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NEW MOTOR VEHICLE BOARD

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FILED
NEW MOTOR VEHICLE BOARD
DATE 3-16-15
BY SO

8 **STATE OF CALIFORNIA**
9 **NEW MOTOR VEHICLE BOARD**

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12 In the Matter of the Protest of
13 **ADRENALINE POWERSPORTS,**
14 Protestant,
15 v.
16 **POLARIS INDUSTRIES, INC.,**
17 Respondent.

Protest No. PR-2418-15

**OPPOSITION TO MOTION TO DISMISS
PROTEST FOR LACK OF
JURISDICTION; DECLARATION OF
MICHAEL M. SIEVING**

Hearing Date: March 27, 2015
Hearing Time: 10:00 a.m.
ALJ: Hon. Anthony M. Skrocki

18
19 Protestant ADRENALINE POWERSPORTS ("Adrenaline" or "Protestant") hereby files its
20 opposition to the Motion to Dismiss Protest for Lack of Jurisdiction filed Respondent POLARIS
21 INDUSTRIES, INC., ("Polaris" or "Respondent").

22 The Motion to Dismiss filed in this matter is based solely upon the contention by Polaris that
23 the existence of a single page document entitled "Polaris Dealer Agreement" (Exhibit A to Motion),
24 which was purportedly executed prior to January 1, 2015, obviates Board jurisdiction to hear this
25 protest. This overly-simplistic argument ignores the interrelationship between the various Vehicle
26 Code Sections which govern not only Board jurisdiction but the substantive and procedural
27 prerequisites of establishing "franchisees" or "dealerships" in California.¹

28 ¹ All statutory references herein are to the Vehicle Code unless otherwise indicated.

1 Section 3062(a)(1) provides, in relevant part, as follows:

2 [I]f a franchisor seeks to enter into a franchise *establishing an additional motor vehicle*
3 *dealership* ... that has a relevant market area within which the same line-make is represented,
4 the franchisor shall, in writing, first notify the board and each franchisee in the line-make in the
5 relevant market area of the franchisor's intention to establish *an additional dealership* or
6 relocate an existing dealership. [emphasis added].

7 Section 3062(e)(1) defines "[m]otor vehicle dealership" or "dealership" as:

8 an authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or
9 sells or leases new motor vehicles.

10 Thus, Section 3062, and the protest rights afforded by that section, requires not only the mere
11 execution of "franchise", but that the franchise in fact establishes the proposed additional "dealership".

12 As the Board is well aware, the execution of a franchise is only one step required for the establishment
13 of a new dealership.

14 Prior to the filing of the instant motion, counsel for Polaris provided counsel for Adrenaline
15 with copies of various documents related to the proposed new dealer, Granite Bay Motorcycle
16 Partners, Inc. ("GBMP"). These documents purport to show that, prior to January 1, 2015, (1) a
17 "franchise" had been executed between GBMP and Polaris², and (2) GBMP had acquired flooring
18 related to the new line-make. It is undisputed by the parties that prior to January 1, 2015, GBMP did
19 not have an occupational license issued by DMV for the Polaris line, did not have Polaris product at its
20 location, and therefore was not "established" as a dealership for Polaris.

21 Section 331.1 defines "franchisee" as:

22 ... any person who, pursuant to a franchise, *receives new motor vehicles* subject to registration
23 under this code, ... new all-terrain vehicles, as defined in Section 111, ... from the franchisor
24 *and who offers for sale or lease, or sells or leases the vehicles at retail* ... [emphasis added].
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28 ² The documents produced included the "Standard Provision", which are incorporated into the single page "franchise"
submitted by Polaris. The Standard Provisions are attached as Exhibit A to the Declaration of Michael M. Sieving (the
"Sieving Declaration") attached hereto, as discussed below.

1 Clearly, under the facts of this case, GBMP was not a "franchisee" for the Polaris line as of
2 January 1, 2015. GBMP did not "receive new motor vehicles" from Polaris prior to that time, and did
3 not sell or lease, or offer to sell or lease, Polaris vehicles until some time after the amendments to
4 Section 111 became effective.
5

6 Section 11700 makes it unlawful for any person to act as a new motor vehicle dealer without
7 first having procured a license from DMV as such. In order to issue a new dealer license (or modify
8 an existing license) DMV requires that the proposed dealer submit either a form OL-22 with
9 attachments (in the case of a new license), or form OL-600 (for a modification to an existing license).
10 In the case of a license for the sale of new vehicles, a form OL-124 is also required as a prerequisite
11 for the issuance of the license, whether it be for a new license or the modification of an existing
12 license. Section 11709(a) requires that the dealer have a sign "erected or posed pursuant to this
13 subdivision ... [which] shall have an area of not less than two square feet per side displayed and shall
14 contain lettering of sufficient size to enable the sign to be read from a distance of at least 50 feet".
15

16 Title 13 California Administrative Code Section 270.06 further defines the requirements of the signage
17 to be "of a permanent nature, erected on the exterior of the office or display area". Section 5(b) of the
18 Standard Provisions (incorporated into the GBMP / Polaris franchise) also require various identifying
19 signs which as of January 1, 2015 (and, as of at least late February 2015) are not affixed to the GBMP
20 facility. (See the Sieving Declaration, paragraph 3, and Exhibits A and B to the Sieving Declaration).
21

22 Exhibit A to the Sieving Declaration is the Standard Provisions for the GBMP Polaris
23 Agreement provided by counsel for Polaris. (See Sieving Declaration, Exhibit A). Section 5(b) of the
24 Standard Provisions provides that GBMP "will display prominently the authorized blue, internally
25 illuminated, exterior Polaris logo sign". Attached to the Sieving Declaration as Exhibit B are
26 photographs of the GBMP dealership taken on February 20, 2015 (subsequent to the enactment of the
27
28

1 amendments to Section 111), which clearly show that even as of this late date, there were no Polaris
2 signs erected at the GBMP dealership, despite the requirements of (1) the Standard Provisions, (2)
3 Section 11709(a), and (3) Title 13 Section 270.06. Without a license issued by DMV for GBMP to
4 sell Polaris vehicles, there was no dealership "established" prior to January 1, 2015 as contemplated by
5 Section 3062(a) and (e)(1). nor was there a "franchisee" as defined by Section 331.1.
6

7 **CONCLUSION**

8 Polaris has not presented sufficient argument evidence to support a determination that the
9 Board does not have jurisdiction over the present Section 3062 protest. In support of its motion,
10 Polaris relies solely upon its contention that a franchise was in existence prior to January 1, 2015, the
11 effective date of the amendments to Section 111. GBMP was clearly not a "franchisee" on the
12 effective date of the statute as required by the relevant Vehicle Code sections and DMV regulations,
13 and many of the substantive requirements for the establishment of a "dealership" had not been met.
14 Polaris relies upon a limited interpretation of Section 3062 in support of its position. Protestant
15 requests that the motion to dismiss be denied or, at a minimum, Protestant be allowed to conduct
16 discovery as to the status of the "establishment" of the dealership (including obtaining documents
17 related to the licensing issue) prior to a ruling on this motion.
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21 DATED: March 16, 2015

MICHAEL M. SIEVING

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23 
24 MICHAEL SIEVING
25 Attorney for Protestant
26
27
28

DECLARATION OF MICHAEL M. SIEVING

I, MICHAEL M. SIEVING, declare:

1. I am an attorney at law duly license to practice in all courts of the State of California and represent Protestant herein. The following facts are true of my own personal knowledge and if called as a witness I could and would competently testify thereto.
2. Attached hereto as Exhibit A is a true and correct copy of the Standard Provisions pertaining to the GBMP franchise with Polaris.
3. Attached hereto as Exhibit B are photographs taken of the GBMP dealership by me on February 20, 2015. These photographs accurately depict the dealership at that time. I personally viewed the entire exterior of the GBMP dealership, and did not see any signage identifying the dealership as a Polaris franchisee.
4. I am informed and believe that GBMP did not have a DMV license to sell as new Polaris brand vehicles on or before January 1, 2015. This belief is based upon statements made and documents provided to me by counsel for Polaris, as well as information I received from my client.

I declare under the laws of the State of California that the foregoing is true and correct.

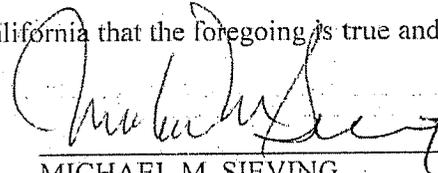

MICHAEL M. SIEVING

EXHIBIT A

STANDARD PROVISIONS

2014-2015

POLARIS DEALER AGREEMENT



POLARIS®

**2014-2015 POLARIS DEALER AGREEMENT
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**STANDARD PROVISIONS
2014-2015 POLARIS DEALER AGREEMENT**

SECTION 1: APPOINTMENT OF DEALERSHIP

a. Appointment of Non-Exclusive Dealer and Location. Polaris hereby appoints Dealer as an authorized non-exclusive retail dealer of Products at the Authorized Retail Location. Dealer agrees not to, directly or indirectly, advertise, sell, display or service Products or otherwise operate at or from any location other than the Authorized Retail Location. Dealer may not establish, directly or indirectly, an associate or sub-dealer for the sale, service or display of Products.

b. Polaris' Right To Authorize Other Dealers. Polaris reserves the right, in its sole discretion, to appoint additional dealers of any Products in any location, and to distribute Products in any alternative methods or manners.

