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Infiniti Division, Nissan North America, Inc.

8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

11 In the Matter of the Protest of
12 SANTA MONICA AUTO GROUP, dba
SANTA MONICA INFINITI,
13
Protestant,
14
v.
15
INFINITI WEST, a Division of NISSAN
16 NORTH AMERICA, INC.,
17
Respondent.

Protest No. PR-2330-12

**RESPONDENT INFINITI DIVISION,
NISSAN NORTH AMERICA, INC.'S
MOTION TO DISMISS PROTEST;
DECLARATION OF ERIC ANDERSON
IN SUPPORT OF MOTION TO
DISMISS**

Telephonic Hearing

Date: June 6, 2012
Time: 10:00 a.m.
Call-In No.: 877-402-9753
Participant Code: 437282

18
19 Respondent, Infiniti Division, Nissan North America, Inc. (erroneously named herein as
20 “Infiniti West, a Division of Nissan North America, Inc.”) (“INFINITI”) submits the following
21 Motion to Dismiss Protest in the above-captioned matter and respectfully moves for an order
22 dismissing the protest initiating this proceeding.

23 **I. INTRODUCTION**

24 Santa Monica Auto Group, dba, Santa Monica Infiniti (“SMI”) filed Protest No. PR-2330-
25 12 (the “Protest”), attempting to prevent INFINITI’s appointment of a dealer in the Beverly Hills,
26 California market (“BH Open Point”), to replace the prior Infiniti representation in that market.

27 SMI has, however, asserted its protest in direct violation of its unambiguous written
28 agreement in which it both (a) acknowledged that good cause existed to establish Infiniti

1 representation in the BH Open Point and (b) unequivocally agreed not to take any action to
2 protest, prevent or delay the establishment of an Infiniti dealer in the Beverly Hills market (the
3 “Waiver Agreement”). The Waiver Agreement thus authorizes INFINITI to take the very action
4 which SMI now seeks to prevent by its protest.

5 Prior to its appointment as an Infiniti dealer, SMI was fully informed by INFINITI that it
6 intended to appoint an additional dealer in the BH Open Point. SMI agreed that such
7 establishment would be reasonable and in the best interests of both Infiniti consumers and Infiniti
8 dealers. Thus, following negotiations and in consideration for SMI’s appointment as an Infiniti
9 dealer, SMI executed the Waiver Agreement, expressly agreeing not to take any action, whether
10 in court or before the California New Motor Vehicle Board, seeking to prevent or delay the
11 establishment which is now the subject of this Protest.

12 Having voluntarily agreed with INFINITI to waive its right to protest the appointment of
13 an Infiniti dealer in Beverly Hills, SMI has no basis to attempt to shield itself from its
14 commitments, whether by arguing the provisions of the California Vehicle Code, California case
15 law, or otherwise. To the contrary, SMI knowingly and voluntarily relinquished its right to
16 protest in return for the economic benefits it now holds. Accordingly, dismissal of the subject
17 Protest is entirely consistent with the agreed-upon terms contained in the Waiver Agreement and
18 SMI’s protest should be dismissed.

19 **II. BACKGROUND FACTS**

20 There is no dispute as to the following basic facts:

21 1. Protestant SMI is an authorized dealer of Infiniti vehicles with its principal place
22 of business at 3219 Santa Monica, Blvd., Santa Monica, CA 90404. Respondent INFINITI is a
23 distributor of new motor vehicles licensed by the California Department of Motor Vehicles.

24 2. SMI had been negotiating with INFINITI to acquire a franchise since at least June
25 30, 2009. After initially being informed that the Infiniti dealership had been awarded to another
26 candidate, negotiations were resurrected on or about March 1, 2010. (See, Proposed Decision *In*
27 *the Matter of the Protest of Santa Monica Group, Inc., v. General Motors LLC*, Protest Nos. PR-
28 2263-10 and PR-2264-10, adopted by the Board on September 27, 2011, at Paragraph 34).

1 3. On September 24, 2010, SMI entered into an Infiniti Dealer Term Sales and
2 Service Agreement (the “Dealer Agreement”) with INFINITI. A copy of the Dealer Agreement is
3 attached as Exhibit “A” to the Declaration of Eric Anderson in Support of Motion to Dismiss.

4 4. In connection with its appointment as an Infiniti Dealer, also on September 24,
5 2010, SMI entered into the written Waiver Agreement with INFINITI in which it
6 “acknowledge[d] that good cause exists to establish Infiniti representation in Beverly Hills” and
7 agreed to “not take any action, whether in court or before the California New Motor Vehicle
8 Board...to prevent or delay the establishment of Infiniti representation in the Beverly Hills
9 market..” A copy of the Waiver Agreement is attached as Exhibit “B” to the Declaration of Eric
10 Anderson in Support of Motion to Dismiss.

11 5. On or about March 26, 2012, INFINITI sent a Notice of Intent to Establish Infiniti
12 Dealership to SMI, informing SMI that INFINITI intended to appoint an additional Infiniti dealer
13 in the BH Open Point to replace the prior Infiniti representation in that market (The “BH Open
14 Point Notice”). SMI received the BH Open Point Notice on March 28, 2012.

15 6. On March 29, 2012, SMI filed this Protest with the New Motor Vehicle Board, in
16 response to the BH Open Point Notice, seeking to prevent INFINITI from appointing a dealer to
17 replace the prior Infiniti representation in that market.

18 **III. ARGUMENT**

19 **A. Authority of Board to Consider Motion to Dismiss Protest**

20 The Board has authority to dismiss SMI’s protest without a full merits hearing. The Court
21 of Appeals, in *Duarte & Witting v. New Motor Vehicle Board* (2004) 104 Cal. App. 4th 626, held
22 that the Board has implied authority to dismiss a protest upon motion of the Respondent, where
23 there is an overriding issue which renders moot a merits hearing on the standard good cause
24 factors. In *Duarte & Witting*, the Court stated that Respondent DaimlerChrysler’s decision to
25 stop manufacturing the Plymouth line of vehicles meant that there was no reason to hold a
26 hearing on the applicability of the good cause factors for termination of protestant’s franchise.
27 After its review of several cases in which the Board granted motions to dismiss protests for
28 various reasons, the Court stated:

1 Although the foregoing cases involved different kinds of dismissals
2 that are not at issue in this case, we shall conclude the purpose of
3 the Board and the goal of administrative efficiency support a
4 conclusion that the Board has implied authority to dismiss a protest
5 where the undisputed facts demonstrate good cause for franchise
6 termination as a matter of law and afford no basis for preventing
7 termination of the franchise. *The procedure in this case was*
8 *analogous to a summary judgment motion*, where the franchisor
9 established good cause for termination as a matter of law, and the
10 undisputed facts gave [Protestant] no viable basis to prevent
11 termination of the franchise. In this circumstance, there would be
12 no point to conducting an evidentiary hearing on issues of whether
13 the dealer was performing its obligations under the franchise
14 agreement. Such an evidentiary hearing would simply entail the
15 wasteful expenditure of public funds. * * * ¶ Dismissal of a
16 protest in the circumstances of this case furthers the goal of
17 administrative efficiency and is consistent with the Board's purpose.

