

1 Annick M. Persinger (CA Bar No. 272996)

2 **TYCKO & ZAVAREEI LLP**

3 10880 Wilshire Blvd. Suite 1101

4 Los Angeles, CA 90024

5 (510) 254-6808

6 *apersinger@tzlegal.com*

7 *Counsel for Plaintiffs and Class*

8 [Additional Counsel listed on Signature Page]

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 FRANKLIN MCINTYRE, MELISSA NULL,  
13 CHRISTINA REGNIER, AND CRYSTAL  
14 SMITH, *on behalf of themselves and all others*  
15 *similarly situated,*

16 Plaintiffs,

17 v.

18 AMERICAN HONDA MOTOR CO., INC., a  
19 California corporation,

20 Defendant.

Case No.: 2:23-cv-7024

**CLASS ACTION**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 All allegations made in this Complaint are based upon information and belief except those  
2 allegations that pertain to Plaintiffs, which are based on personal knowledge. Each allegation in this  
3 Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the *Federal*  
4 *Rules of Civil Procedure*, is likely to have evidentiary support after a reasonable opportunity for further  
5 investigation or discovery.

6 **I. NATURE OF THIS ACTION**

7 1. Plaintiffs bring this proposed class action for damages and injunctive relief on behalf  
8 of themselves and all other persons and entities nationwide who purchased a 2019-2023 Acura RDX  
9 vehicle (the “Vehicles” or “Class Vehicles”) manufactured by defendant American Honda Motor Co.,  
10 Inc. (“Honda” or “Defendant”).

11 2. The Vehicles are equipped with a defective rear windshield with electrical defroster  
12 that causes the rear windshield glass to spontaneously shatter or break with no external impact. *See*  
13 *images*<sup>1</sup> below:



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<sup>1</sup> These images are screenshots taken from a video of the no-impact shattering happening in real time. Available at <https://www.youtube.com/watch?v=xnZeeBkruPY>.



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11 3. According to Defendant, the spontaneous shattering of the Vehicle’s rear windshield is  
12 caused by an “incorrect specification for the rear defroster grid.”<sup>2</sup>

13 4. Automobile windows (including rear windshields) play a vital role in the Vehicles’  
14 occupant protection system by helping protect occupants from full- and partial-ejection during normal  
15 vehicle operation as well as crashes. Windows also serve as an important barrier separating occupants  
16 from weather elements, dust, debris, and other outside objects that could otherwise intrude into the  
17 passenger compartment and jeopardize the operator’s ability to control the Vehicle. Windows also  
18 prevent small children and pets from exiting the Vehicles when the Vehicles are in motion, and secure  
19 occupants and occupants’ personal property from intruders, thieves, and other ill-intentioned persons.

20 5. These rear windshield failures occur without warning, when the motor is off or running,  
21 and when the Vehicles are still or travelling at speed.

22 6. If a rear windshield fails when the Vehicle is travelling at speed, the resulting noise can  
23 startle the driver and cause him or her to panic and swerve dangerously. Vehicle owners who have  
24 experienced rear windshield failure while driving may confuse the loud crashing noise with the impact  
25 of another vehicle or with gun fire.

26  
27 <sup>2</sup> *Acura Service Bulletin 22-014* (October 28, 2022), available at  
28 <https://www.tsbsearch.com/Acura/22-014> and attached hereto as Exhibit A.



1 \$5,000,000, exclusive of interests and costs, and because this is a class action in which the members  
2 of the classes and Defendant are citizens of different states.

3 16. Venue is proper in this judicial district under 28 U.S.C. § 1391 because Defendant is a  
4 resident of Torrance, California, which is located in this district.

5 **III. PARTIES**

6 **A. Franklin McIntyre (Alabama)**

7 17. Plaintiff Franklin McIntyre is an Alabama citizen residing in Jackson, Alabama.

8 18. Plaintiff McIntyre purchased a new 2023 Acura RDX on November 30, 2022 from Joe  
9 Bullard Acura in Mobile, Alabama.

10 19. On May 4, 2023, Plaintiff McIntyre's wife drove the Vehicle to work and parked it in  
11 her employer's parking lot. But when she returned to the Vehicle she noticed that the rear windshield  
12 had shattered. There was no evidence of external impact. Rather, all evidence suggested it simply  
13 shattered.

14 20. Plaintiff McIntyre subsequently called the dealer, Joe Bullard Acura. The dealer told  
15 him that the damage to the rear windshield was not covered under the warranty.

16 21. Accordingly, Plaintiff McIntyre was forced to take his Vehicle to Paul's Discount Glass  
17 & Tire, Inc. and pay \$588.50 out-of-pocket to replace the rear windshield.

18 22. Prior to purchasing the Vehicle, none of the representations received by Plaintiff  
19 McIntyre contained any disclosure relating to any defect in the rear windshield. Had Defendant  
20 disclosed that the rear windshield in the Vehicle was defective, posing a safety risk, Plaintiff McIntyre  
21 would not have purchased it, or would have paid less for the Vehicle.

22 23. Plaintiff McIntyre has suffered an ascertainable loss as a result of Defendant's wrongful  
23 conduct associated with the rear windshield defect including, but not limited to, out-of-pocket costs to  
24 replace the rear windshield and the diminished value of the Vehicle.

25 **A. Christina Regnier (California)**

26 24. Plaintiff Christina Regnier is a California citizen residing in Los Angeles County,  
27 California.

1           25. Plaintiff Regnier purchased a new 2019 Acura RDX on November 28, 2019 from  
2 Cerritos Acura in Cerritos, California.

3           26. On or about April 10, 2023, Plaintiff Regnier was driving her Vehicle at highway speeds  
4 when her rear windshield spontaneously shattered. At the time of failure, Plaintiff Regnier was  
5 speaking to a friend on her mobile phone and both described the resulting noise as an “explosion.”  
6 There was no evidence of external impact. Rather, all evidence suggested it simply shattered.

7           27. Plaintiff Regnier subsequently called Cerritos Acura, who directed her to contact Acura  
8 customer care. When Plaintiff Regnier subsequently called Acura customer care, she was told that  
9 there was no known rear windshield defect with Acura RDX Vehicles and that there was no recall for  
10 the Vehicles related to window shattering.

11           28. Prior to purchasing the Vehicle, none of the representations received by Plaintiff  
12 Regnier contained any disclosure relating to any defect in the rear windshield. Had Defendant  
13 disclosed that the rear windshield in the Vehicle was defective, posing a safety risk, Plaintiff Regnier  
14 would not have purchased it, or would have paid less for the Vehicle.

15           29. Plaintiff Regnier has suffered an ascertainable loss as a result of Defendant’s wrongful  
16 conduct associated with the rear windshield defect including, but not limited to, out-of-pocket costs to  
17 replace the rear windshield and the diminished value of the Vehicle.

18 **B. Crystal Smith (Maryland)**

19           30. Plaintiff Crystal Smith is a Maryland citizen residing in Nottingham, Maryland.

20           31. Plaintiff Smith purchased a 2019 Acura RDX in January 2020 from Acura of Ellicott  
21 City in Maryland.

22           32. On the morning of February 11, 2023, Plaintiff Smith came outside to find that the rear  
23 windshield of her Vehicle had shattered. There was no evidence of external impact. Rather, all  
24 evidence suggested it simply shattered.

25           33. Plaintiff Smith paid a \$150 deductible to replace the rear windshield.

26           34. After the rear windshield was replaced, Plaintiff Smith started experiencing a tailgate  
27 lift alert and contacted AutoNation Acura Hunt Valley in Cockeysville, Maryland. The dealer told her  
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1 it was going to cost her \$360 for two hours of labor to repair the Vehicle. However, the dealer  
2 ultimately determined that the tailgate was fine but there was glass caught in the hatch and suggested  
3 she take the Vehicle to a body shop to and clean it out.

4 35. The dealer told Ms. Smith there is no recall so she would have to open another claim  
5 with her insurance company. Plaintiff Smith has not opened a second claim with her insurer because  
6 she does not believe she should have to pay the deductible since it was not her fault that the rear  
7 windshield shattered.

8 36. Prior to purchasing the Vehicle, none of the representations received by Plaintiff Smith  
9 contained any disclosure relating to any defect in the rear windshield. Had Defendant disclosed that  
10 the rear windshield in the Vehicle was defective, posing a safety risk, Plaintiff Smith would not have  
11 purchased it, or would have paid less for the Vehicle.

12 37. Plaintiff Smith has suffered an ascertainable loss as a result of Defendant's wrongful  
13 conduct associated with the rear windshield defect including, but not limited to, out-of-pocket costs to  
14 replace the rear windshield and the diminished value of the Vehicle.

15 **C. Melissa Null (Texas)**

16 38. Plaintiff Melissa Null is a citizen of Texas residing in Euless, Texas.

17 39. Plaintiff Null purchased a 2020 Acura RDX in August 2019 from Goodson Acura  
18 located in Dallas, Texas.

19 40. The rear windshield of Plaintiff Null's Vehicle shattered on January 13, 2022, when  
20 Plaintiff Null entered the Vehicle and shut the driver's door. There was no evidence of external impact.  
21 Rather, all evidence suggested it simply shattered.

22 41. Later in the day, Plaintiff Null drove the Vehicle to Vandergriff Acura located in  
23 Arlington, Texas who told her that the damage was not covered under warranty.

24 42. Accordingly, Plaintiff Null took the Vehicle to Safelight and paid \$543 out-of-pocket  
25 to replace the rear windshield.

1           43. Plaintiff Null has suffered an ascertainable loss as a result of Defendant’s wrongful  
2 conduct associated with the rear windshield defect including, but not limited to, out-of-pocket costs to  
3 replace the rear windshield and the diminished value of the Vehicle.

4 **B. Defendant American Honda Motor Company, Inc.**

5           44. Defendant American Honda Motor Company, Inc. is a California corporation, and is a  
6 North American subsidiary of Honda Motor Company, Ltd. Defendant is headquartered in Torrance,  
7 California and maintains central operations in California.

8           45. Defendant first opened in the United States as a storefront selling Honda motorcycles  
9 in Los Angeles, California in 1959. By 1968, Defendant had sold its millionth motorcycle. Starting in  
10 1969, Defendant began marketing and selling automobiles, with its operations still centered in  
11 California.

12           46. By 1991, Defendant added production to its U.S. operations and oversaw all aspects of  
13 production, including research and development, from its headquarters in California. As a center point  
14 of Honda’s global operations, Defendant made nearly \$2 billion in capital investments in California  
15 and exported hundreds of millions of dollars in vehicles and other technology from its exclusive port  
16 facilities on the West Coast, at Port Hueneme, California, in 2015.

17           47. In 1986, Defendant created its first luxury name marque, Acura. By 2006, Defendant  
18 established research and development facilities dedicated solely to its vehicles in Torrance, California  
19 with related facilities emerging in subsequent years dedicated solely to the creation of “future Honda  
20 and Acura automobile and mobility design concepts” in downtown Los Angeles, California.<sup>3</sup>

21           48. From its headquarters in Torrance, Defendant combines product sales, service, and  
22 coordinating functions for Honda in North America, and is responsible for the manufacture,  
23 development, distribution, marketing, sales, and servicing of Acura-brand automobiles. The decisions  
24 regarding the marketing and sale of the Vehicles’ rear windshields and decisions regarding the  
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27 <sup>3</sup> *Honda R&D Americas Opens New Advanced Design Studio in Downtown Los Angeles*, Honda (Nov.  
28 28, 2012), <https://hondanews.com/en-US/releases/honda-r-d-americas-opens-new-advanced-design-studio-in-downtown-los-angeles>.

1 disclosure or non-disclosure of the defect were in whole or substantial part made by Defendant in  
2 California and were purposefully emanated by Defendant in California.

3 49. In this Complaint, when reference is made to any act, deed, or conduct of Defendant or  
4 Honda, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or  
5 more of its officers, directors, agents, employees, or representatives who was actively engaged in the  
6 management, direction, control, or transaction of the ordinary business and affairs of Defendant.

7 50. Honda sells cars in part via communications that it authorized its dealers to make about  
8 Honda vehicles, including the defective Vehicles discussed herein. This includes authorizing Honda  
9 dealers to distribute brochures and other marketing and promotional materials. Honda, through its  
10 authorized dealers, has and had the opportunity to disclose all material facts relating to the defective  
11 Vehicles.

12 51. Authorized Honda dealers are Honda's agents, such that an opportunity to receive  
13 information from an authorized Honda dealership is an opportunity to receive information directly  
14 from Honda itself. *See Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1226 (9th Cir. 2015). This agency  
15 relationship is established by the fact that, among other things: Honda's Acura logo is displayed at  
16 authorized dealerships; Honda issues technical bulletins and service instructions to dealerships  
17 detailing potential vehicle problems; Honda distributes various advertising and promotional materials  
18 to its dealerships, including brochures, booklets, and pamphlets; and under the terms of its express  
19 warranty, Honda requires its customers to return to its authorized dealerships for warranty repairs.

20 52. Furthermore, Honda's relationship with its dealerships is governed by a dealership  
21 agreement that imposes a number of reciprocal obligations on both parties. An example of such a  
22 Honda Automobile Dealer Sales and Service Agreement ("Dealership Agreement") is attached as  
23 Exhibit B hereto.<sup>4</sup> Among other things, it requires:

- 24 • that Honda offer to dealers "general and specialized product information and . . . field  
25 sales personnel to advise and counsel Dealer's sales organization on sales-related

26 \_\_\_\_\_  
27 <sup>4</sup> Although Exhibit B is an example of Defendant's dealership agreements with authorized dealers of  
28 Honda-brand vehicles, Plaintiffs allege upon information and belief that Defendant's agreements with  
Acura-brand dealers contain substantially similar provisions.

1 subjects such as merchandising, training and sales management,” (Dealership  
2 Agreement § 10.2.A), as well as “general and specialized service and parts training  
3 courses” (*id.* § 10.2.B);

- 4 • that Honda make available to dealers: (1) “sample copies of building layout plans or  
5 facility planning recommendations, including sales, service and parts space and the  
6 placement, installation and maintenance of recommended signs[,]” as well as, “from  
7 time to time,” (2) “representatives . . . to counsel and advise Dealer and its personnel in  
8 connection with Dealer’s planning and equipping of the Dealership Premises” (*id.* §  
9 10.3);
- 10 • that Honda make available “such sales, service and parts manuals, brochures, special  
11 service tools, parts displays, and equipment and other data for Honda Products as  
12 American Honda deems necessary for Dealership Operations” (*id.* § 10.4);
- 13 • that Honda “agrees to maintain a nationwide system of authorized Dealers of Honda  
14 Products” and that, “[i]n order that those authorized Dealers may be assured of the  
15 benefits of comprehensive advertising of Honda Products,” Honda agrees to “establish  
16 and maintain general advertising programs in such manner and amount as it may deem  
17 appropriate and will make sales promotion and campaign materials available” to dealers  
18 (*id.* § 10.5)
- 19 • that dealers “promote and sell, at retail to the end user, Honda Products . . . , and  
20 promote and render service to the end user,” and “provide sales and service of Honda  
21 Products within the Dealer’s Area of Statistical Analysis at levels as reasonably  
22 determined by American Honda” (*id.* § 12.1);
- 23 • that dealers “agree[] to establish and maintain an adequate and trained sales, parts and  
24 service organization” that includes a “Dealership Manager,” “a qualified and on-site  
25 Honda-trained service manager, a qualified an on-site Honda-trained parts manager and  
26 a number of competent service and parts personnel” who shall “regularly attend and  
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1 meet the current minimum level of required training provided by American Honda” (*id.*  
2 § 12.3);

- 3 • that dealers “agree[] to acknowledge, investigate and resolve satisfactorily all  
4 complaints received from customers and/or owners of Honda Products in a prompt,  
5 courteous and businesslike manner, in order to secure and maintain the goodwill of the  
6 public” and to “promptly report[]” to Honda “[a]ny complaint received by Dealer which  
7 . . . cannot be remedied” (*id.* § 13.1);
- 8 • that dealers “will follow all reasonable directives and suggestions, and the Policies and  
9 Procedures” made by Honda, and that “[a]ll written directives, suggestions, Policies  
10 and Procedures contained in any of its bulletins, manuals, or other written or electronic  
11 communication . . . which are in effect as of the date of the Dealer Agreement or are  
12 issued thereafter, will be deemed a part of [the Dealership Agreement]” (*id.* § 12.9);
- 13 • that dealers will “perform any and all warranty, campaign, recall, product-improvement  
14 or product-update service in compliance with instructions and directives issued by  
15 American Honda, regardless of where (or from which U.S. Honda Dealer) the Honda  
16 Product involved was purchased,” and that “[t]o protect and maintain the goodwill and  
17 reputation of Honda Products and the Honda Trademarks,” dealers “agree[] that [they]  
18 will not charge any customer for warranty service or any work done in connection with  
19 such warranty, campaign, recall, product improvement or update, or any other service  
20 for which Dealer is to be reimbursed by American Honda . . . .” (*id.* § 12.12);
- 21 • that dealers “understand[] and agree[] that the only warranties that will be applicable to  
22 Honda Products will be such written warranty or warranties as may be furnished by  
23 American Honda.” The same provision states: “Except for its express liability under  
24 such written warranties, American Honda neither assumes nor authorizes any other  
25 person or party . . . to assume for it any other obligation or liability in connection with  
26 any Honda Product or component thereof” (*id.* § 14.1);

- 1 • that dealers “agree[] that [they] will expressly incorporate any warranty furnished by  
2 American Honda with a Honda Vehicle as a part of each order form or other contract  
3 for the sale of such Honda Vehicle by Dealer to any buyer,” “agree[] that [they] will  
4 deliver to the buyer of all Honda Products, at the time of delivery of such Honda  
5 Products, copies of such applicable warranties as may be furnished by American  
6 Honda,” and “agree[] to abide by and implement in all other respects American Honda’s  
7 warranty procedures in effect at the time of Dealer’s sale” (*id.* § 14.2);
- 8 • that dealers “agree[] to develop and actively utilize sales, parts and service programs  
9 for the advertisement, promotion and servicing of Honda Products.” The provision  
10 further states: “Such programs will include the prominent display and use or  
11 demonstration of Honda Products. Dealer further agrees to cooperate with all  
12 reasonable promotional programs developed by American Honda” (*id.* § 15.1);
- 13 • that dealers “agree[] that [they] will not advertise, promote or trade in Honda Products  
14 or the servicing thereof in such a manner as to injure or be detrimental to the goodwill  
15 and high-quality image and reputation of American Honda or the Honda Trademarks.”  
16 The provision further states: “Dealer further agrees that it will not publish or otherwise  
17 disseminate any advertisement or announcement or use any form or medium of  
18 advertising which is objectionable to American Honda. Dealer agrees to discontinue  
19 immediately any advertisement or form of advertising deemed objectionable upon  
20 request of American Honda” (*id.* § 15.2);
- 21 • that dealers “agree[] to erect and maintain, at the Authorized Location . . . authorized  
22 product signs as required by American Honda . . . as well as such other authorized signs  
23 as are necessary to advertise the Dealership Operations effectively, and as are required  
24 by American Honda” (*id.* §15.4);
- 25 • that dealers “agree[] that American Honda has the exclusive right to use and to control  
26 the use of the Honda Trademarks and, but for the right and license granted by [this  
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1 Dealership Agreement] to use and display the Honda Trademarks, Dealer would have  
2 no right to use the same” (*id.* § 16.1);

- 3 • that dealers are “granted the non-exclusive right and license to use and display the  
4 Honda Trademarks at the Dealership Premises and in connection with advertising for  
5 the Authorized Location.” The provision further states: “Such use or display is limited  
6 to that which is necessary in connection with the sale, offering for sale and servicing of  
7 Honda Products at retail at the Authorized Location . . . . Dealer agrees that it will  
8 promptly discontinue the use of any of the Honda Trademarks, or change the manner  
9 in which any of the Honda Trademarks are used when requested to do so by American  
10 Honda” (*id.* § 16.2);
- 11 • that dealers “agree[] to keep complete and current records and to promptly prepare for  
12 American Honda such reports, based on such records, as American Honda may  
13 reasonably request pursuant to the Policies and Procedures.” The provision further  
14 states: “All records required to be maintained by Dealer pursuant to [this Dealership  
15 Agreement] shall be kept in such manner and format so as to be readily accessible,  
16 retrievable and reproducible by Dealer for review and audit by American Honda . . . .”  
17 (*id.* § 17.3);
- 18 • that dealers “agree[] to permit, during reasonable business hours, American Honda, or  
19 its designee, to examine, audit, reproduce and take copies of all reports, accounts and  
20 records pertaining to the sale, servicing and inventorying of Honda Products, including,  
21 but not limited to, records in support of claims for reimbursement or credit from  
22 American Honda, and, with the prior approval of Dealer, which approval will not be  
23 unreasonably withheld, to interview Dealer employees with respect thereto . . . .” (*id.* §  
24 17.4);
- 25 • that the Dealership Agreement may be terminated if the dealer fails “to perform  
26 adequately as to its advertising and promotional responsibilities” or its “sales service,  
27 parts or customer satisfaction responsibilities” as “determined by American Honda” (*id.*  
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1           56.     The Vehicles are mid-sized SUVs equipped with a standard rear gate that includes a  
2 rear windshield.