SECTION 2: PURCHASE OF PRODUCTS

a. Orders. Dealer will order Products from Polaris in accordance with the ordering process established by Polaris and in accordance with the Polaris Dealer Policy Manual. Polaris will sell Products to Dealer in accordance with Dealer's order ("Order"), subject to availability of Product, the terms of the order program and the terms of this Agreement. Polaris may cancel, accept or reject (in whole or in part) or decrease quantities in any Order at any time without any liability to Dealer. Polaris may ship Orders as Products become available and in advance of the expected delivery date upon notice to Dealer. Polaris will notify Dealer of any changes to any Order. All sales are subject to the provisions of this Agreement, the Polaris Dealer Policy Manual ("Dealer Manual"), and Polaris' current general sales terms, conditions, and programs, which will change from time to time. For each Order, all title to, and risk of loss for Products passes to Dealer upon shipment from the factory.

b. Product Changes. Polaris may discontinue or change the specifications, materials or design of any Product, or add or delete Products at any time, without any liability or obligation to Dealer or Dealer's customers.

c. Cancellation of Orders. Dealer may not cancel, change, or refuse delivery of any Order, or return ordered Products without Polaris' prior written authorization and without following Polaris' current Wholegoods Orders and Cancellations Policy forth in the Polaris Dealer Policy Manual. Dealer will be subject to reimbursement charges for any cancellation, change, delivery refusal or return as set forth in the Polaris Dealer Policy Manual. Parts, garments and accessories may not be returned unless Dealer complies with the current RMA Policy in the Dealer Manual. Any amount charged to Dealer in connection with a cancellation, refused delivery, changed or der or return is a reasonable reimbursement for any loss Polaris suffers from such actions, and is not a penalty.

d. Delivery. All delivery dates agreed upon by the parties are tentative, notwithstanding any terms in any Order or other communication by either party. Polaris will attempt to deliver in

accordance with such dates, but will not be in breach of any duty to Dealer if it fails to meet a delivery date for any reason. Dealer will have the necessary equipment and facility for unloading Product. Necessary equipment will include but not be limited to chains, forklift, unloading ramp or reasonable substitute. Dealer may receive delivery of Product off-site, provided Dealer obtains Polaris' prior written consent.

SECTION 3: PRICE, PAYMENT AND FINANCIAL REQUIREMENTS

a. **Price.** Polaris will sell Products to Dealer at such prices, discounts and terms as may be established by Polaris from time to time. Prices do not include sales, use, excise or other tax which will be a separate charge paid by Dealer, as applicable. Dealer will pay the price in effect on the date of Polaris' shipment, regardless of when the Order was submitted or accepted. Polaris may change Product prices upon notice to Dealer.

b. **Payment.** Subject to Dealer's obligations in Section 3(c), full payment on all Products is due and payable in cash prior to shipment to Dealer, unless Polaris has agreed otherwise in writing in advance.

c. **Capital Requirements.** To permit Dealer to pay for orders for Products and otherwise comply with the terms of this Agreement, Dealer will at all times maintain minimum levels of working capital, tangible net worth, and flooring accounts and/or lines of credit with an approved financial institution as Polaris will reasonably require from time to time in the Capital Requirements Policy set forth in the Dealer Manual.

(i) In an effort to make flooring accounts available to dealers on advantageous terms, Polaris may work with flooring account lenders to provide financing to its dealers. Dealer acknowledges that such flooring account lenders are separate and distinct from Polaris, that the obligations owed by Dealer to such flooring account lenders are separate and distinct from the obligations owed by Dealer to Polaris, and that Dealer is free to select a flooring account and/or line of credit of its own choosing provided that it complies with the Capital Requirements Policy and this Agreement.

(ii) If Polaris at any time requires an increased amount of minimum working capital, net worth, flooring account, or line of credit, Dealer agrees to promptly establish and maintain the revised amount. Dealer and Polaris agree to execute such new documents as Polaris may reasonably require evidencing the revised capital requirements.

(iii) If at any time Dealer loses its flooring account and/or line of credit, Dealer must immediately notify Polaris and must take immediate steps to reinstate its flooring account and/or line of credit at the level specified by Polaris pursuant to the Capital Requirements Policy. While Polaris may continue to do business with Dealer while Dealer seeks to reinstate its flooring account and/or line of credit, Dealer agrees that Polaris is not obligated to do so under Section 15. If Polaris does continue to do business, Polaris will not ship any Products to Dealer until Polaris has received payment for the price and delivery of such Products and Dealer has guaranteed that they will accept delivery of all ordered Products. By continuing to do business with Dealer in this manner, Dealer

agrees that Dealer is not relieved of its obligation to reinstate its flooring account and/or line of credit at the level specified by Polaris pursuant to the Capital Requirements Policy, and that Polaris has not waived its right to enforce the capital requirements by continuing to do business with Dealer. Failure to promptly and successfully reinstate Dealer's flooring account and/or line of credit as specified above, is grounds for termination under Section 13.

d. Deficiency Balance. Dealer will reimburse Polaris for any payment Polaris makes to any financial institution relating to obligations Dealer may have to such institution. If Dealer fails to meet its obligations to any financial institution and Polaris is required to repurchase any Product sold to Dealer, Dealer will reimburse Polaris for any deficiency between the repurchase cost and resale price and for any costs and expenses which Polaris incurs in connection with the sale of such repurchased Product. Dealer may voluntarily surrender Products to a financial institution, but it will continue to be bound by its obligations to Polaris for any deficiency remaining after the sale of the surrendered Product by such financial institution and to reimburse Polaris for any costs that Polaris incurs as a result of such sale. Under such circumstances, Polaris may charge Dealer's account to satisfy such deficiencies. Dealer will reimburse Polaris for all costs of collection it incurs in recovering amounts owed to Polaris by Dealer which Dealer does not pay. Dealer authorizes Polaris or its agents to run a credit report on Dealer in connection with any request for, or adjustment to, credit under this Agreement or in connection with Polaris' evaluation of Dealer's performance under this Agreement.

e. Security Interest. Dealer grants Polaris a continuing first priority purchase money security interest in all Products purchased by Dealer, and all proceeds thereof, to secure any and all of Dealer's indebtedness or obligations to Polaris. Any such security interest will be secondary to any security interest by the financial institution which extends credit for a flooring account and/or line of credit under Section 3(c). Dealer will execute all financing statements, personal guaranties and other instruments, agreements and documents, which Polaris may request, relating to assurance of payment of all Dealer's obligations to Polaris.

SECTION 4: REPORTING OF PACKAGING SHORTAGES, OVERAGES AND DEFECTS

Dealer must inspect all Products and any returnable packing crates immediately upon arrival and note any damage on the delivery bill. Dealer will notify Polaris in writing within ten (10) days after the arrival of any Products of any packaging shortages, overages, or defects and submit with such notice all relevant packing slips and inspection reports. Polaris reserves the right to refuse any requested adjustment to the Order if Dealer does not comply with this Section 4. Dealer will notify Polaris in writing of any other failure of Products to conform to this Agreement, which failure is reasonably discoverable upon arrival, and will notify Polaris in writing of any such failure within ten (10) days of the earlier of: (i) actual discovery; or (ii) when such failures should have been discovered through reasonable diligence. If Dealer does not comply with this paragraph, Dealer agrees to waive any claims for shortages, overages, or defects.