18 104 Cal. App. 4th at 647 - 648. (Footnote and name of Protestant omitted, emphasis added.)

19 In the present case, SMI indisputably signed the Waiver Agreement, supported by
20 consideration, in which SMI agreed not to protest the appointment by INFINITI of a dealership in
21 Beverly Hills. Indeed, SMI explicitly acknowledged in the Waiver Agreement that INFINITI had
22 good cause to appoint the Beverly Hills dealership, both prior to and after the appointment of SMI
23 in Santa Monica. SMI made a knowing, fully informed agreement, supported by consideration,
24 waiving its statutory right to protest the appointment of the Beverly Hills dealership. Such waiver
25 agreements have been upheld by the courts, where the signed waiver is clear, unambiguous and
26 unequivocal. E.g., *Winet v. Price* (1992) 4 Cal. App. 4th 1159, 1164 – 1165. In *Winet*, the court
27 granted summary judgment to the defendant on the basis of a signed waiver agreement, holding
28 that a client, who was aware of possible future malpractice claims against a former attorney, and

1 was a sophisticated businessman, was bound by the release contained therein. *See also, San*
2 *Diego Hospice v. County of San Diego* (1995) 31 Cal. App. 4th 1048, 1053 – 1054 [general
3 release is a complete bar to all claims, and summary judgment was appropriately granted to
4 defendant].

5 As noted by the court in *Duarte & Witting*, the Motion to Dismiss procedure before the
6 Board is “analogous to a summary judgment motion” where there is no dispute as to the basic
7 facts, and where a question of law will decide the matter. The *Duarte & Witting* court ultimately
8 held that the Board could dismiss a protest in response to Respondent’s motion, where to go
9 through a full merits hearing would constitute a waste of both time and the agency’s resources.
10 *See also, Nader Automotive Group, LLC v. New Motor Vehicle Board* (2009) 78 Cal. App. 4th
11 1478, 1485, citing *Duarte & Witting* for the proposition that the Board’s authority to grant
12 Motions to Dismiss is “settled law.”

13 In the current case, the determination of the waiver issue will resolve the protest and
14 obviate the need for a full merits hearing. The parties and the Board need not conduct a full
15 merits hearing, incurring the time and expense that would entail, in order to consider issues which
16 have nothing to do with the waiver issue. As recognized by the *Duarte & Witting* and *Nader*
17 *Automotive* courts, the Board has authority to dismiss a protest where a question of law resolves
18 the issue, without conducting a full merits hearing.

19 **B. SMI Has Expressly Waived Its Right to Protest the Establishment of An**
20 **Additional Dealer in the Beverly Hills Open Point**

21 In light of the undisputed facts set forth above, the Board must uphold SMI’s waiver of its
22 right to protest under the Waiver Agreement. The Waiver Agreement was entered into following
23 lengthy negotiations, in exchange for valuable consideration including INFINITI’s agreement to
24 appoint SMI as an authorized Infiniti dealer. Therefore, SMI knowingly, intentionally and
25 voluntarily relinquished its statutory right to protest INFINITI’s establishment of an Infiniti
26 dealer in the Beverly Hills, California market to replace the prior Infiniti representation in that
27 market.
28

1 In its unambiguous written agreement, SMI both acknowledged that good cause existed to
2 establish Infiniti representation in the Beverly Hills Open Point and unequivocally agreed not to
3 take any action to prevent or delay that establishment. The Waiver Agreement plainly and
4 unambiguously provides that:

5 You acknowledge that good cause exists to establish Infiniti
6 representation in Beverly Hills, and that such establishment would
7 be reasonable and in the best interests of Infiniti consumers and
8 Infiniti Dealers in the metro. You shall not take any action, whether
9 in court or before the California New Motor Vehicle Board, or any
10 other legal, equitable, or administrative tribunal, to prevent or delay
11 the establishment of Infiniti representation in the Beverly Hills
12 market, or to seek damages as a result of such actions.

13 Such waiver agreements have been upheld by the courts, where the signed waiver is clear,
14 unambiguous and unequivocal. *Winet v. Price* (1992) 4 Cal. App. 4th 1159, 1164 – 1165; *San*
15 *Diego Hospice v. County of San Diego* (1995) 31 Cal. App. 4th 1048, 1053 – 1054.

16 **C. The Waiver Agreement is Valid and Fully Enforceable.**

17 It is anticipated that SMI will attempt to avoid its unequivocal agreement in the Waiver
18 Agreement not to protest the establishment of an Infiniti dealer in Beverly Hills by misguided
19 reliance on the provisions of Cal. Veh. Code. Section 11713.3(g).

20 Prior to January 1, 2012, this section provided that it was unlawful for a manufacturer to:
21 “require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel
22 that would relieve any person from liability to be imposed by this article...”

23 After January 1, 2012, this section provides that it is unlawful for a manufacturer or
24 distributor:

- 25 (1) Except as provided in paragraph (3), to obtain from dealer or
26 enforce against a dealer an agreement, provision, release,
27 assignment, novation, waiver, or estoppel that does any of the
28 following:

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(A) Modifies or disclaims a duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, or a right or privilege of a dealer, pursuant to Chapter 4...of Division 5 or Chapter 6... of Division 2.

Although the new version of this section also provides a mechanism for a dealer to waive its right to file a protest under Section 3062 to the establishment of a dealership, the new version also expressly provides in paragraph (3) that: “This subdivision does not do any of the following: ... (D) Affect the enforceability of a provision in any contract entered into on or before December 31, 2011.”

Because the Waiver Agreement at issue in this case was entered into in September 2010 and the new version of Section 11713.3(g), by its express terms, does not affect the enforceability of agreements entered into before December 31, 2011, the only statutory provision applicable to the Waiver Agreement in this case is the prior version of Section 11713.3(g) in effect until January 1, 2012.

The language in that prior version of Section 11713.3(g) made it unlawful for a manufacturer to: “require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability to be imposed by this article....” Interpreting this language, the California courts have held that a waiver agreement with language almost identical to the Waiver Agreement at issue in this case was valid and fully enforceable. *DaimlerChrysler Motors Company et. al. v. Lew Williams, Inc. et .al* (2006) 142 Cal.App.4th 344. *Lew Williams*, like this case, arose when a dealer agreed not to protest the establishment of a new dealer and then, in violation of that agreement, filed a protest under Vehicle. Code section 3062. The language of the waiver agreement at issue in *Lew Williams* (also in the form of a letter agreement), provided that the protesting dealer would not protest DaimlerChrysler’s establishment of a dealership “anywhere in the south Sacramento area.” The operative language of the waiver, as quoted by the Court, was almost identical to the language of the Waiver Agreement in this case. Specifically, the protesting dealers in *Lew Williams*:

1 agree[d] to waive any and all rights on behalf of [the protesting
2 dealers] that those dealers may have to protest or challenge such re-
3 opening or re-establishment ...before any court or administrative
4 agency under any federal or state statute, regulation or rule
5 including, but not limited to any right to protest before the
6 California New Motor Vehicle Board....