3           57.     The rear windshield includes an electrical defroster grid that can be used to heat the rear  
4 windshield.

5           58.     Since its debut, the third generation RDX has suffered an unprecedented number of  
6 spontaneous rear windshield failures.

7           59.     On June 10, 2022, after nearly two years of receiving a consistent barrage of NHTSA  
8 complaints, online complaints, warranty claims, and other various notices, Defendant finally released  
9 a “Service Bulletin” announcing that all 2019 model year RDXs and certain 2020 model year RDXs  
10 suffered from a defect that caused the rear windshield glass to shatter or break “with no external  
11 impact.”<sup>6</sup>

12           60.     The June 10, 2022 Service Bulletin identified the cause of the spontaneous rear  
13 windshield glass shattering as an “[i]ncorrect specification for the rear defroster grid.”<sup>7</sup>

14           61.     Yet Defendant’s fix, as Defendant stated in the Service Bulletin and directed  
15 dealerships to undertake, is simply to replace defective windshields with equally defective  
16 windshields. Indeed, the Service Bulletin calls for replacement of the defective windshield with  
17 another of the same part number. This “fix,” however, does not actually cure the fundamental issue, as  
18 evidenced by Vehicle owners experiencing multiple rear windshield shatters.

19           62.     As discussed, the rear windshield plays a critical role in modern vehicles. Yet Vehicle  
20 owners are being forced to drive dangerous and unsafe Vehicles with rear windshields that can  
21 spontaneously shatter at any given moment, even if the windshield had already been “repaired” by  
22 Defendant pursuant to its Service Bulletin.

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25 <sup>6</sup> *Acura Service Bulletin 22-014* (June 10, 2022), available at  
26 <https://static.nhtsa.gov/odi/tsbs/2022/MC-10215489-0001.pdf>. The June 10, 2022 Service Bulletin,  
27 entitled 22-014 Rear Windshield Glass Shattering, was amended on October 28, 2022 to change the  
28 range of VIN numbers of Vehicles in model year 2020 that were affected by the defect. *See Exhibit A.*

<sup>7</sup> *Acura Service Bulletin 22-014* (June 10, 2022), *supra* note 6.

**B. Defendant Knew of the Defect Before Plaintiffs Purchased the Vehicles.**

63. Defendant has long known or should have known of the Vehicles' rear windshield problems from multiple sources. These sources include pre-release design, manufacturing, and testing data; warranty claims data; consumer complaints made directly to Defendant, collected by NHTSA and/or posted on public online forums; testing done in response to those complaints; aggregate data and complaints from authorized dealers; and other sources. Yet, Defendant failed to disclose and actively concealed the Vehicles' rear windshield defect from the public, and continued to manufacture, distribute, and sell the Vehicles. Defendant continues to fail to disclose and actively conceals this defect from consumers prior to purchase.

**1. Pre-Release Design, Manufacturing, and Testing Data**

64. It is standard practice for automobile manufacturers to engage in extensive pre-launch testing of their vehicles. Honda did so for the defective Vehicles and tested the rear windshields and defrosters before selling the defective Vehicles.

65. Given the immediacy and frequency of consumer complaints about the shattering of the rear windshields in the defective Vehicles, it is apparent that Honda likely learned about the rear windshield defect prior to putting the Vehicles up for sale.

**2. Warranty Claims Data**

66. Honda also knew or should have known about the rear windshield defect based on the large number of warranty repairs related to rear windshield repairs.

67. Upon information and belief, Honda regularly compiles and analyzes detailed warranty service information regarding repairs performed under warranty at its network of dealerships. Indeed, Honda requires dealers to maintain detailed and meticulous records for any warranty repairs performed and routinely refuses to pay for warranty repairs made where the nature and cause of the malfunction is insufficiently described.

68. Upon information and belief, these dealer service records and warranty data reflect an abnormally large spike in shattering rear windshields for the Vehicles.

69. The complete warranty repair data regarding the rear windshield's repeated failures put Honda on notice of the defect.

1                   **3.       Complaints Made Directly to Honda**

2           70.     Honda also knew or should have known of the rear windshield defect based on the  
3 numerous complaints it received directly from customers. The large number of complaints, and the  
4 consistency of their descriptions of the rear windshield failures, alerted Honda of the defect.

5           71.     Only Defendant has access to the full universe of complaints it received regarding the  
6 Vehicles’ spontaneously shattering rear windshields. However, upon information and belief, many  
7 Vehicle owners who experienced the defect complained to Honda. The large number of complaints  
8 should have alerted Defendant to the defect.

9                   **4.       Complaints Collected by NHTSA**

10          72.     Vehicle manufacturers are required by federal law to maintain close contact with the  
11 NHTSA regarding potential safety defects. By law, manufacturers are required to report information  
12 regarding customer complaints and warranty claims to NHTSA, and federal law imposes criminal  
13 penalties against manufacturers who fail to disclose known safety defects. *See generally*  
14 Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. No.  
15 106-414, 114 Stat. 1800 *et seq.* (2000).

16          73.     Automakers have an affirmative legal duty to disclose emerging safety-related defects  
17 to the NHTSA under the Early Warning Reporting requirements. *Id.*

18          74.     Vehicle manufacturers should and do monitor NHTSA databases for consumer  
19 complaints as part of their ongoing obligation to uncover and report potential safety-related defects.  
20 Accordingly, Honda knew or should have known of the many complaints about the shattering rear  
21 windshields lodged with the NHTSA, and the sheer number of complaints coupled with their  
22 consistency alerted or should have alerted Honda to the defect.

23          75.     A sampling of the complaints posted on the NHTSA database include the following:

- 24               • “GOT IN DRIVER SEAT CLOSED THE DOOR AND THE REAR WINDOW  
25 SHATTERED NO PRIOR DAMAGE TO WINDOW. IT WAS PARKED IN THE  
26 DRIVEWAY” NHTSA ID Number: 11384857. Incident Date December 24, 2020.  
27               • “TL\* THE CONTACT OWNS A 2020 ACURA RDX. THE CONTACT STATED  
28 WHILE THE VEHICLE WAS STATIONARY AND WHILE SCRAPING ICE OFF

1 THE REAR HATCH WINDSHIELD, THE WINDSHIELD FRACTURED. THE  
2 VEHICLE WAS TAKEN TO JOE RIZZA ACURA (8150 W 159TH ST, ORLAND  
3 PARK, IL 60462) WHERE IT WAS DIAGNOSED WITH THE REAR HATCH  
4 WINDSHIELD NEEDED TO BE REPLACED. THE DEALER INFORMED THE  
5 CONTACT THAT THIS WAS A DESIGN DEFECT AND REPLACED THE HATCH  
6 DOOR AND THE WINDSHIELD. THE CONTACT STATED THAT THE  
7 WINDSHIELD WAS REPLACED, BUT THERE WAS STILL PIECES OF BROKEN  
8 GLASS LEFT INSIDE THE HATCH.” NHTSA ID Number: 11403144. Incident Date  
9 February 15, 2021.

- 10 • “Car was parked in the garage[.] [W]oke up in the morning found my car back window  
11 glass shattered” NHTSA ID Number: 11447614. Incident Date November 21, 2021.
- 12 • “When closing driver side door, rear window shattered and blew out.” NHTSA ID  
13 Number: 11447414. Incident Date December 20, 2021.
- 14 • “My rear windshield popped while my car was parked in my workplace without hitting  
15 any thing on it . i read on line lots of owner for Acura had a same problem.” NHTSA  
16 ID Number: 11446462. Incident Date December 22, 2021.
- 17 • “Rear windshield shattered while parked in my drive way. Vehicle was not being  
18 driven. I have read several reports of this happening to other Acura rdx. I have contacted  
19 the dealership and Acura who have both told me I need to pay out of pocket to get this  
20 fixed. This is an Acura problem and Acura was unable to help. I should not be  
21 responsible for getting this fixed as vehicle was in driveway when this happened. I have  
22 been without a vehicle since this happened on 12/24. I'm very unsatisfied with Acura.”  
23 NHTSA ID Number: 11445399. Incident Date December 24, 2021.
- 24 • “Rear glass window shattered out of nowhere. Thankfully the car was parked when it  
25 happened. It’s bound to happen on these cars and when reported to Acura they did  
26 nothing. My car was parked in front of my house all night with a camera recording it  
27 and there was nothing else that could’ve happened to it. Also, when inspected, you can  
28

1 tell the glass was not impacted in anyway. It shattered from the inside out. There was  
2 no warning lights or anything prior to the incident. On a side note, I believe this problem  
3 is covered under warranty in Canada but not in the US, which means Acura knows  
4 about the problem but isn't doing anything about it here." NHTSA ID Number:  
5 11498858. Incident Date December 25, 2021.

- 6 • "Rear window spontaneously exploded while opening my door to enter. There are no  
7 replacement glass available from Acura, I am forced to drive with plastic and duct tape  
8 covering my rear window. Acura denies there is a problem/ that they are at fault. The  
9 are currently daily posts on the 3rd Gen Acura RDX Facebook group of owners rear  
10 window spontaneously exploding. This has been a know issue with owners since 2019,  
11 however the frequency of the rear glass exploding has increased dramatically." NHTSA  
12 ID Number: 11447734. Incident Date January 4, 2022.

- 13 • "I opened my driver's side door and sat down when I heard a crack sound. I turned  
14 around and heard a louder crack sound and saw my back window was shattered. I called  
15 Acura twice and spoke to two different agents and both stated they never heard of this  
16 happening nor were there any bulletins about this being an issue. I called three Acura  
17 dealerships near me and all three stated they have never heard of this issue even though  
18 I've heard of this happening multiple times in my Acura owners group discussions. The  
19 last dealership I spoke with asked for me to drive it to them so they could see it. While  
20 driving there the glass just continued to drop inside my cargo trunk. The dealership is  
21 supposed to be checking with their district manager tomorrow but didn't sound  
22 optimistic. They did check with parts and the rearview glass is on backorder with no  
23 ETA and other Acura owners have been waiting months to get theirs replaced. I feel  
24 this is a much bigger issue and is a defect in the design of this model based on what  
25 I've heard and have now experienced firsthand." NHTSA ID Number: 11447429.  
26 Incident Date January 13, 2022.

- 1 • “Back windshields have been spontaneously shattering. Sitting in my car parked for 20  
2 minutes waiting for my son and the back window shattered...all the edges with a strange  
3 crack and the glass appeared shattered...ran my hand across it and cut my finger. People  
4 that came over to the car had me lift the hatch and the center of the window fell in. I  
5 joined an RDX owner Facebook page and it seems like this is happening to a lot of  
6 people.” NHTSA ID Number: 11447941. Incident Date January 13, 2022.
- 7 • “Back windshield spontaneously shattered[.]” NHTSA ID Number: 11447607. Incident  
8 Date January 13, 2022.
- 9 • “As normal I remote started my vehicle. Walked over to my vehicle opened my driver  
10 door and closed it normal[.] [A]ll of a sudden my rear window shattered!” NHTSA ID  
11 Number: 11447486. Incident Date January 13, 2022.
- 12 • “Rear windshield spontaneously shattered while car was idle. Seems to be a common  
13 issue especially in the cold. Outside temp was about 20F when it happened.” NHTSA  
14 ID Number: 11451524. Incident Date January 27, 2022.
- 15 • “The rear windshield shattered unexpectedly while the car was parked. Seem that others  
16 might be having the same issues.” NHTSA ID Number: 11449891. Incident Date  
17 January 30, 2022.
- 18 • “The rear hatch window unexpectedly blows out and shattered glass, without warning.  
19 No impact involved.” NHTSA ID Number: 11449822. Incident Date January 30, 2022.
- 20 • “I got in my vehicle, closed the driver door and heard a loud ‘pop’ followed by the  
21 sound of glass falling. Turned around and saw a giant hole in the middle of my rear  
22 windshield. Got out to investigate and noticed the rear window was completely  
23 shattered all the way to the edges of the glass. There are multiple reports of this  
24 happening and yet Acura USA refuses to acknowledge it. Instead, forcing us to file an  
25 insurance claim when in fact this is faulty glass, and should be covered by Acura. It's  
26 2022, a simple google search will show how common this issue has become. Acura  
27  
28

1 needs to be held accountable and something needs to be done about this immediately.”  
2 NHTSA ID Number: 11451772. Incident Date January 31, 2022.

- 3 • “Opened my Acura RDX car door, sat down, closed the door - and then my rear  
4 windshield shattered and collapsed into my trunk. I knew of no damage to it - the car is  
5 a 2020, relatively new - This incident caught me my complete surprise. Searched on  
6 internet, and see similar complaints from other Acura owners about exploding rear  
7 windshields after closing driver side door.” NHTSA ID Number: 11450324. Incident  
8 Date February 1, 2022.
- 9 • “On the date of the incident, I remotely started my car from the office before leaving  
10 for the day. I got into my vehicle shut the door, started the vehicle (push start), and  
11 heard a loud sound that sounded like a gunshot and something shattering. I looked  
12 around my surroundings and noticed my rearview window was shattered. The rear  
13 window had a large hole slightly just above the rear wiper. I immediately went back  
14 into the office to tell one of my co-workers what occurred. My co-worker assisted me  
15 with cleaning up the glass and securing the window to get home safely. After arriving  
16 home, I called to report the incident to my insurance company and was advised to  
17 follow-up the next morning. Later that night I discovered this has been occurring with  
18 multiple Acura RDX vehicles in the US and Canada. The next morning I immediately  
19 called Rosenthal Acura to report the incident to my service advisor. I asked him if Acura  
20 was aware of this occurring with other vehicles. I was told he was aware this occurred  
21 with another vehicle but, I was told the corporate office has not made the dealership  
22 aware of this occurring with any other vehicles. As a result, it was suggested that I  
23 report the incident to my insurance provider. This appears to be an issue with multiple  
24 2019-2021 Acura RDX drivers in the US and Canada. The Canadians appear to be  
25 acknowledging the issue and fixing the vehicles. The US needs to protect the consumers  
26 and immediately recall and inspect these vehicles. Some drivers are reporting this  
27 incident occurring on multiple occasions. I am grateful this did not happen while I was  
28

1 driving home. The idea of glass shattering while driving could be dangerous for the  
2 driver, passengers, and others on the highway. This is a safety problem that needs to be  
3 immediately addressed.” NHTSA ID Number: 11450222. Incident Date February 1,  
4 2022.

- 5 • “I would like to filed a safety issue dues shatter rear window on my 2019 Acura RDX.  
6 Around 1:47 pm on 2/2/2022 I got in my car and start it up and I hear a pop I look back  
7 to see what was going on then noticed my rear window was shatter I then got out off  
8 the car to inspect what was going on I didn’t not see any Visual impact and item that  
9 could damage or shatter my rear window. The temperature at that time was mid 51  
10 degrees and the rear defrost was not active. I have recording and pictures to prov[ide]  
11 as evidence if need. I believe my car is not the only one with this happening there lots  
12 in this particular make and model are having the same issue. This happened at my work  
13 parking lot C19 at Boeing Algona Washington” NHTSA ID Number: 11450504.  
14 Incident Date February 2, 2022.
- 15 • “I happened to be driving and out the nowhere my rear back trunk window shattered,  
16 mind that this is the second time this happens one last year my truck was sitting in the  
17 garage and I close my door and just hear a loud bang and my back glass shattered.”  
18 NHTSA ID Number: 11450726. Incident Date February 6, 2022.
- 19 • “On Feb 14, the back window exploded and shattered on its own, additional the fron[t]  
20 windshield was cracked from one side to the next. I came out of my office to find a hole  
21 in the back window, shattered glass every where[.] No one was in or around the vehicle,  
22 no vandalism or impact occur[r]ed to the car. Now the remaining pieces of shattered  
23 glass are in the door which could not be removed. This is the 1st car I have ever had to  
24 have this type of issue. I have been a loyal Honda car owner for over 15 years. I lease  
25 this car in Sept 2021, I'm not sure why the window would be exploding on its own.”  
26 NHTSA ID Number: 11453340. Incident Date February 14, 2022.

- 1 • “The contact owns a 2020 Acura RDX. The contact stated that while the vehicle was  
2 parked at her residence, a loud sound was heard coming from outside. Upon inspection,  
3 the contact noticed that the rear windshield had shattered and there were glass shards  
4 on the driveway and inside of the vehicle. There was no impact to the rear windshield  
5 that could have caused it to shatter. An auto glass company was made aware of the  
6 failure but informed the contact that parts were on backorder. The vehicle was taken to  
7 the dealer and the contact was referred to the manufacturer. The vehicle was not  
8 repaired and remained at the dealer. The manufacturer was made aware of the failure  
9 and a case was opened. The manufacturer informed the contact that the cold temperature  
10 caused the failure. The failure mileage was approximately 19,000.” NHTSA ID  
11 Number: 11454896. Incident Date February 27, 2022.
- 12 • “The contact owns a 2020 Acura RDX. The contact stated that while the vehicle was  
13 parked, she approached the rear of the vehicle to open the hatch and noticed that the  
14 edges of the rear window was crumbling. The contact stated that upon opening the  
15 hatch, the middle of the hatch window cracked and the pieces fell inside the trunk. The  
16 vehicle was towed to the dealer, who informed the contact that they could not determine  
17 that the failure was a Manufacturer’s defect. The vehicle was not repaired. The  
18 manufacturer was notified of the failure and informed the contact that they could not  
19 assist unless the dealer determined that it was a Manufacturer’s defect. A case was  
20 opened. The failure mileage was approximately 22,908.” NHTSA ID Number:  
21 11455536. Incident Date March 4, 2022.
- 22 • “Rear glass shattered right after I got into my car and closed my door, 100% sure I’m  
23 not the only one having this issue. Acura RDX 2019” NHTSA ID Number: 11456431.  
24 Incident Date March 7, 2022.
- 25 • “Got into the RDX, closed the driver door and rear glass shattered. Called Dealership  
26 and spoke with salesman and service manager and both said they never heard of this  
27 before. Reading online this has happened several times. Acura in Canada has  
28

1 acknowledged that this is a defect and repairs are done under warranty. What can be  
2 done in USA?” NHTSA ID Number: 11462859. Incident Date April 30, 2022.