SECTION 5: DEALER'S DUTIES

a. Dealer's Sales Responsibility. Dealer will use its best efforts in its Local Market Opportunity ("LMO"), to promote, display, sell and service a full line of only those Products it is authorized to sell under this Agreement. Dealer will meet sales performance goals satisfactory to Polaris and agrees that meeting and maintaining such sales performance is a material condition to entering into and continuing this Agreement. Polaris will evaluate whether Dealer is meeting its sales goals based on reasonable criteria including but not limited to the following: the volume of Dealer's sales of Products as compared to competitive products in the Dealer's LMO or market area; the volume of Dealer's sales of Products as compared to other dealers of Products; the actual sales volume of the Products by Dealer as compared to the annual sales performance goals established by Polaris for Dealer; the trend over a reasonable period of time of Dealer's sales, and the volume of Dealer's sales of Products as compared to Dealer's agreed goals. If Dealer handles brands which compete with the Products, Dealer agrees to afford the Products at least as much effort as Dealer gives to competitive products handled by Dealer in terms of promotion and sale, floor space, inventory and service. Polaris reserves the right to decrease, expand or alter Dealer's LMO.

b. Authorized Retail Location. Dealer will maintain the Authorized Retail Location in a neat and orderly fashion and in accordance with this Agreement and with the current Facility Standards Policy in the Dealer Manual, and to maintain Polaris' competitive position and the reputation associated with the Trademarks. Polaris may change the facility standards from time to time. The Authorized Retail Location must, at all times, be satisfactory and acceptable to Polaris with respect to appearance, location, size and layout of building, showroom, office, parts department, storage space, workshop and service operation. At minimum, Dealer, representing Polaris line makes, will display prominently the authorized blue, internally illuminated, exterior Polaris logo sign, if representing Victory, will display prominently the authorized, internally illuminated, exterior Victory signage, and if representing Indian, will display prominently the authorized, internally illuminated, exterior Indian signage. Required signage will be permanently affixed and prominently displayed on a permanent pole or building. Dealer will maintain reasonable business hours. Dealer will devote the space required by Polaris exclusively to Products, irrespective of any other products Dealer may carry. Dealer will make such alterations to the Authorized Retail Location as Polaris may reasonably specify. Dealer will, at all times in the future, comply with any and all reasonable new or changed facility standards. Polaris' entering into this Agreement with Dealer constitutes material and continuing consideration for Dealer's agreement to comply with any reasonable new or changed facility standards and for any and all future agreements Dealer may make with Polaris to alter, improve, upgrade or expand the Authorized Retail Location.

c. Facility Inspection and Reports. Dealer hereby grants Polaris permission to inspect and photograph all parts of the Authorized Retail Location to ensure compliance with this Agreement and Polaris' current facility standards. Dealer agrees to execute, as of the effective date of this Agreement, and from time to time upon request of Polaris during the operation of this Agreement, a facility report, business plan, or other document specified by Polaris, which will include, without limitation, a description and comparison of the Authorized Retail Location against Polaris' current facility standards.

d. Purchases and Inventory; Garments. Dealer will purchase such numbers and model mix of Products as agreed to by Dealer and Polaris, and Dealer will maintain an adequate stock of Products sufficient to fulfill Dealer's obligations under this Agreement and which is adequate to meet the current and anticipated consumer demand, including an inventory of parts, garments and accessories at levels agreed to by Dealer and Polaris. Dealer may only purchase and sell to retail consumers garments specifically related to the Products that Dealer is authorized to purchase under this Agreement.

e. Product Set-Up. Dealer will inspect, assemble, test and set-up Products to ensure Products are in proper operating condition prior to delivery to any customer. Dealer will not deliver to anyone, other than another authorized Polaris dealer, any Products which are either in shipping crates, or not fully set-up, serviced, and successfully passed the pre-delivery inspection in accordance with the applicable Polaris Pre-Delivery Inspection Form. The obligation to properly set-up, service and inspect Products will survive the termination or expiration of this Agreement and apply to all new Products, whenever sold by Dealer.

f. Warranty and Service. Dealer agrees to provide and explain the terms of Polaris' warranty to purchasers of Products, including any territorial limitations to warranty coverage and to perform promptly, at no cost to the consumer, any necessary Polaris warranty and service programs then in effect, including all extended warranty services. Dealer will promptly (within 3 business days) and accurately register the warranty of all new wholegoods sold, maintain and train adequate numbers of staff and personnel, and maintain adequate tools and service equipment to perform such warranty and service programs. Dealer will be responsible for, and hold Polaris harmless from, any costs or other damages incurred by Polaris as a result of any failure by Dealer to comply with this Section 5(f), including the failure to perform such warranty and service programs and/or the failure to promptly and accurately register the warranty of all new wholegoods sold. Dealer will provide service to any customer who has purchased a Product regardless from whom the Product was purchased. All service will be performed in accordance with Polaris' service and related manuals as may be in effect from time to time. Dealer will not perform any service not authorized in advance by the customer, and Dealer will provide all customers with itemized invoices showing the details and charges of all work performed. Polaris may from time to time evaluate Dealer's service performance in accordance with the then-current Polaris Warranty Policies and Procedures Manual. Dealer acknowledges that Polaris, at its sole discretion, may approve warranty payment on a non-defective item or non-warrantable work as a goodwill gesture. A warranty payment by Polaris is not an admission that a particular item or part is defective or that the claim was warrantable. Dealer acknowledges that the identity of consumers and all other information relating to warranty claims is confidential and agrees to maintain the confidentiality of this information. Dealer will take actions recommended by Polaris which may improve Dealer's service of Products or treatment of service customers, in order to further the goodwill and reputation of Products and the Trademarks.

g. Dealer Staff. Dealer will maintain a staff of dedicated personnel to sell and/or service Products sufficient to meet the anticipated demands of the market served by Dealer. Dealer's staff that sell and/or service Products will be certified by Polaris. To become certified, Dealer's employees must satisfactorily complete all certification training programs offered by Polaris in that area, including, but not limited to, Polaris' online training, and must also pass any certification tests offered at the conclusion of such programs. All sales and service personnel

must be re-certified annually. Dealer will be responsible for all out-of-pocket expenses incurred by such personnel, including transportation and lodging.

h. Tools and Equipment. Dealer will maintain, at all times, adequate tools, service equipment, Polaris manuals and service publications, to meet Dealer's service, maintenance and warranty obligations in accordance with the Polaris Dealer Policy Manual. This obligation includes, without limitation, acceptance of new tools, service equipment, manuals and publications uniquely designed to meet the service needs for newly introduced product.

i. Advertising. Dealer will conduct reasonable amounts of local advertising (in newspapers, on radio, or in other appropriate media) and spend reasonable sums on local promotional activities relating to Products. Any advertising copy or other materials displaying Trademarks must be approved in advance in writing by Polaris. Dealer's advertising must comply with all safety-related advertising regulations and guidelines prescribed by Polaris and/or state and federal law, including, but not limited to, age recommendations and warnings. Without limiting the foregoing, Dealer agrees that Dealer's advertising, including the on-line posting of photographs or videos, will not show any use of a Product that conflicts with the instructions, warnings, or guidelines provided by Polaris for such Product.

j. Polaris Meetings. Dealer will attend all national Polaris sales meetings and seminars, and all regional and district Product, sales and management training seminars. Dealer will be responsible for its out-of-pocket expenses, including transportation and lodging. In addition to violating this Agreement, failure to attend dealer meetings constitutes a waiver of any dealer show specials.

k. Computer. Dealer will maintain at all times a personal computer with sufficient capability to operate software as Polaris may designate, and an Internet service provider with high speed access to permit access to Polaris' electronic Dealer Information System and any other Polaris' designated systems. Dealer will submit orders and order changes for Products, warranty registrations, claims for warranty reimbursement, inventory information, traffic and retail sales information, and/or such other information as Polaris may designate, through the Polaris designated systems. Providing this data to Polaris through its designated systems in the timeframe designated by Polaris is a material requirement of this Agreement. Dealer agrees that Polaris may make this information, including inventory information (but excluding specific retail price or customer identification information) available to other Polaris dealers in the form of reports or product availability information.

l. Customer Relations. Dealer will conduct its sales and service in a manner to develop and maintain good customer relations for the Dealer and Polaris. Dealer will not make any false, misleading or disparaging comments to any customer or other person about Polaris, its products, or its personnel, or any other Polaris dealer.

m. Compliance with Law. Dealer will comply with all laws and regulations applicable to Dealer's business of selling and servicing Products, including tax laws, and maintain all necessary licenses and permits.

n. Restrictions on Sales of Products.

- (i) Dealer will sell Products only to customers in the United States for personal use or primary business use (not for resale). Dealer may not, directly or indirectly, sell Products to any person or business engaged in the business of reselling, brokering or wholesaling such Products. Dealer may sell Products to Polaris dealers in the United States who are authorized by Polaris to sell such Products. Dealer may also sell parts to any customer, dealer or repair shop for repair use only and not for resale. Any breach of this Section 5(n)(i) will be a material breach of this Agreement and will cause irreparable harm to Polaris, and injunctive relief against a violation would be appropriate and reasonable.
- (ii) Dealer will not directly or indirectly sell, market, distribute, license the use of, or maintain any Products, whether new and unused, current or non-current, outside of the United States, or directly or indirectly advertise Products outside of the United States or distribute or lease the use of any Products to any person, firm or corporation who intends to distribute or sell such Products outside of the United States.
- (iii) Subject to Section 5(n)(i) and (ii), Dealer may sell Products to persons who are not permanently residents in the United States and whose domicile address, as shown on the warranty registration, is outside of the United States, if and only if such customer has a second residence in the United States and the customer certifies in writing in a form acceptable to Polaris that the Products are or will be used and stored exclusively in the United States. In any other situation not covered by this Section 5(n)(iii), Dealer must request Polaris' written approval to sell Products to any person that is not a permanent resident of the United States. Polaris may, however, refuse any such request in its sole and absolute discretion.
- (iv) If any representation or information provided by Dealer in connection with this Section 5(n) is untrue, misleading or fraudulent, including without limitation, the customer's address, other contact information, or the intended use for the Products, Dealer hereby acknowledges and agrees that: (1) Dealer will be entirely responsible for all damages and losses thereby incurred by the customer involved and/or by Polaris, its affiliates and/or any third party including, without limitation, those arising from situations such as a safety recall notification sent to a wrong address based upon Dealer's information; and (2) such failure to comply with this Section 5(n) is a material breach of this Agreement.
- (v) If a Dealer violates this Section 5(n), Polaris reserves the right to take any one or more of the following actions: (1) debit an amount equivalent to 15% of dealer invoice for each of the involved Product(s) on Dealer's parts account, (2) debit all promotional rebates, incentives and sales programs for the Products involved, (3) limit future allocations of Product; (4) place the Dealer on probation, and/or (5) terminate this Agreement.

