in performing under the Service Contracts in place of New Leaf;

12 5. For an Order enjoining New Leaf from interfering with Howard's right to perform
13 the Service Contracts for its customers;

14 6. For damages in an amount according to proof at time of trial but not less than
15 \$1,000,000;

16 7. For interest thereon at the legal rate from a date or dates according to proof;

17 8. For punitive damages in an amount according to proof at trial.

18 AS TO THE THIRD CAUSE OF ACTION FOR NEGLIGENT INTERFERENCE WITH
19 PROSPECTIVE ECONOMIC RELATIONS:

20 1. For an Order that all sums received for the unexpired Service Contracts be held in
21 constructive trust for such purpose pending the proper performance and/or the expiration of all
22 such Service Contracts;

23 2. For specific performance of Defendant New Leaf's obligation to insure Plaintiff's
24 contractual obligations under the Service Contracts and to make Plaintiff an additional insured
25 with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract

26 3. For restitution of all unearned fees paid to New Leaf for unexpired Service
27 Contracts which have not been used to perform under the Service Contracts according to proof at
28 time of trial but in excess of \$3,200,000;

1 4. For indemnity from New Leaf for customer claims and for all expenses incurred
2 by Howard's in performing under the Service Contracts in place of New Leaf;

3 5. For an Order enjoining New Leaf from interfering with Howard's right to perform
4 the Service Contracts for its customers;

5 6. For damages in an amount according to proof at time of trial but not less than
6 \$1,000,000;

7 7. For interest thereon at the legal rate from a date or dates according to proof.

8 AS TO THE FOURTH CAUSE OF ACTION FOR RESCISSION:

9 1. That Defendant New Leaf's obligations to continue to administer the Service
10 Contracts be rescinded;

11 2. For an Order that all sums received for the unexpired Service Contracts be held in
12 constructive trust for such purpose pending the proper performance and/or the expiration of all
13 such Service Contracts;

14 3. For specific performance of Defendant New Leaf's obligation to insure Plaintiff's
15 contractual obligations under the Service Contracts and to make Plaintiff an additional insured
16 with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract

17 4. For restitution of all unearned fees paid to New Leaf for unexpired Service
18 Contracts which have not been used to perform under the Service Contracts according to proof at
19 time of trial but in excess of \$3,200,000;

20 5. For indemnity from New Leaf for customer claims and for all expenses incurred
21 by Howard's in performing under the Service Contracts in place of New Leaf;

22 6. For an Order enjoining New Leaf from interfering with Howard's right to perform
23 the Service Contracts for its customers;

24 7. For damages in an amount according to proof at time of trial but not less than
25 \$1,000,000;

26 8. For interest thereon at the legal rate from a date or dates according to proof.

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AS TO THE FIFTH CAUSE OF ACTION FOR MONEY HAD AND RECEIVED AND
RESTITUTION BASED ON UNJUST ENRICHMENT:

1. For an Order that all sums received for the unexpired Service Contracts be held in
constructive trust for such purpose pending the proper performance and/or the expiration of all
such Service Contracts;

2. For specific performance of Defendant New Leaf's obligation to insure Plaintiff's
contractual obligations under the Service Contracts and to make Plaintiff an additional insured
with respect to the insurance policy pursuant to paragraphs 1A and 5G of the Contract

3. For restitution of all unearned fees paid to New Leaf for unexpired Service
Contracts which have not been used to perform under the Service Contracts according to proof at
time of trial but in excess of \$3,200,000;

4. For indemnity from New Leaf for customer claims and for all expenses incurred
by Howard's in performing under the Service Contracts in place of New Leaf;

5. For damages in an amount according to proof at time of trial but not less than
\$1,000,000.

6. For interest thereon at the legal rate from a date or dates according to proof.

AS TO ALL CAUSES OF ACTION:

1. For attorney's fees if allowed by contract or law;

2. For costs of suit incurred herein;

3. For all such other and further relief as the Court deems just and proper.

DATED: October 21, 2021

CURD, GALINDO & SMITH, L.L.P.

Joseph D. Curd
JOSEPH D. CURD Attorneys for Plaintiff

Exhibit 1

DEALER ADMINISTRATION AGREEMENT

This Administration Agreement (this "Agreement"), effective this 26 day of January 2016, is entered into by and between Howards Appliances Inc. located at 901 E. Imperial Highway Suite E La Habra CA 90631 hereinafter referred to as ("Dealer") and New Leaf Service Contracts, LLC, with offices located at 909 Lake Carolyn Parkway Suite 900 Irving Texas 75039 (hereinafter referred to as ("Administrator")).