3 • “On two occasions now my vehicle was parked at the train station and I have returned  
4 to the back window being cracked. The first time (11/21) when I shut the rear passenger  
5 door I heard the glass crack. There was a small hole near the bottom center which  
6 quickly expanded as doors were closed. The second time (8/22) I walked up to my  
7 vehicle and there was a large hole in the rear window which looked exactly the same.  
8 Both times glass was also broken around the edges. We are confident it is not vandalism  
9 due to the fact that the vehicle was parked in an open well-monitored area, nothing was  
10 taken and no other cars were damaged. Something must be defective.” NHTSA ID  
11 Number: 11479781. Incident Date August 16, 2022.

12 • “The contact owns a 2019 Acura RDX. The contact stated that upon entering the  
13 vehicle, he closed the front driver’s side door and the rear window glass exploded. No  
14 warning light was illuminated. The vehicle was taken to an independent mechanic  
15 where the failure could not be duplicated. The dealer was not notified of the failure.  
16 The manufacturer was notified of the failure and informed the contact that the vehicle  
17 was out of warranty. The manufacturer suggested that the vehicle be taken to the dealer  
18 to be diagnosed. The failure mileage was approximately 50,000.” NHTSA ID Number:  
19 11484613. Incident Date September 14, 2022.

20 • “The rear (trunk) window of my 2019 Acura SUV shattered upon entrance into the  
21 vehicle after I closed my driver side door. The vehicle was parked at my place of  
22 employment and when I approached the vehicle, the vehicle looked fine, and window  
23 was intact. In addition, there prior to the incident, there is no visible crack on the  
24 window or indication of attempted theft. There were no lights warning issues. The  
25 vehicle has always been serviced by the dealership and never was I informed of any  
26 issues with the rear window. This is a safety issue as the window could have shattered  
27 while I was driving the vehicle and the sudden shattered cause have harm passengers  
28

1 in the back seat. I was fortunate that I was not driving which may have caused an  
2 accident not knowing what could have occurred on the road especially on a freeway.”  
3 NHTSA ID Number: 11492017. Incident Date October 27, 2022.

4 • “Rear windshield shattered. No explanation. I had no tree branches near or on by my  
5 car. Car was parked in my driveway. I called Acura corporate and at this time no recall.”  
6 NHTSA ID Number: 11499284. Incident Date November 24, 2022.

7 • “On November 26, 2022 RDX rear glass shattered while parked. This was reported to  
8 ACURA to find out if this is a known defect. Acura replied that they don’t have a recall  
9 on this problem. Coincidentally, few days after glass was replaced (insurance) the  
10 remote start failed due to ‘open trunk, doors or hood[.]’ Acura dealer replace defective  
11 trunk switch.” NHTSA ID Number: 11501937. Incident Date November 26, 2022.

12 • “The contact owns a 2019 Acura RDX. The contact stated that after she exited the  
13 vehicle, her husband closed the front passenger’s side door, and she heard a crack. The  
14 contact stated that the rear window had shattered. The dealer was notified of the failure  
15 and the contact was informed that the glass could be ordered; however, the vehicle was  
16 not repaired. The manufacturer was notified of the failure and the contact was informed  
17 that the warranty had expired. The failure mileage was approximately 40,000.” NHTSA  
18 ID Number: 11497744. Incident Date December 8, 2022.

19 • “Rear windshield shattered as driver shut the driver door after entering the car. There  
20 was no sign of anything hitting the glass. There was an Acura TSB for this exact  
21 problem but my dealer refuse to acknowledge.” NHTSA ID Number: 11497368.  
22 Incident Date December 13, 2022.

23 • “The contact owns a 2020 Acura RDX. The contact stated that while the vehicle was  
24 parked, the rear window shattered without warning or impact. The vehicle was taken to  
25 the dealer; however, the vehicle was not diagnosed. The contact was advised to notify  
26 the insurance company of the failure. The vehicle was not repaired. The manufacturer  
27 was notified of the failure and the contact was advised to go through the insurance  
28

1 company and to take the vehicle to a different dealer for diagnosis. The failure mileage  
2 was approximately 20,000.” NHTSA ID Number: 11498695. Incident Date December  
3 13, 2022.

4 • “2019 Acura RDX Advance - Upon entering driver side and closing driver door, rear  
5 hatch glass shattered. Vehicle was stationary in my closed garage in Upstate NY after  
6 being parked overnight and was then remote started to warm up. Approx. overnight  
7 temps were in the teens. There was no evidence of any prior damage to the glass.  
8 Damage to the window is more in the lower center above the rear wiper mount.”  
9 NHTSA ID Number: 11497458. Incident Date December 14, 2022.

10 • “At the end of the work day, I approached my car that had been remotely started through  
11 the app approximately 5 minutes prior. I put my work bag in the back driver side, closed  
12 the door, then heard small items hitting the ground. I went to the back of the car and  
13 found the back window on the lift gate shattered. The door wasn’t slammed. The lift  
14 gate has only ever been operated with the power feature.” NHTSA ID Number:  
15 11500925. Incident Date January 9, 2023.

16 • “The back windshield just shattered when I closed the drivers door. I looked online and  
17 it seems like a known issue and Acura is not taking any responsibility for it.” NHTSA  
18 ID Number: 11501441. Incident Date January 12, 2023

19 • “On January 16, 2023, at approximately 5:00 PM, I returned to my vehicle, a 2019  
20 Acura RDX in a secured parking lot after work, got into the driver’s seat, closed the  
21 door, turned on the vehicle, and my rear windshield spontaneously shattered without  
22 any signs whatsoever of external impact. The entire rear windshield shattered from end  
23 to end without explanation. Upon further researching this issue, it appears to be a  
24 common problem with several model years of the Acura RDX. I reported this incident  
25 to Acura, corporate customer relations, who declined to offer any assistance for the  
26 problem, despite there being a technical service bulletin issued for this problem for all  
27 2019 Acura RDX VINs. I was fortunate that this did not occur while my vehicle was in  
28

1 motion, however, the problem poses a serious safety issue that Acura refuses to do  
2 anything about. I'm not sure why they would issue a TSB yet decline to authorize a  
3 repair or replacement of the windshield. This is a common problem that is known to  
4 Acura and poses a safety issue to the motoring public." NHTSA ID Number: 11504800.  
5 Incident Date January 16, 2023.

- 6 • "The rear windshield spontaneously shattered when I got in and closed the door. Temp  
7 was better 30-40F. I have seen so many complaints online about similar issue." NHTSA  
8 ID Number: 11504057. Incident Date January 24, 2023.
- 9 • "I went out, got in the vehicle and before starting, I heard a crinkling/rustling noise. It  
10 sounded as if something was in the rear of the vehicle. I got out of the vehicle and  
11 walked to the back and the entire rear window glass was shattered. There was no impact,  
12 no foreign object hit it, etc. It simply shattered while sitting in the driveway, with the  
13 vehicle off, when I closed the door. This is a huge safety risk. I have contacted Acura.  
14 There is no current recall, but there is a current safety bulleting regarding this issue.  
15 Apparently it has happened to thousands of people who own an RDX model years 2019-  
16 2022. I cannot believe that this is not an active recall, given the number of reports and  
17 the safety concern." NHTSA ID Number: 11504156. Incident Date January 27, 2023.
- 18 • "I was driving on the interstate at 75 miles per hour. The back window literally  
19 exploded. There was a very loud boom. Upon pulling over, I discovered that the  
20 window had shattered. Part of the glass fell down inside the car. We were not going  
21 under an overpass and did not hit anything that would have caused the glass to suddenly  
22 shatter. Acura has issued a Technical Service Bulletin (TSB) but not a recall. Since the  
23 car was out of warranty, the repair is not covered. The internet is full of posts about  
24 unexplained glass shattering on 2019 Acura's. This is a safety issue." NHTSA ID  
25 Number: 11505927. Incident Date January 29, 2023.
- 26 • "Woke up on 2/11/2023 and my whole rear window was shattered into a million pieces.  
27 No signs of anything thrown at or hitting it. Filed insurance claim to replace window  
28

1 but still have glass stuck in between frame and plastic because they can not remove  
2 plastics. They are welded to the body of vehicle. No warning signs or alerts. Luckily I  
3 was parked in my driveway and not driving when this occur[r]ed. Had I been driving I  
4 probably would have caused an accident.” NHTSA ID Number: 11507491. Incident  
5 Date February 11, 2023.

6 76. As the preceding complaints demonstrate, Vehicle owners have lodged many  
7 complaints with the NHTSA about their rear windshields shattering which alerted or should have  
8 alerted Honda to the defect.

9 **5. Customer Complaints on Internet Forums**

10 77. In addition to the complaints lodged directly with Honda, dealers, and NHTSA, many  
11 Vehicle owners posted complaints regarding repeated rear windshield failures on public online internet  
12 forums, which Defendant—like most manufacturers—regularly monitors. The following is a  
13 representative sample of those complaints:<sup>8</sup>

- 14 • “Who’s rear windshield shattered out of nowhere? Apparently, Acura says they haven’t  
15 heard of this happening. I have a 20 RDX aspec. Curious to how many people have  
16 experienced this because I know I’m not the only one. Acura should be aware of this  
17 but yet they do nothing about it.” Jessica Goncalves, *Acura RDX/Aspec*, Facebook  
18 (Dec. 27, 2021).
- 19 • “Had it happen a month ago on my 2020 RDX A Spec. The worst part about this  
20 happening is that there is a bunch of glass that fell into the hatchback door. So every  
21 time you open and close it, you hear a ton of glass rolling around in there. The glass  
22 company told me I needed to take it to a dealership to have them remove the excess  
23 glass from the door because they could not get at it. The dealership also told me that  
24 it’s very difficult to remove the glass as well and may need to have the entire door  
25 replaced. Luckily insurance will cover everything, but it’s been a real pain in the ass.  
26 Good times!” Jason Woodsmall, *Acura RDX/Aspec*, Facebook (Dec. 28, 2021).

27  
28 <sup>8</sup> See <https://www.facebook.com/groups/2280777962201435> (last visited August 24, 2023).

- 1 • “Had It happened a few weeks ago, paragon Acura didn’t wanna cover It. Spoke to a  
2 manager they opened a case with Acura and Acura paid for It. Although just like  
3 everyone else I still hear glass in the trunk door” Chris Munoz, *Acura RDX/Aspec*,  
4 Facebook (Dec. 28, 2021).
- 5 • “Happened to my 2019 Advance about a week ago. My insurance paid 100% of the cost  
6 to repair. I had to go to an auto body shop so they could take the whole tailgate apart to  
7 get the glass out.” Rich Wiley, *Acura RDX/Aspec*, Facebook (Dec. 28, 2021).
- 8 • “So this just happened today. Got of work hop in start her up and pop! Rear defrost  
9 wasn’t on, today on my end it was a sunny day temperature was around 51. I guess I  
10 was riding a timing bomb 🧨 🧑🏻♂️. This was the 2<sup>nd</sup> replacement OE part” Raydar  
11 Jaysen Rayden, *Acura RDX/Aspec*, Facebook (Feb. 1, 2022).
- 12 • “This is ridiculous. I literally just had this happen to me yesterday.” Latasha Holland,  
13 *Acura RDX/Aspec*, Facebook (Feb. 2, 2022).
- 14 • “I’ve also had mine replaced 3 times already.” Kevin Troncoso, *Acura RDX/Aspec*,  
15 Facebook (Feb. 3, 2022).
- 16 • “My glass was done within 2 days, it’s all the glass inside the trunk that rattles  
17 everytime I open it,” Randy Duque, *Acura RDX/Aspec*, Facebook (Feb. 3, 2022).
- 18 • “I just got mine replaced yesterday unfortunately this was the second time this happened  
19 except this time I was driving []. It’s not a glass issue because the first time I had to  
20 wait weeks for a replacement and was[] not willing to pay out of pocket got an after  
21 market glass and it still happen[e]d.” Rios Syl, *Acura RDX/Aspec*, Facebook (Feb. 9,  
22 2022).
- 23 • “Even tho it’s covered at your dealership report it. @ <https://www.nhtsa.gov/> and Acura  
24 customer service Some aren’t getting it covered. It needs to be a recall! Just so you  
25 know people are having this happen more than once. It’s happened to me” Sherry  
26 DiGirolamo, *Acura RDX/Aspec*, Facebook (Feb. 19, 2022).

- 1 • “My wife’s 2020 RDX rear window just exploded. She got in the car--shut the door-  
2 and boom window blew out. Is Acura covering this?” James Mower, *Acura RDX/Aspec*,  
3 Facebook (Feb. 20, 2022).
- 4 • “The same thing happen to me and I didn’t even have my Acura RDX for a month. I  
5 called Acura they couldn’t do anything . I called my insurance after 2 wks I finally got  
6 auto body shop remove the glass. They called it comprehensive loss.” Edna Vega,  
7 *Acura RDX/Aspec*, Facebook (Mar. 25, 2022).
- 8 • “happened to my 2020 3 weeks ago” Vin Ortez, *Acura RDX/Aspec*, Facebook (Mar. 25,  
9 2022).
- 10 • “Just go through safelite they’ll fix it within a week im on my second window blowout  
11 lol but hey its under there lifetime warranty so why not” Tola Sok, *Acura RDX/Aspec*,  
12 Facebook (May 13, 2022).

13 **6. Acknowledgements of the Problem by Honda Representatives, Dealers, and**  
14 **Technicians**

15 78. Defendant’s knowledge of the defect is also shown by the fact that Honda  
16 representatives, dealers, and technicians have admitted to Vehicle owners—including many of the  
17 named Plaintiffs—that repeated rear windshield failure is a well-known and pervasive problem with  
18 the Vehicles.

19 79. Defendant further acknowledged the defect in its Service Bulletin, wherein it identified  
20 the cause for the Vehicles’ rear windshield shattering: “[i]ncorrect specification for the rear defroster  
21 grid.” *See Acura Service Bulletin 22-014* (June 10, 2022), *supra* note 6; *see also* Exhibit A.

22 **C. Defendant’s Warranties and Response to the Defect**

23 80. Defendant issued to all original purchasers and lessees, including Plaintiffs and the  
24 other Class members, a written manufacturer’s warranty. This New Vehicle Limited Warranty states  
25 that “Acura will repair or replace any part that is defective in material or workmanship under normal  
26 use” and that “all repairs/replacements made under this warranty are free of charge.”

27 81. But, as countless consumers have reported, Defendant initially refused to repair the  
28 shattered rear windshields under its warranties.



1           90. Alternatively, subject to confirmation, clarification, and/or modification based on  
2 discovery to be conducted in this action, Plaintiffs McIntyre, Plaintiff Regnier, Plaintiff Smith, and  
3 Plaintiff Null to represent the following state-specific classes, respectively:

- 4           i. All persons and entities in Alabama that purchased a model year 2019-  
2023 Acura Vehicle (the “Alabama Class”).
- 5           ii. All persons and entities in California that purchased a model year 2019-  
2023 Acura Vehicle (the “California Class”).
- 6           iii. All persons and entities in Maryland that purchased a model year 2019-  
2023 Acura Vehicle (the “Maryland Class”).
- 7           iv. All persons and entities in Texas that purchased a model year 2019-2023  
8 Acura Vehicle (the “Texas Class”).

9           91. The Nationwide Class, Alabama Class, California Class, Maryland Class, and Texas  
10 Class, are collectively referred to herein as the “Classes,” and their members are collectively referred  
11 to herein as “Class members.”

12           92. Excluded from the Classes are: (1) Defendant, any entity in which Defendant has a  
13 controlling interest, and its legal representatives, officers, directors, employees, assigns and  
14 successors; (2) the Judge to whom this case is assigned and any member of the Judge’s staff or  
15 immediate family; and (3) Class Counsel.

16           93. Plaintiffs seek only damages and injunctive relief on behalf of themselves and the Class  
17 members. Plaintiffs disclaim any intent or right to seek any recovery in this action for personal injuries,  
18 wrongful death, or emotional distress suffered by Plaintiffs and/or the Class members.

19           94. **Ascertainability.** While the exact number of Class members is unknown to Plaintiffs at  
20 this time and can only be determined by appropriate discovery, membership in the Classes is  
21 ascertainable based upon the records maintained by Honda and governmental officials.

22           95. **Numerosity.** Upon information and belief, Honda has sold over 100,000 defective  
23 Vehicles nationwide during the relevant time period, all of which have the defective rear windshields  
24 at issue. Therefore, the Class members are so numerous that individual joinder of all Class members  
25 is impracticable under Federal Rule of Civil Procedure 23(a)(1).

26           96. **Commonality and Predominance.** Defendant has engaged in the same conduct  
27 regarding all of the members of the Classes. The injuries and damages to these Class members also  
28 present questions of law and fact that are common to each Class member, and that are common to the

1 Classes as a whole and will drive the litigation and predominate over any questions affecting only  
2 individual Class members. Numerous common issues of law and fact exist as to all Class members,  
3 including without limitation:

- 4 a. whether each Vehicle was sold with a defective rear windshield;
- 5 b. whether Defendant breached implied warranties made to the Class members;
- 6 c. whether Defendant replaced defective parts with defective parts;
- 7 d. whether Defendant knew about the defect and, if so, how long Defendant has known  
8 about the defect;
- 9 e. whether Defendant concealed the defect;
- 10 f. whether Defendant's conduct violates consumer protection statutes, warranty laws, and  
11 other laws asserted herein;
- 12 g. whether the Class members have suffered damages as a result of the conduct alleged  
13 herein, and, if so, the measure of such damages, including diminution of value and  
14 deprivation of the benefit of the bargain; and
- 15 h. whether the Class members are entitled to injunctive relief.

16 97. **Typicality.** The claims, defenses, and injuries of the representative Plaintiffs are typical  
17 of the claims, defenses, and injuries of all those in the classes that they seek to respectively represent,  
18 and the claims, defenses, and injuries of each Class member are typical of those of all other members  
19 in their respective classes, because Plaintiffs and each Class member purchased a Vehicle with the  
20 same defective rear windshield.

21 98. **Adequacy.** Plaintiffs are all members of the Nationwide Class and will fairly and  
22 adequately represent and protect the interests of the Nationwide Class members as required by Federal  
23 Rule of Civil Procedure 23(a)(4). Plaintiffs are adequate representatives because their interests do not  
24 conflict with the interests of the Nationwide Class members. Further, Plaintiffs have retained counsel  
25 competent and experienced in complex class action litigation, including automotive defect class action  
26 litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiff McIntyre is a member of  
27 the Alabama Class, Plaintiff Regnier is a member of the California Class, Plaintiff Smith is a member  
28 of the Maryland Class, and Plaintiff Null is a member of the Texas Class, and, for the preceding

1 reasons, they will fully and adequately represent the interests of their respective class members.  
2 Therefore, the interests of the Class members will be fairly and adequately protected.