o. Returned Crates. Dealer will deliver to Polaris' designated carrier all returnable crates in a clean condition and free from any hazardous substances. Dealer will reimburse Polaris for any costs incurred by Polaris, or its affiliates, in connection with cleaning and/or repairing of any containers returned by Dealer.

p. Records. Dealer will maintain the following records for a minimum of five (5) years: (i) all sales of Products, parts, or service; (ii) all warranty records, including warranty registration forms; (iii) profit and loss statements; (iv) all tax returns of Dealer's dealership; (v) all records relating to rebates and promotional programs; and (vi) all Polaris Pre-Delivery Inspection Forms for all wholegoods Products and attachments sold and delivered to anyone other than another authorized Polaris dealer. Dealer will make such records available to Polaris upon Polaris' request.

q. Master Service Dealer. Dealer will maintain Master Service Dealer status for Products that Dealer sells in accordance with Polaris' Master Service Dealer Policy in the Dealer Manual.

r. Polaris Policies. Dealer will comply with all Polaris policies then in effect, including but not limited to Polaris' policies relating to warranty registration.

s. The Internet. Dealer may only sell Products over the internet if permitted by the current Internet Policy set forth in the Dealer Manual.

t. General Obligations. Dealer agrees to perform all other duties and obligations expressed in this Agreement.

SECTION 6: SAFETY

a. Cooperate With Recalls. Dealer will cooperate with and perform all Product recalls and all Product modification programs, including without limitation technical service bulletins:

b. Inspect Products/Labels. Dealer will inspect all Products upon arrival, and inspect at reasonable intervals all Products in stock, to ensure all mandatory warning labels and hangtags (including those warning labels and handtags necessary to comply with any applicable language requirements), as Polaris may require, are affixed to each Product, that each label is in the appropriate place on the Product, and that the owner's manual and safety DVD, where applicable, is contained within the Product. If a mandatory warning label, owner's manual, safety DVD, or hangtag is misplaced or missing, Dealer will correctly affix such a warning label or hangtag in the appropriate place on the Product and ensure that the owner's manual and safety DVD is contained within the Product. Any discretionary labels Dealer wishes to affix to a Product must be placed so as not to detract from any mandatory warning label.

c. Disseminate and Display Safety Materials. Dealer will disseminate and/or display, as directed, all point-of-purchase Product safety materials supplied by Polaris, including, but not limited to, literature, videos, and posters:

d. Advertisements. Dealer will include all safety messages, as Polaris may from time to time require, in all advertisements and promotional materials.

e. No Inconsistent Safety Representations. Dealer will not make any representations to actual or prospective Product purchasers that are inconsistent with safety-related requirements, warnings or instructions specified by Polaris. Dealer will comply with all age recommendations prescribed by Polaris and state or federal law for the sale of new or used Products, and will provide Dealer's staff with adequate training to ensure compliance with this requirement.

f. ATV Safety Training Program. If Dealer sells Polaris ATVs, in addition to the other duties described in this Section 6, Dealer must inform any consumer purchasing an ATV of the ATV Safety Training offered by the Specialty Vehicle Industry Association ("SVIA"). Dealer should encourage consumers and their families to take this training and should not do or say anything to discount the value of this training. At the time of sale, Dealer must provide consumers with the SVIA Training Fact Sheet that prints out automatically with the Polaris warranty registration form, and that is available on the Dealer Extranet under ATV Safety Training. Furthermore, because Polaris provides customer information from its warranty registrations to the SVIA so the SVIA can contact consumers to schedule safety training, Dealer must submit all ATV warranty registrations on a timely basis to ensure that consumers receive timely information on safety training. Polaris will also send Dealer an annual report on the injury statistics associated with riding ATVs. This information should be made available to all of Dealer's ATV purchasers.

g. Recreational Off Highway Vehicle Safety Training Program. If Dealer sells Polaris Recreational Off Highway Vehicles (including Ranger, RZR and Sportsman Ace vehicles) in addition to the other duties described in this Section 6, Dealer must inform any consumer purchasing an ROV of the ROV Driver Safety Training offered by the Recreational Off-Highway Vehicle Association ("ROHVA"). Dealer should encourage consumers and their families to take this training and should not do or say anything to discount the value of this training.

h. Off-Road Use Only. Dealer acknowledges that ATV and Recreational Off Road Vehicle Products are to be used for off-road purposes only. Dealer will not make any inconsistent statements to any purchaser about the permitted uses of these Products, and will not assist any purchaser, directly or indirectly, in the use of such Products on public roads. Registering the vehicle for on-road use or offering an "on-road kit" of accessories constitutes a direct violation of this requirement regardless of state or local laws permitting such registration or use.

i. Additional Safety Requirements. In addition to the other safety requirements set forth in this Section 6, Dealer will provide purchasers with all other safety and other information that Polaris from time to time requires, and take all other steps Polaris from time to time requires with respect to safety matters.

SECTION 7: WARRANTY

Polaris' warranty on Products will be as set forth in the current Polaris Warranty Program. SUCH WARRANTIES WILL BE THE ONLY WARRANTIES MADE OR DEEMED TO BE MADE TO ANY PERSON BY POLARIS AND THE REMEDIES SET FORTH IN SUCH WARRANTIES WILL BE THE ONLY REMEDIES AVAILABLE TO ANY PERSON. SUCH

WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Neither Dealer, nor any other person, will have authority to bind Polaris to any other representation or warranty. Dealer will indemnify Polaris for all losses, damages, liabilities, reasonable attorneys' fees, or expenses which Polaris may incur as a result of, or in connection with, any claim under such warranty by reason of any act or omission or different warranty given by Dealer, Dealer's employees or agents. Polaris neither assumes nor authorizes anyone to assume for it any other obligation or liability in connection with its Products, and Polaris' maximum liability under the Polaris Warranty Program is to repair or replace the Products.

SECTION 8: TRADEMARKS

a. Authorized Use. Dealer may use the trademark "Polaris," "Victory", "Indian", "GEM", the Polaris star logo, Victory badge, and any other Polaris trademarks authorized by Polaris in writing, (collectively referred to as the "Trademarks") only in connection with promotion, advertising, selling, and servicing of the Products Dealer is authorized to sell under this Agreement, and for no other purpose. Dealer may not use the Trademarks in its corporate legal name or in any other form or manner that is not acceptable to Polaris. Polaris reserves the right to require the use of the Trademarks in a Dealer's d/b/a. Dealer may not use the Trademarks in connection with any products, including promotional items, t-shirts, stickers, etc. (whether or not for resale) that are not specifically authorized by Polaris. Dealer must receive prior written approval from Polaris before producing, displaying, publishing or distributing any materials with the Trademarks. Dealer may not register any domain name containing the Trademarks unless specifically authorized in writing by Polaris. If Dealer would like to utilize a domain name composed of or containing the Trademarks, Polaris must be listed as the registrant/owner of the domain name and such domain name may then be licensed back to Dealer for use if first approved in writing by Polaris. If Dealer, for any reason, stops being an authorized dealer of Products, Dealer must immediately cease all use of the Trademarks and domain names, remove all Polaris signs and assign to Polaris any and all rights and interest Dealer acquired in any of the Trademarks as a result of this Agreement. Dealer acknowledges that Dealer has no rights in any Trademarks or domain names containing the Trademarks and Polaris has no obligation to Dealer to take any enforcement action regarding unauthorized users of the Trademarks or domain names containing the Trademarks. Dealer agrees that any breach of this Section 8 would cause irreparable harm to Polaris, and that, in addition to any other remedies, injunctive relief would be appropriate and reasonable.

SECTION 9: CERTAIN REPORTS

Upon Polaris' request, Dealer will furnish Polaris with a detailed written inventory of Dealer's Products, complete sales and warranty information, financial statements, or any additional written reports or other documents, which Polaris believes will assist it in evaluating the market and/or Dealer's performance under this Agreement. Upon Polaris' request, and at least annually, Dealer will submit a written business plan for Dealer's operations. Such reports/plans will be in

a form specified by Polaris. Dealer agrees that any failure by Dealer to comply with this Section 9 is a material breach of this Agreement.

