

VIA EMAIL

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Attorneys for Respondent
MITSUBISHI MOTORS NORTH AMERICA, INC.

New Motor Vehicle Board

Received
6-23-23

FILED

New Motor Vehicle Board

Date: 6-23-23

By: am

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

SORAYA, INC. DBA AUTO GALLERY
MITSUBISHI-MURRIETA,

Protestant,

v.

MITSUBISHI MOTORS NORTH AMERICA,
INC.,

Respondent.

Protest No. PR-2819-23

**RESPONDENT'S NOTICE OF MOTION
TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY ADJUDICATION**

PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum of Points and Authorities in Support of Respondent's Motion to Dismiss or, in the Alternative, for Summary Adjudication; the Declaration of Steven Smidlein, executed on June 22, 2023, together with the exhibits thereto; and upon all of the papers and proceedings herein, Respondent Mitsubishi Motors North America, Inc. ("MMNA") hereby moves the California New Motor Vehicle Board (the "Board") for an Order dismissing with prejudice or, in the alternative, summarily adjudicating in MMNA's favor all

RESPONDENT'S NOTICE OF MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY ADJUDICATION

1 claims set forth in the protest filed by Protestant, Soraya, Inc. d/b/a Auto Gallery Mitsubishi-Murrieta
2 (“Dealer”) under California Vehicle Code § 3060 (the “Protest”).

3 WHEREFORE, Respondent MMNA requests that the Board enter an Order dismissing the
4 Protest with prejudice or, in the alternative, summarily adjudicating all claims in the Protest in MMNA’s
5 favor, and for such other relief that the Board deems just and equitable.

6 DATED: June 23, 2023

8 SEYFARTH SHAW LLP

9
10 By: _____



11 Dean A. Martoccia
12 Brandon L. Bigelow (*pro hac vice*)
13 William F. Benson (*pro hac vice*)

14 Attorneys for Respondent
15 Mitsubishi Motors North America, Inc.

PROOF OF SERVICE

I am a resident of the Commonwealth of Massachusetts, over the age of eighteen years, and not a party to the within action. My business address is 2 Seaport Lane, Suite 1200, Boston, Massachusetts 02210. On June 23, 2023, I served the within document:

**RESPONDENT'S NOTICE OF MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION**

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.

☒ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

☐ electronically by using the Court's ECF/CM System.

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Soraya, Inc. d/b/a Auto Gallery
Mitsubishi-Murrieta

New Motor Vehicle Board (Via Email)
nmvb@nmvb.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence 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 June 23, 2023, at Boston, Massachusetts.



William F. Benson

VIA EMAIL

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INC.,

Respondent.

Protest No. PR-2819-23

**RESPONDENT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION**

I. INTRODUCTION

Mitsubishi Motors North America, Inc. ("MMNA") submits this memorandum in support of its motion to dismiss, or in the alternative, for summary adjudication of the protest filed by Protestant, Soraya, Inc. d/b/a Auto Gallery Mitsubishi-Murrieta ("Dealer") under California Vehicle Code § 3060

(the “Protest”), in which Dealer claims that MMNA did not have good cause to terminate Dealer’s franchise agreement (the “Dealer Agreement”).

The sole basis for MMNA’s exercise of its right to terminate the Dealer Agreement was Dealer’s failure to operate its dealership at its authorized location—26825 Auto Mall Parkway, Murrieta, California (the “Dealership Premises”)—since at least March 7, 2023. Dealer admits that it is closed but asserts it is “prepared to resume full operations” at the Dealership Premises. (Protest, ¶ 8). But nothing in the Dealer Agreement permitted Dealer to cease “full operations” in the first place, and in May 2023, Hamid Ghadiri, the 100% owner of Dealer, sold the Dealership Premises, so Dealer is unable to resume operations at the Dealership Premises in accordance with the express terms of the Dealer Agreement. Dealer thus can no longer satisfy its obligations under the Dealer Agreement and the Board cannot provide any relief intended to “assur[e] performance of binding contractual agreements between [Dealer] and [MMNA].” *See* Cal. Veh. Code § 3067(a); *Duarte & Witting, Inc. v. New Motor Veh. Bd.*, 104 Cal. App. 4th 626, 637, 641 (2002). Because a closed dealership with no facilities from which to operate is not transacting business, is not benefiting the public welfare or consumers, is not fulfilling its warranty obligations and is in material breach of its franchise agreement, good cause for termination exists as a matter of law and MMNA is entitled to terminate Dealer’s franchise. This protest should be dismissed with prejudice or summarily adjudicated in favor of MMNA.

II. FACTUAL BACKGROUND

A. The Parties’ Contractual Relationship

MMNA markets and distributes new motor vehicles and other related products in the United States to independently owned and operated authorized dealers, who in turn sell or lease vehicles to retail customers and perform repairs and service on Mitsubishi vehicles. (Declaration of Steven Smidlein (“Smidlein Decl.”), ¶ 4, submitted herewith). Dealer and MMNA are parties to a Mitsubishi Dealer Sales and Service Agreement dated February 12, 2019 (the “Dealer Agreement”), which incorporates the Dealer Sales and Service Agreement Standard Provisions (“Standard Provisions”). (*Id.*, ¶ 5 and Exs. A and B). Pursuant to the Dealer Agreement, Dealer is authorized to conduct sales and service operations at 26825 Auto Mall Pkwy, Murrieta, California 92562 (the “Dealership Premises”).

(Dealer Agreement, Section 6). Among other things, Dealer agreed under Section IV.F of the Standard Provisions to keep its Dealership Premises open for business. MMNA may terminate the Dealer Agreement immediately “[u]pon failure of Dealer to keep its MMNA dealership operations, or any part thereof, open for business for a period of five (5) consecutive business days.” (Standard Provisions, Section X.B.1.a).

Under the Dealer Agreement, Dealer is also required to (1) report new vehicle sales and submit monthly financial statements to MMNA, (2) submit timely warranty claims to MMNA for reimbursement for warranty service performed by Dealer and (3) maintain a wholesale credit line in an amount and with a financial institution acceptable to MMNA. (Standard Provisions, Sections III.C.2, VI.A., VI.B., VIII.A.1).

B. Dealer Ceases All Dealership Operations

Dealer has not sold a new motor vehicle to a customer since November 22, 2022, has not performed a warranty repair since January 18, 2023, and its financial statements for February and March 2023 evidence that Dealer had no new vehicle sales in February or March 2023. (Smidlein Decl., ¶¶ 10-11). In February 2023, MMNA personnel observed that Dealer was not conducting customary sales and service operations during customary hours of business for at least seven consecutive business days at the Dealership Premises. (*Id.*, ¶ 7). MMNA personnel also observed that the real estate where the dealership operations had been conducted was “Available” for sale. (*Id.* and Ex. C). In March 2023, Dealer’s employees confirmed to MMNA that its operations were closed (*id.*, ¶ 8 and Ex. D), and on March 14, 2023, Amir Ghadiri, Dealer Principal and Owner, confirmed that fact. (*Id.*, ¶ 9 and Ex. E). Thus, it is undisputed that Dealer is defunct and no longer operating as a Mitsubishi dealership at the Dealership Premises. On April 18, 2023, in further evidence of Dealer’s financial woes, MMNA received notice from the financial institution providing Dealer’s wholesale credit line that the wholesale credit lines for Dealer have been suspended until further notice. (*Id.*, ¶ 12 and Ex. F).

C. MMNA Issues a Notice of Termination and Dealer Sells its Dealership Premises

On April 19, 2023, because Dealer had not been conducting dealership operations at its Dealership Premises for at least seven consecutive business days, MMNA issued a notice of termination

1 of the Dealer Agreement. (Smidlein Decl., ¶ 14 and Ex. G). Recognizing the seriousness of this type of
2 breach, Cal. Veh. Code § 3060(a)(1)(B)(v) provides that a franchisor may terminate a franchise on
3 fifteen days written notice.

4 Dealer filed its Protest on April 20, 2023 stating that it “is prepared to resume full operations at
5 the Murrieta location” (Protest, ¶ 8), and requesting the Board order MMNA not to terminate Dealer’s
6 Mitsubishi franchise. Less than a month later, in May 2023, Hamid Ghadiri, the 100% owner of Dealer,
7 sold the Dealership Premises. (Smidlein Decl., ¶ 15 and Ex. H). Dealer has since transferred all new car
8 inventory to another Mitsubishi dealership owned by Mr. Ghadiri located in Corona, California, and the
9 Corona dealership is selling that new car inventory to retail customers. (*Id.*, ¶ 16). Although Dealer
10 never had the right under the Dealer Agreement to cease operations at the Dealership Premises in the
11 first place, with that sale Dealer is now unable to resume operations at the Dealership Premises in
12 accordance with the express terms of the Dealer Agreement.