3 99. **Superiority.** A class action is appropriate under Federal Rule of Civil Procedure  
4 23(b)(3) because questions of law or fact common to Class members predominate over any questions  
5 affecting only individual members, and a class action is superior to any other available means for fairly  
6 and efficiently adjudicating the controversy. In this regard, the Class members' interests in individually  
7 controlling the prosecution of separate actions are low given the magnitude, burden, and expense of  
8 individual prosecutions against large corporations such as Defendant. Further, neither Plaintiffs nor  
9 their counsel are aware of any ongoing litigation concerning this controversy already begun by any of  
10 the Class members. It is desirable to concentrate this litigation in this forum to avoid burdening the  
11 courts with individual lawsuits. Individualized litigation presents a potential for inconsistent or  
12 contradictory results and also increases the delay and expense to all parties and the court system  
13 presented by the legal and factual issues of this case. By contrast, the class action procedure here will  
14 have no management difficulties. Defendant's records and the records available publicly will easily  
15 identify the Class members. This defect is common to all defective Vehicles; therefore, the same  
16 common documents and testimony will be used to prove Plaintiffs' claims as well as the claims of the  
17 Class members. Finally, proceeding as a class action provides the benefits of single adjudication,  
18 economies of scale, and comprehensive supervision by a single court.

19 100. A class action is appropriate under Federal Rule of Civil Procedure 23(b)(2) because,  
20 as stated above, Honda has acted or refused to act on grounds that apply generally to the Class  
21 members, so that final injunctive relief or corresponding declaratory relief is appropriate as to all Class  
22 members.

## 23 VI. CLAIMS

### 24 COUNT I

#### 25 BREACH OF IMPLIED WARRANTY— 26 MAGNUSON-MOSS WARRANTY ACT

(15 U.S.C. §§ 2301, *et seq.*)

27 On Behalf of the Nationwide Class

1           101. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully  
2 written herein.

3           102. Plaintiffs bring this claim on behalf of the Nationwide Class.

4           103. The Vehicles are “consumer product[s]” within the meaning of 15 U.S.C. § 2301.

5           104. Plaintiffs and members of the Class are “consumers” within the meaning of 15 U.S.C.  
6 § 2301 because they are persons entitled under applicable state law to enforce against the warrantor  
7 the obligations of its express and implied warranties.

8           105. Defendant is a “supplier” of consumer products to consumers and a “warrantor” within  
9 the meaning of 15 U.S.C. § 2301.

10           106. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiffs  
11 properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

12           107. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action  
13 for any consumer who is damaged by the failure of a warrantor to comply with a written or implied  
14 warranty.

15           108. Defendant made written and implied warranties regarding the Vehicles to Plaintiffs and  
16 Class members within the meaning of 15 U.S.C. § 2301. Defendant provided Plaintiffs and other Class  
17 members an implied warranty of merchantability within the meaning of the Magnuson-Moss Warranty  
18 Act, 15 U.S.C. § 2301(7).

19           109. Defendant breached the implied warranty of merchantability because the Vehicles were  
20 not fit for the ordinary purpose for which such goods are used. As described throughout the Complaint,  
21 the Vehicles contain defects which render them unsafe, inconvenient, and imperfect such that Plaintiffs  
22 and Class members would not have purchased the Vehicles had they known of the defects.

23           110. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are  
24 not required to give Defendant notice and an opportunity to cure until such time as the Court determines  
25 the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.  
26 Regardless, Plaintiffs have afforded Honda a reasonable opportunity to cure the breach by providing  
27 Honda a pre-suit notice dated June 1, 2023, but Honda has not remedied the breach.  
28





1 reliable transportation. Specifically, the Class Vehicles contain a rear windshield defect that renders  
2 the Vehicles unsafe.

3 131. Thus, the Vehicles, when sold and at all times thereafter, were not in merchantable  
4 condition or quality and are not fit for their ordinary intended purpose.

5 132. By virtue of the conduct described herein and throughout this Complaint, Honda  
6 breached the implied warranty of merchantability.

7 133. Plaintiff has afforded Honda a reasonable opportunity to cure the breach by providing  
8 Honda a pre-suit notice dated June 1, 2023, but Honda has not remedied the breach.

9 134. Any attempt by Honda to disclaim or limit the implied warranty of merchantability vis-  
10 à-vis consumers would be unconscionable and unenforceable because Honda knowingly sold a  
11 defective product without informing consumers about the defect. Any time limits contained in Honda's  
12 warranty periods would also be unconscionable and inadequate to protect Plaintiff and the other  
13 Alabama Class members. Among other things, Plaintiff and the other Alabama Class members had no  
14 meaningful choice in determining any time limitations, the terms of which unreasonably favored  
15 Honda. A gross disparity in bargaining power existed between Honda and Plaintiff and the other  
16 Alabama Class members, and Honda knew of the defect at the time of sale.

17 135. As a direct and proximate result of Honda's breach of the implied warranty of  
18 merchantability, Plaintiff and the other Alabama Class members have been damaged in an amount to  
19 be proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or  
20 diminution of value.

21 **COUNT IV**  
22 **VIOLATIONS OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT**  
23 **(ALA. CODE § 8-19-1, et seq.)**  
24 **On Behalf of the Alabama Class**

25 136. Plaintiff McIntyre ("Plaintiff" for purposes of this Count) incorporates by reference all  
26 preceding allegations as though fully set forth herein.

27 137. Plaintiff brings this Count on behalf of the Alabama Class.

28 138. By failing to release material facts about the defect, Honda curtailed or reduced the  
ability of consumers to take notice of material facts about their Vehicle, and/or it affirmatively operated

1 to hide or keep those facts from consumers. Moreover, Honda has otherwise engaged in activities with  
2 a tendency or capacity to deceive.

3 139. By failing to disclose and by actively concealing the defect in the rear windshield and  
4 marketing its Vehicles as safe, reliable, and of high quality, Honda engaged in deceptive trade practices  
5 in violation of the Alabama's Deceptive Trade Practices Act.

6 140. In the course of Honda's business, it willfully failed to disclose and actively concealed  
7 the defect as discussed herein. Honda compounded the deception by repeatedly asserting the Vehicles  
8 were safe, reliable, and of high quality, and by claiming to be a reputable manufacturer that valued  
9 safety, and stood behind its vehicles once they are on the road.

10 141. Honda's unfair or deceptive acts or practices, including these concealments, omissions,  
11 and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false  
12 impression in consumers, and did in fact deceive reasonable consumers, including Plaintiff and the  
13 other Alabama Class members.

14 142. Honda intentionally and knowingly misrepresented material facts regarding the  
15 Vehicles with an intent to mislead Plaintiff and the other Alabama Class members, including without  
16 limitation by failing to disclose the defects in light of circumstances under which the omitted facts  
17 were necessary in order to correct the assumptions, inferences or representations being made by Honda  
18 about the reliability and safety of its Vehicles.

19 143. Honda's conduct as alleged above constitutes unfair or deceptive acts or practices in  
20 violation of Alabama's Deceptive Trade Practices Act for, *inter alia*, one or more of the following  
21 reasons:

- 22 a) representing that the Vehicles have sponsorship, approval, characteristics, benefits,  
23 and qualities that they do not have;
- 24 b) representing that the Vehicles are of a particular standard, quality, or grade when they  
25 are not;
- 26 c) advertising the Vehicles with intent not to sell them as advertised including but not  
27 limited to selling the Vehicles with the known defects at issue in this litigation; and
- 28 d) knowingly making false and misleading statements of fact concerning selling the  
Vehicles with the known defects at issue in this litigation.

1 144. Honda's actions as alleged above occurred in the conduct of trade or commerce.

2 145. Honda's unfair or deceptive actions impact the public interest because Plaintiff and the  
3 Alabama Class were injured in exactly the same way as many others purchasing Vehicles in Alabama,  
4 as a result of Honda's generalized course of deception. All of the conduct alleged herein occurred, and  
5 continues to occur, in the conduct of Honda's business.

6 146. Plaintiff and the Alabama Class were injured as a result of Honda's conduct as  
7 described above, including but not limited to diminution of value.

8 147. Honda's conduct proximately caused the injuries to Plaintiff and the Alabama Class.

9 148. Accordingly, Honda is liable to Plaintiff and the Alabama Class for damages in an  
10 amount to be proven at trial, including attorneys' fees, costs, and treble damages.

11  
12 **COUNT V**  
13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
14 **(BASED ON CALIFORNIA LAW)**  
15 **On Behalf of the California Class**

16 149. Plaintiff Regnier ("Plaintiff" for purposes of this Count) incorporates by reference all  
17 preceding allegations as though fully set forth herein.

18 150. Plaintiff brings this Count on behalf of the California Class and in the alternative to  
19 Count II.

20 151. Honda was at all relevant times a "merchant" with respect to motor vehicles and "seller"  
21 of motor vehicles.

22 152. The Vehicles are and were at all relevant times "goods."

23 153. A warranty that the Vehicles were in merchantable condition and fit for the ordinary  
24 purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code § 2314.

25 154. The Vehicles were defective at the time they left the possession of Honda. The Vehicles  
26 were not in merchantable condition and are not fit for the ordinary purpose of providing safe and  
27 reliable transportation. Specifically, the Class Vehicles contain a rear windshield defect that renders  
28 the Vehicles unsafe.





1 171. Plaintiff Null (“Plaintiff” for purpose of this count) incorporates by reference all  
2 preceding allegations as though fully set forth herein.

3 172. Plaintiff brings this Count on behalf of the Texas Class and in the alternative to Count  
4 II.

5 173. Honda was at all relevant times a “merchant” with respect to motor vehicles and “seller”  
6 of motor vehicles.

7 174. The Vehicles are and were at all relevant times “goods.”

8 175. A warranty that the Vehicles were in merchantable condition and fit for the ordinary  
9 purpose for which vehicles are used is implied by law pursuant to Tex. Bus. & Com. Code § 2.314.

10 176. The Vehicles were defective at the time they left the possession of Honda. The Vehicles  
11 were not in merchantable condition and are not fit for the ordinary purpose of providing safe and  
12 reliable transportation. Specifically, the Class Vehicles contain a rear windshield defect that renders  
13 the Vehicles unsafe.

14 177. Thus, the Vehicles, when sold and at all times thereafter, were not in merchantable  
15 condition or quality and are not fit for their ordinary intended purpose.

16 178. By virtue of the conduct described herein and throughout this Complaint, Honda  
17 breached the implied warranty of merchantability.

18 179. Plaintiff has afforded Honda a reasonable opportunity to cure the breach by providing  
19 Honda a pre-suit notice dated June 1, 2023, but Honda has not remedied the breach.

20 180. Any attempt by Honda to disclaim or limit the implied warranty of merchantability vis-  
21 à-vis consumers would be unconscionable and unenforceable because Honda knowingly sold a  
22 defective product without informing consumers about the defect. Any time limits contained in Honda’s  
23 warranty periods would also be unconscionable and inadequate to protect Plaintiff and the other Texas  
24 Class members. Among other things, Plaintiff and the other Texas Class members had no meaningful  
25 choice in determining any time limitations, the terms of which unreasonably favored Honda. A gross  
26 disparity in bargaining power existed between Honda and Plaintiff and the other Texas Class members,  
27 and Honda knew of the defect at the time of sale.

1 181. As a direct and proximate result of Honda's breach of the implied warranty of  
2 merchantability, Plaintiff and the other Texas Class members have been damaged in an amount to be  
3 proven at trial, including, but not limited to, benefit-of-the-bargain damages, restitution, and/or  
4 diminution of value.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class members, respectfully  
7 request judgment against Defendant as follows:

- 8 (A) certifying the proposed Nationwide Class and state specific classes and subclass;  
9 (B) appointing Plaintiffs and their counsel to represent the Class;  
10 (C) alternatively, appointing Plaintiffs McIntyre, Plaintiffs Regnier, Plaintiffs Smith, and  
11 Plaintiff Null and their counsel to represent the Alabama, California, Maryland, and Texas  
12 Classes, respectively;  
13 (D) ordering injunctive relief, restitution, disgorgement, and/or other appropriate relief;  
14 (E) awarding compensatory, punitive, exemplary, and other recoverable damages;  
15 (F) awarding reasonable attorneys' fees and expenses;  
16 (G) awarding pre-judgment and post-judgment interest; and  
17 (H) awarding such other and further relief as this Court may deem just and proper.

18 **JURY DEMAND**

19 Plaintiffs demand a trial by jury of all issues so triable.

20  
21 Dated: August 25, 2023

Respectfully submitted,

22 /s/ Annick M. Persinger

23 Annick M. Persinger (CA Bar No. 272996)  
24 **TYCKO & ZAVAREEI LLP**  
10880 Wilshire Blvd. Suite 1101  
25 Los Angeles, CA 90024  
(510) 254-6808  
26 *apersinger@tzlegal.com*

27 Andrea R. Gold  
28 Leora N. Friedman (pro hac vice *forthcoming*)

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**TYCKO & ZAVAREEI LLP**  
2000 Pennsylvania Avenue, NW Suite 1010  
Washington, DC 20006  
(202) 973-0900  
*agold@tzlegal.com*  
*lfriedman@tzlegal.com*

Jeffrey S. Goldenberg  
**GOLDENBERG SCHNEIDER, L.P.A.**  
4445 Lake Forest Drive, Suite 490  
Cincinnati, Ohio 45242  
*jgoldenberg@gs-legal.com*  
(513) 345-8297  
*jgoldenberg@gs-legal.com*

Frank Bartela (*pro hac vice* forthcoming)  
**DWORKEN & BERNSTEIN**  
60 South Park Place  
Painesville, OH 44077  
(440) 352-3391  
*fbartela@dworkenlaw.com*

*Counsel for Plaintiffs Franklin McIntyre, Melissa Null, Christina Regnier, and Crystal Smith*

# **EXHIBIT A**



# Service Bulletin

# 22-014

June 10, 2022

Version 1

## Rear Windshield Glass Shattering

### AFFECTED VEHICLES

Year	Model	Trim	VIN Range
2019	RDX	ALL	ALL
2020	RDX	2WD	5J8TC1H60LL000001 Thru 5J8TC1H60LL020269
2020	RDX	AWD	5J8TC2H53LL000001 Thru 5J8TC2H53LL039430

### SYMPTOM

The rear windshield glass is shattered or broken with no external impact.

### POSSIBLE CAUSE

Incorrect specification for the rear defroster grid.

### CORRECTIVE ACTION

Inspect and replace the rear windshield glass.

### PARTS INFORMATION

Part Name	Part Number	Quantity
Rear Windshield Glass	73211-TJB-A02	1
Rubber Windshield Dam	73127-TY0-000	2
Rubber Windshield Dam RR	73212-TJB-A01	4
Windshield Spacer B, RR	73222-SR4-000	1

**CLIENT INFORMATION:** The information in this bulletin is intended for use only by skilled technicians who have the proper tools, equipment, and training to correctly and safely maintain your vehicle. These procedures should not be attempted by "do-it-yourselfers," and you should not assume this bulletin applies to your vehicle, or that your vehicle has the condition described. To determine whether this information applies, contact an authorized Acura automobile dealer.

**WARRANTY CLAIM INFORMATION**

The normal warranty applies.

Operation Number	Description	Flat Rate Time	Defect Code	Symptom Code	Template ID	Failed Part Number
832120	Replace the rear windshield glass.	1.5 hr	01801	03217	B22014A	73211-TJB-A02

Skill Level: Repair Technician

**INSPECTION PROCEDURE**

- Make sure that the vehicle's front/rear bumper, tailgate, and rear wiper do not have any visual damage.
- Check the tailgate alignment. Make sure it opens and closes properly.
- If there are no signs of damage to the bumpers, tailgate, wiper, or alignment issues, and the tailgate opens and closes properly, go to the REPAIR PROCEDURE and replace the rear windshield glass.

**REPAIR PROCEDURE**

Replace the rear windshield glass. Refer to the service information> enter keyword **Rear Window**, then select **Rear Window Area** from the list.

END



# Service Bulletin

# 22-014

**October 28, 2022**

Version 2

## Rear Windshield Glass Shattering

Supersedes 22-014, dated June 10, 2022, to revise the information highlighted in yellow.

### AFFECTED VEHICLES

Year	Model	Trim	VIN Range
2019	RDX	ALL	ALL
2020	RDX	2WD	5J8TC1H...L000001 Thru 5J8TC1H...L020269
2020	RDX	AWD	5J8TC2H...LL000001 Thru 5J8TC2H...LL039430

### REVISION SUMMARY

Under AFFECTED VEHICLES, the VIN range was changed.

### SYMPTOM

The rear windshield glass is shattered or broken with no external impact.

### POSSIBLE CAUSE

Incorrect specification for the rear defroster grid.

### CORRECTIVE ACTION

Inspect and replace the rear windshield glass.

### PARTS INFORMATION

Part Name	Part Number	Quantity
Rear Windshield Glass	73211-TJB-A02	1
Rubber Windshield Dam	73127-TY0-000	2
Rubber Windshield Dam RR	73212-TJB-A01	4
Windshield Spacer B, RR	73222-SR4-000	1

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**WARRANTY CLAIM INFORMATION**

The normal warranty applies.

Operation Number	Description	Flat Rate Time	Defect Code	Symptom Code	Template ID	Failed Part Number
832120	Replace the rear windshield glass.	1.5 hr	01801	03217	B22014A	73211-TJB-A02

Skill Level: Repair Technician

**INSPECTION PROCEDURE**

- Make sure that the vehicle's front/rear bumper, tailgate, and rear wiper do not have any visual damage.
- Check the tailgate alignment. Make sure it opens and closes properly.
- If there are no signs of damage to the bumpers, tailgate, wiper, or alignment issues, and the tailgate opens and closes properly, go to the REPAIR PROCEDURE and replace the rear windshield glass.

**REPAIR PROCEDURE**

Replace the rear windshield glass. Refer to the service information> enter keyword **Rear Window**, then select **Rear Window Area** from the list.

END

## **EXHIBIT B**



**HONDA**

Automobile Dealer  
Sales and Service  
Agreement

208481

DEALMAKER OF POTSDAM, LLC  
d/b/a DEALMAKER HONDA OF POTSDAM  
42 MAPLE STREET  
POTSDAM, NY 13676



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## **Honda Automobile Dealer Sales And Service Agreement**

### **Dealer Agreement**

This Honda Automobile Dealer Sales and Service Agreement ("Dealer Agreement") is between the Honda Automobile Division, American Honda Motor Co., Inc. ("American Honda" or "Honda") and the Dealer set forth in the Owners and Officers Attachment ("Dealer"). This Dealer Agreement is made and entered into at Torrance, California, effective on the date fully executed below, for the term set forth in the Dealer Agreement Term Attachment, as extended from time to time. By this Dealer Agreement, American Honda gives to Dealer the non-exclusive right to sell and service Honda Products at the Authorized Location.

### **Statement Of Philosophy**

Honda is committed in its quest to achieve ever-increasing levels of excellence. Honda is committed to creating vehicles of the highest quality to provide Honda customers with an ownership experience so rewarding that they remain customers for life.

American Honda is equally committed to setting the highest standards of Customer Satisfaction throughout the lifetime of the ownership experience. To achieve this goal, American Honda is dedicated to supporting a Dealer organization of the same high quality.

This Dealer Agreement embodies the commitment between American Honda and its Dealers to conduct business in a fair and open manner. The ultimate goal of the shared responsibilities outlined in this Dealer Agreement is the complete satisfaction of the Honda customer.

#### **1. Purpose Of The Dealer Agreement**

This Dealer Agreement, together with the Attachments hereto, which are incorporated by this reference and the Policies and Procedures, set forth the rights and obligations of Dealer and American Honda with respect to current and potential customers and each other. Dealer and American Honda seek to effectively promote, sell and service Honda Products, enhance the Honda image and satisfy Honda customers. Achievement of the purposes of the Dealer Agreement is premised upon the mutual understanding and cooperation between American Honda and Dealer. American Honda and Dealer have entered into this Dealer Agreement in reliance upon the integrity, ability and express intention of each party to deal fairly with the consuming public and with each other. In that spirit, American Honda shall, when considering significant changes to the Dealer Agreement and/or the Attachments hereto that are intended to affect all Dealers, endeavor to review in advance such changes with a representative group of Dealers, as is reasonably practicable.