SECTION 10: POLARIS' OTHER DUTIES

Except as otherwise provided herein, Polaris' duties will be limited to: (i) providing parts catalogs, service manuals, current servicing information, and such service training as Polaris reasonably deems necessary to qualify Dealer's employees to service the Products (Polaris will determine the time, place, and frequency of such training); and (ii) conducting sales reviews with Dealer.

SECTION 11: RELATIONSHIP WITH POLARIS

For all purposes, Dealer is an independent business/contractor, and not an agent, employee, partner, joint venturer, or franchisee of Polaris. Dealer will have the sole right to determine the manner in which Dealer performs Dealer's duties under this Agreement, subject to no control by Polaris, except as otherwise expressly provided in this Agreement. No fiduciary obligations are created by this Agreement.

SECTION 12: CONFIDENTIAL INFORMATION

Polaris has communicated and will communicate valuable information to Dealer with respect to the Products and their sale, marketing and servicing, as well as promotional and advertising know-how and sales and merchandising information, which is of substantial value to Polaris' business. Dealer acknowledges that such information is confidential, and will maintain its confidentiality. Dealer will not use such information other than as necessary to perform its obligations under this Agreement or disclose it to any other party during, or after the termination and/or non-renewal of, this Agreement. Dealer will take all reasonable steps necessary to ensure that Dealer's employees, officers, agents, shareholders, or partners are aware of and understand their confidentiality obligations, maintain the confidentiality of such information, and not disclose it to any other party during or after the expiration, termination and/or non-renewal of this Agreement.

SECTION 13: RENEWAL, TERMINATION OR NON-RENEWAL

a. Term. Unless otherwise renewed under Section 13(b), this Agreement will automatically expire at the end of the Term.

b. Renewal/Non-renewal. If Polaris decides to renew this Agreement, it will do so by giving Dealer written notice, prior to the end of the Term, of its intention to renew this Agreement. Dealer must consent to such renewal in writing by executing a current dealer agreement within thirty (30) days thereafter. Polaris' offer to renew will occur only in the form of a letter signed by a duly authorized representative of Polaris expressly stating that it is an offer to renew, and inviting Dealer to accept such offer. Accordingly, neither requests for sales

projections, requests for orders, taking or acceptance of orders, invitations to conventions or meetings, nor any other act or oral communication whatsoever, will constitute an offer to renew this Agreement. Nothing will prohibit Polaris from offering to renew upon terms and conditions different from, or additional to, the terms and conditions of this Agreement. If for any reason this Agreement is not renewed in writing, this Agreement will automatically expire by its terms as noted in Section 13(a). If the parties continue to do business together after the end of the Term, their relationship will be governed by the same terms set forth in this Agreement on a day-to-day basis, until either party gives thirty (30) days written notice of termination or the parties otherwise renew this Agreement in writing. In such event, either party has the absolute right to terminate this Agreement upon thirty (30) days notice or upon such longer period if required by applicable state law. If Polaris decides not to renew this Agreement, Polaris will give Dealer written notice of its intention not to renew, but such written notice is not a condition precedent to the automatic expiration of this Agreement.

c. Mutual Termination. This Agreement may be terminated at any time by mutual agreement of the parties.

d. Termination by Dealer. This Agreement may be terminated by Dealer at any time by giving Polaris sixty (60) days' written notice of such termination.

e. Termination by Polaris.

(i) Polaris has the absolute right, in its sole discretion, to terminate this Agreement on written notice ten (10) days prior to the effective date of the termination based upon the grounds set forth in Section 13(e). No advance notice, however, is required for violations as to Sections 13(e)(ii)(a) or (e) and, in such cases, termination is immediate upon receipt of written notice from Polaris.

(ii) Dealer acknowledges and agrees that each of the following grounds constitute a substantial and material failure to comply with this Agreement and good cause for terminating this Agreement:

(a) Dealer becomes insolvent, or a petition in bankruptcy is filed, or Dealer makes a general assignment for the benefit of creditors, or a receiver or trustee is appointed for any significant portion of Dealer's property, or a petition for dissolution or for an assignment or for the reorganization of its affairs is filed; or

(b) There is any material adverse change in Dealer's financial position, which Polaris believes may impair its prospect of receiving timely and full payment, or may increase Polaris' own financial risk; or

(c) There is, without Polaris' prior written approval, any change in Dealer's executive management, ownership, or control or any change to the location of the Authorized Retail Location; or

- (d) Dealer refuses to furnish Polaris with information it is required to provide under this Agreement, to timely furnish sales, service, or financial information upon demand, or to permit Polaris to examine or audit Dealer's accounts and records; or
- (e) There is any finding or charge by a governmental agency, or court, or a settlement, or plea, that Dealer or any of Dealer's employees or agents, or a predecessor of Dealer owned or controlled by the same person, committed a misdemeanor, or unfair or deceptive business practice, or a felony, which, in Polaris' sole business judgment, may affect the reputation or interests of Polaris in a materially adverse manner; or
- (f) Dealer submits to Polaris any false application, claim or report, including false warranty claims, orders for Products, warranty registrations, rebate claims, reports of delivery, registrations, or transfer of Products; or
- (g) Dealer fails to maintain the minimum capital requirements in accordance with Section 3(c) above, including without limitation, a flooring account or line of credit; or
- (h) Dealer fails to timely pay Dealer's obligations to Polaris; or
- (i) Dealer fails to conduct sales and service operations for seven (7) consecutive days; or
- (j) Dealer enters into any agreement, combination, understanding or contract, oral or written, with any other party with the purpose of fixing prices of Products; or
- (k) Dealer engages in conduct which materially impairs the goodwill associated with the Trademarks, including without limitation, making disparaging or defamatory remarks about the Products; or
- (l) Dealer breaches any provision of Section 6; or
- (m) Dealer materially breaches any provision of this Agreement, except as provided for in Section 13(f). No provision of this Agreement that states that a particular breach is material is intended to imply that other breaches are not material.

f. Termination by Polaris After Failure to Cure. If Polaris, in its sole business judgment, determines that the Authorized Retail Location fails to meet Polaris' standards, or that Dealer has failed to adequately perform Dealer's sales or service responsibilities, Polaris will notify Dealer of the nature of Dealer's failure and of the period of time (which will not be less than sixty (60) days) during which Dealer will have the opportunity to correct such failure. If Dealer does not correct such failure by the expiration of the specified period, then

Polaris may terminate this Agreement by giving Dealer at least thirty (30) days written notice. The notice and cure provisions set forth in this Section 13(f) do not apply to any of the reasons for termination set forth in Section 13(e).

g. Cancellation of Orders. Upon mailing of a written notice of termination or non-renewal or after the date of the expiration of this Agreement, Polaris will have the right to cancel all pending Orders, whether previously accepted by Polaris or not. Notwithstanding the foregoing, if Polaris 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 other sales.

h. Application for Approval of Prospective Purchaser of Dealer's Business Upon or After Notice of Non-Renewal or Notice of Termination. Dealer may request, in writing, that Polaris furnish applications to prospective purchasers identified by Dealer upon or after receipt of notice of non-renewal or termination. Polaris will consider the application of such person or entity as a possible transferee of Dealer, and if Polaris should approve the application of such person or entity in the ordinary course of business and prior to the effective date of termination or non-renewal, Polaris may approve the transfer of this Agreement, and, in conjunction with such transfer, withdraw notice of termination or non-renewal. Polaris will not be obligated to consider or approve any application that it would not approve without regard to the pending notice of termination or non-renewal. Polaris reserves the right to disapprove any such application. Because the withdrawal of the notice of termination is gratuitous by Polaris and for the benefit of Dealer, Dealer agrees that Polaris may place reasonable conditions upon its approval of the prospective purchaser. The obligation of Polaris to consider the application of prospective purchasers will cease upon the effective date of termination or non-renewal. Under no circumstances will Polaris be required to expedite the processing of any application of a prospective purchaser to delay the effective termination or non-renewal pending approval or other action.

i. Duties upon Termination. Upon termination or non-renewal of this Agreement by either party for any reason, Dealer will:

- (i) Immediately pay Polaris all payments that are due. Dealer and Dealer's guarantors will also remain obligated under any agreements between Dealer, or them, and Polaris or a financing institution.
- (ii) Promptly return to Polaris, at Dealer's expense, all Polaris service or other manuals and promotional and advertising materials (including, but not limited to, indoor and outdoor signs and logos) provided by Polaris.
- (iii) Assign and transfer to Polaris, or its designee, within thirty (30) days of termination or non-renewal, such unfilled customer orders and contracts, together with any advance payments thereon, for the purchase of Products from Dealer, as Polaris, or such designee, elects to accept. Polaris will have no obligation to, but may, at its sole discretion, reimburse Dealer for unusual out-of-pocket costs in procuring such customer orders.