13 **III. LEGAL ARGUMENT**

14 **A. Legal Standards Governing Motions to Dismiss and/or for Summary Adjudication**

15 The Board is a quasi-judicial administrative agency whose jurisdiction is limited to specific
16 franchisor-franchisee disputes specified in the Vehicle Code. *Mazda Motor of Am., Inc. v. Cal. New*
17 *Motor Veh. Bd.*, 110 Cal. App. 4th 1451, 1456, 1461 (2003) (Board did not have jurisdiction over
18 dealer’s claim that franchisor violated Vehicle Code § 11713.3 by failing to timely or reasonably
19 disapprove buy-sell); *Ri-Joyce, Inc. v. New Motor Veh. Bd.*, 2 Cal. App. 4th 445, 455 (1992) (“*Ri-Joyce*”)
20 (“[The Board] does not have plenary authority to resolve any and all disputes which may arise between a
21 franchisor and franchisee. The Board’s jurisdiction under section 3060 encompasses disputes arising
22 over the attempted termination, replacement or modification of a franchise agreement. Claims arising
23 from disputes with other legal bases must be directed to a different forum.”).

24 The Board may consider a respondent’s motion to dismiss and/or for summary adjudication
25 where a set of undisputed facts provides a basis on which the case may be adjudicated as a matter of
26 law. *See, e.g., Duarte & Witting, Inc. v. New Motor Vehicle Bd.*, 104 Cal. App. 4th 626, 637, 641
27 (dismissing termination protest where undisputed facts showed that manufacturer had discontinued
28

product line, rendering any issues relating to good cause moot); *Fairfield Imports Two, LLC v. Nissan N. Am., Inc.*, Protest Nos. PR-2587-18, PR-2588-18, PR-2597-18, and PR-2598-18, at ¶ 67 (Cal. New Motor Veh. Bd. Aug. 15, 2019) (concluding that Board “has the implied authority to dismiss these Protests because the undisputed facts show good cause for termination of [dealer’s] franchises”). Indeed, the authority to resolve an administrative proceeding without a full evidentiary hearing in such circumstances is expressly granted to agencies in sections 11445.10 - 11445.40 of the California Government Code. In proceedings “where there is no disputed issue of material fact,” an agency is expressly authorized to use an “informal hearing procedure” that “provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer.” Cal. Gov’t Code §§ 1145.10(b)(2) & 11445.20(a). Parties may “offer written or oral comments on the issues,” while the use of witnesses, testimony, evidence, and discovery are limited or eliminated altogether. *Id.* § 1145.40(b). If appropriately utilized, such an informal hearing procedure shall “satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute.” *Id.* § 1145.10(b)(1). Dismissing or summarily adjudicating a protest based on an undisputed evidentiary record “furtheres the goal of administrative efficiency and is consistent with the Board’s purpose.” *Duarte*, 104 Cal. App. 4th at 638.

B. Termination Proceedings Under the Vehicle Code

MMNA may not terminate the Dealer Agreement unless it provides the requisite notice and “the board finds there is good cause for termination or refusal to continue, following a hearing call pursuant to Section 3066.” Cal. Veh. Code §§ 3060(a)(1) and (2). Because Dealer filed a protest, MMNA “may not terminate or refuse to continue [the Dealer Agreement] until the board makes its findings.” *Id.*, § 3060(a)(2). To determine whether good cause has been established for “terminating or refusing to continue a franchise, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following [specified factors].” *Id.*, § 3061. The Board, however, “need not take evidence on irrelevant matters.” *Duarte*, 104 Cal. App. 4th at 643. As set forth herein, given it is undisputed that Dealer ceased all operations months ago and sold the Dealership Premises, good cause exists for the termination of Dealer. No hearing is necessary or required. *Id.* at 638.

1 **C. The Protest Should Be Dismissed Based on the Undisputed Evidence Showing that**
2 **Dealer Has Ceased Dealership Operations and Sold the Dealership Premises.**

3 The undisputed evidence presented by MMNA conclusively establishes that Dealer ceased
4 dealership operations on or before March 7, 2023 and sold the Dealership Premises in May 2023.

5 Specifically, the following facts are not (and cannot be) disputed:

- 6 • The last retail new vehicle sale reported by Dealer was November 22, 2022;
- 7 • The last warranty repair reported by Dealer was January 18, 2023;
- 8 • Dealer's financial statements evidence that no new vehicles were sold at retail in
9 February and March 2023;
- 10 • Dealer has not conducted dealership operations since at least March 7, 2023;
- 11 • On March 14, 2023, Dealer admitted that its dealership operations were closed;
- 12 • Dealer's wholesale line of credit was suspended on April 18, 2023;
- 13 • Dealer sold the Dealership Premises in May 2023;
- 14 • Dealer has transferred all new car inventory to another Mitsubishi dealership owned by
15 Mr. Ghadiri located in Corona, California, and the Corona dealership is selling that new
16 car inventory to retail customers.

17 (Smidlein Decl., ¶¶ 7-16, and Exs. C-H). MMNA terminated the Dealer Agreement because Dealer
18 ceased conducting dealership operations, plain and simple. Dealer has no inventory or facilities. Dealer
19 is not serving customers in the Murrieta market area. Dealer has no ability or prospect of resuming
20 dealership operations. By filing this Protest, Dealer is attempting to hold its franchise hostage even
21 though it is not fulfilling its fundamental obligations as a dealer. Every day the dealership remains
22 dormant causes further damage to MMNA's goodwill in the market. Accordingly, the Board should
23 dismiss the Protest and declare the Dealer Agreement lawfully terminated.

24 The Board has the inherent power to dismiss a protest or summarily dismiss a protest (without a
25 hearing on the merits of the protest). *See Duarte*, 104 Cal. App. 4th at 637, 641. Because Dealer has
26 ceased operations and sold the Dealership Premises, no order of the Board could result in Dealer
27 continuing to operate as a Mitsubishi dealer. Going to a hearing would be pointless: no Mitsubishi sales
28 have been made or will be made in the future by Dealer; no warranty obligations are being performed by
Dealer on customers' vehicles; Dealer is not providing any benefit to the public; and Dealer is not

1 contributing to the community and is not generating any tax revenue. Based on the undisputed evidence,
2 good cause exists for the termination of Dealer because Dealer breached the Dealer Agreement, Dealer
3 ceased all operations months ago, Dealer sold the Dealership Premises and thus has no facilities, Dealer
4 is providing no benefit to the public, and there is no likelihood that Dealer will be reopened and
5 operating in the future.

6 **IV. CONCLUSION**

7 Respondent MMNA requests that the Board enter an Order dismissing the Protest with prejudice
8 or, in the alternative, summarily adjudicating the Protests in Respondent's favor, and for such other
9 relief that the Board deems just and equitable.

10
11 DATED: June 23, 2023

12
13 SEYFARTH SHAW LLP

14
15 By: 

16 Dean A. Martoccia
17 Brandon L. Bigelow (*pro hac vice*)
18 William F. Benson (*pro hac vice*)
19 Attorneys for Respondent
20 Mitsubishi Motors North America, Inc.
21
22
23
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27
28

PROOF OF SERVICE

I am a resident of the Commonwealth of Massachusetts, over the age of eighteen years, and not a party to the within action. My business address is 2 Seaport Lane, Suite 1200, Boston, Massachusetts 02210. On June 23, 2023, I served the within document:

**RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION**

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
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- ☐ electronically by using the Court's ECF/CM System.

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Attorney for Petitioner,
Soraya, Inc. d/b/a Auto Gallery
Mitsubishi-Murrieta

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

Executed on June 23, 2023, at Boston, Massachusetts.



William F. Benson

VIA EMAIL

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STATE OF CALIFORNIA

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In the Matter of the Protest of

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Protest No. PR-2819-23

**DECLARATION OF STEVEN SMIDLEIN
IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

New Motor Vehicle Board

Received
6-23-23

FILED

New Motor Vehicle Board

Date: 6-23-23

By: am

1 I, Steven Smidlein, hereby declare as follows:

2 1. I am a resident of Southlake, Texas and have knowledge of the facts set forth herein from
3 my own personal knowledge and from a review of the documents referenced, and if called as a witness, I
4 could and would testify competently thereto.

5 2. I make this Declaration in support of Mitsubishi Motors North America, Inc.'s
6 ("MMNA") Motion to Dismiss or, in the Alternative, for Summary Adjudication.

7 3. I am the Director, West-Central Region, for MMNA, and have held this position since
8 August 13, 2018. Among other duties, I am responsible for monitoring the operations and performance
9 of Mitsubishi dealers in MMNA's West-Central Region for compliance with the requirements of their
10 dealer agreements.

11 4. MMNA markets and distributes new motor vehicles and other related products in the
12 United States under the "Mitsubishi" brand name through a nationwide network of independently owned
13 and operated dealers. Authorized Mitsubishi dealers then sell or lease vehicles to retail customers and
14 perform repairs and service on Mitsubishi vehicles. To join this network and become an authorized
15 Mitsubishi dealer, a dealer must execute a Mitsubishi Dealer Sales and Service Agreement with
16 MMNA.

17 5. Soraya Inc. d/b/a Auto Gallery Mitsubishi-Murrieta ("Dealer") and MMNA are parties to
18 a Mitsubishi Dealer Sales and Service Agreement dated February 12, 2019 (the "Dealer Agreement"). A
19 true and accurate copy of the Dealer Agreement is attached hereto as Exhibit A. The Standard
20 Provisions to the Dealer Sales and Service Agreement Standard Provisions (the "Standard Provisions")
21 are incorporated by reference into the Dealer Agreement. A true and accurate copy of the Standard
22 Provisions is attached hereto as Exhibit B.