7 142 Cal.App.4th at 348.

8 Although the events subsequent to the dealer’s violation of the waiver agreement in *Lew*
9 *Williams* differ from the present case, the court’s reasoning and rulings in upholding the validity
10 of nearly identical waiver agreement language in that case are fully applicable to the waiver
11 agreement in the present case.

12 In *Lew Williams*, the protesting dealer argued that its waiver agreement was void under
13 the former version of section 11713.3(g) in effect prior to January 1, 2012. The dealer cited
14 language which makes it unlawful for a manufacturer or distributor to: “require a dealer to
15 prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any
16 person from liability to be imposed by this article...” *Lew Williams*, 142 Cal.App.4th at 353.

17 As explained by the *Lew Williams* court in holding that these statutory provisions did not
18 invalidate the protesting dealer’s waiver agreement:

19 DaimlerChrysler did not “require” [the protesting dealer] to assent
20 to the waiver. The waiver was the result of an arm’s length
21 voluntary transaction where for valuable consideration... [the
22 protesting dealer] agree[d] not to protest should DaimlerChrysler
23 eventually reestablish a dealership [in South Sacramento]....”
24 ¶...Nothing in [the statement that its business objectives could not
25 be met unless all Chrysler dealers in the area agreed to give up their
26 protest rights] discloses coercion by DaimlerChrysler on its
27 dealers....¶...In short, Vehicle Code section 11713.3 did not
28 invalidate [the protesting dealer’s] Letter Agreement waiver.

1 *DaimlerChrysler v. Lew Williams*, 142 Cal.App.4th at 353 – 354.

2 Thus, the provisions of California Vehicle Code Section 11713.3(g) cited above only
3 apply to, and therefore only invalidate, waivers in which a manufacturer “requires” a dealer to
4 agree, i.e., are the result of the manufacturer’s “coercion” of a dealer. As was the case in *Lew*
5 *Williams*, in this action, INFINITI did not “require” or “coerce” SMI to do anything.

6 The Waiver Agreement was voluntarily agreed to by SMI as part of its lengthy
7 negotiations with INFINITI to be appointed as an authorized Infiniti dealer in Santa Monica.
8 Because these negotiations involved the initial appointment of SMI as an Infiniti dealer, the
9 voluntary nature of the Waiver Agreement cannot be disputed. At the time of its appointment as
10 an Infiniti dealer and execution of the Waiver Agreement, SMI was entirely free either to forgo its
11 rights to protest an additional dealer in Beverly Hills, or not. Similarly, INFINITI was free not to
12 agree to appoint SMI as its authorized dealer in Santa Monica, unless it agreed not to protest the
13 appointment of a Beverly Hills dealer. SMI had choices with respect to the rights of its
14 prospective dealership as did INFINITI. Neither party had yet attained any economic power over
15 the other.

16 By protesting the appointment of a Beverly Hills Infiniti dealer in direct contravention of
17 the Waiver Agreement, SMI seeks to retain the benefit of its bargain without providing the
18 consideration it expressly agreed to provide in exchange for its appointment. This Board should
19 not allow SMI to accomplish this plan.

20 As explained by the *Lew Williams* court:

21 [The protesting dealer] waived its right to protest, then
22 duplicitously protested. It should not be allowed to shield itself
23 from liability under the cloak of a statute designed to protect a right
24 [that the protesting dealer] voluntarily relinquished in return for
25 economic benefits it now holds.”

26 *DaimlerChrysler v. Lew Williams*, 142 Cal.App.4th at 354.

27 SMI received valuable consideration from INFINITI, including being appointed as the
28 authorized Infiniti dealer in Santa Monica. Therefore, SMI has no basis to attempt to shield itself

1 from its commitment not to protest the appointment of an Infiniti dealer in Beverly Hills, whether
2 under the provisions of the California Vehicle Code, California case law, or otherwise. There
3 being no “required” or “coerced” waiver by INFINITI, the Waiver Agreement cannot be unlawful
4 or unenforceable under the California Vehicle Code.

5 **D. The Express and Unequivocal Language of the Waiver Agreement is**
6 **Controlling Between the Parties and Does Not Contain Any Ambiguities**
7 **Which Require an Evidentiary Hearing on this Motion.**

8 California Code of Civil Procedure section 1856 (a) provides that:

9 Terms set forth in a writing intended by the parties as a final
10 expression of their agreement with respect to such terms as are
11 included therein may not be contradicted by evidence of any prior
12 agreement or of a contemporaneous oral agreement.

13 Under well-settled California law, SMI is prohibited from asserting or relying upon any
14 purported verbal representations or understandings that contradict or modify the clear and
15 unambiguous terms of the Waiver Agreement. *Casa Herrera, Inc. v. Beydown* (2004) 32 Cal.4th
16 336, 343–344 [Extrinsic evidence may not be used to contradict or vary the terms of an
17 unambiguous writing].

18 In addition, there are no disputed facts in this case that would necessitate an evidentiary
19 hearing. In its Protest, SMI does not contend that the Waiver Agreement is uncertain or
20 ambiguous nor does it contest the validity of the Waiver Agreement in any other manner.

21 Because there are no disputed facts and extrinsic evidence is not allowed to modify the
22 express language of the Waiver Agreement, the issues here present only a matter of law and no
23 evidentiary hearing on the merits of this motion is either required or appropriate.

24 **IV. CONCLUSION**

25 SMI filed this protest despite its express and voluntary Waiver Agreement and in direct
26 contravention of the parties’ stated intent in entering into that Agreement. For all of the reasons
27 set forth above, SMI has waived its right to protest INFINITI’s Notice of Intent to establish the
28 Beverly Hills dealership. Accordingly, INFINITI respectfully requests that the Board grant its

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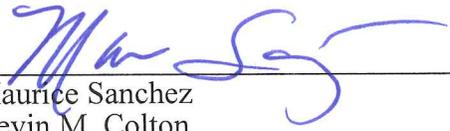
motion and enter an order dismissing the above-captioned protest.

Respectfully submitted,

Dated: April 30, 2012

BAKER & HOSTETLER LLP

By:


Maurice Sanchez
Kevin M. Colton

Attorneys for Respondent
Infiniti Division of Nissan North America, Inc.