For consistency and clarity, terms that are used frequently in this Dealer Agreement have been defined in Article 24.

#### **2. Rights Granted To Dealer**

Subject to the terms and conditions of this Dealer Agreement, Dealer agrees to:

- A. Buy only from American Honda, or from other American Honda Dealers, and resell or lease in the United States the Honda Products identified in the Honda Product Attachment, which may be revised by American Honda from time to time. Honda Products are designed and manufactured in accordance with the laws

and regulations of the United States and for the United States market. American Honda provides warranty coverage for Honda Products sold or leased in the United States. As such, Dealer agrees not to sell or lease Honda Products outside the United States. Nothing in this Dealer Agreement is intended to prohibit Dealer from selling or leasing a Honda Product to a customer in the United States who has the undisclosed intention to transport the Honda Product outside the United States after the sale or lease;

- B. Identify itself as an authorized American Honda Dealer utilizing approved signage at the Authorized Location(s) identified in the Authorized Location Attachment; and
- C. Use the Honda Trademarks in the advertising, promotion, sale and servicing of Honda Products in the manner provided in this Dealer Agreement.

### **3. Responsibilities Accepted By Dealer**

Dealer accepts its appointment as an authorized American Honda Dealer and agrees to:

- A. Promote, sell and service Honda Products and serve American Honda customers according to the terms and conditions of this Dealer Agreement;
- B. Establish and maintain Dealership Premises at the Authorized Location(s) as set forth in this Dealer Agreement; and
- C. Abide by all other terms and conditions of this Dealer Agreement, and American Honda's Policies and Procedures.

### **4. Owners And Officers**

Dealer covenants and agrees that this Dealer Agreement is personal to Dealer, to the Dealer Owner(s) and to the Dealer Principal/Executive Manager, and that American Honda has entered into this Dealer Agreement based upon their particular qualifications and attributes and their continued ownership or participation in Dealership Operations. The parties therefore recognize that the ability of Dealer to perform this Dealer Agreement satisfactorily and the Dealer Agreement itself are both conditioned upon the continued active involvement in or ownership of Dealer by those individuals set forth as Dealer Owners in the Owners and Officers Attachment and/or that individual set forth as Dealer Principal/Executive Manager in the Dealer Principal/Executive Manager Attachment.

### **5. Management Of Dealership Operations**

Dealer represents, and American Honda enters into this Dealer Agreement in reliance upon such representation, that the person set forth in the Dealership Manager Attachment appended hereto exercises the functions of Dealership Manager, has a full-time commitment to the promotion, sale and servicing of Honda Products and the satisfaction of Honda customers, and is in complete charge of the day-to-day Dealership Operations with authority to make all decisions regarding ordinary course transactions on behalf of Dealer with respect to Dealership Operations. American Honda further enters into this Dealer Agreement upon the representation that the person designated as

the Dealer Principal/Executive Manager in the Dealer Principal/Executive Manager Attachment appended hereto shall have ultimate control of the Dealership Operations and shall have final authority to decide any Dealer-related matters not within the authority of the Dealership Manager.

The Dealership Manager shall be easily accessible to American Honda personnel at the Dealership Premises, as needed. The Dealer Principal/Executive Manager shall be accessible to American Honda personnel as reasonably necessary to decide matters not within the scope of authority of the Dealership Manager. The Dealership Manager shall have no significant business interests or management responsibilities other than to devote full-time efforts to the Dealership Operations.

## **6. Changes In Ownership Or Management**

### **6.1 Changes In Ownership Or Dealer Principal/Executive Manager**

There shall be no voluntary or involuntary change, direct or indirect, in the legal or beneficial ownership of Dealer, Dealer Principal/Executive Manager or of the Dealer Owners, as specified in either the Dealer Principal/Executive Manager Attachment or the Owners and Officers Attachment without the prior written approval of American Honda, which shall not be unreasonably withheld. Dealer agrees to give American Honda prior written notice of any change in any of the above-referenced persons/individuals. Upon a change in the majority ownership of Dealer, Dealer shall execute a new Owners and Officers Attachment, subject to American Honda's Policies and Procedures. The Dealer Agreement shall otherwise remain in full force and effect. American Honda shall not approve a change in majority ownership of Dealer unless, in addition to all other requirements of American Honda, Dealer shall have paid all outstanding debts and other amounts due to American Honda, regardless of any payments or other offsets Dealer may feel it is entitled to from American Honda.

### **6.2 Changes In Dealership Manager**

Except as provided herein, there shall be no change in Dealer's Dealership Manager as designated on the Dealership Manager Attachment without the prior written consent of American Honda, which consent shall not be unreasonably withheld. Should an involuntary or unanticipated change in the Dealership Manager take place, Dealer shall appoint, as soon as is practicable under the circumstances, an individual to serve as interim Dealership Manager, who shall be subject to the approval of American Honda. Dealer shall appoint a regular, non-interim Dealership Manager, who shall also be subject to the approval of American Honda, within 90 days of the departure of the former non-interim Dealership Manager.

Whenever the Dealer Owners nominate a new, non-interim Dealership Manager candidate for the Dealership, American Honda shall have the right to withhold a decision concerning approval or rejection of the candidate for a trial period of up to one year from receipt of this nomination, at the sole discretion of American Honda. The candidate may operate in the capacity of Dealership Manager until American Honda has approved or rejected the nomination in writing. Inclusion of a Dealership Manager candidate in the Dealership Manager Attachment shall not constitute approval of the candidate.

Provided Dealer gives notice to American Honda as required herein, this Dealer Agreement does not require the prior approval of American Honda, or otherwise limit the ability or discretion of Dealer to terminate the employment of its Dealership Manager. The requirement of American Honda's consent to a change in Dealership Manager is limited to the approval of any interim or non-interim Dealership Manager candidate, and not to the individual currently approved by American Honda and listed in the Dealership Manager Attachment, unless that individual ceases to be Dealer's Dealership Manager in the future.

**7. Dealership Premises/Authorized Location(s)**

American Honda has approved only the Dealership Premises, as set forth in the Dealership Premises Attachment and the Authorized Location Attachment as the Authorized Location(s) for the display of Honda Trademarks and for conducting any aspect of Dealership Operations. Dealer shall provide to American Honda, upon request, a copy of the legal document which allows Dealer to occupy the Authorized Location(s) for the term set forth in the Dealer Agreement Term Attachment. Dealer shall not change the usage, configuration or function of any of the Dealership Premises, as described in the Dealership Premises Attachment and the Authorized Location Attachment for Dealership Operations, and shall not otherwise utilize the Dealership Premises or Authorized Location for any line-makes other than those previously approved by American Honda, which approval shall not be unreasonably withheld. Dealer shall submit to American Honda, its written proposal for any change in the Dealership Operations at the Dealership Premises and/or Authorized Location at least sixty (60) days prior to any such change taking place.

**8. Incorporation Of Attachments**

The Attachments to this Dealer Agreement, as amended from time to time, are hereby incorporated in this Dealer Agreement and made a part of it. American Honda reserves the right to issue new and superseding Attachments from time to time, as it deems necessary, subject to the provisions of Article 1.

**9. Term Of Dealer Agreement**

This Dealer Agreement is made for the period set forth in the Dealer Agreement Term Attachment hereto, unless sooner terminated. Continued dealings between American Honda and Dealer after the expiration of this Dealer Agreement term shall not constitute a renewal of this Dealer Agreement for a term, but rather shall be on a day-to-day basis, unless and until a new or renewal Dealer Agreement Term Attachment is fully executed by both parties.

**10. The Obligations Of American Honda**

**10.1 Supply Of Product**

It is the obligation of American Honda to supply to Dealer, and to all authorized Honda Dealers, Honda Products in a fair and reasonable manner. In fulfilling this obligation, Honda Products may be supplied either on the basis of Dealer order or on the basis of allocation, depending on market conditions and availability. There are numerous factors which affect the availability of Honda Products. Among those factors are component availability and production capacity,

consumer demand, strikes and other labor troubles, weather and transportation conditions, and government regulations. Because such factors affect individual Dealer supply, American Honda necessarily reserves discretion in accepting orders and allocating and distributing Honda Products, and its judgment and decision in such matters will be final.

#### **10.2 Sales, Service And Parts Support**

To assist Dealer in the fulfillment of its obligations under the Dealer Agreement, which Dealer has as a retail seller of and service provider for Honda Products, American Honda agrees to provide Dealer sales, service and parts support.

**10.2.A** To assist Dealer in fulfilling its sales responsibility, American Honda agrees to offer general and specialized product information and to provide field sales personnel to advise and counsel Dealer's sales organization on sales-related subjects such as merchandising, training and sales management.

**10.2.B** To assist Dealer in fulfilling its service and parts responsibilities, American Honda agrees to offer, or cause to be offered, general and specialized service and parts training courses for Dealer's employees to attend. Based on the parts and service training needs of Dealer's parts and service personnel, to be determined by American Honda with the assistance of Dealer, Dealer agrees to have members of Dealer's parts and service organization attend such courses. Further, American Honda agrees to make available to Dealer field parts and service personnel capable of advising and counseling Dealer's service personnel on parts and service-related subjects, including product quality, inventory management, retail/wholesale parts marketing and merchandising, technical adjustments, repairs and replacement of product components, recall, product-improvement or product-update campaigns which American Honda may conduct, owner complaints, warranty administration, service and parts merchandising, and training and service management.

#### **10.3 Dealership Facility Planning**

To assist Dealer in planning, establishing and maintaining the Dealership Premises, American Honda will, at its sole option, make available to Dealer, upon request, sample copies of building layout plans or facility planning recommendations, including sales, service and parts space and the placement, installation and maintenance of recommended signs. In addition, representatives of American Honda will be available to Dealer from time to time to counsel and advise Dealer and its personnel in connection with Dealer's planning and equipping of the Dealership Premises.

#### **10.4 Product Support**

American Honda agrees to make available to Dealer, at reasonable cost, such sales, service and parts manuals, brochures, special service tools, parts displays, and equipment and other data for Honda Products as American Honda deems necessary for Dealership Operations.

**10.5 Promotion And Advertising Support**

American Honda agrees to maintain a nationwide system of authorized Dealers of Honda Products. In order that those authorized Dealers may be assured of the benefits of comprehensive advertising of Honda Products, American Honda agrees to establish and maintain general advertising programs in such manner and amount as it may deem appropriate and will make sales promotion and campaign materials available to Dealer.

**10.6 Warranty Reimbursement**

American Honda agrees to compensate Dealer for the labor and parts used by Dealer in performing its obligations under any American Honda warranty and in connection with any recall, product-improvement or product-update campaign which American Honda may undertake and require Dealer to perform. Such compensation will be in such reasonable amounts, and pursuant to such requirements and instructions, as American Honda shall establish in its Policies and Procedures from time to time, and such compensation shall constitute full and complete payment by American Honda to Dealer for such work.

**10.7 Dealer Indemnification**

American Honda agrees to assume the defense of Dealer and to indemnify Dealer against any money judgment, less any offset recovered by Dealer, in any legal action naming Dealer as a defendant, where such legal action relates to: (a) an alleged breach of any Honda warranty relating to Honda Products; (b) bodily injury or property damage claimed to have been caused by a defect in the design, manufacture or assembly of a Honda Product prior to delivery thereof to Dealer (other than a defect which could have been detected by Dealer in a reasonable inspection); or (c) a misrepresentation or misleading statement of American Honda; provided, however, that if any information discloses the possibility of Dealer error or omission in servicing or otherwise (including but not limited to Dealer not having performed all recall or campaign services of which Dealer has notice on the Honda Product involved in the legal action, if the defect subject to the recall or campaign is alleged or contended to be a contributing cause of the breach of warranty, injury or damage which is the subject matter of the legal action), or should it appear that the Honda Product involved in such legal action has been altered by or for Dealer, or if Dealer has violated any of the provisions of this Article 10.7, then Dealer will immediately obtain its own counsel and take all appropriate action necessary to investigate the matter, conduct discovery and otherwise take steps necessary to defend itself, and American Honda will not be obligated to defend or indemnify Dealer further.

Dealer will promptly notify American Honda of any claim which Dealer will assert American Honda might be obligated to defend under this Article 10.7. American Honda will have not less than thirty (30) days to conduct a reasonable investigation to initially determine whether or not American Honda will defend Dealer under this Article 10.7. Dealer will take the steps necessary to protect its own interests involved in the legal action until American Honda assumes the active defense of Dealer. American Honda will, upon assuming the defense of Dealer, reimburse Dealer for all reasonable attorneys' fees or court costs incurred by Dealer from the date of the tender, provided such tender is made after a reasonable investigation, discovery and other necessary action, and discloses a duty to defend on the part of American Honda and no potential liability on the part

of Dealer. American Honda, upon assuming Dealer's defense, will have the right to retain and direct counsel of its own choosing, and Dealer will cooperate fully in all matters during the course of defending the legal action. Upon the conclusion of American Honda's own investigation and discovery and other appropriate action to determine the extent of both American Honda's and Dealer's alleged liability, if it appears that tender of defense back to Dealer is appropriate, American Honda may either tender the defense back to Dealer or take other appropriate action, including, but not limited to, continuing to provide a defense for Dealer at Dealer's expense, in its sole discretion. If, upon final judgment in a legal action, it is determined that American Honda wrongfully failed or refused to defend Dealer, American Honda will reimburse Dealer for all reasonable costs and attorneys' fees incurred by Dealer from the date of the tender of defense, provided such tender was made after a reasonable investigation, discovery and other necessary action, and discloses a duty to defend on the part of American Honda and no potential liability on the part of Dealer.

## **11. Sale Of Honda Products To Dealer**

### **11.1 Acquisition Of Honda Products**

To the extent that Honda Products are the subject of a Dealer order, such orders will be submitted and processed in accordance with procedures established by American Honda. No order will be binding on American Honda, as evidenced by either the issuance of an invoice or shipment of the ordered Honda Products, and any such order may be accepted in whole or in part. All orders by Dealer will be deemed firm orders and binding upon the Dealer, except that at any time prior to acceptance by American Honda, an order may be canceled by Dealer by giving actual notice to American Honda in writing of the desire by Dealer to cancel such order.

### **11.2 Availability And Allocation Of Product**

American Honda and Dealer recognize that Honda Products may not always be available in desired quantities. It is therefore understood and agreed that American Honda, at its sole election, will have the right to allocate Honda Products among authorized Honda Dealers in a fair and reasonable manner. American Honda will provide to Dealer an explanation, in writing, of any allocation system it may adopt.

### **11.3 Prices And Terms Of Sale**

American Honda will have the right at any time and from time to time to establish and revise prices and other terms, including payment by Dealer, for its sales of Honda Products to Dealer. Revised prices, terms or provisions will apply to the sale of any Honda Products as of the effective date of the revised prices, terms or provisions, even though a different price or different terms may have been in effect at the time such Honda Products were allocated to or ordered by Dealer.

### **11.4 Method, Place And Charges Associated With Product Delivery**

American Honda will have the right to select the distribution points and the mode of transportation and may pay carriers for all charges in effecting delivery of Honda Products to Dealer. Dealer agrees to pay to American Honda such charges for delivery as American Honda may assess. Subject to the Policies and Procedures regarding terms of sale which may be established and revised from

time to time by American Honda, risk of loss to Honda Products will pass to Dealer upon tender of the Honda Products to Dealer or its authorized agent, and title will pass to Dealer upon receipt of funds due.

**11.5 Charges For Non-Acceptance Or Non-Payment By Dealer**

If Dealer should fail or refuse or for any reason be unable to accept delivery of any Honda Products ordered by Dealer, or if Dealer should request diversion of a shipment from American Honda, Dealer will be responsible for and pay to American Honda, promptly on demand, all costs and expenses incurred by American Honda in filling and shipping Dealer's order and by reason of such diversion, including costs of demurrage and storage, plus restocking charges as determined by American Honda. American Honda may direct that such returned Honda Products be delivered to another destination, but the amount charged Dealer for return to such other destination will not be greater than the costs and expenses of returning such Honda Products to their original place of shipment plus any demurrage, storage, and restocking charges.

**11.6 Inventory Damage Claims And Liability**

As between American Honda and Dealer, American Honda assumes responsibility for damage to Honda Products caused prior to delivery to Dealer or its authorized agent. Dealer shall cooperate fully with American Honda as required for American Honda to make claims to its insurance carriers with respect to such damage.

**11.7 Delays/Failures In Delivery**

American Honda will not be liable in any manner for delay or failure in supplying any Honda Products where such delay or failure is the result of any event beyond the control of American Honda. Such event may include, but is not limited to, any law or regulation or any acts of God, foreign or civil wars, riots, interruptions of navigation, shipwrecks, fires, strikes, lockouts, or other labor troubles, embargoes, blockades, demand for, or delay or failure of any supplier to deliver or in making delivery, of Honda Products.

**11.8 Product Changes By American Honda**

American Honda reserves the right at any time to change or modify, without notice, any specification, design or model of Honda Products. In the event of any change or modification with respect to any Honda Products, Dealer will not be entitled to have such or similar change or modification made with respect to any other Honda Products, except as may be required by applicable law. American Honda may, however, in its sole discretion, make such changes or modifications to all Honda Products in its inventory or control, whether or not invoiced to Dealer. No such change will be considered a model year change unless specified by American Honda.

**11.9 Discontinuance Of Manufacture, Importation Or Distribution**

American Honda may at any time discontinue, without obligation to Dealer or Dealer's customers, the sale of any Honda Products, or models or lines thereof or any other items, goods or services. Further, American Honda will have no obligation, under any circumstances, to accept orders for any Honda Products which are not in current inventory, or which are not listed in the Product Attachment to this Dealer Agreement.

## **12. The Obligations Of Dealer**

### **12.1 Product Sales And Service Obligations**

Dealer agrees that it shall at all times, subject only to American Honda's ability to supply Honda Vehicles to Dealer, maintain in showroom-ready condition for the purpose of demonstrating to the public, at least a minimum inventory and representative mix of the models of Honda Vehicles listed in the Product Attachment. Further, it is the obligation of Dealer to effectively promote and sell, at retail to the end user, Honda Products (with the exception of Honda-authorized service contracts, as set forth below), and to promote and render service to the end user. This service obligation exists whether or not the Honda Product for which service is being sought was purchased from the servicing Dealer or is then currently under warranty. Dealer shall offer Honda-authorized service contracts for sale to customers, such that they are available for purchase upon a customer's request. Dealer shall provide sales and service of Honda Products within the Dealer's Area of Statistical Analysis at levels as reasonably determined by American Honda.

### **12.2 Sales And/Or Service Performance Criteria**

Dealer's performance of its sales and/or service obligations for Honda Products will be evaluated by American Honda on the basis of such Policies and Procedures containing such reasonable criteria as American Honda may develop from time to time. Such criteria may include, but are not limited to, such reasonable retail sales and/or service objectives as American Honda may establish, as well as a comparison of Dealer's retail sales and/or service performance with reasonable groupings of other authorized Dealers of Honda Products. Dealer shall also be evaluated as to whether it conducts its sales and service activities in such a manner as to promote the positive image of Honda Products.