23 6. Dealer was authorized to conduct sales and service operations at 26825 Auto Mall Pkwy,
24 Murrieta, California 92562 (the "Dealership Premises"). Dealer Agreement, Section 6. Among other
25 things, Dealer agreed under Section IV.F of the Standard Provisions to keep its Dealership Premises
26 open for business.
27
28

1 7. As reflected in contact reports prepared by MMNA personnel, in February 2023, MMNA
2 observed that Dealer was not conducting customary sales and service operations during customary hours
3 of business for at least seven consecutive business days at the Dealership Premises. MMNA also
4 observed that the real estate where dealership operations at Dealership Premises had been conducted was
5 “Available” for sale. A true and accurate photo depicting an “Available” for sale sign at the Dealership
6 Premises is attached hereto as Exhibit C.

7 8. On March 9, 2023, Linda Felix, MMNA’s District Parts & Service Manager, observed
8 that Dealer’s remaining employees were working at Auto Gallery Corona in Corona, California, and
9 these employees advised Ms. Felix that the Murrieta location was closed and they had fully moved out
10 of the Murrieta store on March 7, 2023. A true and accurate email informing me about this conversation
11 is attached hereto as Exhibit D.

12 9. On March 14, 2023, Amir Ghadiri, Dealer Principal, advised Denny Goodrich (one of
13 Dealer’s vendors), by email, that the Dealership Premises were closed. Mr. Goodrich forwarded this
14 email to MMNA. A true and accurate copy of this email chain, dated March 14, 2023, is attached hereto
15 as Exhibit E.

16 10. Dealer is required to report new vehicle sales and submit monthly financial statements to
17 MMNA. Standard Provisions, Sections VI.A. and VI.B. Based on these statements, Dealer has not sold
18 a new motor vehicle since November 22, 2022. Dealer’s financial statements for February and March
19 2023 evidence that Dealer had no new vehicle sales in February or March 2023.

20 11. Dealer is also required to submit timely warranty claims to MMNA for reimbursement
21 for warranty service performed by Dealer. Standard Provisions, Section VIII.A.1. Dealer has not
22 reported that it has performed a warranty repair since January 18, 2023.

23 12. Under Section III.C.2 of the Standard Provisions, Dealer is obligated to maintain a
24 wholesale credit line in an amount and with a financial institution acceptable to MMNA. On April 18,
25 2023, MMNA received notice from the financial institution providing Dealer’s wholesale credit line that
26 the wholesale credit lines for Dealer have been suspended until further notice. A true and accurate copy
27 of this letter is attached hereto as Exhibit F.

1 13. Under Section X.B.1.a of the Standard Provisions, MMNA may terminate the Dealer
2 Agreement immediately “[u]pon failure of Dealer to keep its MMNA dealership operations, or any part
3 thereof, open for business for a period of five (5) consecutive business days.”

4 14. On April 19, 2023, because Dealer had not been conducting dealership operations at its
5 Dealership Premises for at least seven consecutive business days, MMNA issued a notice of termination
6 of the Dealer Agreement. A true and accurate copy of MMNA’s notice of termination is attached hereto
7 as Exhibit G.

8 15. On May 24, 2023, a Grant Deed for the sale of the Dealership Premises was recorded in
9 County of Riverside, Office of Assessor-County Clerk-Recorder (“County Clerk”). Attached hereto as
10 Exhibit H is a true and accurate copy of the Grant Deed, which MMNA obtained from the County Clerk.
11 As evidenced by the Grant Deed, Hamid Ghadiri, the 100% owner of Dealer, sold the Dealership
12 Premises to White Topi, LLC in May 2023. Thus, Dealer is unable to resume operations at the
13 Dealership Premises in accordance with the express terms of the Dealer Agreement.

14 16. Dealer has transferred all of its new car inventory to Auto Gallery Corona, another
15 Mitsubishi dealership owned by Mr. Ghadiri in Corona, California. Auto Gallery Corona is selling that
16 new car inventory to retail customers.

17 DATED: June 22, 2023

18
19
20 By: 

Steven Smidlein

PROOF OF SERVICE

I am a resident of the Commonwealth of Massachusetts, over the age of eighteen years, and not a party to the within action. My business address is 2 Seaport Lane, Suite 1200, Boston, Massachusetts 02210. On June 23, 2023, I served the within document:

**DECLARATION OF STEVEN SMIDLEIN IN SUPPORT OF RESPONDENT'S
MOTION FOR SUMMARY ADJUDICATION**

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Robert A. Mayville, Jr., Esq.
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Attorney for Petitioner,
SORAYA, INC. DBA AUTO GALLERY
MITSUBISHI-MURRIETA

New Motor Vehicle Board (Via Email)
nmvb@nmvb.ca.gov

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

Executed on June 23, 2023, at Boston, Massachusetts.

/s/ William F. Benson

William F. Benson

EXHIBIT A



DEALER SALES AND SERVICE AGREEMENT

THIS AGREEMENT is made and entered into by and between **Mitsubishi Motors North America, Inc.** a California corporation, with headquarters at 6400 Katella Avenue, Cypress, California 90630 (hereinafter referred to as "MMNA"), and

SORAYA INC

(Name of Dealer)

a California Corporation doing business as
(State)

AUTO GALLERY MITSUBISHI-MURRIETA

(Name)

at 26825 Auto Mall Pkwy,
(Number and Street)

Murrieta,

(City)

Riverside

County,

California

92562

(County)

(State)

(Zip)

(hereinafter referred to as "Dealer").

1. BASIS OF AGREEMENT

This Agreement provides for the nonexclusive right of Dealer to sell and service motor vehicles which are listed on the most recent MMNA Product List as issued by MMNA from time to time, and related parts, accessories and options distributed in the United States by MMNA. Dealer acknowledges that Mitsubishi Motors Corporation and other manufacturers supplying motor vehicles to MMNA may now or in the future distribute motor vehicles or related products in the United States through distributors other than MMNA, and that entering into this Agreement confers no rights or benefits upon Dealer with respect to the sale or servicing of such motor vehicles or products.

2. TERM

This Agreement shall continue in effect for a period of **Three (3) Years** from its effective date, unless earlier terminated by Dealer pursuant to Section X.A. of the accompanying MMNA Dealer Sales and Service Agreement Standard Provisions (hereinafter referred to as the ("Standard Provisions") or earlier terminated by MMNA pursuant to Section X.B. of the Standard Provisions. Unless earlier terminated by MMNA or Dealer, MMNA shall, not less than three (3) months prior to the expiration of this Agreement, conduct an evaluation of Dealer's performance to determine whether Dealer qualifies for renewal of this Agreement for an additional three (3) year term. Criteria considered in such evaluation shall be as set forth in the Dealer Development Plan then in effect for Dealer. If MMNA determines that Dealer qualifies for renewal of its MMNA dealership, Dealer and MMNA shall execute an MMNA Dealer Sales and Service Agreement in the form then used by MMNA, which agreement will include similar provisions for further re-qualification and renewal.

If, at any time, MMNA determines that a different or revised form of dealer sales and service agreement would better serve the interests of the parties, MMNA may, upon a minimum of thirty (30) days' notice to Dealer, terminate this Agreement and offer the new or amended form of agreement to Dealer in its stead. Dealer must accept the new or amended form of agreement within thirty (30) days of receipt thereof.

(Rev. 8/21/03)

Agreement Date FEB 12 2019
(DAP005)

3. OWNERSHIP OF DEALER

MMNA and Dealer recognize that the ability of Dealer to satisfactorily perform *this Agreement* is conditioned upon the continued active involvement in and/or ownership of Dealer by the following person(s) in the percentage(s) shown (hereinafter referred to as the "Owners"):

Names of Owner	Title	Percentage of Ownership	Involvement in Management
HAMID GHADIRI	PRESIDENT	100.0000%	Active

This Agreement has been entered into by MMNA in reliance upon, and in consideration of, the personal qualifications and representations of the above-named Owners. Accordingly, except as otherwise provided herein, no change in the active involvement in Dealer's management by the Owners and no change in the ownership of Dealer by the Owners which results in a change in majority control or interest shall be permitted by Dealer or any Owner without the prior written approval of MMNA, which approval shall not be unreasonably withheld.

4. MANAGEMENT OF DEALER

Dealer represents that Hamid Ghadiri exercises the functions of general manager and Hamid Ghadiri exercises the functions of Dealer Principal (hereinafter referred to as the "Executive Managers") of its MMNA dealership and that each has complete authority to make all decisions on behalf of Dealer with respect to the dealership operations.

MMNA has entered into *this Agreement* in reliance upon, and in consideration of, the personal qualifications and representations of the above-named Executive Managers. Accordingly, Dealer agrees that there shall be no change in the Executive Managers without MMNA's prior written consent. Dealer shall give MMNA prior written notice of any proposed change in Executive Managers (including the name and qualifications of the person proposed to be appointed as a replacement Executive Manager) and MMNA shall have the right, in its sole and reasonable discretion, to determine whether the proposed candidate possesses the requisite qualifications and experience for the position.