Exhibit A

Final Article

Santa Monica Auto Group

a (in)

Dealer is Individual partnership limited liability company, corporation California California
Incorporated or formed under the laws of the State of
Doing business as
(Dealer) Dealer is located in Santa Monica Santa Monica California

The Principal Owner(s) of Dealer are as follows:

Name Kayvan Naimi Residence 325 S. Gretna Green Way Los Angeles, CA 90049 Percentage Interest 0%
The other Owner(s) of Dealer are as follows:

Name The Kayvan Naimi Family Trust Residence 325 S. Gretna Green Way Los Angeles, CA 90049 Percentage Interest 51%
The Kamran Naimi Family Trust Residence 218 19th Street Santa Monica, CA 90402 Percentage Interest 49%

The Executive Manager of Dealer is as follows:

Name See Exhibit C Residence Percentage Interest 0%

Expiration Date: October 1, 2013 Net Worth Guide Requirement: \$ 1,745,610
Working Capital Guide Requirement: \$ 1,371,810 Flooring Line Requirement: \$ 6,673,922

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate effective as of the 24 day of September 2010 at Encinitas, Tennessee.

Dealer: SANTA MONICA AUTO GROUP DBA SANTA MONICA INFINITI
Seller: INFINITI DIVISION NISSAN NORTH AMERICA, INC.

By Kayvan Naimi Signature Ben Poore, Vice President General Manager, Infniti Division
By Eric R. Anderson Signature
Kayvan Naimi, Principal Owner Eric R. Anderson Regional Vice President, Infniti West Region



INFINITI

DEALER TERM SALES AND SERVICE AGREEMENT

THIS AGREEMENT is entered into effective the day last set forth below by and between the INFINITI DIVISION of NISSAN NORTH AMERICA, INC., a California corporation, hereinafter called Seller, and the natural person or entity identified as Dealer in the Final Article of this Agreement.

The purpose of this Agreement is to establish Dealer as an authorized dealer of Infiniti Products and to provide for the sale and service of Infiniti Products in a manner that will best serve owners, potential owners and purchasers of Infiniti Products as well as the interests of Seller, Dealer and other Authorized Infiniti Dealers. This Agreement sets forth the rights which Dealer will enjoy as an Authorized Infiniti Dealer, the responsibilities which Dealer assumes in consideration of the receipt of these rights, and the respective conditions, rights and obligations of Seller and Dealer that apply to Seller's grant to Dealer of such rights and Dealer's assumption of such responsibilities. It is understood that Dealer wishes an opportunity to qualify for a reseller Infniti Dealer Sales and Service Agreement for Infniti Products and understands that for that purpose Dealer first must fulfill all of Dealer's undertakings hereinafter described.

This is a personal services Agreement in entering into this Agreement and appointing Dealer as provided below, Seller is relying upon the personal qualifications, expertise, reputation, integrity, experience, ability and representations of the individual(s) named herein as Principal Owner(s) and Executive Manager. Infniti Products are intended for discriminate owners with the expectation that such owners will be loyal and proud, but also demanding toward Seller and Dealer with respect to Infniti Products and the manner in which they are sold and serviced. Owners, potential owners and purchasers of Infniti Products are expected to work, and are entitled to do business with, dealers who enjoy the highest reputation in their communities and have well located, attractive and efficient places of business, courteous personnel and outstanding service and parts facilities. Infniti Products must be sold by enthusiastic dealers who are not interested in short term results only, but are willing to look toward long term goals and who are devoted to creating and maintaining a positive total ownership experience for owners of Infniti Products. Seller's standard of excellence for Infniti Products must be matched by the dealers who sell them to the public and who service them during their operative lives.

Achievement of the purposes of this Agreement is premised upon mutual understanding and cooperation between Seller and Dealer. Dealer has entered into this Agreement in reliance upon Seller's integrity and expressed intention to deal fairly with dealer and the consuming public. Seller has entered into this Agreement in reliance upon Dealer's integrity and ability and expressed intention to deal fairly with the consuming public and Seller.

It is the responsibility of Seller to market Infniti Products throughout the Territory. It is the responsibility of Dealer to actively promote the retail sale of Infniti Products and to provide courteous and efficient service of Infniti Products. The success of both Seller and Dealer will depend on how well they each fulfill their respective responsibilities under this Agreement. It is recognized that Seller will endeavor to provide motor vehicles of excellent quality and workmanship and to establish a network of Authorized Infniti Dealers that can provide an outstanding sales and service effort at the retail level, and Dealer will endeavor to fulfill its responsibilities through aggressive, sound, ethical selling practices and through conscientious regard for customer service in all aspects of its Infniti Dealership Operations.

Seller and Dealer shall refrain from engaging in conduct or activities which might be detrimental to or reflect adversely upon the reputation of Seller, Dealer or Infniti Products and shall engage in no discourteous, deceptive, misleading or unethical practices or activities.

For consistency and clarity, terms which are used frequently in this Agreement have been defined in Section 1 of the Standard Provisions. All terms used herein which are defined in the Standard Provisions shall have the meanings stated in said Standard Provisions. These definitions should be read carefully for a proper understanding of the provisions in which they appear.

To achieve the purposes referred to above, Seller and Dealer agree as follows:

Article First: Appointment of Dealer

Subject to the conditions and provisions of this Agreement, Seller:

- (a) appoints Dealer as an Authorized Infniti Dealer and grants Dealer the non-exclusive right to buy from Seller those Infniti Products specified in Dealer's current Product Addendum hereto, for resale, rental or lease at or from the Dealership Locations established and described in accordance with Section 2 of the Standard Provisions; and
(b) grants Dealer a non-exclusive right, subject to and in accordance with Section 1.1 of the Standard Provisions, to identify itself as an Authorized Infniti Dealer, to display the Infniti marks in the conduct of its Dealership Operations and to use the Infniti Marks in the advertising, promotion and sale of Infniti Products in the manner provided in this Agreement.

Article Second: Assumption of Responsibilities by Dealer

- Dealer, hereby accepts from Seller its appointment as an Authorized Infniti Dealer and, in consideration of its appointment and subject to the other conditions and provisions of this Agreement, hereby assumes the responsibility for:
(a) resupplying and maintaining at the Dealership Location in accordance with Section 2 of the Standard Provisions;
(b) actively and effectively promoting the sale at retail (and, if Dealer elects, the leasing and rental) of Infniti Vehicles within Dealer's Primary Market Area in accordance with Section 3 of the Standard Provisions;
(c) servicing Infniti Vehicles and for selling and servicing Infniti Parts and Accessories in accordance with Section 4 of the Standard Provisions;
(d) building and maintaining consumer confidence in Dealer and Infniti Products in accordance with Sections 3, 4 and 5 of the Standard Provisions; and
(e) performance of the additional responsibilities set forth in this Agreement, including those specified in Section 5 of the Standard Provisions.