### **12.3 Qualifications And Training Of Dealership Personnel**

To enable Dealer to fulfill its obligations satisfactorily, Dealer agrees to establish and maintain an adequate and trained sales, parts and service organization. In addition to employing a Dealership Manager with the qualifications set forth in Article 5 above, Dealer shall employ a qualified and on-site Honda-trained service manager, a qualified and on-site Honda-trained parts manager and a number of competent service and parts personnel, adequate to care for the service and parts obligations to be performed by Dealer under the Dealer Agreement, as per the Policies and Procedures. Dealer's management personnel shall be made reasonably available for regular consultation with American Honda representatives and shall have appropriate day-to-day decision-making authority with respect to that portion of Dealership Operations for which each is responsible. Dealer shall ensure that all of its appropriate personnel regularly attend and meet the current minimum level of required training provided by American Honda, at Dealer's expense.

**12.4 Statements Regarding Honda Products**

Dealer agrees that it and its employees, Dealer Owners or other persons within Dealer's control will not make any misrepresentations or false, deceptive or misleading statements regarding Honda Products, including without limitation, the items making up the total selling price of Honda Products or as to the prices or charges relating to such items. With the understanding that Dealer is the sole judge of the lawful price at which it sells Honda Products, Dealer recognizes that a retail customer has the right to purchase Honda Vehicles or Honda Products without being required to purchase any optional equipment or accessories which the purchaser neither wants nor orders, unless such equipment or accessories are required under applicable laws or regulations. Dealer further agrees that if it or its employees present to a customer American Honda's vehicle invoice originally sent to Dealer, it will present it in its original and complete state.

**12.5 Representations Regarding The Use Of All Non-Honda Products, Honda Parts And Quality Standards**

Dealer agrees to use only genuine Honda Products, or American Honda-approved products, parts or accessories, in performing warranty repairs, special policy repairs and any other repairs paid for in whole or in part by American Honda, in accordance with the applicable Policies and Procedures. Dealer and its employees shall not represent or imply to a customer or to any other person that non-Honda products are in fact Honda Products. Dealer acknowledges that Dealer, not American Honda, is responsible for all warranty obligations and liability issues arising from Dealer's installation or use of non-Honda products, parts, or accessories on customer's Honda Vehicle.

**12.6 Pre-Delivery Service And Inspection Requirements**

Dealer agrees to make certain that all Honda Products sold by it have received pre-delivery services and inspection in accordance with applicable Policies and Procedures. Dealer further agrees that all Honda Products sold by it will be in proper operating condition prior to delivery to any customer, and will bear, in the appropriate location, all appropriate consumer notices (in the form of stickers, tags, labels and other notices) as intended by American Honda, to the extent Dealer has been notified of such intent. To enable Dealer to fulfill its obligations in this regard, Dealer agrees that an appropriate number of its service personnel will be fully qualified to perform all necessary pre-delivery service and inspection.

**12.7 Motor Vehicle Safety And Emissions Control Requirements**

Dealer agrees to comply with, and operate consistently with, all applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 and the Federal Clean Air Act, as amended, including such applicable rules and regulations as may be issued thereunder, and all other applicable federal, state and local motor vehicle safety and emission control requirements. In the interests of motor vehicle safety and emission control, American Honda agrees to provide to Dealer, and Dealer to American Honda, such information and assistance as may reasonably be requested by the other in connection with the performance of obligations imposed on either party by the National Traffic and Motor Vehicle Safety Act of 1966 and the Federal Clean Air Act, as amended, and the rules and regulations issued thereunder, and all other applicable federal, state and local motor vehicle safety and emission control requirements.

**12.8 Used Vehicle Responsibilities**

Dealer agrees to conduct a used vehicle operation at or in connection with the Dealership Premises, to the extent reasonably required to enhance the opportunity for sales of Honda Vehicles. American Honda may, from time to time, develop used vehicle programs to enhance Dealer's ability to promote sales of new and used vehicles and to enhance customer satisfaction. Dealer will be eligible to participate in such programs to the extent it complies with program requirements. Dealer agrees to promptly and accurately report the sale of used vehicles under these programs to American Honda and to provide such reasonable information in a format as required by American Honda.

**12.9 New Or Modified Marketing Strategies, Directives, Policies And Procedures**

American Honda and Dealer recognize that it may be necessary for American Honda to formulate new or different marketing strategies, directives, and Policies and Procedures to meet new or changing technology, laws or circumstances. In the operation of Dealer's business and in the sale and promotion of Honda Products, in rendering service and in all other activities of the Dealership Operations, Dealer will follow all reasonable directives and suggestions, and the Policies and Procedures. All written directives, suggestions, Policies and Procedures contained in any of its bulletins, manuals, or other written or electronic communication (confirmed in writing) which are in effect as of the date of the Dealer Agreement or are issued thereafter, will be deemed a part of the requirements of this Article 12.9.

**12.10 Business Permits And Licenses**

Dealer agrees that it will, at all times, maintain in effect all business permits and licenses required for the lawful conduct of Dealership Operations and for the Dealership Premises.

**12.11 Legal Compliance**

Dealer agrees that it will comply with all laws, rules, regulations and guides relating to the conduct of its business.

**12.12 Honda Product Service Support**

Dealer agrees that it will perform any and all warranty, campaign, recall, product-improvement or product-update service in compliance with instructions and directives issued by American Honda, regardless of where (or from which U.S. Honda Dealer) the Honda Product involved was purchased. To protect and maintain the goodwill and reputation of Honda Products and the Honda Trademarks, Dealer agrees that it will not charge any customer for warranty service or any work done in connection with such warranty, campaign, recall, product improvement or update, or any other service for which Dealer is to be reimbursed by American Honda according to its applicable Policies and Procedures.

**12.13 Capital And Flooring Line Of Credit Requirements**

Dealer agrees to maintain minimum capital requirements as set forth in the most current edition of the American Honda Dealer Standard Accounting Manual and in the Capital and Flooring Line of Credit Attachment. These capital requirements include, but are not limited to, Net Working Capital, Effective Net Worth, and Flooring lines of credit. Dealer agrees that it will, at all times, pay for Honda

Products promptly. American Honda will have the right, reasonably, to specify revised minimum capital and Flooring lines of credit requirements from time to time, and Dealer agrees to promptly establish and maintain the financial resources, according to the revised requirements. Such Flooring lines of credit shall be exclusively dedicated to the Dealership Operations for Honda Vehicles at the subject Dealership Premises and for no other dealership or business.

#### **12.14 Indemnification Of American Honda By Dealer**

Dealer agrees to assume the defense of American Honda (including reimbursing American Honda for reasonable attorneys' fees and costs incurred by it in defending any covered matter) and to indemnify American Honda against any money judgment, less any offset recovered by American Honda, in any legal action naming American Honda as a defendant where such legal action relates to: (a) an alleged failure by Dealer to comply, in whole or in part, with any obligation assumed by Dealer pursuant to the Dealer Agreement, (b) Dealer's alleged negligent or improper repairing or servicing of Honda Products, or such other motor vehicles or equipment as may be sold or serviced by Dealer, (c) Dealer's alleged breach of any contract between Dealer and Dealer's customer or (d) Dealer's alleged misrepresentation or misleading statement, either direct or indirect, to any customer of Dealer. American Honda may, at its sole option and expense, participate in defending any such lawsuit.

### **13. Customer Satisfaction**

The mutual goal of American Honda and Dealer is to be recognized as marketing the finest products and providing the best customer service in the automobile industry. The parties will strive to make the Honda name and Honda Trademarks synonymous with the highest levels of customer satisfaction.

#### **13.1 Dealer's Customer Satisfaction Responsibilities**

Dealer will be responsible for satisfying Honda customers in all matters except those directly related to product design and/or manufacturing or which are otherwise entirely out of Dealer's control. Dealer will take all reasonable steps to ensure that each customer is completely satisfied with his or her Honda Products and with the services and practices of Dealer. Dealer will not engage in any practice or method of operation if its nature or quality may negatively impact the reputation of the Honda name, Honda Trademarks or Honda Products, and/or if American Honda has reasonably objected to it. Dealer further agrees to acknowledge, investigate and resolve satisfactorily all complaints received from customers and/or owners of Honda Products in a prompt, courteous and businesslike manner, in order to secure and maintain the goodwill of the public. Any complaint received by Dealer which, in the opinion of Dealer, cannot be remedied, shall be promptly reported to American Honda by Dealer, by a method designated by American Honda. Additionally, Dealer shall:

- 13.1.A** Designate an employee responsible for customer satisfaction and who has the authority to resolve most customer satisfaction matters;
- 13.1.B** Develop a detailed customer satisfaction plan and implement that plan on a continuous basis; and

**13.1.C** Require that Dealer's employees, including its Dealership Manager, attend American Honda's customer satisfaction training sessions, at Dealer's expense.

**13.2 Responsibilities Of American Honda**

American Honda shall ultimately be responsible for alleged manufacturing or design defects concerning Honda Products. In addition, American Honda supports Dealer's efforts to achieve a high level of customer satisfaction. Accordingly, American Honda shall:

**13.2.A** Contact Dealer on a periodic basis to discuss customer satisfaction matters;

**13.2.B** Designate persons having principal responsibility and authority on behalf of American Honda to handle and resolve customer satisfaction matters with customers and Dealers; and

**13.2.C** Establish reasonable criteria on which to evaluate Dealer's performance and will regularly evaluate Dealer's performance in promoting customer satisfaction.

**14. Warranty**

**14.1 Warranty Of Honda Products**

Dealer understands and agrees that the only warranties that will be applicable to Honda Products will be such written warranty or warranties as may be furnished by American Honda. Except for its express liability under such written warranties, American Honda neither assumes nor authorizes any other person or party (including, but not limited to, Dealer) to assume for it any other obligation or liability in connection with any Honda Product or component thereof. Any additional obligations assumed by Dealer without American Honda's express written permission shall be the sole responsibility of Dealer. Any extended service contract offered by American Honda or others shall be governed by its own terms. Dealer shall abide by American Honda's warranty Policies and Procedures, as amended from time to time, and shall comply with all warranty requirements imposed by law. Unless otherwise approved in writing by American Honda, Dealer shall make all warranty repairs using genuine Honda Parts.

**14.2 Warranty Disclosure/Campaign Inspection**

Dealer agrees that it will expressly incorporate any warranty furnished by American Honda with a Honda Vehicle as a part of each order form or other contract for the sale of such Honda Vehicle by Dealer to any buyer. Dealer further agrees that it will deliver to the buyer of all Honda Products, at the time of delivery of such Honda Products, copies of such applicable warranties as may be furnished by American Honda. Dealer agrees to abide by and implement in all other respects American Honda's warranty procedures in effect at the time of Dealer's sale.

**15. Advertising, Promotion And Dealership Image**

**15.1 Advertising And Promotion**

Dealer agrees to develop and actively utilize sales, parts and service programs for the advertisement, promotion and servicing of Honda Products. Such programs will include the prominent display and use or demonstration of Honda Products. Dealer further agrees to cooperate with all reasonable promotional programs developed by American Honda.

**15.2 Advertising Standards**

Dealer agrees to maintain the highest standards of ethics, quality and professionalism in advertising, promoting and selling Honda Products. Dealer shall comply with all applicable laws, rules and regulations with respect to advertising and shall not make any representation that is reasonably likely to mislead, confuse, or deceive the public or that misstates the characteristics of, or disparages any Honda Product or any competitive product. Dealer shall neither directly nor indirectly misstate the price or availability of any Honda Product. Dealer agrees that it will not advertise, promote or trade in Honda Products or the servicing thereof in such a manner as to injure or be detrimental to the goodwill and high-quality image and reputation of American Honda or the Honda Trademarks. Dealer further agrees that it will not publish or otherwise disseminate any advertisement or announcement or use any form or medium of advertising which is objectionable to American Honda. Dealer agrees to discontinue immediately any advertisement or form of advertising deemed objectionable upon request of American Honda. Finally, Dealer agrees that it will conform its advertising to such lawful Policies and Procedures as may be published by American Honda from time to time. In addition to other remedies as allowed pursuant to this Dealer Agreement and applicable law, Dealer, if found to be in material breach of this Article 15.2 (or in other violation of the Policies and Procedures), may be subject to the loss of advertising/marketing program funds and other sanctions.

**15.3 Complete Price And Related Disclosures**

Dealer agrees to accurately represent to customers the total sale or lease price of any Honda Product being advertised or considered for purchase or lease. Further, Dealer agrees to explain to customers of such Honda Products all other information required by applicable law. Dealer understands and hereby acknowledges that it may sell Honda Products at whatever lawful price Dealer desires.

**15.4 Dealership Signs**

Subject to applicable federal, state or local ordinances, regulations and statutes, Dealer agrees to erect and maintain, at the Authorized Location, and at Dealer's expense, authorized product signs as required by American Honda and purchased or leased from a vendor approved by American Honda, as well as such other authorized signs as are necessary to advertise the Dealership Operations effectively, and as are required by American Honda. Dealer agrees to comply with American Honda's sign program as amended from time to time, in accordance with the Policies and Procedures.

**15.5 Dealership Image**

Dealer agrees to maintain the Dealership Premises to the highest standards of cleanliness, quality and modernization, consistent with the reasonable standards followed by representative competitive dealers in Dealer's local market area, including those representing Honda, as well as other line-makes.

**16. Trademarks And Service Marks**

**16.1 Trademark Use And Control**

Dealer agrees that American Honda has the exclusive right to use and to control the use of the Honda Trademarks and, but for the right and license granted by Article 16.2 hereof to use and display the Honda Trademarks, Dealer would have no right to use the same.

**16.2 Trademark Use By Dealers**

Dealer is hereby granted the non-exclusive right and license to use and display the Honda Trademarks at the Dealership Premises and in connection with advertising for the Authorized Location. Such use or display is limited to that which is necessary in connection with the sale, offering for sale and servicing of Honda Products at retail at the Authorized Location, and by the other limitations of this Article 16. Dealer agrees that it will promptly discontinue the use of any of the Honda Trademarks, or change the manner in which any of the Honda Trademarks are used when requested to do so by American Honda.

**16.3 Trademarks In Conduct Of Business/Unauthorized Locations**

American Honda and Dealer recognize that Dealer is free to sell Honda Products at retail to customers wherever in the United States they may be located; subject to the terms of this Dealer Agreement. However, in order that American Honda may establish and maintain an effective network of authorized Dealers for the sale and service of Honda Products, Dealer specifically agrees that it will not, without the prior written approval of American Honda, either display Honda Trademarks or establish any place or places of business, either directly or indirectly, for the conduct of any of its Dealership Operations except at the locations and for the purpose described in the Authorized Location Attachment of the Dealer Agreement. Dealer further agrees that the rights and license granted by Article 16.2 hereof will be automatically canceled upon a change in the location of the Authorized Location, or conduct of any Dealership Operations at a location other than the Authorized Location, unless such change in location or additional location was previously approved in writing by American Honda. Dealer further agrees that such right and license terminates with the termination of the Dealer Agreement.

**16.4 Failure To Perform Trademark Obligations**

If Dealer refuses or neglects to meet and perform its obligations assumed under Article 16.2, Article 16.3 and this Article 16.4 hereof, Dealer will reimburse American Honda for all costs, attorneys' fees and other expenses incurred by American Honda in connection with any action to require Dealer to comply therewith.

#### **16.5 Trademark Removal Obligations**

In the event Dealer fails to comply with the terms and conditions of this Article 16 regarding the use of the Honda Trademarks or upon the termination of the Dealer Agreement, Dealer shall immediately discontinue use of and remove all Honda Trademarks from the Dealership Premises, the Authorized Location and any and all advertisements by Dealer. American Honda shall, after a reasonable attempt to notify Dealer under the circumstances, have the right to enter upon the Dealership Premises and remove, or obliterate, without liability, all signs and identification bearing Honda Trademarks. If applicable, Dealer shall obtain written permission, from the landowner or other appropriate person, for American Honda to enter upon the Dealership Premises for the purposes stated in this Article. Dealer agrees to hold American Honda harmless from any claims of damage to property or injury to persons reasonably incurred in connection with such removal. Dealer agrees that it shall promptly reimburse American Honda for any expenses, costs and attorneys' fees incurred in such action. Dealer's obligations as set forth in this Article 16.5 shall survive the termination of the Dealer Agreement and shall not be subject to a release of claims unless specifically set forth therein.

### **17. General Business Requirements**

#### **17.1 Uniform Accounting System**

Dealer agrees to employ Generally Accepted Accounting Principles in the dealership's accounting systems. Dealership accounting practices and financial statement preparation must comply with the methods outlined in the American Honda Dealer Standard Accounting Manual, published accounting bulletins and Policies and Procedures. Dealer agrees to furnish monthly to American Honda a complete and accurate financial and operating statement according to the terms outlined in the American Honda Dealer Standard Accounting Manual.

#### **17.2 Confidentiality Of Financial Reports**

Dealer understands that financial statements and other business information furnished to American Honda will remain confidential and will not be relinquished to any unaffiliated third party unless authorized by Dealer, required by law, subpoena or court order, or the information is pertinent to a proceeding in which American Honda and/or Dealer are parties. Financial information submitted to American Honda by Dealer may also be used in compiling composite trend information and reports for use by American Honda and its affiliates. The source of such information will neither be identified nor disclosed and will remain in aggregate form for the purposes of composite reporting. Dealer agrees that any and all financial data, reports, or information received by it from American Honda and its employees will not be used in any manner that may violate state or federal anti-trust laws, any other applicable law or the confidentiality and privacy rights of other Dealers.

#### **17.3 Maintenance Of Records/Preparation of Reports**

Dealer agrees to keep complete and current records and to promptly prepare for American Honda such reports, based on such records, as American Honda may reasonably request pursuant to the Policies and Procedures. Dealer shall retain such records for a minimum of two (2) years for consumer records, and five (5) years for all other dealership records, regardless of whether any shorter retention

period is required by any governmental entity. Dealer further agrees to prepare, keep current and retain records in support of requests for reimbursement or credit in accordance with the Policies and Procedures for not less than two (2) years. All records required to be maintained by Dealer pursuant to this Article 17.3 shall be kept in such a manner and format so as to be readily accessible, retrievable and reproducible by Dealer for review and audit by American Honda, subject to applicable law.

**17.4 Dealership Accounts And Records**

Dealer agrees to permit, during reasonable business hours, American Honda, or its designee, to examine, audit, reproduce and take copies of all reports, accounts and records pertaining to the sale, servicing and inventorying of Honda Products, including, but not limited to, records in support of claims for reimbursement or credit from American Honda, and, with the prior approval of Dealer, which approval will not be unreasonably withheld, to interview Dealer employees with respect thereto and Dealer shall cooperate fully with any such action by American Honda.

**17.5 Hours Of Operation**

Dealer agrees that Dealership Operations will be conducted in the normal course of business during and for not less than the days of the week and hours of the day customary for automobile dealerships in Dealer's Area of Statistical Analysis.

**17.6 Suggested Retail Price**

Dealer agrees and understands that any retail price which may be suggested by American Honda is merely a suggested price, and Dealer has no obligation to sell any Honda Products at such price. Dealer further understands and agrees that it is the sole judge of the price at which it sells Honda Products and the price it charges others for service, subject only to applicable local, state and federal laws, rules and regulations.

**17.7 Taxes**

Dealer understands and agrees that it will be responsible for and will pay any and all taxes, whether sales, use, excise, or other, and all other governmental or municipal charges imposed upon the sale of Honda Products by American Honda to Dealer, and will maintain accurate records of the same, which records will be available to American Honda, or its designee, during regular business hours for inspection.