j. Polaris' Right of First Refusal to Buy Certain Assets. Upon termination or non-renewal of this Agreement, Polaris will have no obligation, but will have a first option, to repurchase any inventory, equipment, furnishings, special tools or any signage acquired by Dealer. Upon termination or non-renewal, and subject to the provisions of this Agreement (including Sections 5(o) and 8), Dealer may dispose of Dealer's inventory, equipment, furnishings and special tools in any manner Dealer deems appropriate.

k. Repurchase of Inventory: Subject to Section 13(j) and unless state law expressly provides otherwise, upon termination or non-renewal of this Agreement by either Dealer or Polaris, returns of any inventory, equipment, furnishings, special tools or any signage acquired by Dealer will be subject to the following guidelines:

- (i) Within thirty (30) days after request by Polaris, but in no event later than thirty (30) days after the effective date of termination or non-renewal, Dealer will provide to Polaris an itemized list of all items it seeks to return for repurchase or Dealer will be deemed to have waived its rights to return the item.
- (ii) The inventory list must be submitted electronically to Dealer Development, in a Microsoft Excel spreadsheet, a text file (.txt), or a comma separated value file (.csv), and must contain both the complete part number and quantity of each item Dealer seeks to return.
- (iii) If the inventory list provided is not submitted as provided in Section 13(k)(ii), Polaris may have the list translated into the correct format and will charge the Dealer the greater of the actual costs incurred to transfer the information or \$500.00. Polaris, however, cannot and does not guarantee the accuracy of the resulting transferred lists and will not be held responsible for any delays caused by the incorrect submission.
- (iv) Polaris will not accept the return of inventory prior to the effective date of termination and prior to issuance of a Return Merchandise Authorization (RMA) or other written authorization for return. Polaris reserves the right to reject any inventory that does not meet the current RMA Policy. Unless Polaris agrees otherwise, Dealer will be responsible for freight on all returns.
- (v) Polaris will have up to ninety (90) days from return of the inventory to Polaris to process the returned items.

SECTION 14: LIMITATION OF REMEDIES

a. No Damages From Termination or Non-renewal. No party terminating or failing to renew this Agreement in accordance with its terms will by reason of such termination or failure to renew be liable to the other for compensation, reimbursement, or damages of any kind relating to such termination or non-renewal, whether for expenditures, investments, losses, lost profits, or commitments in connection with the business or goodwill of the other party, or otherwise.

b. Exclusive Remedies. Unless otherwise expressed in Section 13, Polaris' and Dealer's exclusive remedy for any breach by the other party will be to request that such breach be cured, if possible, and, if that does not occur within sixty (60) days thereafter, to terminate this Agreement, and/or, when appropriate, pursue arbitration under Section 19.

c. No Liability for Damages. Neither Dealer nor Polaris will have any liability to each other for money damages for any breach of this Agreement, other than for monies due hereunder, and neither party will have any liability to the other for lost profits, loss of good will, or other incidental or consequential damages. The foregoing limitation on liability does not apply to the indemnity provisions of Sections 7, 17(a) and 20(j), and does not limit Polaris' ability to recover any money damages it sustains as the result of a breach of this Agreement in any legal proceeding where Dealer sues for damages outside of this Agreement.

d. Time Limit for Filing any Action. Except for claims brought under Sections 17(a), 18 and 20(j), no action regardless of form, or request for arbitration, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action or claim has arisen, or in the case of a claim for nonpayment, more than one (1) year from the date payment was due.

SECTION 15: FORCE MAJEURE AND SUSPENSION OF PERFORMANCE FOR BREACH

Polaris will not be liable to any person for any delay in delivery or for non-delivery caused, in whole or in part, by the occurrence of any contingency beyond the control of Polaris or for any decision by Polaris in its sole business judgment to cease the manufacture of any Product. Additionally, if Dealer is at any time in material breach of this Agreement or with an agreement with Dealer's financial institution, Polaris may suspend its own performance under this Agreement until such breach is cured, in addition to exercising any other rights and remedies Polaris may have with respect to such breach. Furthermore, if Dealer is in material breach of this Agreement, or has failed to make timely payment of any debt owed to Polaris, in addition to the remedies set forth in Section 13, Dealer agrees that Polaris may setoff Dealer's outstanding debt against any payments owed to Dealer, and that Polaris may withhold any payments due to Dealer until Dealer provides adequate proof of compliance with the terms of the Agreement.

SECTION 16: NOTICES

Except where provided otherwise, all notices required or permitted by this Agreement will be addressed to the recipient in writing at the addresses stated on the cover page to this Agreement and will be either hand delivered, sent by facsimile, sent by mail correct postage prepaid whether by first-class, certified, registered mail, or sent by any courier with a shipping and delivery tracking system (for example, Federal Express or UPS). Notices and invoices that Polaris places on the Polaris web site are deemed to be proper notice under this Agreement for all purposes, and Dealer agrees to check for any such notices or invoices at least once each working day. Notice is effective upon sending.

SECTION 17: INDEMNIFICATION; INSURANCE

a. Indemnification. Dealer will indemnify and hold Polaris and its affiliates, and their respective officers, directors and employees, harmless from and against any and all claims, losses, damages, liens, judgments, fines, civil penalties, costs and expenses (including without limitation, attorneys' fees and litigation expenses), which Polaris may suffer or incur directly or indirectly arising out of or related (in whole or in part) to any breach of or failure to fully comply with obligations under this Agreement by Dealer, or any act, omission or negligence of Dealer, Dealer's employees or agents, including, without limitation, those related to the sale, repairs, leases, rentals, storage loans and demonstration rides of Products. Polaris will have the right to defend at its own expense any third party claims, or to tender the defense of such claims to Dealer for defense at Dealer's expense. If Polaris tenders the defense to Dealer, then Polaris will have the right to approve the settlement of any claim and participate in the defense with counsel of its choice, and in the event of an actual or potential conflict of interest between Polaris and Dealer, Polaris will be entitled to separate defense counsel at Dealer's expense (which counsel will be chosen by Polaris). If Dealer denies a tender and the denial (in whole or part) is later determined to be a breach of Dealer's obligations under this Section, Polaris is entitled to recover its reasonable attorney fees and costs incurred as a result of the denial and in pursuing its claim against Dealer for breach of its obligations. This Section 17(a) will survive termination or non-renewal of this Agreement by any party for any reason.

b. Insurance Requirements.

i. Liability Insurance. Dealer, at its own cost and expense, will obtain and maintain liability insurance in the form of a Garage Policy (or equivalent coverage under a Business Auto and Commercial General Liability Policy), including coverage for "insured contract," covering claims arising from Dealer's operations, including the sale and service of Products, and the use, ownership, operation, maintenance, including loading and unloading, and demonstration, of automobiles, motorcycles, or mobile equipment including off-road vehicles and snowmobiles, with Limits of Liability Insurance of no less than \$2,000,000 per occurrence/aggregate (which may be met with combination of primary and an Umbrella or Excess Liability Policy). Dealer will cause such policies to be endorsed to name Polaris Industries Inc. and its affiliates as Additional Insureds on any applicable Garage Policy (or equivalent Business Auto and Commercial General Liability Policy) and any applicable Excess or Umbrella Policy.

ii. Property Insurance. Dealer will obtain and maintain property insurance protecting Dealer's property (including inventory) on a special causes of loss (or equivalent) basis and for the full replacement value thereof, and such policy will name Polaris Industries Inc., and its affiliates as Lenders' Loss Payee as their interests may appear.

iii. Worker's Compensation Insurance. Dealer will obtain and maintain Workers Compensation (or equivalent) in accordance with all applicable state or local laws.

iv. Waiver of Subrogation. To the extent not prohibited by law or regulation, Dealer will cause all policies referenced in this Section 17(b) to be endorsed with a waiver of subrogation favoring Polaris Industries Inc., and its affiliates.

v. Notice of Cancellation. Dealer will provide Polaris with at least thirty (30) days notice in the event of cancellation or decrease in coverage.

vi. Certificate of Insurance. Dealer will provide Polaris with a certificate of insurance evidencing the required coverages herein no later than the first day of the term of this Agreement.

SECTION 18: AWARD OF ATTORNEYS' FEES TO POLARIS

In any action or proceeding relating to or arising out of this Agreement brought by either party, whether such action or proceeding be founded upon contract, tort, statute, regulation, or otherwise, Polaris will be entitled to recover from Dealer its costs and expenses (including, but not limited to, reasonable attorneys' fees) of prosecuting and/or defending any such action or proceeding in which Polaris has substantially prevailed. For purposes of this Agreement, Polaris will be considered to have "substantially prevailed" in such action or proceeding if: (1) its net recovery therein exceeds Dealer's recovery in the same action or proceeding; (2) in an action or proceeding in which Polaris is the defendant and has asserted no counterclaim against Dealer, if Dealer recovers no damages (which for purposes of this Section 18 does not include costs or attorneys' fees, even if the same are awarded by statute or other rule of law) from Polaris and fails to obtain any equitable relief against Polaris; or (3) Polaris successfully moves to enforce the arbitration clause set forth in Section 19. This Section 18 will survive termination or non-renewal of this Agreement by either party for any reason. Notwithstanding the above, this Section 18 does not apply to arbitration actions or proceedings brought or filed under Section 19, provided Dealer is not seeking to recover damages and/or attorney's fees outside of this Agreement. Polaris may, at its discretion, seek to recover any costs and expenses it would be entitled to recover under this Section 18 in any subsequent or related arbitration.