Article Third: Ownership

(a) Owners. This Agreement has been entered into by Seller in reliance upon, and in consideration of, the personal qualifications, expertise, reputation, integrity, experience, ability and representations with respect thereto of the Principal Owner(s) named in the Final Article of this Agreement and in reliance upon Dealer's representations concerning the ownership of Dealer as follows:

- (i) Dealer represents and agrees that the person(s) named as Principal Owner(s) in the Final Article of this Agreement, and only those person(s), shall be the Principal Owner(s) of Dealer;
(ii) Dealer represents and agrees that the person(s) named as Other Owner(s) in the Final Article of this Agreement, and only those person(s), shall be the Other Owner(s) of Dealer.

(b) Holding Company. Seller requires that a natural person be named as the Principal Owner(s) of Dealer because Seller relies on the personal qualifications, expertise, reputation, integrity, experience, ability and representations of such individuals. If one or more of the Principal Owners of Dealer is a corporation, partnership or other entity and not a natural person (hereinafter called "Holding Company"), Dealer and Seller agree that the natural persons listed in Holding Company Addendum of this Agreement as owners of the Holding Company shall be deemed to be the Principal Owner(s) and/or Other Owner(s) of Dealer, as the case may be, and that the terms and conditions of this Agreement, including without limitation the provisions of this Article Third, and Sections 11, 13, and 14 of the Standard Provisions, shall apply to the owner(s) of the Holding Company as well as to Dealer. Dealer represents to Seller and agrees that the Holding Company is owned as indicated in the Holding Company Addendum to this Agreement.

(c) **Changes in Ownership.** In view of the fact that this is a personal services Agreement and in view of its objectives and purposes, this Agreement and the rights and privileges conferred on Dealer hereunder are not assignable, transferable or saleable by Dealer, and no property right or interest is or shall be deemed to be sold, conveyed or transferred to Dealer under this Agreement. Dealer agrees that any change in the ownership of Dealer specified herein requires the prior written consent of Seller, excepting any change in the record or beneficial ownership interest of Dealer involving control or interest. Dealer shall give Seller prior notice of any proposed change in such ownership requiring the consent of Seller and immediate notice of the death or incapacity of any Principal Owner. No such change, and no assignment of this Agreement or of any right or interest herein, shall be effective against Seller unless and until embodied in an appropriate amendment to or assignment of this Agreement, as the case may be, duly executed and delivered by Seller and by Dealer. Seller shall not, however, unreasonably withhold its consent to any such change. Seller shall have no obligation to transact business with any person who is not named either as a Principal Owner or Executive Manager of Dealer hereunder or provided in Section 14 of the Standard Provisions.

Article Fourth: Management

(d) **Executive Manager.** Seller and Dealer agree that the retention by Dealer of qualified management is of critical importance to the successful operation of Dealer and in the achievement of the purposes and objectives of this Agreement. This Agreement has been entered into by Seller in reliance upon, and in consideration of, the past and future services, experience, ability and representations with respect thereto of the person named as Executive Manager in the Final Article of this Agreement and on Dealer's representation to Seller and agreement that the person identified as Executive Manager shall be the Dealer's executive manager, shall have full managerial authority for the Dealership Operations, and shall continuously provide his or her personal services in operating the dealership and will be physically present at the Dealership facilities on a full-time basis.

(e) **Changes in Management.** In view of the fact that this is a personal services Agreement and in view of its objectives and purposes, Dealer agrees that any change in the Executive Manager from that specified in the Final Article of this Agreement requires the prior written consent of Seller. Dealer shall give Seller prior notice of any proposed change in Executive Manager and immediate notice of the death or incapacity of any Executive Manager. No change in Executive Manager shall be effective unless and until embodied in an appropriate amendment to this Agreement duly executed and delivered by Seller and by Dealer. Subject to the foregoing, Dealer shall make its own, independent decisions concerning the hiring and firing of its employees, including, without limitation, its Executive Manager.

To enable Seller to evaluate and respond to Dealer concerning any proposed change in Executive Manager, Dealer agrees to provide, in the form requested by Seller and in a timely manner, all applications and information customarily requested by Seller to evaluate the proposed change. While Seller shall not unreasonably withhold its consent to any such change, it is agreed that any successor Executive Manager must possess personal qualifications, expertise, reputation, integrity, experience and ability which are, in the opinion of Seller, satisfactory. Seller will determine whether, in its opinion, the proposed change is likely to result in a successful dealership operation with capable management that will satisfactorily perform Dealer's obligations under this Agreement. Seller shall have no obligation to transact business with any person who is not named as an Executive Manager of Dealer hereunder prior to having concluded its evaluation of such person.

(f) **Evaluation of Management.** Dealer and Seller understand and acknowledge that the personal qualifications, expertise, reputation, integrity, experience and ability of the Executive Manager and his or her ability to effectively manage Dealer's day-to-day Dealership Operations is critical to the success of Dealer in performing its obligations under this Agreement. Seller may, from time to time, evaluate the performance of the Executive Manager and will advise Dealer and the Executive Manager of Dealer's personal general performance. Seller may, from time to time, evaluate the performance of the Executive Manager and will advise Dealer and the Executive Manager of the results of such evaluations and the way in which any deficiencies affect Dealer's performance of its obligations under this Agreement.

Article Fifth: Additional Provisions

The additional provisions set forth in the attached "Infract Dealer Sales and Service Agreement Standard Provisions," bearing form number JA-4S-D-789, are hereby incorporated in and made a part of this Agreement. The Notice of Primary Market Area, Dealership Facilities Addendum, Product Addendum, Dealer Operating Requirements Addendum, Dealer Identification Addendum, Holding Company Addendum, all bulletins and Standards referred to in this Agreement (including references contained in the Standard Provisions referred to above) are hereby incorporated in and made a part of this Agreement. Dealer further agrees to be bound by and comply with the Warranty Manual, Seller's Manuals or Instructions heretofore or hereafter issued by Seller to Dealer, any amendment, revision or supplement to any of the foregoing, and any other manuals heretofore or hereafter issued by Seller to Dealer.

Article Sixth: Termination of Prior Agreements

This Agreement cancels, supercedes and annuls all prior contracts, agreements and understandings except as stated herein. All negotiations, representations and understandings being merged herein. No waiver, modification or change of any of the terms of this Agreement or change or amendment of any part of this Agreement or addition to it (except filing of blank spaces and lines) will be valid or binding on Seller unless approved in writing by the President or an authorized Vice-President of Seller.

Article Seventh: Term

This Agreement shall have a term commencing on the effective date hereof and, subject to its earlier termination in accordance with the provisions of this Agreement, expiring on the expiration date indicated in the Final Article of this Agreement. Subject to other applicable provisions hereof, this Agreement shall automatically terminate at the end of such stipulated term without any action by either Dealer or Seller.