5. SALES LOCALITY

Subject to and in accordance with the terms and conditions hereof, MMNA has established the following Sales Locality as the non-exclusive, primary area of responsibility for Dealer's promotion and sale of MMNA Products:

City of: **Murrieta**

County or Parish of **Riverside**

State of **California**

Except as may be otherwise required by applicable law, MMNA reserves the right to sell and/or lease MMNA Products to others (including, without limitation, public or private fleet purchasers and employees of MMNA or its affiliates) and to enter into MMNA Dealer Sales and Service Agreements with others within and without the Sales Locality. MMNA and Dealer agree that additional MMNA Dealers may be appointed in or near the Sales Locality when MMNA determines, in accordance with applicable law, that additional MMNA sales and service facilities are warranted.

Nothing contained in *this Agreement* shall require or be construed to require Dealer's approval of MMNA entering into MMNA Dealer Sales and Service Agreements or any other agreements with others within or without the Sales Locality.

(Rev. 8/21/03)

6. DEALERSHIP PREMISES

MMNA has approved the following premises as the location of Dealer's MMNA sales and service operations (hereinafter referred to as the "Dealership Premises").

MMNA New Vehicle Sales Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Parts Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Service Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Sales and General Offices

26825 Auto Mall Pkwy, Murrieta, California, 92562

Used Vehicle Display and Sales Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Vehicle Storage Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Body and Paint Facilities

26825 Auto Mall Pkwy, Murrieta, California, 92562

Parts Delivery Address – (This address is for shipments and warehousing only and for no other Mitsubishi dealership operation at this location).

26825 Auto Mall Pkwy, Murrieta, California, 92562

MMNA and Dealer recognize that Dealer may sell MMNA Products to customers wherever they may be located. However, in order that MMNA may establish and maintain an effective network of MMNA Dealers for the sale and servicing of MMNA Products, Dealer specifically agrees that, without the prior written approval of MMNA, it shall not display MMNA Trademarks or, either directly or indirectly, establish any place or places of business for the conduct of any of its MMNA dealership operations, except on the Dealership Premises in the manner and for the purposes described above.

Dealer shall maintain all requirements and conditions of this MMNA Dealer Sales and Service Agreement as outlined in Dealer's most recent Dealer Development Plan, including but not limited to exclusive facility, management and capital requirements.

7. LICENSES

Dealer agrees to secure and maintain all licenses required for the operation of its business as contemplated by *this Agreement* in any state or jurisdiction where its MMNA dealership operations are to be conducted. If any such license or licenses are required, *this Agreement* shall not become effective, unless and until all such required licenses have been obtained and **Dealer** furnishes **MMNA** with a copy of all such licenses together with written notice specifying the date and number, if any, of all such licenses. **Dealer** shall notify **MMNA** immediately in writing if **Dealer** fails to secure, maintain or renew any such license. If any required license is suspended or revoked, **Dealer** shall notify **MMNA** immediately in writing of the effective date of such suspension or revocation.

8. SCOPE OF AGREEMENT

Dealer agrees to be bound by and comply with each and every term of this MMNA Dealer Sales and Service Agreement, all schedules hereto, the Standard Provisions, the *Dealer Development Plan*, the most recent *Product List* and all *Product Addenda*, the *Warranty Manual* and all other manuals heretofore or hereafter issued by **MMNA**, all modifications, extensions or renewals of any of the foregoing, and each and every bulletin or directive heretofore or hereafter issued to **Dealer** by **MMNA**. **MMNA** may from time to time deliver to **Dealer** a *Product Addendum* setting forth special terms and conditions applicable to particular *MMNA Vehicles* designated in the *Product Addendum*. Such special terms and conditions shall supersede and control any inconsistent terms and conditions in *this Agreement* with respect to the *MMNA Vehicles* designated in the *Product Addendum*. Each *Product Addendum* shall be effective as of the date specified in the *Product Addendum* and shall remain effective (1) until it is amended or terminated by its own terms or by a new *Product Addendum*, (2) until the *MMNA Vehicles* designated in the *Product Addendum* are no longer distributed by **MMNA**, or (3) until termination of *this Agreement*.

9. DEFINITIONS

Italicized terms used herein shall have the meanings set forth in Section II of the Standard Provisions

10. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

11. JURISDICTION

MMNA and **Dealer** agree that all litigation between **MMNA** and **Dealer** which may arise out of or in connection with *this Agreement* or any transaction between them shall be subject to the exclusive jurisdiction of the courts of the State of California or of the federal courts sitting therein, and each hereby consents to the jurisdiction of such courts. **Dealer** agrees that any and all process directed to it in any such litigation may be served upon it outside of California with the same force and effect as if such service had been made within California.

12. LEGAL EFFECT

This Agreement terminates and supersedes all prior written or oral agreements and understandings, if any, between **MMNA** and **Dealer**, except (1) any agreements expressly referred to and incorporated herein, (2) any indebtedness which may be owing by either **MMNA** or **Dealer** to the other, and (3) any of **Dealer's** unfilled orders with **MMNA** for any *MMNA Products* placed with **MMNA** pursuant to the provisions of any sales agreement terminated or superseded by *this Agreement*. Except as herein otherwise provided, upon execution of *this Agreement* by **Dealer** and in consideration of **MMNA's** entering into *this Agreement*, **Dealer** releases **MMNA** from any and all claims, demands, contracts and liabilities (including, but not limited to, statutory liabilities), known or unknown, of any kind or nature whatsoever, arising from or out of or in connection with any such prior agreements, business transactions, course of dealing, discussions or negotiations between the parties prior to the effective date hereof. **Dealer** expressly acknowledges and waives the application of California Civil Code §1542 which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

13. NOTICES

Any notice to be given hereunder may be delivered to the party if a sole proprietor, to a partner of the party if a partnership, or to an officer of the party if a corporation, or may be given by sending such notice by registered or certified mail or by telegram or tested telex addressed, if to **Dealer**, to its principal office as above stated, and

(rev. 7/89)

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Agreement Date FEB 12 2019

if to **MMNA**, to its headquarters as above stated, marked "Attention President". Except as otherwise provided in *this Agreement*, any notice so given shall be considered to have been given when delivered or mailed as provided above.

14. AUTHORITY OF DEALER

If **Dealer** is a partnership or corporation, **Dealer** shall provide **MMNA** with a certified copy of the partnership authorization, corporate resolution or other document evidencing the authority of **Dealer** to enter into and adhere to the terms of *this Agreement*.

15. VALIDITY

No representative of **MMNA** shall have authority, other than by a writing signed by the President or an Executive Vice President or two Vice Presidents of **MMNA**, to renew, extend or terminate *this Agreement*, or to amend, modify or waive any provision of *this Agreement* or any performance required hereby, or to make any agreement which imposes obligations on either **MMNA** or **Dealer** not specifically imposed by *this Agreement*.

16. ATTACHMENT

"See attached
Addendum"

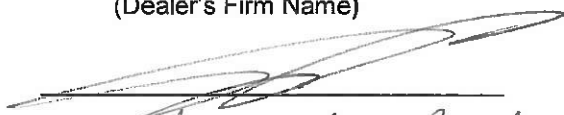
IN WITNESS OF THE FOREGOING, the parties hereto have executed *this Agreement* in duplicate. *THIS AGREEMENT* SHALL NOT BECOME EFFECTIVE UNTIL IT HAS BEEN SIGNED BY THE PRESIDENT OR AN EXECUTIVE VICE PRESIDENT OR TWO VICE PRESIDENTS OF **MMNA**. **DEALER** WILL BE NOTIFIED IN WRITING BY MMNA WHEN *THIS AGREEMENT* HAS BEEN SO SIGNED, WHICH NOTICE WILL SPECIFY THE EFFECTIVE DATE OF *THIS AGREEMENT*.

SORAYA INC

dba AUTO GALLERY MITSUBISHI-MURRIETA

(Dealer's Firm Name)

By



Date

01-28-2019

Title

Hamid Ghadiri, President

By

Date

Title

(Witness)

Mitsubishi Motors North America, Inc.

By

(Chairman)

Date

OR

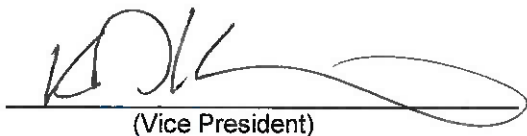
By

(Executive Vice President)

Date

OR

By

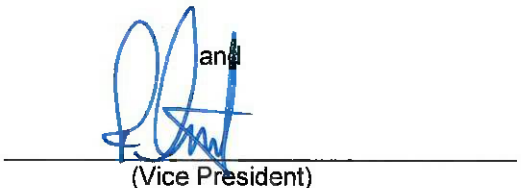


(Vice President)

Date

FEB 12 2019

By



(Vice President)

Date

FEB 12 2019

ADDENDUM Terms and Conditions

Set forth below are the terms and conditions to be satisfied by Dealer, as referenced in MMNA's Letter of Intent dated December 21, 2018, Amended Letter of Intent dated February 5, 2019, and incorporated by this reference, and Section 16 of the MMNA Sales and Service Agreement, to which this is attached as an Addendum.

Dealer shall provide exclusive dealership facilities for the sale and service of MMNA products on property located at **26825 Auto Mall Parkway, Murrieta, California**, as noted on Attachments 1 and 2. Dealer shall be operational no later than **March 15, 2019**.


Dealer agrees to purchase at least one (1) temporary banner that complies with the Mitsubishi Motors Dealer Visual Identity Program ("Dealer VI Program") branding requirements for the approved facility noted above, and install within thirty (30) days of said operational date.