WHEREAS, Dealer desires to sell service contracts ("Service Contracts") to Dealer's customers under a Service Contract program designed by Administrator (the "Program");

WHEREAS, Dealer recognizes that Administrator has expertise in designing and administering such Service Contracts; and

WHEREAS, Administrator desires to assist Dealer in implementing, maintaining and administering the Program for the benefit of Dealer's customers who purchase and if applicable register the Service Contracts. ("Purchasers");

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. DEALER AGREES:

A. To appoint Administrator, on an exclusive basis, to administer the Program. Dealer acknowledges that all Service Contracts sold by Dealer shall be contracts between Administrator, Obligor, Retailer and the Purchaser. Dealer's contractual obligations under the Service Contracts shall be insured pursuant to an insurance policy obtained by Administrator and issued by an insurance company qualified to issue such policies in the necessary jurisdictions (the "Insurance Company"). Dealer agrees to cooperate with Administrator and/or the Insurance Company with regard to the preparation and submission of all governmental filings applicable to the Program and will provide adequate resources to assist Administrator with the collection of Dealer data needed for such filings.

B. To follow Administrator's instructions and procedures contained herein and as otherwise agreed to in writing, with respect to the Program and to submit business to Administrator in accordance with the terms of this Agreement; provided, however, that Dealer agrees that the instructions and procedures contained herein can be modified unilaterally by Administrator to conform with changes mandated by law.

C. To endeavor to sell Service Contracts on qualified covered equipment to Dealer's customers. Dealer may add other categories only upon the prior approval of Administrator. Administrator reserves the right to restrict certain types of products and/or manufacturers of products from eligibility for a Service Contract upon sixty (60) days prior written notice to Dealer's, provided that no restriction shall apply for Service Contracts sold prior to the effective date of such restrictions.

D. To sell Service Contracts only in the form approved in writing by Administrator (Exhibit "B"). If Dealer sells any Service Contract that has not been approved in writing by Administrator, Dealer shall assume all administrative and other responsibilities thereunder and the contractual liability insurance obtained by Administrator shall not cover such Service Contracts. Administrator may prospectively change the form or terms of the Service Contract upon sixty (60) days

prior written notice to Dealer. Further, Dealer shall not use or otherwise disseminate any marketing materials related to the Program which have not been approved in writing by Administrator.

E. To not offer a customer a Service Contract on a new or refurbished product that does not have a manufacturer's warranty of at least three hundred and sixty-five (365) days on parts and labor, unless otherwise mutually agreed upon in writing. If Dealer sells such service contracts, dealer acknowledges he is the obligor and such service contracts are not covered under this agreement.

F. To not market and sell a Service Contract on any product where the combination of the manufacturer's warranty and the Service Contract would exceed six (6) years of coverage from the date of purchase or date of delivery, excluding major component coverage, unless prior written approval from Administrator has been granted. If Dealer sells such service contracts, dealer acknowledges he is the obligor and such service contracts are not covered under this agreement.

G. To not market, sell or quote any price of Service Contract to an educational institution, commercial establishment or a large buyer (a purchaser who purchases more than 25 units) without first receiving prior written approval and a price quote from Administrator. If Dealer sells such service contracts, dealer acknowledges he is the obligor and such service contracts are not covered under this agreement.

H. To pay Administrator a fee for each Service Contract sold by Dealer in accordance with the Program cost schedule ("Cost Schedule"), an initial copy of which is set forth in Exhibit "A". The Cost Schedule may not be adjusted by Administrator for two years from the Effective date. Thereafter, Administrator may adjust the cost schedule in its sole discretion upon thirty (30) days' notice to Dealer. Dealer must submit all Service Contracts and payments monthly in the format acceptable to and requested by Administrator and payment made via ACH or wire by the 15th of the month for all contracts sold the previous month. If Dealer fails to remit any amounts owed to Administrator for Service Contract sales or cancellations, Administrator shall have the right to offset the amounts owing against any amounts which Administrator, its agents, subsidiaries or affiliates, may owe Dealer. Furthermore, Dealer understands and agrees that Administrator can assign its right to the Insurer for any amounts not remitted as described in the preceding sentence. Neither the Administrator, the Obligor nor Insurance Company shall have any responsibility under this agreement for any service contracts until payment is made by the Dealer. Dealer further acknowledges that any obligations under the service contracts to the purchaser prior to payment being made by the Dealer to the Administrator are the responsibility of Dealer. Service Contracts reported and paid sixty (60) days after date of contract sale will incur a 50% surcharge plus any claims made and shall be accepted at the sole discretion of administrator. Dealer shall be solely responsible for collecting from each Purchaser and remitting to the proper taxing authority all taxes based on the price paid for the Service Contracts. Unless otherwise mutually agreed upon in writing, Administrator shall have no responsibility for the processing and remittance of such taxes related to sales to Purchasers.