Article Eighth: License of Dealer

If Dealer is required to secure or maintain a license for the conduct of its business as contemplated by this Agreement in any state or jurisdiction where any of its Dealership Operations are to be conducted or any of its Dealership Facilities are located, this Agreement shall not be valid until and unless Dealer shall have furnished Seller with written notice specifying the date and number, if any, of such license or licenses issued to Dealer. Dealer shall notify Seller immediately in writing if Dealer shall fail to secure or maintain any and all such licenses or renewals thereof, or if such license or licenses are suspended or revoked, specifying the effective date of any such suspension or revocation.

Article Ninth: Infract Proceedings

Should a proceeding of any nature be filed with or initiated by any Court or administrative body, seeking to prevent or delay Seller from entering into an Infract Dealer Sales and Service Agreement with Dealer and/or seeking damages resulting from Seller doing so, Seller shall be under no obligation to do so, so long as such proceeding is pending, and, if, as a result of such proceeding, Seller shall be enjoined or prevented from entering into an Infract Dealer Sales and Service Agreement with Dealer, any offer made pursuant to Article Twelfth shall be void, and Seller shall have no liability to Dealer for any damages which Dealer may suffer thereby.

Article Tenth: Breach by Dealer

Dealer's failure to carry out fully, all of the terms and provisions of this Agreement, including those terms and provisions incorporated herein by reference, shall be a breach of the entire Agreement, and Seller shall be under no obligation to Dealer to extend this Agreement in whole or in part or to enter into a regular Infract Dealer Sales and Service Agreement with Dealer or to be under any other obligation to Dealer.

Upon Dealer's failure to meet any term or deadline set forth in Article Twelfth of this Agreement or to the occurrence of any of the other events warranting termination of this Agreement as set forth in Section 12 of the Standard Provisions, Seller may terminate this Agreement prior to the expiration date hereof, by giving Dealer written notice thereof, such termination to be effective upon the date specified in such notice, or such later date as may be required by any applicable statute.

Article Eleventh: Execution of Agreement

This Agreement, and any Addendum or amendment or notice with respect thereto, shall be valid and binding on Seller only when it bears the signature of either the President or an authorized Vice-President of Seller and, when such signature is a facsimile, the manual countersignature of an authorized employee of Seller at the Director level and a duplicate original thereof is delivered personally or by mail to the Dealership Location. This Agreement shall bind Dealer only when it is signed by a duly authorized officer or executive of Dealer if a corporation, one of the general partners of Dealer if a partnership or Dealer if an individual.

Article Twelfth: Conditions of Seller's Offer

If this agreement is not terminated prior to the expiration date set forth in the Final Article, Seller may offer to enter into as of such date an Infract Dealer Sales and Service Agreement in such form as may be in use by Seller at such time. Seller will make the offer and Dealer may accept such offer only if Dealer has fulfilled and continues to fulfill, during the term of this Agreement and at the expiration thereof, all of the following conditions, each of which Dealer understands and agrees to be reasonable and necessary:

- (a) Comply with Seller's net working capital, net worth requirements, and financing as specified in Section 5.G of the Standard Provisions and in amounts not less than the dollar threshold as specified in the Final Article of this Agreement;
- (b) Provide Seller, on or before the tenth day of each month, or such terms as may be designated by Seller, with the financial and operating statements specified in Section 5.I(i) of the Standard Provisions;
- (c) If new, remodeled or expanded dealership facilities are required under Article Twelfth (d) below, Dealer shall:
 - (i) Complete the acquisition and installation, at the New Dealership Facilities, of signs, furniture, furnishings, tools and equipment as required by Seller for Dealer's New Dealership Facilities;
 - (ii) Employ, with all other of qualified persons to operate the dealership required by Seller for Dealer's New Dealership Facilities;
 - (iii) Comply with all other of Seller's requirements for Dealer to operate the New Dealership Facilities and qualify in all other respects for an Infract Dealer Sales and Service Agreement;
 - (iv) Comply with all federal, state and local governmental licensing and other requirements for Dealer to do business as an Authorized Infract Dealer at the New Dealership Facilities;
 - (v) Dealership facilities conditional to Seller's offer (if any);

See Exhibit B, which is incorporated by this reference into this Agreement for all purposes.

- (a) Other condition(s) to Seller's offer (if any):
- See Exhibit C, which is incorporated by this reference into this Agreement for all purposes.

Article Thirteenth: Special Conditions

See Exhibit A, which is incorporated by this reference into this Agreement for all purposes.



This Exhibit A is incorporated by reference in and is a part of the Infiniti Dealer Term Sales and Service Agreement by and between Dealer and Seller dated September 24, 2010. The terms of this Exhibit will be effective for as long as Dealer or its principals are authorized Infiniti dealers, and shall be binding on any successors. As a condition of Seller's consent to any change in ownership, Dealer agrees to require any proposed buyer of Dealer's dealership assets to assume the rights, obligations, and provisions in accordance with Seller's Guides and Policies in effect at that time, specifically including those set forth below.

Article Thirteenth, Special Conditions is hereby amended to read as follows:

A. Exclusivity

Dealer agrees to the following "Exclusivity Provisions", which incorporate Seller's Facility Usage Policy as may be established or revised by Seller from time to time:

- a) The only line-make of new, unused motor vehicles which Dealer shall display, sell, advertise or promote at or from the Dealership Facilities shall be the Infiniti line and make of motor vehicles. Dealer agrees not to conduct any dealership operations for any other make or line of new, unused vehicles from the Dealership Facilities. Dealer agrees to market, promote, and sell all Infiniti Products from the Dealership Facilities.
- b) Dealer shall sell and maintain a full line of Genuine Infiniti Parts and Accessories, including service contracts, at the Dealership Facilities and shall provide a full range of automotive servicing for Infiniti vehicles at the Dealership Facilities pursuant to Section 4 of the Standard Provisions to the Agreement. Nothing contained herein, however, shall preclude Dealer from offering parts, accessories or servicing for vehicles of other lines or makes so long as such products or services are incidental to Dealer's Infiniti Dealership Operations and do not substitute for the sale of Infiniti Products.
- c) Dealer shall not install or maintain any signage at the Dealership Facilities which would detract or conflict with the IREDI program or Infiniti Brand image or might lead any consumer into believing that any line or make of vehicles other than the Infiniti line is sold at the Dealership Facilities.
- d) Seller and Dealer agree that the Dealership Facilities are unique. If Dealer fails to fully and in good faith perform its obligations hereunder, Dealer agrees that monetary damages would be an inadequate remedy to Seller. The parties agree that Seller may seek such equitable relief, including specific performance and injunctive relief, as may be available to Seller.



- e) Any failure by Dealer to abide by the foregoing subparts (a) through (d) shall constitute a material breach of the Agreement warranting its termination, and shall constitute "good cause" for its termination under Section 3061, et seq., of the California Vehicle Code, or any successor statute.