Dealer also agrees to resurface and restripe the parking lot and vehicle display area (per the submitted plans) which shall be completed by **March 7, 2019**.

Dealer shall purchase from MMNA's authorized vendor, when available, all required showroom merchandising materials. Dealer shall also purchase from MMNA's authorized vendor, and install no later than thirty (30) days from the execution of this Dealer Agreement, ten (10) poster frames. Said elements shall be displayed in the appropriate customer areas inside the dealership at all times.

Dealer's Mitsubishi facilities exceed MMNA facility requirements in one or more departmental areas and/or total square footage. Dealer shall use the entire facility for its new Mitsubishi operation and any modification in the use of the facility, including the addition of other new line makes, must receive MMNA's prior written approval.

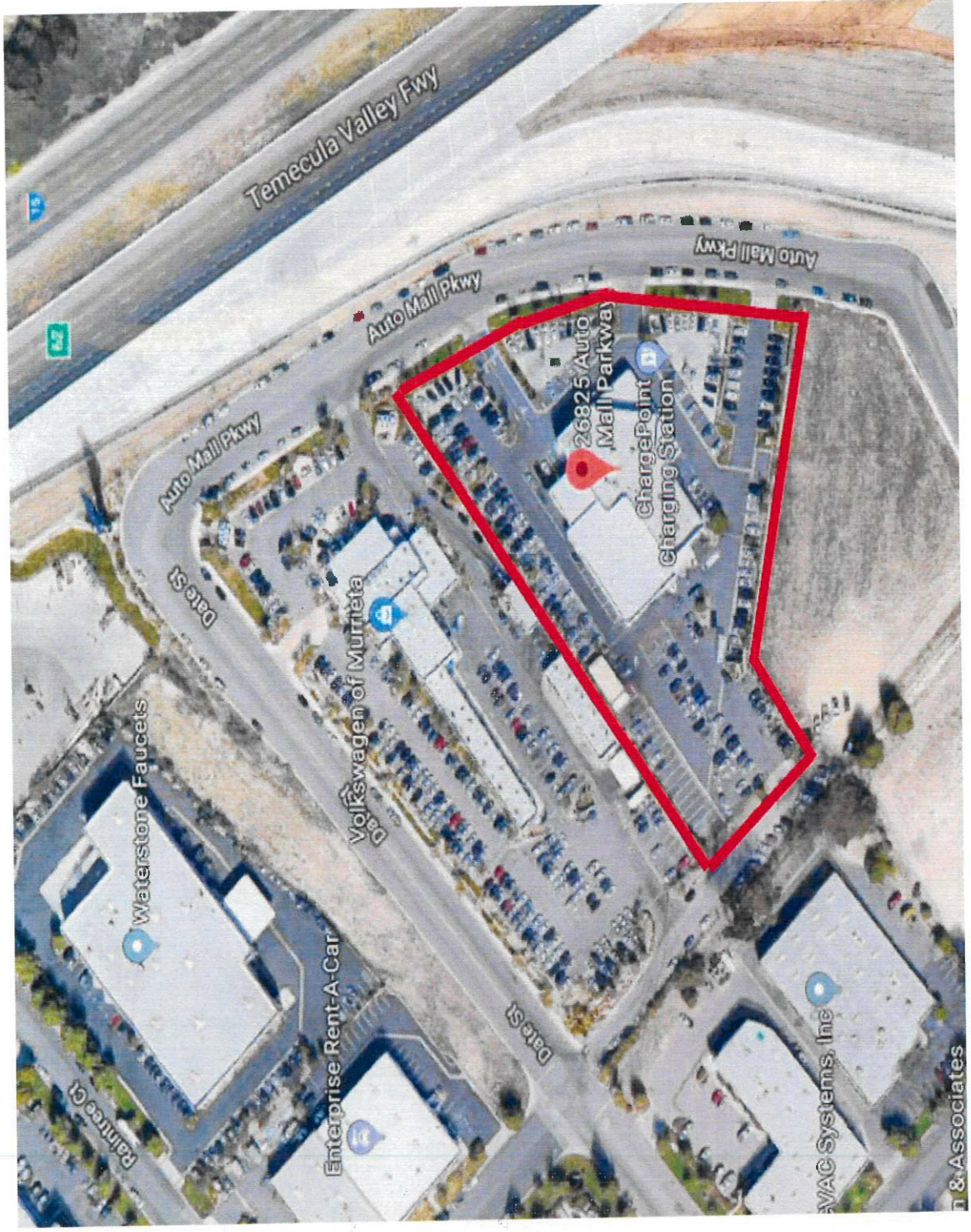
Dealer agrees to work with the MMNA Authorized vendor to implement, purchase and install (as allowed by local ordinances) all required interior and exterior elements of the Dealer VI Program within twelve (12) months of the effective date of this Dealer Agreement. Required exterior elements of such VI Program include, but are not limited to: building fascia panels with illuminated dealer name letters, the Dynamic Slope architectural element incorporating the Corporate Mark, the Entrance Gate, painting and refinishing to Program colors, and the Tower Sign. Interior elements of the VI program include, but are not limited to: the Reception area black panel wall with the Corporate Mark, painting and refinishing walls and ceilings to Program colors, installing flooring materials compatible with the Program, and the Customer Lounge meeting Program requirements.

By  Title: President Date: 2-6-19



Agreement Date FEB 12 2019

AUTO GALLERY MITSUBISHI-MURRIETA – ATTACHMENT 1 (AERIAL VIEW)



AUTO GALLERY MITSUBISHI-MURRIETA - ATTACHMENT 2 (FACILITY PLAN)

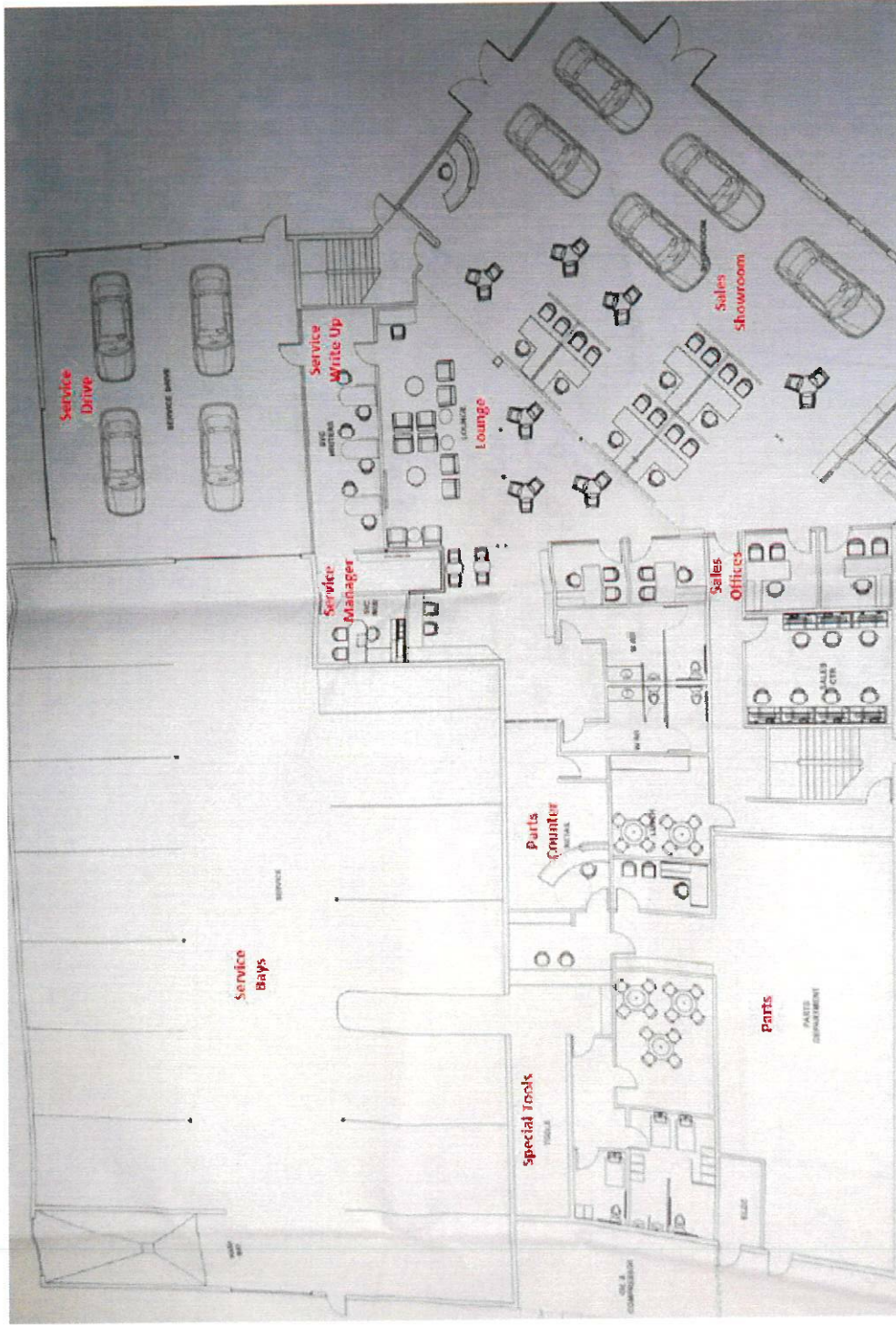


EXHIBIT B



**DEALER SALES AND SERVICE AGREEMENT
STANDARD PROVISIONS**

**MITSUBISHI
MOTORS NORTH AMERICA, INC.**

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DEALER SALES AND SERVICE AGREEMENT STANDARD PROVISIONS

The following Standard Provisions have been made a part of and are incorporated by reference in the Mitsubishi Motors North America, Inc. Dealer Sales and Service Agreement and shall apply to and govern the transactions, dealings, and relations between MMNA and Dealer.