I. To provide Administrator with the consumer information on Service Contract sales required hereunder in electronic form or through Administrator's online portal specified for contract entry.

J. That it shall have no authority to make, alter, modify, waive or discharge any terms or conditions of any Service Contract or any performance thereunder, to incur any liability on behalf of Administrator or the Insurance Company, or to make representations about Service Contract coverage not contained expressly in the relevant Service Contract. Dealer shall abide by and be bound by

Administrator and/or the Insurance Company's determination as to whether any claim is proper and valid under the terms of the Service Contract. If Dealer disagrees with any such determination, and should Dealer voluntarily make any claim payment, then Dealer shall be solely responsible for such payment.

K. To inform Administrator, within ten (10) days following the end of the month in which a cancellation was processed, of any Purchaser request for such a refund or cancellation. Purchaser refunds or cancellations will be made in accordance with applicable state or federal laws and regulations. Dealer shall be responsible for its proportionate share of refunds in connection with such refund or cancellation requests by Purchasers. Dealer shall be fully responsible for any refunds required as a result of Dealer's failure to properly sell, report or remit funds for Service Contracts.

L. That it shall not, during the Term of this Agreement, sell, market or otherwise distribute any extended service contracts, extended warranties and/or similar product protection offerings which are offered or administered by any person or entity other than Administrator.

M. That it shall make reasonable effort to advise Administrator in the event Dealer is notified by any manufacturer that a product line offered in Dealer has suffered an unusual type and/or amount of defects and is subject to recall, an extension of the manufacturer's limited warranty or any other special treatment. Dealer agrees to use its best effort to assist Administrator to obtain solutions from a manufacturer whose eligible product has suffered an unusual type of defect or an unusual number of defects or is subject to recall.

N. To the extent that Dealer sends (or has a third party send on its behalf) any emails to third parties related to the Service Contracts, Dealer represents and warrants that it will not, and undertakes that it will have processes consistent with applicable industry standards to ensure that it will not, violate CAN-SPAM or any other privacy or anti-spam laws in the U.S. or elsewhere worldwide. Any emails which promote, sell or relate to the Service Contracts, or which in any way appear to have been sent by or on behalf of Administrator must be reviewed and approved in writing in advance by Administrator, and must comply with CAN-SPAM (including but not limited to containing the appropriate opt-in/opt-out provisions, and ensuring that such emails are not sent to those who have already opted out), as well as other applicable privacy and anti-spam laws.

2. ADMINISTRATOR AGREES:

A. To implement, maintain and administer the Program.

B. To maintain at its own cost and expense, at its own administrative offices, a toll-free line to be used for assisting Purchasers in obtaining the services provided under the terms of the Service Contract. Administrator shall continuously maintain and staff such telephone line with sufficient employees and/or automated phone services to properly provide service for Purchasers.

C. To require service centers in its dependent service network to perform service in accordance with the Quality of Service Standards. Administrator represents and warrants that all contractors performing extended warranty and repair services under the Service Contracts will perform such extended warranty repair services such that they will not negatively impact the products.

D. To pay for the cost of printing point of purchase materials up to 1% of net remittances, which Administrator deems necessary for the successful implementation of the Program. All Program materials must be approved by Dealer and Administrator, in writing, prior to ordering any such printing. Administrator will supply Dealer with mockups for all printed Program materials, and Dealer will then have thirty (30) days to reject or disapprove of any or all aspects of the mock-up.

E. To investigate process and adjust claims covered by the Service Contracts and to pay valid claims.

F. To process all requests for cancellations, refunds and transfers by Dealer.

G. To assist Dealer in understanding the format required to submit information electronically or through the portal and implementing the requisite system modifications.

H. Administrator shall provide direct marketing services, including direct mail, and telemarketing on behalf of Dealer to pursue the sale of Service Contracts on Second Effort Opportunities and/or Renewal Opportunities (as such terms are hereinafter defined).

"Second Effort Opportunities" shall be defined as all point of purchase transactions for eligible products that did not include the sale of a Service Contract.