**17.8 Area Of Statistical Analysis**

Dealer understands and agrees that, while it has responsibility for the promotion and retail sale and servicing of Honda Products within the Area of Statistical Analysis in which it is located, Dealer has no territorial exclusivity to, and no proprietary right in, the Area of Statistical Analysis. Further, American Honda reserves the right, based upon reasonable criteria, to appoint or relocate other authorized Dealers of Honda Products into the Area of Statistical Analysis or any other location. American Honda will, upon Dealer's written request, provide Dealer with a description of its then-current Area of Statistical Analysis.

## **18. Nomination Of Successors And Transfers Of Ownership**

### **18.1 Nomination Of Successor**

Each Dealer Owner identified in the Owners and Officers Attachment of the Dealer Agreement may nominate a successor to his or her interest. The person nominating a successor must obtain the signatures of all Dealer Owners identified in the Owners and Officers Attachment on both copies of the Successor Nomination Attachment in order for it to be effective. The receipt of a completed Successor Nomination Attachment by American Honda in no way implies approval of the successor nominee(s). Upon receipt of a completed Successor Nomination Attachment, American Honda will evaluate the qualifications of the successor nominee(s) and will notify Dealer in writing as to whether the successor nominee(s) meet(s) its then-current requirements, and can therefore be conditionally approved. If American Honda does not conditionally approve the successor nominee(s), it shall state the reason(s) for its decision.

Dealer and American Honda recognize that a significant period of time may pass between the submission of the Successor Nomination Attachment and the event that would potentially result in the successor nominee(s) succeeding the nominating Dealer Owner(s). Therefore, Dealer Owner(s) shall promptly notify American Honda of any material event, occurrence or other relevant change to any of the information submitted by Dealer Owner(s) in support of the Successor Nomination Attachment.

Any Dealer Owner may cancel an executed Successor Nomination Attachment at any time prior to the death or Incapacity of that Dealer Owner, by providing American Honda with a notice in writing, signed by all Dealer Owner(s) then listed in the Owners and Officers Attachment.

### **18.2 Death Or Incapacity—Successor Nominee(s)**

Within sixty (60) days of the death or Incapacity of a Dealer Owner who has previously nominated a successor or successors in accordance with this Article 18, a Dealer Owner, or Dealership Manager or their legal representative must notify American Honda of such occurrence. Upon receipt of the notice, American Honda will send a letter to the successor nominee(s), setting forth the required contents of an application for transfer of ownership. Within ninety (90) days of receipt of American Honda's letter, the successor nominee(s) must submit to American Honda either a complete written application to be approved as (an) owner(s) of Dealer, or a statement of intention to divest ownership rights in some other manner. If the successor nominee(s) submit(s) an application to be considered for an ownership transfer, American Honda will, at that time, re-evaluate the qualifications of the successor nominee and either approve or disapprove of that person's application based upon reasonable criteria. A successor nominee approved by American Honda will be granted a one (1) year term Dealer Agreement. A successor nominee not approved by American Honda will be contacted with respect to that action and the resolution of the relationship between American Honda and Dealer.

### **18.3 Death Or Incapacity—No Successor Nominee(s)**

Upon the death or Incapacity of a Dealer Owner who has not already nominated a successor(s) in accordance with this Article 18, a Dealer Owner, Dealership

Manager or their legal representative must notify American Honda of such occurrence. American Honda will then send a letter to the remaining Dealer Owners, Dealership Manager or apparent heirs of Dealer. The remaining Dealer Owner(s) or heir(s) shall have ninety (90) days from the receipt of American Honda's letter either to propose a successor to the deceased or Incapacitated Dealer Owner, or to otherwise notify American Honda of the proposed ownership structure. If the deceased or Incapacitated Dealer Owner is either the Dealer Principal, Dealership Manager or the controlling Dealer Owner, and no proposal for a replacement is made or the ownership structure proposal is reasonably rejected by American Honda, American Honda will follow the appropriate procedures pursuant to the Dealer Agreement and state law regarding winding up of its relationship with Dealer. If the deceased or Incapacitated Dealer Owner is neither the Dealer Principal, Dealership Manager nor the controlling Dealer Owner, American Honda will take no action to terminate the Dealer Agreement with Dealer as a result of the Dealer Owner's death or Incapacity and the remaining Dealer Owners may continue operation of the dealership, provided they comply with the other requirements of this Article 18.3. American Honda reserves the right to approve of or reject any management or ownership change proposal. American Honda will abide by any state laws which require that the heirs of a Dealer Owner be allowed an opportunity either to operate the dealership or to transfer ownership within a designated or reasonable time period.

## **19. Right Of First Refusal And Option To Purchase**

### **19.1 Overview**

If the Dealer Owner(s) holding a majority of the ownership interest in Dealer enter into an agreement for the transfer of the Ownership Interest or Assets with a third party, American Honda shall have a right of first refusal or option to purchase the Ownership Interest or Assets, instead of the third party, on generally the same terms and conditions as agreed upon by the Dealer Owner(s) and the third party. The process is more fully described below.

American Honda's right of first refusal or option to purchase shall not apply to ownership transfers involving immediate family members or other legal heirs as defined by applicable law, successor nominee(s) nominated pursuant to Article 18 above, or qualified management employee(s), which own at least a fifteen percent (15%) interest in Dealer and have been employed by Dealer for a period of at least two (2) years prior to the submission of the ownership transfer proposal to American Honda.

### **19.2 Right Of First Refusal**

American Honda has a right of first refusal or option to purchase the Ownership Interest or Assets of such dealership on substantially the same terms and conditions as have been agreed to by any proposed third-party purchaser. American Honda must exercise its right of first refusal under this Article 19 within fifteen (15) Business Days of its receipt of the following completed documentation and information: (1) the ownership transfer agreement(s) executed by Dealer (or Dealer Owner(s)) and the prospective buyer(s), including all exhibits, schedules, attachments, applicable real and personal property leases and any relevant "side" agreements relating to the transfer of money, value or other performance in

exchange for the Ownership Interest or Assets; (2) the proposed third party purchaser's application (as defined by American Honda); and (3) if a transfer of ownership of real property is contemplated and all of the preceding has been completed, a real estate appraisal and/or environmental report prepared in connection with or relied upon by the parties to, the proposed ownership transfer. American Honda may exercise its right of first refusal or option to purchase under this Article 19 regardless of whether it has made a decision on whether or not to approve the proposed ownership transfer. American Honda will agree to keep all relevant "side" agreements submitted by Dealer confidential, unless it decides to exercise its right of first refusal, in which case it shall disclose all ownership transfer agreements, including the "side" agreements, to its proposed transferee, and American Honda shall require that its proposed transferee execute a confidentiality agreement as to such agreements.

A bona fide ownership transfer agreement is one in which Dealer (or Dealer Owner(s)) in good faith actually agree(s) and commit(s) to divesting itself of its Ownership Interest or Assets associated with the dealership, in an arm's length transaction and in exchange for the specific payment of money, value and/or such other performance by an independent third-party purchaser, as set forth in the terms of that agreement, which is disclosed to American Honda. If Dealer enters into a bona fide ownership transfer agreement and American Honda exercises its right of first refusal, American Honda will assume the proposed buyer's rights and obligations under such ownership transfer agreement. American Honda shall have a reasonable amount of time to close the transfer of the Ownership Interest or Assets, which, at most, shall be the same number of days that the Dealer and proposed purchaser had from the execution of the ownership transfer agreement to the closing date. American Honda, as the new purchaser of the Ownership Interest or Assets, will request that Dealer provide such documents and information relating to the proposed transfer that a proposed purchaser would customarily require under such circumstances. If Dealer fails or refuses either to (a) provide such documentation and information or (b) state in writing that no such documents or information exist, American Honda may presume that the ownership transfer agreement is not bona fide. However, American Honda is not limited in making this determination based on Dealer's failure or refusal to provide such documentation and information, and may also determine that an ownership transfer agreement is not bona fide based upon other legitimate and reasonable grounds.

**19.3 Submission Of Proposed Ownership Transfer Either Not Bona Fide Or Not Made In Good Faith**

If Dealer submits a proposal to transfer ownership which is either not bona fide or made in good faith, American Honda has the option to withdraw its exercise of the right of first refusal and/or reject the proposed transfer of the Ownership Interest or Assets, without any liability to either Dealer (or Dealer Owner(s)) or the proposed purchaser.

**19.4 Exercise Of American Honda's Rights Or Option To Purchase**

Dealer will disclose American Honda's right of first refusal or option to purchase as stated in this Article 19 to any potential third-party purchaser, and will refer to such right or option in any ownership transfer agreement. If, for any reason, the parties to the ownership transfer agreement decide not to complete the

transaction, and, if Dealer notifies American Honda of that decision in writing and prior to American Honda's exercise of its right of first refusal or option to purchase, the ownership transfer proposal will be deemed withdrawn and American Honda's right of first refusal or option to purchase will be deemed extinguished as to that transaction, unless, Dealer notifies American Honda that it desires American Honda to continue its consideration of whether to exercise its right of first refusal or option to purchase.

American Honda's right of first refusal or option to purchase may be assigned by it to any third party and American Honda hereby guarantees full payment to Dealer of the purchase price by such assignee. If the ownership transfer agreement involves the leasing of real or personal property by the proposed third-party purchaser, American Honda will further guarantee the payment of such leases, provided it may assign them to a third party, and American Honda's guarantee of the payment of such leases shall continue in effect after such assignment, unless American Honda and Dealer agree otherwise. After American Honda exercises its right of first refusal or option to purchase, and provided it has obtained an executed confidentiality agreement from its potential assignee, American Honda may disclose the terms of any pending ownership transfer agreement submitted by Dealer and any other relevant information to its potential assignee, without liability to Dealer or to any third party.

After the exercise of American Honda's right of first refusal and in exchange for the documents described below, as well as the proposed purchaser's (and its owners') full written waiver and release of American Honda (and related parties, including its proposed assignee) and Dealer from any liability, in a form acceptable to American Honda, American Honda will reimburse the proposed purchaser for its reasonable expenses paid in evaluating and negotiating the proposed transfer of Ownership Interest and Assets. The proposed purchaser shall, within thirty (30) days of the exercise of American Honda's right of first refusal, also provide American Honda with a full and complete written itemization and invoices or receipts of payment for all expenses claimed, as well as copies of any reports, documents or other data received by the proposed purchaser, for which the proposed purchaser is seeking reimbursement.

American Honda's right or option under this Article 19 will be binding upon and enforceable against any assignee or successor-in-interest of Dealer or any potential or actual purchaser of the Ownership Interest or Assets. Upon completion of the Ownership Interest or Assets transfer pursuant to the terms of this Dealer Agreement, the applicable Dealer Agreement will be deemed cancelled, as will all applicable rights granted Dealer thereunder. Dealer's failure to provide American Honda with a right of first refusal or to abide by any of the material terms of this Article 19 prior to submission of an ownership transfer proposal shall be sufficient grounds for American Honda to invoke any and all remedies available to American Honda, including, but not limited to, the rejection of such proposal, without prejudice to any additional rights of American Honda. As used in this Article 19, all references to Dealer shall be construed to apply with equal force and effect to any Dealer Owner/Related Party that owns any interest in the subject dealership.

**20. Termination Of Dealer Agreement**

**20.1 Termination By Mutual Agreement**

The Dealer Agreement may be terminated, at any time, by mutual agreement of American Honda and Dealer.

**20.2 Voluntary Termination By Dealer**

Dealer may terminate the Dealer Agreement, at any time, by giving American Honda notice of such termination. Such termination shall be effective upon the date specified by Dealer, or if no date is specified, then upon receipt by American Honda of such notice.

**20.3 Termination By American Honda Upon Written Notice**

American Honda may terminate the Dealer Agreement, at any time, by serving on Dealer a written notice of such termination by certified or registered mail or by hand delivery at the Dealership Premises or at the residence of a Dealer Owner. Subject to other provisions of the Dealer Agreement, termination will be effective as provided by applicable state law or such longer period as American Honda may specify; provided, however, that termination will be effective ten (10) days after receipt by Dealer or a Dealer Owner if for an occurrence of any circumstance referred to in Articles 20.4.A., 20.4.B., 20.4.C. or 20.4.D. hereof.

**20.4 Grounds For Termination By American Honda**

It is recognized that each of the following occurrences is contrary to the spirit and objectives of the Dealer Agreement and is therefore grounds for its termination:

**20.4.A** Failure by Dealer to secure and maintain any license necessary for the conduct by Dealer of its business pursuant to the Dealer Agreement or the termination, expiration without renewal, suspension or revocation of any such license for any reason whatsoever, whether or not the license is reinstated.

**20.4.B** Any change, transfer or attempted transfer by Dealer or any Dealer Owner, voluntarily or by operation of law, of the whole or any part of the Dealer Agreement or any interest or legal or beneficial ownership therein or any right or obligation thereunder, directly or indirectly, such as, for example only, by way of a sale of an underlying ownership interest in Dealer or the Dealership Premises or a change in the persons having control or managerial authority, or which is not bona fide or submitted in good faith, or without prior written consent of American Honda. Any purported change, transfer or assignment without the prior written consent of American Honda shall be null and void and not binding on American Honda.

**20.4.C** Dealer's abandonment of Dealership Premises or failure to maintain all required aspects of Dealership Operations as an ongoing business, fully staffed and open during customary business hours for the days and hours as are customary for automobile dealerships in the Area of Statistical Analysis, provided such failure is not due to causes beyond Dealer's control. Failure of the Dealership Premises to remain open for

seven (7) consecutive days will constitute, without more, such abandonment.

- 20.4.D** The relocation of Dealership Operations or any aspect of Dealership Operations to a new location or the establishment of an additional location for the display, sale or service of any Honda Products or any other aspect of Dealership Operations, whether such relocation or additional location is permanent, temporary or is within or outside Dealer's Area of Statistical Analysis, without the prior written approval of American Honda, which shall not be unreasonably withheld.
- 20.4.E** Failure by Dealer to pay, within ten (10) days after written demand from American Honda, any delinquent accounts or other monies due to American Honda from Dealer.
- 20.4.F** Submission or participation in the submission to American Honda of any false or fraudulent statement, application, report, request for issuance of reimbursement, compensation, refund or credit, including, but not limited to, any false or fraudulent claim for warranty work, labor rate, set-up reimbursement or warranty coverage.
- 20.4.G** Dealer's entering into any agreement, combination, understanding or contract, oral or written, with any other corporation, person, firm or other legal entity for the purpose of fixing prices of Honda Products or otherwise violating any law.
- 20.4.H** Death or Incapacity of any Dealer Owner or Dealership Manager, subject to the provisions of Article 18.
- 20.4.I** Use by Dealer of any deceptive or fraudulent practice, whether willful, negligent or otherwise, in the sale of any Honda Product. Dealer may be able to cure this breach by proposing and taking such remedial action as may be deemed necessary by American Honda to repair or avoid the damage to the goodwill of American Honda or to the reputation of Honda Products or the Honda Trademarks. American Honda is under no obligation to notify Dealer or any other party of the actions to be taken in this regard. In order to be considered a cure, Dealer shall propose and take such effective action(s) within a reasonable period of time as determined by American Honda. Dealer acknowledges that, depending on the type and severity of the subject deceptive or fraudulent practice, there may be no effective cure. American Honda will notify Dealer if the breach of the Dealer Agreement is of the type and/or severity which cannot effectively be cured.
- 20.4.J** Any conviction in any court of original jurisdiction of Dealer, any Dealer Owner or any Dealership Manager for any crime or violation of any law if, in the opinion of American Honda, such conviction or violation may adversely affect the conduct of Dealership Operations or tend to be harmful to the goodwill of American Honda or to the reputation of Honda Products or the Honda Trademarks, or the violation or refusal or

neglect of Dealer to comply with the provisions of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or the Clean Air Act, or any rules, regulations or standards under either of said Acts, including, but not limited to, performance of any product update or recall operation as directed by American Honda. Dealer may be able to cure this breach by proposing and taking such remedial action as may be deemed necessary by American Honda to repair or avoid the damage to the goodwill of American Honda or to the reputation of Honda Products or the Honda Trademarks. American Honda is under no obligation to notify Dealer or any other party of the actions to be taken in this regard. In order to be considered a cure, Dealer shall propose and take such effective action(s) within a reasonable period of time as determined by American Honda. Dealer acknowledges that, depending on the type and severity of the subject crime or violation of law, there may be no effective cure. American Honda will notify Dealer if the breach of the Dealer Agreement is of the type and severity which cannot effectively be cured.

**20.4.K** Any dispute, disagreement, controversy or personal difficulty between or among Dealer Owners, their successors, or in the management of Dealer which, in American Honda's opinion, may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who, in American Honda's opinion, does not have or no longer has requisite qualifications for the position. American Honda shall notify Dealer in writing of such circumstances and their actual or potential effect on Dealer's business, and will grant Dealer a reasonable opportunity to cure. In order to be considered a cure, any action(s) to be taken by Dealer shall occur within a reasonable period of time, as determined by American Honda. American Honda will notify Dealer if the breach of the Dealer Agreement is of the type and severity which cannot effectively be cured.

**20.4.L** Failure of Dealer to make improvements, alterations or modifications of its Dealership Premises which are required to meet reasonable facility requirements (including, but not limited to, signs, space, configuration and image consistent with the other Honda or representative competitive dealers in Dealer's local market) as reasonably established by American Honda or to which Dealer has agreed or represented to American Honda that Dealer will make or do. American Honda shall notify Dealer in writing of the nature and extent of such failure(s) and how Dealer's performance may be made acceptable, and will grant Dealer a reasonable opportunity to cure. In order to be considered a cure, such action(s) shall take place within a reasonable period of time as determined by American Honda. American Honda will notify Dealer if the breach of the Dealer Agreement is of the type and severity which cannot effectively be cured.

**20.4.M** Impairment of the reputation or the financial standing of Dealer or of any Dealer Owner subsequent to the execution of the Dealer Agreement; the ascertainment by American Honda of any facts existing at or prior to execution of the Dealer Agreement which tend to impair

such reputation or financial standing; the failure of Dealer continuously to meet the required minimum capital and credit requirements as established by American Honda; or the failure of Dealer to prepare and submit proper financial and operating statements to American Honda as set forth in the American Honda Dealer Standard Accounting Manual. American Honda shall notify Dealer in writing of the nature and extent of such circumstances and will grant Dealer a reasonable opportunity to cure. In order to be considered a cure, any action(s) to be taken by Dealer shall take place within a reasonable period of time, as determined by American Honda. American Honda will notify Dealer if the breach of the Dealer Agreement is of the type and severity which cannot effectively be cured.

**20.4.N** Failure of Dealer to perform adequately as to its advertising and promotion responsibilities, as determined by American Honda. American Honda shall notify Dealer in writing of the nature and extent of such failure(s) and how Dealer's performance may be made acceptable, and will grant Dealer a reasonable opportunity to cure. In order to be considered a cure, such action(s) shall take place within a reasonable period of time as determined by American Honda.

**20.4.O** Failure of Dealer to perform adequately as to its sales, service, parts or customer satisfaction responsibilities (except as otherwise set forth in this Article 20), each as determined by American Honda. American Honda shall notify Dealer in writing of the nature and extent of such failure(s) and how Dealer's performance may be made acceptable, and will grant Dealer a reasonable opportunity to cure for not less than six (6) months. In order to be considered a cure, such action(s) shall take place within such reasonable period of time as determined by American Honda or as required by applicable law.

**20.4.P** Dealer's material breach of any provision of the Dealer Agreement or Dealer's failure to comply with any requirement contained in the Dealer Agreement, which, in the opinion of American Honda, is not cured within a reasonable period of time or which is of the type and severity which cannot effectively be cured. American Honda will notify Dealer of either the reasonable time period within which such breach must be cured, or if the breach is of the type and severity which cannot effectively be cured. American Honda is under no obligation to suggest a potential cure, but may do so in its discretion.