I. GENERAL OBLIGATIONS

The purpose of *this Agreement* is to provide for the sale and servicing of *MMNA Products* in a manner that will best serve the interests of **MMNA**, **Dealer**, other *Authorized MMNA Dealers*, and the owners and purchasers of *MMNA Products*.

Dealer has entered into *this Agreement* with confidence in **MMNA's** integrity and expressed intention to deal fairly with **Dealer** and the consuming public of *MMNA Products* and services. **MMNA** has entered into *this Agreement* with confidence in **Dealer's** integrity, ability and expressed intention to deal fairly with **MMNA**, other *Authorized MMNA Dealers*, and the consuming public of *MMNA Products* and services and with reliance upon **Dealer's** undertaking to perform and carry out the duties, obligations and responsibilities of an *Authorized MMNA Dealer* as set forth in *this Agreement*.

Dealer shall engage in no discourteous, deceptive, misleading or unethical practices and shall actively promote the sale of *MMNA Products*. **Dealer** shall give prompt, efficient and courteous service to all customers of *MMNA Products* whether or not those customers purchased *MMNA Products* from **Dealer**.

MMNA will actively assist **Dealer** in all aspects of **Dealer's** MMNA dealer operations. **MMNA** shall offer suggestions and provide materials designed to assist **Dealer** and its personnel, conduct periodic annual evaluations of **Dealer's** premises, performance and facilities as described in Section VII.B.1. hereof, and provide special training programs for the active participation of **Dealer** and its sales, service and parts personnel.

II. DEFINITIONS

As used in *this Agreement*, the following terms shall have the meanings indicated:

- A. **MMNA** shall mean Mitsubishi Motors North America, Inc., a California corporation which is the authorized distributor in the United States of *MMNA Products*.
- B. *MMNA VEHICLE* shall mean any new passenger car or truck with a *Gross Vehicle Weight Rating* of under 7,000 pounds (whether or not manufactured or supplied by MMC) distributed in the United States by **MMNA** and set forth in the *Product List*.
- C. *MMNA PARTS AND/OR ACCESSORIES* shall mean genuine new parts, components and accessories, designed primarily for use on *MMNA Vehicles* and distributed by **MMNA**.
- D. *MMNA PRODUCTS* shall mean *MMNA Vehicles*, *MMNA Parts and Accessories*, and other new products (whether or not manufactured or supplied by MMC) which from time

to time may be offered by **MMNA** to **Dealer** under *this Agreement*.

- E. *MMNA TRADEMARKS* shall mean the trademarks, service marks, design marks and trade names which are used by **MMNA** in connection with *MMNA Products*, including, without limitation, the names "Mitsubishi" and "**MMNA**," and the Mitsubishi three-diamond logo.
- F. *MMC* shall mean Mitsubishi Motors Corporation, a Japanese corporation which manufactures or supplies to **MMNA** some or all of the *MMNA Vehicles*.
- G. *AUTHORIZED MMNA DEALER OR MMNA DEALER* shall mean any dealer located in the United States authorized by **MMNA** to conduct dealership operations in connection with the sale of *MMNA Products* pursuant to an MMNA Dealer Sales and Service Agreement.
- H. *OWNERS* shall mean the persons named in Section 3 of the MMNA Dealer Sales and Service Agreement.
- I. *EXECUTIVE MANAGERS* shall mean the persons named in Section 4 of the MMNA Dealer Sales and Service Agreement.
- J. *DEALERSHIP PREMISES* shall mean the place or places of business established by **Dealer** and approved by **MMNA** in accordance with Section 6 of the MMNA Dealer Sales and Service Agreement.
- K. *DEALERSHIP FACILITIES* shall mean the buildings and other improvements on the *Dealership Premises* provided by **Dealer** in accordance with requirements set forth in the *Dealer Development Plan*.
- L. *DEALER DEVELOPMENT PLAN* shall mean the written development plan, as amended from time to time by **MMNA**, setting forth the criteria relied upon by **MMNA** to determine initially whether **Dealer** qualifies for appointment as an *MMNA Dealer* and thereafter to evaluate whether **Dealer's** performance hereunder qualifies **Dealer** for renewal(s) of its MMNA dealership.
- M. *GROSS VEHICLE WEIGHT RATING* shall mean the value specified by the manufacturer of *MMNA Vehicles* as the loaded weight of a single vehicle.
- N. *SALES LOCALITY* shall mean the locality which is designated in Section 5 of the MMNA Dealer Sales and Service Agreement as the primary area of **Dealer's** sales and service responsibility for *MMNA Products*.
- O. *WARRANTY MANUAL* shall mean the MMNA Warranty Policy and Procedure Manual, as the same may be amended from time to time by MMNA, which sets forth policies and procedures concerning warranties on *MMNA Products*.
- P. *PRE-DELIVERY INSPECTION MANUAL* shall mean the MMNA Pre-delivery Inspection Procedures Manual, as the same may be amended from time to time by MMNA, which sets forth MMNA policies and procedures concerning the servicing of *MMNA Vehicles* prior to their delivery to purchasers of *MMNA Vehicles*.
- Q. *INVOICE PRICE* shall mean, with respect to each *MMNA Product* to which it refers, the price to **Dealer** for such product as from time to time established by **MMNA**.

- R. *PARTS DISCOUNT AND PURCHASE TERMS SCHEDULE* shall mean a listing of the terms, discounts and conditions relating to the purchase of *MMNA Parts and Accessories* supplied by **MMNA** to **Dealer**, as amended from time to time by **MMNA**.
- S. *MMNA MASTER PARTS PRICE LIST* shall mean a listing of the suggested list prices and the prices of *MMNA Parts and Accessories* issued by **MMNA** from time to time.
- T. *POLICY REVIEW BOARD* shall mean the MMNA Policy Review Board described in Section XI hereof.
- U. *THIS AGREEMENT* shall mean the Mitsubishi Motors North America, Inc. Dealer Sales and Service Agreement, all schedules thereto, these Standard Provisions, the *Warranty Manual* and the *Dealer Development Plan*, the most recent *Product List* and all *Product Addenda*, each as amended from time to time, and all other guides, bulletins or directives issued from time to time by **MMNA** to *MMNA Dealers*.
- V. *PRODUCT LIST* shall mean a list of *MMNA Products* distributed by **MMNA** which shall be provided to **Dealers** and amended or supplemented by **MMNA** from time to time.
- W. *PRODUCT ADDENDUM* or *ADDENDA* shall mean any addendum to *this Agreement* which **MMNA** may issue to **Dealers** from time to time setting forth special terms and conditions governing the sale or servicing only of the particular vehicles or products designated in the *Product Addendum*.

III. SALES OF MMNA PRODUCTS TO DEALER

A. Orders

Dealer shall submit to **MMNA** firm orders for *MMNA Products* in such quantity and variety as are necessary to fulfill **Dealer's** obligations under *this Agreement*. **Dealer** agrees to submit current orders and estimated projections of **Dealer's** future requirements for *MMNA Products* at such times and for such periods as **MMNA** may reasonably request. **Dealer** will submit all orders and projections in the format prescribed by **MMNA**.

All orders are subject to acceptance by **MMNA**. **MMNA** is under no obligation to accept orders from **Dealer** and may accept any order in whole or in part. Acceptance of any order may be by oral or written notice to **Dealer** or by shipment of the *MMNA Products* ordered.

No order may be cancelled by **Dealer** and each order shall remain binding upon **Dealer** unless rejected in writing by **MMNA**.

Except as otherwise provided herein, **MMNA** agrees to ship *MMNA Products* to **Dealer** only on **Dealer's** orders. **MMNA** will use its best efforts to fill any orders which it has accepted, but nothing contained in *this Agreement* shall obligate **MMNA** to deliver to **Dealer** any particular number of *MMNA Vehicles* or *MMNA Parts and Accessories*.

B. Deliveries

1. Mode and Place of Delivery

MMNA shall select the distribution points, carriers and modes of transportation in effecting delivery of *MMNA Products* to **Dealer**. **Dealer** agrees to reimburse **MMNA** for any delivery, freight, handling and other charges which appear on **MMNA's** invoice to **Dealer**.

2. Diversion of Deliveries

If **MMNA** is required to divert any *MMNA Product* ordered by **Dealer** because of **Dealer's** failure or refusal to accept such product, **Dealer** agrees to assume responsibility for and pay any charges incurred by **MMNA** as a result of such diversion including, without limitation, charges incurred by **MMNA** in returning any such product to the point of original shipment or other distribution point selected by **MMNA**, plus all charges for demurrage or storage related to such diversion.