"Renewal Opportunities" shall be defined as the continuation of existing Service Contract coverage immediately following a point of sale or second effort service contract.

Dealer agrees that Administrator shall be the sole and exclusive provider of the services described herein for leads sent by Dealer(s) to Administrator and further agrees not to engage competitive services to perform said services, including efforts made by Dealer to secure second effort or renewal service contract sales.

Administrator in its sole discretion shall set the price for Second Effort and Renewal Service Contracts being sold through direct marketing.

Administrator will be responsible for assessing sales tax responsibilities in accordance with state regulations. Administrator will collect that amount from residents in the respective state as applicable who purchase Service Contracts and forward the appropriate amount of sales tax to the appropriate state authorities.

The services provided herein shall be performed by Administrator at no cost or expense to Dealer.

Administrator shall pay to Dealer a commission of 15% on net sales (net of cancellations, refund charge backs, sales tax and credit card fees). Payment for commission shall be due on or before the 25th day following the month of the receipt of payment by Administrator from the direct marketing company for the Service Contracts sold to consumers.

3. INDEMNIFICATION:

Each party will indemnify, defend and hold harmless the other party and its respective officers, directors, employees, affiliates and agents (each, an "Indemnified Party," and collectively, the "Indemnified Parties") from and against any claim, loss, liability, cost or expense, including but not limited to reasonable attorneys' fees and costs, (collectively, a "Claim") to the extent such Claim arises from the negligence, willful misconduct or breach of this Agreement by the other party.

If an Indemnified Party has reasonable cause to believe it has grounds for indemnification under this Agreement, it will promptly deliver a notice of its Claim to the other party (the "Indemnitor"), setting forth with reasonable particularity the grounds for the Claim. If there is asserted any Claim by a person (including any entity or governmental organization or agency) not a party to this Agreement (a "Third

Party Claim"), the Indemnified Party must notify the Indemnitor in writing of the Third Party Claim as soon as practicable but no later than twenty (20) days after receipt by such Indemnified Party of written notice of the Third Party Claim. Thereafter, the Indemnified Party will deliver to the Indemnitor, as soon as practicable after receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The failure to notify the Indemnitor will not relieve the Indemnitor of any liability that it may have to the Indemnified Party, except to the extent the Indemnitor demonstrates that the defense of such action is prejudiced by the Indemnified Party's failure to give such notice.

The Indemnitor will be entitled to participate in the defense of a Third Party Claim made against an Indemnified Party and, if it so chooses, to assume the control of the defense thereof with counsel of its choosing. If the Indemnitor elects to assume the control of the defense of a Third Party Claim, the Indemnified Party will (a) cooperate fully with the Indemnitor in connection with such defense, (b) not admit any liability with respect to, or settle, compromise or discharge any Third Party Claim without the Indemnitor's prior written consent and (c) agree to any settlement, compromise or discharge of a Third Party Claim which the Indemnitor may recommend and which by its terms obligates the Indemnitor to pay the full amount of the liability in connection with such Third Party Claim and which releases the Indemnified Party of any further liability associated therewith. In the event the Indemnitor will assume the control of the defense of any Third Party Claim as provided above, the Indemnified Party will be entitled to participate in (but not control) such defense with its own counsel at its own expense. If the Indemnitor does not so assume the control of the defense of any Third Party Claim, the Indemnitor will be entitled to participate in (but not control) the defense of such Third Party Claim with its own counsel at its own expense.

4. LIMITATION OF LIABILITY:

IN NO EVENT SHALL ADMINISTRATOR'S LIABILITY TO DEALER OR ANY THIRD PARTY FOR ANY CLAIM, LOSS, LIABILITY, COST OR EXPENSE RELATING IN ANY WAY TO THIS AGREEMENT, WHETHER BASED IN WHOLE OR IN PART ON NEGLIGENCE, EXCEED THE AMOUNTS REMITTED BY DEALER TO ADMINISTRATOR IN THE THREE (3) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, LOSS, LIABILITY, COST OR EXPENSE, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFIT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT SUCH PARTY, ITS EMPLOYEES, AGENTS OR ASSIGNS, MAY SUFFER WHICH ARE CAUSED BY OR RESULT FROM THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT. FURTHER, NEITHER PARTY SHALL BE RESPONSIBLE FOR ANY TAX LIABILITY OR ASSOCIATED PENALTIES OF THE OTHER PARTY.

5. TERM AND TERMINATION:

A. The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of three (3) years unless terminated in accordance with the terms herein. Thereafter, this Agreement shall be automatically extended for renewal terms of two (2) year each, unless either party provides the other with written notice of termination at least ninety (90) days prior to the expiration of the initial term or any renewal term (collectively the "Term").