SECTION 19: ARBITRATION

a. Place of Arbitration and Applicable Rules. All disputes, controversies, and claims arising out of, or in connection with, the execution, interpretation, performance, nonperformance, or breach of this Agreement (including without limitation the validity, scope, enforceability, and voidability under any statute, regulation, ordinance, or ruling), or termination or non-renewal of this Agreement, or of any provision of this Agreement (including without limitation this arbitration provision, the arbitrability of any issue, and the jurisdiction of the arbitrator), or arising out of or in connection with any claimed duty, right, or remedy (whether arising under this Agreement or any statute, regulation, ordinance, or other rule of law or otherwise) relating to any of the foregoing, will be solely and finally settled by arbitration in Minneapolis, Minnesota, in accordance with the United States Arbitration Act (9 U.S.C. § 1 et. seq.); and the rules of the American Arbitration Association ("AAA") relating to commercial arbitration. There will be one arbitrator who will be a lawyer with at least five years of significant experience related to business law. The arbitration, including without limitation all notices, discovery and exhibits, hearings, deposition, pleadings and other papers, and all proceedings regardless of form, will be treated as confidential by the parties, the arbitrator, and the AAA. For the avoidance of doubt, this confidentiality requirement will supersede any rules of the AAA. The arbitrator will have

the right to award, or include in any award, the specific performance of this Agreement; provided, that the arbitrator will not have the right to issue any award, or include in any award, that relief which is more than could be awarded by a federal or state court located in the State of Minnesota. The arbitrator will have the right to hear and decide any and all issues or claims asserted in the arbitration through summary judgment and/or summary disposition motions without the requirement of any evidentiary hearing. TO BE EFFECTIVE, ANY CLAIM FOR ARBITRATION UNDER THIS SECTION 19(A) MUST BE FILED WITH THE AAA WITH A COPY SENT TO POLARIS. Notwithstanding the above, Polaris will have the right to go to any court to prevent or seek the remedy of specific performance for any material breach of this Agreement by Dealer if Polaris believes such breach relates to Sections 1(a), 6, 7, 8, 12 or 20(a) or to prevent any fraud or misrepresentation to any consumer. Dealer agrees that in such a case, Polaris will be irreparably harmed and that Polaris would be entitled, without bond, to the entry of temporary restraining order or injunction relating thereto.

b. Waiver. The arbitrator's decision or award will be fully and finally binding on the parties and the parties waive all respective rights to further appeal, or redress in any other forum, matters decided by such arbitrator, except solely to obtain execution of the decision and award rendered by the arbitrator, and except as permitted by 9 U.S.C. sections 10 and 11. The parties agree that judgment upon the award of the arbitrator may be entered in any court having jurisdiction over the losing party or its assets.

c. Facilitate Arbitration. The parties agree to facilitate arbitration by:

- (i) promptly making available to one another and to the arbitrator for inspection and copying all documents, books, and records required by the arbitrator to be made available; and
- (ii) unless otherwise agreed in writing, observing strictly the time periods set forth below:
 - (a) The arbitrator must be appointed within thirty (30) days after the filing of the Demand for Arbitration; and
 - (b) The hearing in the arbitration must take place within one hundred twenty (120) days after the AAA notifies the parties that the arbitrator has been appointed.

d. Time for Filing. Any arbitration commenced under this Agreement must be done so within the time period required by law, or within the time period set forth in Section 14(d), whichever period is shorter. Both parties covenant not to commence arbitration, or otherwise bring suit, after the applicable time period have run.

e. Non-Arbitrable Issues. If either party asserts, in any forum, a claim, counterclaim, or defense, the subject matter of which, under statute or current judicial decision, is non-arbitrable for public policy reasons, the parties agree that any legal proceedings relating to such non-arbitrable matters will be stayed pending the decision and award of the arbitrator with respect to matters which are subject to arbitration. Any such non-arbitrable cause of action arising between

the parties will be brought only in a court having jurisdiction and venue in Minneapolis, Minnesota.

f. Class Action Waiver. ANY ARBITRATION UNDER THIS AGREEMENT WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION. BOTH PARTIES WAIVE THE RIGHT TO HAVE ALL ARBITRABLE ISSUES ARBITRATED OR LITIGATED AS A CLASS ACTION OR A PRIVATE ATTORNEY GENERAL ACTION. THE ARBITRATOR WILL BE AUTHORIZED AND EMPOWERED TO CONDUCT ONLY AN INDIVIDUAL (NON-CLASS) ARBITRATION UNLESS BOTH DEALER AND POLARIS AGREE TO DO SO IN WRITING FOLLOWING THE INITIATION OF THE ARBITRATION.

g. Survival and Enforceability. This Section 19 will survive any termination or non-renewal, and expiration of this Agreement and will be enforced to the fullest extent allowable under law.

SECTION 20: MISCELLANEOUS

a. Assignment. Dealer will not assign, transfer, or sell any part of Dealer's rights or obligations under this Agreement, or the ownership of Dealer's stock or substantially all of Dealer's assets without the prior written consent of Polaris (which such consent Polaris may grant or withhold in its sole discretion). Any attempt to do so without Polaris' prior written consent, is void. Polaris may assign any rights or obligations under this Agreement and will provide Dealer with written notice of such assignment or delegation.

b. Successor Owner/Manager. Any designation of Dealer's successor owner or manager in the event of the death or disability of any individual who is in Dealer's executive management, ownership or control, will be in writing. No such designation will be valid and in effect without Polaris' written approval and Polaris reserves the right not to approve any such designation in its sole discretion pursuant to its business judgment.

c. Sale of Dealer Assets or Shares. If Dealer desires to seek written consent from Polaris to assign, transfer or sell all, or any part of, Dealer's rights or obligations under this Agreement, Dealer must have submitted to Polaris all information required by the Dealer Application. Dealer acknowledges that Polaris cannot and will not begin to review the applicant's qualifications until all such information is submitted and dealer has signed Polaris' then current form authorizing Polaris to disclose information to the buyer. The applicant must meet Polaris' current standards for new dealers to be considered. If Dealer wishes to change ownership, Dealer must submit a proposal to Polaris in writing, using the forms supplied by Polaris, at least sixty (60) days prior to the effective date of such change. Polaris has the right, in its sole discretion to approve or disapprove such a change.

d. Right of First Refusal. If Dealer submits a proposal for a change of ownership, Polaris will have a right of first refusal to purchase the dealership assets related to Polaris regardless of

whether the proposed buyer is qualified to be a dealer. Polaris will have a reasonable opportunity to inspect the assets, including real estate, before making its decision.

e. No Third-Party Rights. This Agreement is not enforceable by any third parties and is not intended to convey any rights or benefits to anyone who is not a party to this Agreement.

f. Other Programs. From time to time, Polaris may offer Dealer programs, such as co-op programs, marketing programs, web-site assistance programs, or other such programs. Polaris has no obligation to offer any such programs, and any program may be added, deleted, or modified at any time in Polaris' sole discretion.

g. Loans, Leases, Rentals or Demonstrators. If Dealer loans, leases, rents or supplies demonstrator Products to any person or entity, Dealer does so as an independent business and at Dealer's own risk and without any liability to Polaris. Dealer agrees to give written notice to such person or entity that any such loan, lease, rental or demonstrator is provided by Dealer and not by Polaris and to require any such person or entity to execute a waiver and release, in a form approved by Polaris, that includes Polaris and its subsidiaries and affiliates as released parties.

h. Used Products. Under this Agreement, Dealer agrees and acknowledges that that the following Products are used when their use reaches the following: for ATVs, 20 miles or 10 hours; whichever occurs first; for Victory® Motorcycles, 300 miles; for Indian® Motorcycles, 300 miles; for Snowmobiles, 25 miles; and for RANGER®, 10 hours.

i. Modification Due to Other Laws or Regulations. If any provision of this Agreement contravenes or is prohibited by the laws or regulations of any state or other jurisdiction wherein this Agreement is to be performed (or, in the case of Virginia dealers, denies access to the procedures, forums, or remedies provided for by such laws or regulations), such provision will be deemed to be modified only to the extent necessary to conform to such laws or regulations, and all other terms and provisions of this Agreement will remain in full force and effect. The parties agree that this Section 20(i) will be interpreted as narrowly as lawfully allowed to carry out the full intent of the parties as expressed by this Agreement.

j. Compliance with Laws. Dealer is responsible for all local, state and federal or other applicable taxes and tax returns related to Dealer's business and will hold Polaris harmless from any related claims or demands made by any taxing authority.

k. Governing Law. The interpretation of this Agreement will be governed by the laws of the State of Minnesota without regard to its choice of law rules. This Section 20(k) will survive the termination or non-renewal of this Agreement by any party for any reason, and expiration of this Agreement. Nothing in this Agreement, however, will be construed as extending the statutory laws of Minnesota or of any particular state to this Agreement.

l. Integration Clause. Unless expressly incorporated herein, this Agreement cancels and supersedes all prior written and unwritten agreements and understandings between the parties pertaining to the matters covered in this Agreement. No obligations or agreements will be implied from any of the terms and provisions of this Agreement, since this Agreement is fully integrated. No representations or statements, other than those expressly set forth herein, were made and/or relied upon by the parties in entering into and performing this Agreement. No

modifications of this Agreement will be effective unless reduced to writing and signed by Dealer and an authorized representative of Polaris. No waiver of any particular breach will be deemed to apply to any other breach, whether before or after such waiver.