3. Delay or Failure to Deliver

MMNA shall not be liable for delay or failure to fill orders that have been accepted, where such delay or failure is the result of any domestic or foreign laws, regulations, ordinances, rules, orders or other governmental requests, acts of God, foreign or civil wars, riots, interruptions of navigation, shipwrecks, fires, strikes, lockouts or other labor troubles, embargoes, blockades, delay or failure of *MMC*, other suppliers of **MMNA** or any carrier to deliver *MMNA Products*, or any other event whether similar or dissimilar to the foregoing which is beyond the reasonable control of **MMNA**.

4. Damage Claims Against Carriers

Unless otherwise specified in the *Warranty Manual*, **MMNA** agrees, upon request by **Dealer**, to assist **Dealer** in recovery against any carrier for loss or damage to *MMNA Products* shipped hereunder.

C. Prices and Other Terms of Sales

1. Price Changes

MMNA reserves the right, without prior notice to **Dealer**, to change prices, charges and terms of purchase of all *MMNA Products* sold under *this Agreement* and, except as provided in Section III.C.7. hereof, **Dealer** or its customers shall have no right of cancellation or to any refund or credit with respect thereto. **MMNA** will charge **Dealer** for *MMNA Products* according to the prices, charges and terms of purchase in effect on the date of shipment. Prices, charges and terms of purchase for *MMNA Parts and Accessories* shall be established from time to time by **MMNA** in the *MMNA Master Parts Price List* and in the *Parts Discount and Purchase Terms Schedule*.

2. Payment for *MMNA Vehicles*

Unless otherwise permitted by **MMNA** in writing, payment for *MMNA Vehicles* shall be by cash draft issued prior to shipment of each *MMNA Vehicle* from its port of entry against **Dealer's** then applicable wholesale credit line, which line shall be approved by **MMNA** and established in **Dealer's** name with a financial institution acceptable to **MMNA**. The minimum amount of such credit line must be expressly approved by **MMNA** and must be sufficient to meet **MMNA's**

estimate of **Dealer's** anticipated sales volume, as the same may be revised from time to time in the *Dealer Development Plan*.

MMNA may find it necessary, from time to time, to advise **Dealer** that the amount of available credit required of **Dealer** must be increased. Such decisions will be based upon criteria reasonably established by **MMNA**, including the sufficiency of the existing credit line and anticipated increases in sales. **Dealer** agrees to cooperate fully with **MMNA** and to arrange promptly for all required changes in its financial arrangements.

3. Payment for *MMNA Products* other than *MMNA Vehicles*

MMNA will invoice **Dealer** for all *MMNA Products* other than *MMNA Vehicles* purchased by **Dealer**. Payment for invoices shall be due by the tenth (10th) day of the month following the month in which the products covered by the invoice are delivered. **MMNA** reserves the right, at any time with or without notice to **Dealer**, to place any and all sales of *MMNA Products* other than *MMNA Vehicles* on a C.O.D. basis, cash in advance basis or otherwise alter the credit terms available to **Dealer**. **Dealer's** right to return *MMNA Products* (other than *MMNA Vehicles*) shall be governed by the terms and provisions set forth in the *Parts Discount and Purchase Terms Schedule*.

4. Failure of Financing Arrangements

It is **Dealer's** sole responsibility to institute appropriate controls to ensure the uninterrupted availability of sufficient funds under its approved credit line with **Dealer's** financial institution. Should **Dealer** fail to pay for, or should any applicable financing arrangement fail to provide credit for the payment of, any *MMNA Products* ordered by **Dealer** when payment is due therefor, **MMNA** may, with respect to any such *MMNA Products* (i) cause the same to be stored at the sole risk and expense of **Dealer**; or (ii) cause such *MMNA Products* to be shipped elsewhere (including returning the same to **MMNA**) and **Dealer** shall pay to **MMNA** promptly upon demand all expenses sustained by **MMNA** in storing, handling and shipping occasioned thereby; or (iii) without obligation to pay any sum to **Dealer**, sell such *MMNA Products* directly to any other *MMNA Dealer*, person, firm or corporation, all expenses or losses occasioned thereby to be borne by **Dealer**.

In addition to the foregoing, in the event of an oral or written refusal by **Dealer's** financing institution to make payment against drafts for any *MMNA Vehicle* ordered by **Dealer**, **MMNA** may impose a fixed administrative charge for each *MMNA Vehicle* refused. The amount of such charge, which shall be in addition to otherwise applicable delivery, storage and demurrage charges, shall reflect a reasonable estimate of the average administrative cost incurred by **MMNA** in arranging for alternative disposition of the *MMNA Vehicle* so refused. Furthermore, any failure of **Dealer's** financial institution to maintain for a period of sixty (60) or more days the unrestricted availability to **MMNA** of **Dealer's** credit line in an amount and in accordance with the terms approved by **MMNA** shall constitute grounds for termination of *this Agreement* under Section X.B.2.(f) hereof. "Unrestricted availability" as used in this section shall mean that upon

presentment of **MMNA's** drafts to **Dealer's** financial institution as contemplated hereunder, no approval of **Dealer**, the financial institution itself or any other party will be required before payment to MMNA is made.

5. Title and Risk of Loss

Title and risk of loss or damage to any *MMNA Product* sold to **Dealer** shall pass to **Dealer** upon (i) its delivery to **Dealer**, (ii) its delivery to a common carrier for delivery to **Dealer**, or (iii) receipt by **MMNA** of payment therefor, whichever shall first occur. **MMNA** shall retain, and **Dealer** hereby grants to **MMNA**, a security interest in, and the right to retain or repossess, all *MMNA Products* sold to **Dealer** by **MMNA** until **MMNA** is paid in full therefor.

6. Collection of Indebtedness

Dealer agrees to execute and deliver and shall, where appropriate, cooperate with **MMNA** in causing to be filed with the appropriate authorities any and all statements and documents required or permitted by the Uniform Commercial Code and any other local laws for the protection of unpaid sellers.

Dealer agrees that **MMNA** may apply toward payment of any amount due **MMNA** from **Dealer** any credit owed to **Dealer** by **MMNA**, and **MMNA** may, at its option, collect any sums owed by **Dealer** to **MMNA** by making a separate draft or by including any such sums in any draft issued for the sale of *MMNA Products* sold under *this Agreement*. **Dealer** will pay the amount of each draft and all exchange and collection charges. In addition, **MMNA** may impose an interest charge for balances thirty (30) days or more overdue. Such charge shall be assessed at the maximum rate permitted by law. The foregoing rights of **MMNA** are in addition to, and not in lieu of, any rights or remedies it may have by law as an unpaid seller.

7. Refunds

Should **MMNA** reduce the *Invoice Price* of any *MMNA Vehicle* then in current production, **MMNA** will give written notice of such reduction to **Dealer** and will refund to **Dealer** an amount equal to the difference between any higher price paid by **Dealer** for such *MMNA Vehicles* and the reduced price. Such refunds will be payable only for *MMNA Vehicles* actually purchased by **Dealer** at a price higher than the reduced price and which are new and unsold by **Dealer** on the effective date of the price reduction set forth in **MMNA's** notice thereof. To be entitled to such refund, **Dealer** must, within thirty (30) days after receipt of notice of the price reduction, make written claim therefor supported by evidence satisfactory to **MMNA**.

MMNA shall have no obligation to make refunds or give credits with respect to:

- a. Any *MMNA Vehicle* used as a demonstrator and not promptly registered with **MMNA** by **Dealer** when assigned to demonstrator use;
- b. Any reduction in the amount of **MMNA** charges for distribution and delivery, or taxes;
- c. Any reduction in the amount of any contribution or any other sum for advertising or sales promotion; or

- d. Any reduction by **MMNA** in the suggested retail price or *Invoice Price* established by **MMNA** by reason of any law, order, or regulation of any government or any governmental agency.

MMNA reserves the right to pay refunds to any financial institution which has financed the purchase of, and retains a lien or ownership interest in, any *MMNA Vehicle* for which application for refund or credit is made by **Dealer**.

D. Product Warranties

Dealer understands and agrees that the only warranties applicable to each new *MMNA Product* sold to **Dealer** by **MMNA** shall be the written warranty or warranties expressly furnished by **MMNA** or by the manufacturer of the *MMNA Product* and as stated in the *Warranty Manual*. Anything in *this Agreement* to the contrary notwithstanding, all warranties made by **MMNA** as set forth in the *Warranty Manual* shall survive and, in accordance with their respective terms, continue in full force and effect, despite any expiration or termination of *this Agreement* pursuant to Section X hereof.

E. Change of Design, Options or Specifications

MMNA reserves the right, at any time, to make changes in or discontinue the supply of any design or specification of *MMNA Products* (regardless of whether such products are *MMNA Vehicles*, *MMNA Parts and Accessories* or options), without notice to **Dealer** and, unless required by law, without obligation to make any changes with respect to *MMNA Vehicles* and *MMNA Parts and Accessories* or options previously delivered to **Dealer** or being imported, manufactured, or sold in accordance with **Dealer's** orders. No change shall be considered a model year change unless so specified by **MMNA**. Except as specifically provided in Section III.C.7. hereof, **MMNA** shall be under no liability to **Dealer** on account of any discontinuance or change and shall have no obligation to **Dealer** to make any refund on *MMNA Products* previously purchased by **Dealer**, whether or not the price of *MMNA Products* previously sold by **MMNA** is affected thereby. Unless directed in writing by **MMNA** or required to do so by law, **Dealer** shall not alter any *MMNA Product* or change or substitute any of its components as sold by **MMNA**, except for minor or cosmetic changes which do not affect the mechanical operation, safety or structural integrity of any *MMNA Product*.