B. If a party discovers an act of fraud or material breach of the Agreement (including material incorporated by reference into this Agreement) by the other party, its agents, directors, officers or employees, the non-breaching party shall send written notice to demand that the problem be cured. If the default is not cured within thirty (30) days after written notice is sent, the non-breaching party may terminate this Agreement immediately by giving written notice.

C. Either party may terminate this Agreement immediately by giving written notice in the event of the liquidation or insolvency of the other party, the appointment of a receiver or similar officer for the other party, an assignment by such party for the benefit of its creditors or the filing of a petition of bankruptcy by or against the other party which is not dismissed within thirty (30) days.

D. Administrator shall have the right to terminate this Agreement upon ninety (90) days written notice in the event that Dealer fails to meet or exceed sales volume requirements of \$500,000.00 annually.

E. Failure by the Dealer to remit and pay for all Service Contracts to the Administrator within twenty (20) days following the end of the month in which Service Contracts were sold pursuant to the language in Section 1(H) shall result in immediate termination of this Agreement if Administrator so elects. Dealer shall have no further right to sell additional Service Contracts and the entire amount of any payments for Service Contracts written through that date shall immediately become due and payable.

F. Upon termination by either party, all obligations hereunder shall cease; provided, however, that Dealer shall remain obligated to pay for all Service Contracts issued prior to the termination date and Administrator shall remain obligated to continue its administrative functions and perform its obligations under this Agreement for all Service Contracts issued prior to the date of termination.

G. Termination of this agreement shall in no way alter or invalidate insurance coverage or the status of Dealer as an additional insured with respect to Service Contracts issued and paid prior to termination date.

6. NOTICE:

All notices, demands, or communications regarding this Agreement shall be in writing, signed by the party serving the same, and deposited, postage prepaid, in the United States Postal Service as certified or registered mail or sent via overnight delivery to the following addresses:

If to Administrator at:

New Leaf Service Contracts, LLC
909 Lake Carolyn Parkway Suite 900
Irving Texas 75039
Attention: Richard Gavino, President

If to Dealer at:

Howards Appliances Inc.
901 E. Imperial Highway Suite E
La Habra CA 90631
Attention: John Wilkerson, President & CEO

7. ASSIGNMENT:

Neither party may assign this Agreement or any interest herein without the prior written consent of the other party.

8. COLLECTION AND ENFORCEMENT:

All reasonable advances, costs, expenses, charges, and attorney's fees, which Administrator may make, pay, or incur under any provision of this Agreement for the collection of its fees described in

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Section 1(H) or for the enforcement of any of its rights in this Agreement, or in any dispute or litigation in which Administrator may become involved by reason of or arising out of this Agreement for which it may be indemnified pursuant to Section 3, shall be paid by Dealer to Administrator, upon demand, and shall, at Administrator's election, bear interest until paid at the maximum rate of interest permitted by applicable law (or such rate as may be chosen by Administrator), from the date of such payment until repaid by Dealer. Administrator shall be entitled to bring a court action seeking injunctive, mandatory or other equitable relief to restrain any breach or threatened breach or otherwise to specifically enforce the provisions of this Agreement, it being agreed that money damages alone would be inadequate to compensate it in the event of a breach or threatened breach.

9. ENTIRE AGREEMENT:

This Agreement, together with the attachments hereto, represents the entire and exclusive agreement of the parties with respect to the subject matter hereof, and supersedes all prior written agreements understanding among the parties with respect to the subject matter of this Agreement. This Agreement shall not be modified, amended or changed in anyway except by written agreement signed by both parties.

10. INVALIDITY:

If any provision of this Agreement is held invalid under any state or federal laws or regulations, such provision shall be deemed not to be part of this Agreement in such jurisdiction, but shall not invalidate any other provision hereof. If any provision shall be held invalid, either party shall have the option to terminate this Agreement, subject to all provisions respecting termination provided herein, or redraft to restate such provision so as to be in compliance with such law or regulation.

11. RIGHT TO INSPECT:

Dealer shall keep, maintain and preserve during the Term of this Agreement and for five (5) years thereafter or for such longer period required by law accurate records ("Records") relating to its marketing and sale of Service Contracts under this Agreement and Records showing its compliance with and performance of duties under this Agreement. Administrator shall have the right to audit, inspect and copy the Records at all reasonable times during the business week (Monday through Friday, excluding legal holidays) upon receipt of two (2) weeks prior written notice. The costs of the audit shall be borne by Administrator.