B. Trade Dress Elements

In addition to the provisions set forth in Section 5.L of the Standard Provisions to this Agreement, Dealer hereby acknowledges that upon termination of this Agreement or if Dealer moves, relocates, or changes the usage of the Dealership Location or any of the Dealership Facilities, the use of any Infiniti Trademarks ("Infiniti Marks") or signature building elements including, without limitation, any construction material, shape, design or color scheme that may lead the public to believe a building is an Infiniti Dealership ("Trade Dress Elements") at the facilities specified in the current Dealership Facilities Addendum is unauthorized. Any such unauthorized use by Dealer of Infiniti Marks or Trade Dress Elements will be considered to have irreparably harmed Seller pursuant to any applicable federal and state trademark infringement and unfair competition laws. Upon termination of this Agreement or if Dealer moves, relocates, or changes the usage of the Dealership Location or any of the Dealership Facilities, Dealer is required to remove all signs bearing any trademark, trade name, or other make or name owned, licensed, or associated with Infiniti or otherwise to cover, remove, or obliterate any such trademarks. Dealer hereby gives Infiniti the right to enter the dealership premises and remove its main brand sign and its sign structures and equipment. Furthermore, should Dealer fail to remove any other signs bearing the Infiniti trademark, Infiniti has the right, upon ten (10) days' written notice, to do so. Furthermore, Dealer agrees to also cover, remove, obliterate or significantly modify any Trade Dress Elements from the Infiniti signature building. Dealer acknowledges and agrees that such Trade Dress Elements may lead the public to believe that the building is an Infiniti dealership. Trade Dress Elements include, but are not limited to, the following:

Exterior:

- **Entrance Statement including Infiniti Brand Symbol and Dealer name Letters**
- **Feature Glass Wall with end "wings" and/or "sail" curvature at the top of the wall (must remove the "wings" and remove the "sail")**
- **External Signs (Main Brand Sign, Infiniti logo, Dealer name letters, Service, Pre-Owned & Directional signs)**

Interior:

- **All Interior signage**
- **IREDI Color/Trim Display**

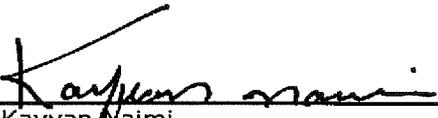


C. Sales Penetration Performance

Seller has agreed to accept Dealer as its authorized Infiniti dealer based on Dealer's representation that Dealer will meet or exceed the Infiniti Los Angeles Area's average sales penetration for the Infiniti total Competitive Car and Truck Segment by October 1, 2012. Dealer further agrees that failure by Dealer to satisfy its Sales Penetration Performance obligations (as set forth in the Agreement, inclusive of this Exhibit) shall represent a material and substantial breach of the Agreement.

DEALER

**SANTA MONICA AUTO GROUP
DBA SANTA MONICA INFINITI**

By 

Kayvan Maimi
Principal Owner

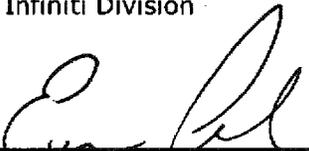
73319
Dealer Code

SELLER

**INFINITI DIVISION
NISSAN NORTH AMERICA, INC.**

By 

Ben Poore
Vice President, General Manager
Infiniti Division

By 

Eric R. Anderson
Regional Vice President
Infiniti West Region



This Exhibit B is incorporated by reference in and is a part of the Infiniti Dealer Term Sales and Service Agreement by and between Dealer and Seller dated September 24, 2010. The terms of this Exhibit will be effective for as long as Dealer or its principals are authorized Infiniti dealers, and shall be binding on any successors. As a condition of Seller's consent to any change in ownership, Dealer agrees to require any proposed buyer of Dealer's dealership assets to assume the rights, obligations, and provisions in accordance with Seller's Guides and Policies in effect at that time, specifically including those set forth below.

Article Twelfth (d) is hereby amended to read as follows:

INFINITI RETAIL ENVIRONMENTAL DESIGN INITIATIVE

Complete construction/remodel of the dealership facilities so as to provide exclusive Infiniti dealership facilities of a size, appearance and layout meeting Seller's approval and in accordance with the Guides established by Seller known as the Infiniti Retail Environmental Design Initiative ("IREDI"), and in accordance with final architectural plans to be submitted to and meeting Seller's approval (such facilities are hereinafter referred to as the "Dealership Facilities") in accordance with the following schedule:

- On or before **June 1, 2012**, Dealer shall execute the Infiniti Retail Environmental Design Initiative ("IREDI") facility consent form; and
- On or before **July 1, 2012**, Dealer shall schedule and complete Pieper O'Brien Herr IREDI consultation #1; and
- On or before **August 1, 2012**, Dealer shall schedule and complete Pieper O'Brien Herr IREDI consultation #2; and
- On or before **October 3, 2012**, Dealer shall submit Preliminary Design Drawings and plans for the construction/remodel of IREDI-compliant, exclusive, stand-alone dealership facilities for Seller's approval; and
- On or before **December 1, 2012**, Dealer shall submit to Seller for approval final architectural plans for the construction/remodel of the IREDI-compliant, exclusive, stand-alone Dealership Facilities; and
- On or before **January 2, 2013**, Dealer shall submit a signed contract for the construction/remodel of the IREDI-compliant, exclusive, stand-alone Dealership Facilities; and
- On or before **February 1, 2013** Dealer shall commence construction/ remodel of the IREDI-compliant, exclusive, stand-alone Dealership Facilities; and



- On or before **October 1, 2013**, Dealer shall: i.) complete construction/remodel of the Dealership Facilities; ii.) successfully complete an IREDI Brand Audit; iii.) provide Infiniti with a Certificate of Occupancy; iv) submit all required paperwork to Infiniti for processing on or before **October 1, 2013**; and v.) commence Infiniti Dealership operations at the approved site.

The new dealership facilities must be fully operational on or before the expiration of the term of this Agreement. Failure by the dealer to meet any of the interim deadlines set forth above shall constitute a material breach of this Agreement, and shall constitute "good cause" for its termination under Section 3061, et seq., of the California Vehicle Code, or any successor statute.

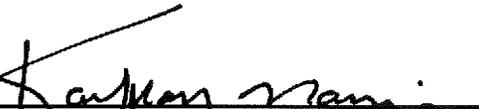
If the consultations described above result in a recommendation for major structural changes to load bearing components of the existing building, Dealer and Seller agree to negotiate a reasonable revision to the above time frame to address this recommendation and to extend the time frames accordingly.