* * *

EXHIBIT 1—LOCAL MARKET OPPORTUNITY

Your LMO is available to you at your Dealer Website in the Business Plan. Log into www.polarisdealers.com. Click on Dealer Management, then go down to Dealer Business Plan V2. Click on Business Review and select a product line. Next, near the top on the left, click on LMO map.

GLOSSARY

Dealer: The corporation, partnership, proprietorship, limited liability corporation, or limited liability partnership that signs the Dealer Agreement with Polaris. This does not include shareholders, owners or the Dealer Operator.

Agreement: The Dealer Agreement, including the signed Agreement proper, the Standard Provisions, and all the related addenda, exhibits, schedules, policies and agreements expressly incorporated by the terms of the Agreement.

Dealer Operator: The person designated by Dealer to provide personal services in carrying out the Dealer Agreement.

Line-Make: Each of the following Polaris wholegoods that are sold to Dealers for retail sale to consumers or businesses is a separate Line-Make: (i) Snowmobiles, (ii) All-Terrain Vehicles, (iii) Victory® Motorcycles, (iv) Indian® Motorcycles, (v) Global Electric Motorcars (GEM®), (vi) RANGER®, and (vii) Brutus™. Polaris may make other products in addition to these that are separate Line-Makes and are thus not part of this Agreement.

Products: Unless otherwise designated by Polaris, the line-make that Polaris designates by an "X" on page one (1) of this Agreement together with Polaris parts, accessories, oil and clothing related to the particular wholegoods so designated. For example, if Dealer executes this Agreement solely for snowmobiles for retail sale to consumers, Dealer is not authorized to purchase from Polaris other Products, such as all-terrain vehicles or related parts.

EXHIBIT B



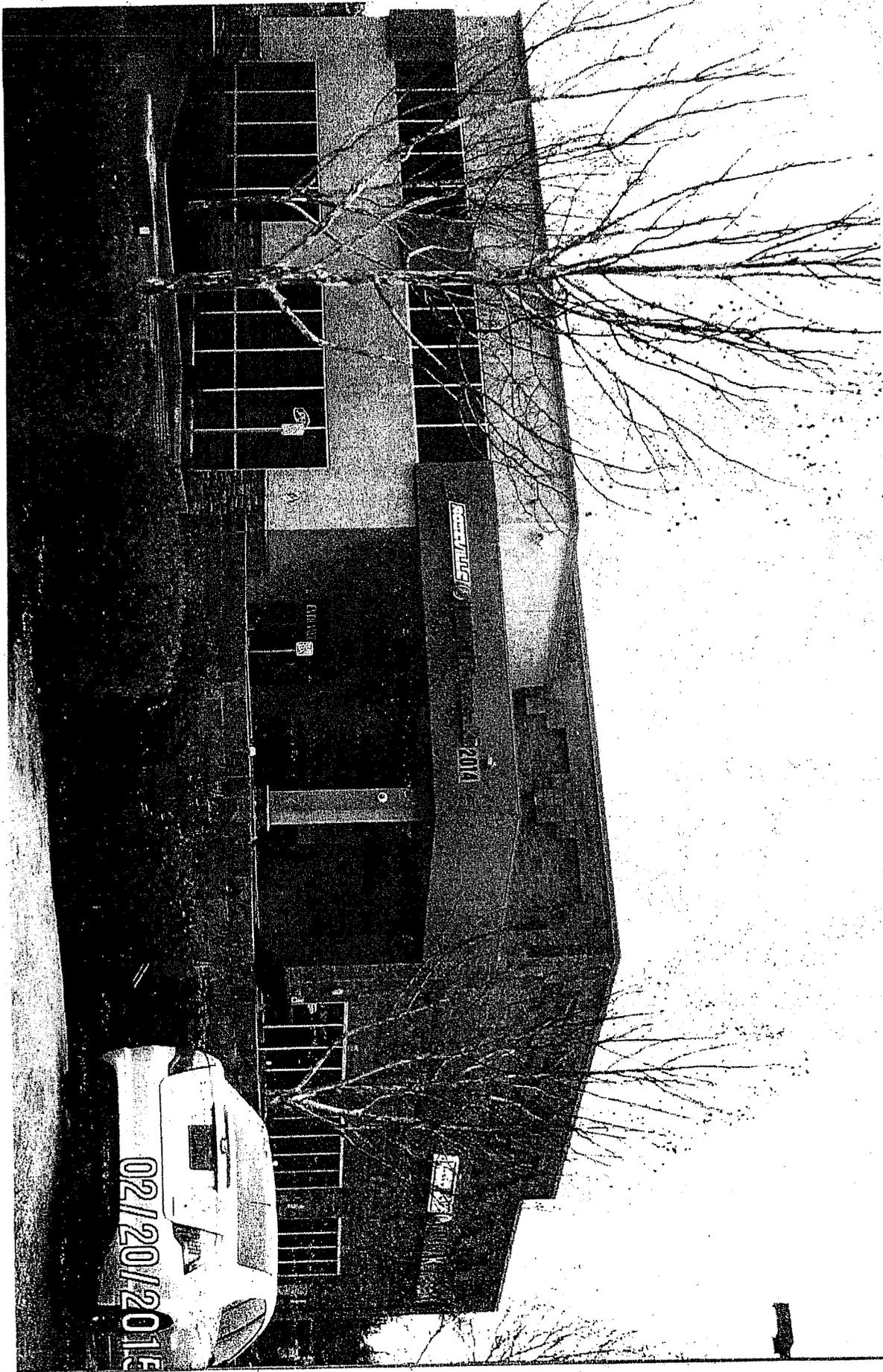
BREVILLE
ANNUAL CONFERENCE 2014

02/20/2014



HOTEL

02/20/2013



1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA)
4 NEW MOTOR VEHICLE BOARD)

5 I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not
6 a party to the within action; my business address is 8865 La Riviera Drive, Unit B, Sacramento,
California.

7 On this date, March 16, 2015, I served the foregoing documents described as:

8 **OPPOSITION TO MOTION TO DISMISS PROTEST**
9 **FOR LACK OF JURISDICTION; DECLARATION OF MICHAEL M. SIEVINGO**

10 I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons
11 noted below.

12 XX (By United States Mail) I placed the envelope for collection and mailing, following our firm's
13 ordinary business practices. I am familiar with our firm's practice for collecting and processing
14 correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a
sealed envelope with postage fully prepaid.

15 _____ (By overnight delivery) I enclosed the documents in an envelope or package provided by an
16 overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package
17 for collection and overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.

18 _____ (By messenger service) I served the documents by placing them in an envelope or package
19 addressed to the persons at the addresses below and providing them to a professional messenger
service for service.

20 _____ (By fax transmission) Based on agreement of the parties to accept service by fax transmission,
21 I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax
machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

22 _____ (By electronic service) Based on a court order or an agreement of the parties to accept service
23 by electronic transmission, I caused the documents to be sent to the persons at the electronic
notification addresses listed below.

24 _____ (By personal service) I served the documents by delivering the envelope, by hand, to the
25 persons listed below.

26 XX (By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served
27 through ATT Internet addressed to all parties appearing on the ATT Internet electronic service list for
the above-entitled case. The file transmission was reported as completed and a copy of the ATT
28 Internet pages will be maintained with the original documents in our office. Service will be deemed
effective as provided for in the Electronic Case Management Order. I have complied with California

1 Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is available for review and
2 copying at the request of the court or any party.

3 Executed on March 16, 2015, at Sacramento, California.

4 I declare under penalty of perjury under the laws of the State of California that the above is true and
5 correct and that I am a member of the State Bar of California.

6 
7 MICHAEL M. SIEVING

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9
10
11 **SERVICE LIST**

12
13 Gregory R. Oxford, Esq.
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