12. CHOICE OF LAW AND WAIVER OF JURY TRIAL:

A. This Agreement and all matters arising out of or relating to this Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Texas, without regard to conflict of laws principles. Each party hereto hereby consents to and confers nonexclusive jurisdiction upon the courts of the State of Texas and the Federal courts of the United States of America located in the Tarrant County in the State of Texas, over any legal action or proceeding arising out of or relating to this Agreement.

B. Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

13. INDEPENDENT PARTIES:

This Agreement is not intended to, nor does it create, a principal/agent, employer/employee, partnership or joint venture relationship between the parties.

14. CONFIDENTIALITY

A. In conjunction with the performance of this Agreement, Dealer may acquire certain information concerning Administrator which is either non-public, confidential or proprietary in nature including, without limitation, pricing information and systems design for administering claims and any other information designated as confidential by Administrator. Dealer agrees that all such information shall be kept confidential and shall not, without the prior written consent of Administrator, be disclosed by Dealer its agents or employees, in any manner whatsoever, in whole or in part, except as required by subpoena, similar court order or regulatory authority so empowered, and such information shall not be used by Dealer its agents and employees who need to know such information for the purpose of performing the terms and conditions of this Agreement, who are informed by Dealer of the confidential nature of the information and agree to be bound to respect the confidential nature of such information. Dealer shall use its best efforts to prevent any breach of this Section by its agents or employees. Notwithstanding the foregoing, such confidential information shall not include information or materials which is in the public domain through no fault of Dealer already in Dealer's possession or known to Dealer prior to Dealer's receipt of such information from Administrator, or obtained by Dealer as a matter of right from sources other than Administrator or Administrator's agents and representatives. This provision shall survive termination of this Agreement.

B. In conjunction with the performance of this Agreement, Administrator may acquire certain information concerning Dealer that is non-public, confidential or proprietary in nature including, without limitation, any and all customer lists, customer information, sales data and any other information designated as confidential by Dealer. Administrator agrees that all such information shall be kept confidential and shall not, without prior written consent of Dealer be disclosed by Administrator, its agents or employees, in any manner whatsoever, in whole or in part, except as is required by subpoena, similar court order or regulatory authority so empowered, and shall not be used by Administrator, its agents or employees, for any purpose whatsoever other than in connection with the performance of Administrator's obligations hereunder. Administrator shall transmit such information only to its agents and employees who need to know such information for the purpose of performing the terms and conditions of this Agreement, and who are informed by Administrator of the confidential nature of the information and agree to be bound to respect the confidential nature of such information. Administrator shall use its best efforts to prevent any breach of this Section by its agents or employees. Notwithstanding the foregoing, such confidential or proprietary information shall not include information or material which is in the public domain through no fault of Administrator, already in Administrator's possession or known to Administrator prior to Administrator's receipt of the same from Dealer or obtained by Administrator as a matter of right from sources other than Dealer or Dealer's agents and representatives. This provision shall survive termination of this Agreement.

15. TRADEMARKS:

Administrator shall be permitted to use throughout the Term of this Agreement and for so long as it is administering any of the Service Contracts, Dealer trade name solely in conjunction with Administrator's performance required under this Agreement, subject to Dealer approval. If this Agreement terminates, Administrator's rights with respect to such trade name shall be limited to answering phones in connection with the Program and Administrator shall have no rights to use such trade name to advertise or solicit customers. Both parties expressly recognize, acknowledge and agree that neither party shall acquire any rights in the other party's trade names or trademarks and any such

trade names or trademarks shall be utilized by the other party only as specifically authorized by this Agreement and only during the Term of this Agreement.

16. WAIVER:

The waiver by a party of any breach of this Agreement shall not constitute a waiver of any subsequent breach, whether of the same or different kind. The failure of any party to act with respect to any breach hereof will not, in and of itself, be construed as a waiver of such breach.

17. CONTRACT INTERPRETATION:

Each party acknowledges that it has had ample opportunity to review and comment on this Agreement. This Agreement shall be read and interpreted according to its plain meaning and any ambiguity shall not be construed against either party. It is expressly agreed by the parties that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement.

IN WITNESS WHEREOF, the parties duly authorized representatives have executed this agreement as of the effective date.

Howards Appliances Inc.
("Dealer")

By: 

Name: John Wilkerson

Title: President & CEO

New Leaf Service Contracts, LLC

By: 

Name: Richard Gavino

Title: President