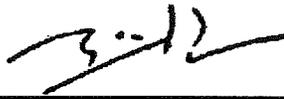
DEALER

SELLER

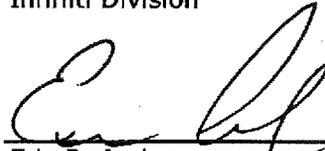
**SANTA MONICA AUTO GROUP
DBA SANTA MONICA INFINITI**

**INFINITI DIVISION
NISSAN NORTH AMERICA, INC.**

By 
Kayvan Naimi
Principal Owner

By 
Ben Poore
Vice President, General Manager
Infiniti Division

73319
Dealer Code

By 
Eric R. Anderson
Regional Vice President
Infiniti West Region



This Exhibit C is incorporated by reference in and is a part of the Infiniti Dealer Term Sales and Service Agreement between Dealer and Seller dated September 24, 2010.

ARTICLE TWELFTH (e), is hereby amended to read as follows:

EXECUTIVE MANAGER

Dealer agrees and acknowledges that Seller has offered to enter into a Dealer Term Sales and Service Agreement with Dealer in consideration of Dealer's representation that Dealer will at all times maintain an Executive Manager who has at least seven (7) years of import luxury experience in all aspects of dealership operations and who otherwise meets all of Seller's requirements. Dealer has agreed to appoint Rick Esses as Executive Manager candidate pursuant to the terms of this Exhibit C.

The qualifications and performance of **Rick Esses**, the individual proposed to be named as the Executive Manager of Dealer shall be evaluated by Seller for a six (6) month period pursuant to Seller's executive management evaluation program. If at the end of such six (6) month period, **Rick Esses** and Dealer's performance in all departments of the dealership (including sales, service, parts and customer satisfaction) is not satisfactory to Seller under the evaluation program guidelines, Dealer shall be obligated to retain another individual who is a qualified Executive Manager to be named under the Final Article of this Agreement within sixty (60) days of the date that Seller notifies Dealer that **Rick Esses** has not met the Executive Manager requirements of Seller as stated above.

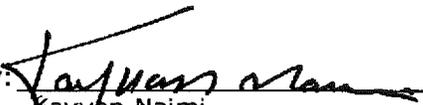
Failure by Dealer to provide a qualified Executive Manager, satisfactory to Seller, will be considered a material breach of the Agreement. Due to the reliance by Seller on Dealer's Executive Management, if Esses does not pass the Executive Manager evaluation, or ceases to be employed by Dealer, and if Dealer does not nominate a qualified Executive Manager pursuant to the terms hereof, Dealer agrees that upon written notice by Seller, Dealer will sell or otherwise transfer all ownership interest in the Infiniti dealership operation in an arm's length transaction to an unrelated third party approved by Infiniti in its sole discretion.

Dealer agrees that if it does not sell or otherwise transfer Dealer's ownership interest in the Infiniti dealership operations within six (6) months of written notice by Seller, then Dealer will voluntarily terminate this Agreement. Failure to divest will cause the voluntary termination to immediately become effective, without further action or notice to Dealer by Seller. Dealer enters into this agreement voluntarily and agrees not to contest or challenge the making of this Agreement, the requirement to divest, or the basis for the voluntary termination, either pursuant to the Agreement or under any applicable law or regulation. If Dealer divests its ownership interest as required herein, the voluntary termination provision shall be void and of no force and effect. Dealer shall not assert any claim, or commence any administrative, legal, equitable, or other action or proceeding seeking injunctive, declaratory, or other relief that would enjoin or delay the termination or non-renewal of the Agreement. Dealer hereby releases, waives, and relinquishes any such alleged rights to do so, with respect to any termination or non-renewal of the Agreement provided for in this provision.



DEALER:

**SANTA MONICA AUTO GROUP
DBA SANTA MONICA INFINITI**

By: 
Kayvan Naimi
Principal Owner

Santa Monica CA
CITY STATE

73319
Dealer Code

SELLER:

**INFINITI DIVISION
NISSAN NORTH AMERICA, INC.**

By: 
Ben Poore
Vice President
General Manager, Infiniti Division

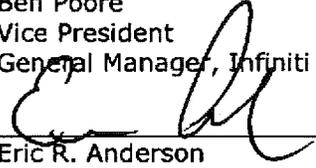
By: 
Eric R. Anderson
Regional Vice President
Infiniti West Region

Exhibit B



INFINITI.

West Region
1683 Sunflower Avenue
Costa Mesa, CA 92626
Phone: 714-433-3800

Mailing Address: PO Box 5020
Costa Mesa, CA 92628-5020

A Division of Nissan North America, Inc.

September 13, 2010

Mr. Kayvan Naimi
Santa Monica Auto Group
3219 Santa Monica Blvd.
Santa Monica, CA 90406

Re: Beverly Hills Open Point

Dear Mr. Naimi:

Infiniti Division, Nissan North America, Inc. ("Infiniti") intends to appoint an Infiniti dealer in Beverly Hills, California to replace the prior dealer in that market. This action may be protestable by you, pursuant to CA Vehicle Code Section 3062.

You acknowledge that good cause exists to establish Infiniti representation in Beverly Hills, and that such establishment would be reasonable and in the best interests of Infiniti consumers and Infiniti dealers in the metro. You shall not take any action, whether in court or before the California New Motor Vehicle Board, or any other legal, equitable, or administrative tribunal, to prevent or delay the establishment of Infiniti representation in the Beverly Hills market, or to seek damages as a result of such actions.

Please sign this letter where indicated below and return this original to my attention at Infiniti West Region.

Sincerely,

Eric Anderson
Regional Vice President
Infiniti West Region

I, Kayvan Naimi, Principal Owner, Santa Monica Auto Group, agree to the foregoing.

(Signature)

9-24-2010

(Date)

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PROOF OF SERVICE

I, Elly Corona, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On April 30, 2012, I served a copy of the within document(s):

RESPONDENT INFINITI DIVISION, NISSAN NORTH AMERICA, INC.'S MOTION TO DISMISS PROTEST; DECLARATION OF ERIC ANDERSON IN SUPPORT OF MOTION TO DISMISS

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- following ordinary business practices, the envelope was sealed and placed for collection by Overnite Express on this date, and would, in the ordinary course of business, be retrieved by Overnite Express for overnight delivery on this date.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

Michael Sieving, Esq.
Tina Hopper, Esq.
1545 River Park Drive, Suite 405
Sacramento, CA 95815
Telephone: (916) 649-3500
Facsimile: (916) 999-8560
Email: msieving@ctsclaw.com
thopper@ctsclaw.com

Counsel for Protestant
SANTA MONICA AUTO GROUP, dba
SANTA MONICA INFINITI

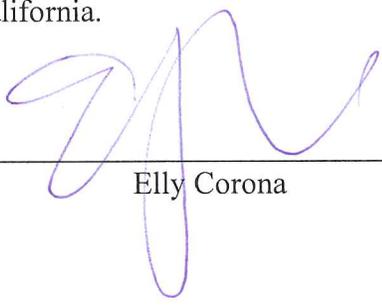
I am readily familiar with the firm's practice of collection and processing correspondence

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for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 30, 2012, at Costa Mesa, California.



Elly Corona

601259818

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
COSTA MESA