**20.5 Termination Of American Honda's Ability To Conduct Business**

The Dealer Agreement will also be terminated upon such written notice by American Honda as is reasonably practicable under the circumstances, in the event:

**20.5.A** Of termination of American Honda's distribution agreement as a distributor of Honda Products;

**20.5.B** Of withdrawal by American Honda from the market in which Dealer is located; or

**20.5.C** American Honda will, for any reason, discontinue the distribution of Honda Products.

American Honda shall comply with all applicable statutory and other legal requirements in the event of any of the above.

**20.6 Termination Due To Financial Condition Of Dealer**

Upon the occurrence of any of the following facts or circumstances, the Dealer Agreement will terminate immediately upon written notice by American Honda, and, upon such termination, any dealings between American Honda and Dealer will be on a day-to-day basis at the sole option of American Honda and may be discontinued at any time by American Honda:

**20.6.A** Dealer's insolvency, by any definition;

**20.6.B** The existence of facts or circumstances which would allow the voluntary commencement by Dealer, or the involuntary commencement against Dealer, of any proceedings under any bankruptcy act or law or under any state insolvency law;

**20.6.C** The appointment of a receiver or other officer having similar powers for Dealer or the Dealership Operations; or

**20.6.D** Any levy against Dealer under attachment, garnishment or execution of similar process which is not, within ten (10) days, either vacated, removed or satisfied by payment or bonding.

**20.7 Additional Ground(s) For Termination**

American Honda may select any applicable provision under which it elects to terminate the Dealer Agreement and give notice thereunder, notwithstanding the existence of any other grounds for termination or the omission of such other grounds in the notice of termination. The omission by American Honda of additional ground(s) for termination of the Dealer Agreement in a notice will not preclude American Honda from later establishing that termination is also supported by such additional ground(s).

**20.8 Continued Acceptance Of Dealer Orders**

The acceptance by American Honda of orders from Dealer or the continued sale of Honda Products to Dealer or any other act or course of dealing of American Honda after termination of the Dealer Agreement will not be construed as or deemed to be a renewal of the Dealer Agreement for any further term or a waiver of such termination. Any dealings after termination will be on a day-to-day basis.

**20.9 Conduct Of Business Operations**

In all cases, Dealer agrees to conduct all Dealership Operations in a professional manner until the effective date of termination and after termination or expiration of the Dealer Agreement, so as not to injure customers or the reputation or goodwill of the Honda Trademarks or of American Honda.

## **21. Rights, Obligations And Dealings Upon Termination**

### **21.1 Cancellation Of Product And Equipment Orders**

Upon the mailing of a written notice of termination of the Dealer Agreement without renewal, American Honda will have the right to cancel all pending orders of Dealer for Honda Products, including special tools and equipment, whether previously accepted by American Honda or not, except as otherwise specifically provided in this Article 21. Notwithstanding the foregoing, if American Honda chooses to fill any orders, it will not be obligated to fill any other orders and will not be precluded from changing the terms of any sale.

### **21.2 Sales And Service Activities**

Not later than the effective date of the termination of the Dealer Agreement, Dealer will cease to hold itself out as being authorized to sell and/or service Honda Products and will discontinue selling Honda Products or performing service as an authorized Dealer.

### **21.3 Trademarks And Signs**

In addition to the requirements of Article 16, not later than the effective date of the termination of the Dealer Agreement, Dealer will, at its sole expense, discontinue any and all uses of any Honda Trademarks and any words, symbols and marks which are confusingly similar thereto; will remove all signs bearing any Honda Trademark; and will destroy all stationery, repair orders, and advertising and solicitation materials, and all other printed matter bearing any Honda Trademark or referring directly or indirectly to American Honda or Honda Products in any way which might make it appear to members of the public that Dealer is still an authorized Dealer. The foregoing will include, but not be limited to, discontinuing the use of any Honda Trademark as part of Dealer's business and corporate name. Dealer will also deliver to American Honda, at American Honda's place of business, or to a person designated by American Honda, or will destroy the same upon request by American Honda, any and all technical service or parts literature, and advertising and other printed material then in Dealer's possession which relates to Honda Products and which was acquired or obtained by Dealer from American Honda. Dealer will destroy any sign bearing a Honda Trademark which has not been repurchased by American Honda.

### **21.4 Dealer Records**

In the event the Dealer Agreement is terminated pursuant to the provisions of Article 20.3 hereof, upon request of American Honda for copies of Dealer's records of sales, pre-delivery service, warranty service, recall or update service or other service of Honda Products, Dealer shall make arrangements to allow American Honda to copy such documents at American Honda's expense. In the event the Dealer Agreement is terminated pursuant to the provisions of Articles 20.1 or 20.2 hereof, upon the request of American Honda, Dealer will deliver to American Honda copies of such Dealer records, at American Honda's expense.

### **21.5 Repurchase Of Eligible Honda Products**

Dealer may, at any time within thirty (30) days after the effective date of termination of the Dealer Agreement, notify American Honda in writing of Dealer's desire to have American Honda repurchase from Dealer those Honda Products in Dealer's inventory which were purchased from American Honda and which, when

American Honda accepts sole possession, shall have no other liens or encumbrances. For purposes of this Article 21.5, eligible Honda Products consist of:

**21.5.A** In the case of new Honda Vehicles, either the then-current model year or of the immediately preceding model year and purchased by Dealer from American Honda within 120 days prior to the effective date of termination, as designated by American Honda, unused, undamaged and in first-class resalable condition, regardless of whether or not American Honda has exercised its right of inspection; and

**21.5.B** In the case of new Honda Parts, listed in the electronic Parts Price List file, and meeting all other conditions of return outlined in the then-current Honda Parts System Guide or in the Policies and Procedures.

**21.6 Repurchase Of Signs, Tools And Equipment**

Upon termination of the Dealer Agreement, and upon request of Dealer given no later than thirty (30) days after the effective date of termination, American Honda will repurchase all signs which bear a Honda Trademark as were authorized in advance by American Honda, all service information and materials, and all special tools and equipment designed specifically for service of Honda Vehicles and which were purchased from American Honda and are usable on current Honda Products, provided that such signs, information, materials, tools and equipment are less than five (5) years old and are in good working order.

**21.7 Repurchase Requirements**

American Honda will repurchase from Dealer those Honda Products and signs, information, materials, tools and equipment as aforesaid on the condition that Dealer furnishes an inventory to American Honda within thirty (30) days after the effective date of termination of the Dealer Agreement and complies strictly with all procedures and conditions of repurchase issued by American Honda at the time of repurchase. American Honda will have the right and option to assign to another person or entity the right to purchase such Honda Products.

**21.7.A** The price for Honda Products, other than tools, equipment, information, materials and signs, will be the price at which they were originally purchased by Dealer from American Honda or the price last established by American Honda for the sale of identical Honda Products, whichever may be lower, and in either case will be less all prior refunds, discounts and allowances made by American Honda with respect thereto, if any. The price for tools, equipment, information, materials and signs will be the price paid by Dealer reduced by straight-line depreciation on the basis of a useful life of five (5) years. In all cases, the price will be reduced by any applicable restocking charge which may be in effect at the time of American Honda's receipt of goods to be repurchased.

**21.7.B** Dealer agrees to store Honda Products, and other items which American Honda desires or is obligated to repurchase, at Dealer's own expense until receipt from American Honda of rejection of repurchase or instructions for shipping and return to a destination designated by American Honda. Dealer agrees to strictly follow and abide by all

instructions for return as may be issued from time to time by American Honda. All Honda Products will be properly and suitably packaged and containered for safe transportation to American Honda. All damage, regardless of nature or cause, will be the responsibility of Dealer until the Honda Products are inspected and accepted by American Honda for repurchase. Storage of such Honda Products and other items will be at Dealer's expense for a period of ninety (90) days after Dealer requests repurchase and provides an inventory as provided by Articles 21.6 and 21.7 hereof. Thereafter, Dealer will be entitled to charge American Honda a reasonable storage charge.

- 21.7.C** American Honda, or its designee, at such reasonable time and for such a reasonable period of time as American Honda may determine, will have the right to enter the premises where items for repurchase are being held for the purpose of checking the inventory submitted by Dealer or examining, inspecting and inventorying any and all Honda Products. If American Honda agrees to repurchase and Dealer fails to furnish an inventory, Dealer will reimburse American Honda for all costs of American Honda taking an inventory.
- 21.7.D** Only those Honda Products meeting the requirements of Articles 21.5 and 21.6 hereof are or will be eligible for return to American Honda. American Honda will not be obligated to give Dealer credit for any Honda Products which do not meet those requirements.
- 21.7.E** Dealer warrants and represents that all Honda Products tendered to American Honda for repurchase will be free of all liens, encumbrances, security interests or attachments at the time repurchase is requested by Dealer. Clear title will be vested in American Honda upon receipt of goods. Dealer will execute and deliver any documents necessary to vest clear title in American Honda, and Dealer will be responsible for complying with all applicable procedures, including, but not limited to, those relating to bulk transfers.
- 21.7.F** Dealer will pay all freight and insurance charges from Dealer to the place of delivery designated by American Honda, provided that Dealer will not be liable for any amount greater than the freight and insurance charges from Dealer to American Honda's closest automobile warehouse or parts center as American Honda may designate. Claims for damage allegedly caused by any carrier will be the sole responsibility of Dealer, and in no event will American Honda be obligated to make a claim against a carrier or be liable to Dealer for damage.
- 21.7.G** As a condition of repurchase, and notwithstanding any other agreement or offer to repurchase, payment for repurchase will first be applied against any obligations or monies owed by Dealer to American Honda. All payment due from American Honda to Dealer pursuant to any provisions of the Dealer Agreement or in connection with the termination of the Dealer Agreement will be made by American Honda after receipt of the goods to be repurchased and after all debits and credits have been ascertained and applied to Dealer's accounts, and

Dealer has delivered to American Honda the manufacturer's certificate of origin or other document of title for Honda Vehicles tendered to American Honda for repurchase. In the event that a balance is due from Dealer to American Honda, Dealer will pay such sum to American Honda within ten (10) days of written notice of such balance.

## **22. Dispute Resolution**

Dealer and American Honda recognize that it is best to avoid disputes whenever possible, but when disputes do arise, it is desirable to resolve such disputes in a fair, prompt and cost-efficient manner. Therefore, Dealer and American Honda agree to make every good faith effort to resolve disputes between them arising under this Dealer Agreement or applicable law in such a manner so as to minimize the disruption of their respective businesses.

## **23. General Provisions**

### **23.1 Authorized Signatories To Agreement Or Modification**

Dealer acknowledges that only the President or a designated Vice President, Secretary or Assistant Secretary of American Honda is authorized to execute the Dealer Agreement, agree to any variation, modification or amendment of any of the provisions thereof, including the Authorized Location, or to make commitments for or on behalf of American Honda. No other employee of American Honda may make any promise or commitment on behalf of American Honda or in any way bind American Honda. Dealer agrees that it will not rely on any statements or purported statements except those made or purportedly made by authorized personnel as stated above.

### **23.2 Entire Agreement**

The Dealer Agreement, including all documents incorporated herein by reference, contains the entire agreement between Dealer and American Honda. Dealer acknowledges that no representations or statements other than those expressly set forth herein were made by American Honda or any officer, employee, agent or representative thereof, or were relied upon by Dealer in entering into the Dealer Agreement. The Dealer Agreement terminates and supersedes, as of the execution thereof, all prior agreements relating to Honda Products, if any.

### **23.3 Waiver Of Prior Claims**

Dealer hereby waives, abandons and relinquishes any and all claims of any kind and nature whatsoever arising from or out of or in connection with any prior agreement entered into between Dealer and American Honda; provided, however, that nothing contained herein shall be deemed a release or waiver of any claim arising out of prior sales of Honda Products by American Honda to Dealer, or legitimate warranty or incentive claims of Dealer.

### **23.4 Personal Services Agreement**

The Dealer Agreement is personal to the individuals identified as principals, owner(s), partners, members or shareholder(s) in the Owners and Officers Attachment. Neither the Dealer Agreement, nor any part hereof or any interest therein, may be transferred or assigned by Dealer, in whole or in part, directly or

indirectly, voluntarily or by operation of law, without the prior written approval of American Honda. Any attempted transfer or assignment will be void and not binding upon American Honda.

**23.5 Notices**

All notices, notifications or requests under or pursuant to the provisions of the Dealer Agreement will be directed to the address of the principal places of business of the respective parties to the Dealer Agreement or at the home address of a Dealer Owner. If either party cannot effect notice at the place of business of the other (or at the home address of a Dealer Owner) because a party has abandoned its place of business or refuses to accept notice, then, and only in such case, notice may be served on American Honda through its designated agent for service of process and upon Dealer through the Department of Motor Vehicles (or its equivalent) in the state where the Authorized Location is located.

**23.6 No Implied Waiver**

The waiver by either party of any breach or violation of or default under any provision of the Dealer Agreement will not be a waiver by such party of any other provision or of any subsequent breach or violation thereof or default thereunder. The failure or delay of either party to take prompt action upon any breach or violation of the Dealer Agreement will not be deemed a waiver of the right to take action for such breach, default or violation at any time in the future.

**23.7 Confidentiality**

Dealer agrees to keep confidential and not disclose, directly or indirectly, any information which American Honda designates as confidential.

**23.8 Choice Of Law**

The Dealer Agreement is and shall be deemed to have been entered into in California and shall be governed by and construed in accordance with the laws of the State of California.

**23.9 Severability**

If any provision of this Dealer Agreement should be held invalid or unenforceable for any reason whatsoever or conflict with any applicable law, the Dealer Agreement will be considered divisible as to such provisions, and such provisions will be deemed amended to comply with such law, or if it cannot be so amended without materially altering the tenor of the Dealer Agreement, then it will be deemed deleted from the Dealer Agreement in such jurisdiction, and in either case, the remainder of the Dealer Agreement will be valid and binding.

**23.10 Modification Of Agreement**

The terms of the Dealer Agreement may not be modified except in writing signed by an authorized officer of Dealer and one of the persons specified in Article 23.1 for American Honda. Without limiting the generality of the foregoing, no course of dealing will serve to modify or alter the terms of the Dealer Agreement.

**23.11 Relationship Between The Parties**

Dealer is an independent business. The Dealer Agreement does not make Dealer the agent or legal representative of American Honda for any purpose whatsoever. Dealer is not granted any express or implied right or authority to

assume or create any obligation on behalf of or in the name of American Honda or to bind American Honda in any manner or thing whatsoever. Dealer has paid no consideration for the Dealer Agreement. Neither the Dealer Agreement nor any right granted under it is a property right.

**23.12 Survival Of Claims/Obligations**

The expiration or termination of the Dealer Agreement will not extinguish any claims American Honda or Dealer may have arising out of obligations under this Agreement and related to Dealership Operations for the collection of money or the enforcement of any obligations which may be in the nature of continuing obligations.

**24. Definitions**

- 24.1** American Honda or Honda means American Honda Motor Co., Inc. a California corporation, and the Honda Automobile Division that markets Honda Products.
- 24.2** Area of Statistical Analysis or ASA means the geographical area used by American Honda and modified in its sole discretion from time to time for analyzing the representation provided by Dealer, in which Dealer's advertising, sales and service performance is evaluated by American Honda. Dealer has no proprietary interest in the Area of Statistical Analysis or any portion thereof. By implementing and/or modifying such Area of Statistical Analysis from time to time, American Honda does not intend to assign, enlarge or otherwise modify any statutorily defined relevant market area or other geographic area in which Dealer may have rights pursuant to state law.
- 24.3** Attachment(s) means the Attachment(s) appended to the Dealer Agreement and issued to Dealer by American Honda from time to time which specifies certain information relevant to the Dealer Agreement. American Honda reserves the right to issue new, superseding Attachments to the Dealer Agreement at any time.
- 24.4** Authorized Location means the location(s) approved by American Honda for the purpose of conducting Dealership Operations, as set forth in Authorized Location Attachment.
- 24.5** Business Days means days on which American Honda's corporate headquarters is normally open for business. All other references to "days" shall mean calendar days.
- 24.6** Dealer means the person, firm, corporation, partnership or other legal entity that enters into the Dealer Agreement with American Honda.
- 24.7** Dealer Agreement means the Honda Automobile Dealer Sales and Service Agreement and Attachments, which are incorporated herein by reference.
- 24.8** Dealer Owner(s) means the individual owner(s) of Dealer (and/or of any entity which owns Dealer) identified in the Owners and Officers Attachment and upon whose personal service American Honda relies in entering into the Dealer Agreement.

- 24.9 Dealer Principal/Executive Manager** means the Dealer Owner identified in the Dealer Principal/Executive Manager Attachment who shall have ultimate operational control of Dealer and shall have final authority (subject to the oversight of the board of directors) to decide any dealership matters, including those within the authority of the Dealership Manager.
- 24.10 Dealership Manager** means the principal manager of Dealer identified in the Dealership Manager Attachment and upon whose personal services American Honda relied in entering into the Dealer Agreement and upon which American Honda continues to rely to conduct Dealership Operations. The Dealership Manager is the person authorized by the Dealer Owner(s) to run the day-to-day Dealership Operations and to enter into ordinary course transactions on behalf of Dealer, e.g., the placement of orders for Honda Vehicles and other Honda Products.
- 24.11 Dealership Operations** means all operations contemplated by the Dealer Agreement. These operations include the display, sale and service of Honda Products, and any other activities undertaken by Dealer related to Honda Products, including rental and leasing operations, used car sales and body shop operations, and finance and insurance operations, whether conducted directly or indirectly by Dealer.
- 24.12 Dealership Premises** means the facilities provided by Dealer at its Authorized Location for the conduct of Dealership Operations, as approved by American Honda.
- 24.13 Flooring** means the wholesale line of credit required to be maintained by Dealer with a financial institution recognized and deemed acceptable by American Honda as sufficient to maintain Dealer's required Honda Vehicle inventory.
- 24.14 Honda Parts** means genuine Honda parts and accessories marketed by American Honda for use with Honda Vehicles.
- 24.15 Honda Products** means Honda Vehicles and Honda Parts, as well as the following items expressly authorized by American Honda or its affiliated companies to bear, utilize or be associated with Honda Trademarks: all licensed products, endorsed products, service contracts and remanufactured parts.
- 24.16 Honda Trademarks** means the various trademarks, service marks, names and designs which American Honda and/or Dealer uses or is authorized to use in connection with Honda Products or services relating thereto.
- 24.17 Honda Vehicles** means such new passenger vehicles as are from time to time offered for sale by American Honda to Dealer for resale as part of the Honda automobile line, as defined by American Honda.
- 24.18 Incapacity or Incapacitated** means that an individual is not able, due to physical or mental impairment, to perform his/her normal duties and exercise full managerial authority pursuant to this Dealer Agreement for an extended or indefinite period of time.

- 24.19** Ownership Interest or Assets means the ownership interest of any Dealer Owner or the tangible and intangible assets customarily associated in the automobile industry with the conduct of Dealership Operations by Dealer.
- 24.20** Policies and Procedures means the policies and procedures prepared by American Honda in its sole discretion based upon American Honda's evaluation of Dealer's business, American Honda's business, its Dealer body, and the marketplace, and which may be established and/or amended by American Honda from time to time.
- 24.21** Related Party means any business entity or individual which owns an interest in Dealer or in any owner of Dealer.