F. Vehicles Excluded

Dealer acknowledges that *this Agreement* confers no rights or benefits with respect to vehicles or products of any kind not distributed by **MMNA**, and that **Dealer's** right to purchase *MMNA Vehicles* from **MMNA** shall at all times be limited to those *MMNA Vehicles* listed on the most recent *Product List*. Without limiting the generality of the foregoing, **Dealer** acknowledges that: (1) *MMC* distributes in the United States trucks with a *Gross Vehicle Weight Rating* of 7,000 pounds or more, truck tractors, buses, other heavy vehicles, and parts and accessories therefor through a distribution company known as Mitsubishi Fuso Truck America, Inc. ("**MFTA**"); (2) *this Agreement* confers no right upon **Dealer** to purchase for resale or lease, sell service or lease **MFTA** vehicles or products; (3) **MFTA** vehicles are of a separate "line make" from *MMNA Vehicles*; and (4) *this Agreement* confers no right upon **Dealers** to protest, object or invoke any other

administrative or judicial process to bar or delay the establishment of any **MFTA** dealership within or without **Dealer's Sales Locality**.

IV. DEALERSHIP PREMISES

A. Responsibilities of Dealer

MMNA and **Dealer** recognize the importance of establishing an effective network of qualified *Authorized MMNA Dealers* meeting **MMNA's** established standards. Accordingly, **Dealer** agrees that it shall not, under any circumstances, establish an associate dealer or subdealer for *MMNA Products* or establish any **MMNA** dealership premises or operations other than those expressly approved by **MMNA**. **Dealer** agrees to operate its **MMNA** dealership only on *the Dealership Premises*, and to provide and utilize the *Dealership Facilities* only in accordance with standards established by **MMNA** set forth in the *Dealer Development Plan*. **Dealer** recognizes that if it engages in other business activities in the *Dealership Facilities* and/or on the *Dealership Premises*, the physical facilities necessary for the sale and servicing of *MMNA Products* may be adversely affected. Accordingly, **Dealer** agrees that it shall not modify, relocate, change the usage of, reduce or expand the *Dealership Premises* or the *Dealership Facilities* without first consulting with **MMNA** and obtaining its written approval of such changes.

B. Automobile Leasing or Rental Business

Dealer may, as part of their **MMNA** dealership operations, engage in the leasing of *MMNA Vehicles* at the *Dealership Premises* so long as **Dealer** complies fully with all standards and requirements established by **MMNA** in connection therewith. **Dealer**, its *Owners* and *Executive Managers* shall not, however, without the prior written consent of **MMNA**, form or acquire, directly or indirectly, a separate legal entity for the purpose of conducting such leasing operations, whether within or without the *Dealership Premises*. Nor shall **Dealer**, its *Owners* and *Executive Managers* acquire for themselves or for members of their respective families any substantial interest in such separate business without the prior written consent of **MMNA**. If **MMNA** consents to the operation or substantial ownership of such separate leasing business by **Dealer**, its *Owners*, *Executive Managers* or their respective families, such business shall be subject to the provisions of Section IV.C. hereof.

C. Related Activities of Dealer or Dealer's Owners or Executive Managers

If **Dealer** or any of **Dealer's Owners** or *Executive Managers* should have or should acquire, directly or indirectly, for themselves or for members of their respective families, any substantial interest in an enterprise the business of which is in any way connected with new or used *MMNA Products* (hereinafter referred to as "Related Business"), or any property which is being used or will be used in connection with new or used *MMNA Products* (hereinafter referred to as "Related Property"), or any beneficial interest in any Related Property, **Dealer** will:

1. At the time *this Agreement* is executed by **Dealer**, or immediately upon such acquisition, whichever may be later, require such Related Business or the holder of legal title or beneficial interest in the Related Property to execute and deliver to **MMNA** a written instrument in which such Related Business or holder shall assume the following obligations:
 - a. To refrain from all conduct which might be harmful to the goodwill of

MMNA or to the reputation of *MMNA Products* or which might be inconsistent with the public interest;

- b. To grant to **MMNA**, until the expiration or prior termination of *this Agreement*, the right, through **MMNA's** employees and other designees, to inspect, at all reasonable times during regular business hours, the premises, as well as the records and accounts, of such Related Business or holder; and
 - c. To refrain from any use of any *MMNA Trademark*.
2. Furnish to **MMNA**, at the time *this Agreement* is executed by **Dealer** or immediately upon such acquisition, whichever may be later, a written report setting forth in detail:
- a. The ownership of beneficial interests in such Related Business or Related Property; and
 - b. The business activities of such Related Business and the use of such Related Property including, among other things, the names of all *Authorized MMNA Dealers* with which such Related Business has any dealings or who use or have any interest in such Related Property, and the terms of such dealings, use and interests.
3. In the event of any change in the ownership, activities or use of the Related Business or Related Property, furnish to **MMNA** a written report setting forth the details of such change.
4. Furnish to **MMNA** such other reports concerning the Related Business or Related Property as **MMNA** may from time to time require.

D. Personnel

Dealer agrees that it will employ qualified personnel in such capacities and in such number as may be specified in the *Dealer Development Plan* or as otherwise required by **MMNA**.

E. Insurance

Dealer shall obtain fire and casualty insurance issued by an insurer of recognized responsibility satisfactory to **MMNA**, with coverage for each occurrence and in an aggregate amount acceptable to **MMNA**, and providing coverage for, among other things, death, bodily injury and property damage claims which may arise in connection with **Dealer's** operations. Such insurance shall be maintained in full force and effect at **Dealer's** sole cost throughout the term of *this Agreement* and all extensions or renewals hereof.

F. Maintaining Operations Open for Business

Since the transportation and maintenance needs of customers served by **Dealer** can be properly met only if **Dealer** keeps the *Dealership Premises* open for business, **dealer** agrees to maintain its dealership operations open for business during all days and hours which are customary and lawful for such operations in the community or locality in which the *Dealership Premises* are located. Any unexcused failure to remain open for business during such hours in excess of five (5) consecutive business days shall constitute grounds for termination of *this Agreement* under Section X.B.1.(a) hereof.

G. Minimum Vehicle Inventories

Subject to the ability of **MMNA** to supply *MMNA Vehicles* ordered by **Dealer**, **Dealer** agrees that it shall, at all times, maintain the minimum inventory of *MMNA Vehicles* for immediate sale as set forth in the *Dealer Development Plan* from time to time by **MMNA** after consultation with **Dealer**. **Dealer** also agrees that it shall have available at all times, for purposes of showroom display and demonstration, the number of current models of *MMNA Vehicles* required of **Dealer** as determined from time to time by **MMNA** after consultation with **Dealer**. **Dealer** agrees to maintain all *MMNA Vehicles* in excellent condition at all times. Failure of **Dealer** to maintain the required minimum number of *MMNA Vehicles* shall constitute grounds for termination of *this Agreement* under Section X.B.2.(n) hereof.

Dealer recognizes that it is the goal of all *MMNA Dealers* to meet efficiently the needs of all customers of *MMNA Products* wherever located and that, although an *MMNA Dealer* may attempt to continually maintain its minimum inventory, occasionally its customers may request a specific *MMNA Vehicle* or *MMNA Part or Accessory* which is not currently in stock. Accordingly, **Dealer** agrees to use its best efforts to cooperate with other *MMNA Dealers* by providing them with access to information regarding its parts and *MMNA Vehicle* inventory and whenever possible, trading its *MMNA Products* to satisfy the needs of a customer of another *MMNA Dealer*.

H. Signs

Subject to applicable governmental ordinances, regulations and statutes, **Dealer** agrees to buy or rent from **MMNA** or from sources designated by **MMNA** and to erect and maintain on the *Dealership Premises*, entirely at **Dealer's** expense, authorized sales and service signs conforming to the requirements established and approved for **Dealer's** use by **MMNA**. **Dealer** further agrees to obtain and maintain any licenses or permits necessary to erect such signs. Failure to obtain, erect, maintain, repair, illuminate and prominently display such signs in a manner approved by **MMNA** shall constitute grounds for termination of *this Agreement* under Section X.B.2.(j) hereof.

I. Electronic Communications System

MMNA has elected to implement an electronic data processing system to facilitate communications between **MMNA** and each *MMNA Dealer*. Such a system is designed to enable each **MMNA Dealer** to electronically transmit current information regarding its sales and service operations, including without limitation, orders for *MMNA Vehicles* and *MMNA Parts and Accessories*, sales reports, and warranty claims data. In recognition of the benefits of such a system, **Dealer** agrees to acquire and install, at its sole expense, on the *Dealership Premises* a dealer computer terminal approved by **MMNA** and to utilize the system in accordance with **MMNA's** instructions.

J. Planning Assistance for Dealership Premises

To assist **Dealer** in planning, establishing and maintaining the *Dealership Premises*, **MMNA** will, if feasible, make available to **Dealer** upon request, copies of sample building layout plans, facility planning recommendations and an identification program covering the placement, installation and maintenance of recommended signs. In addition, representatives of **MMNA** will be available to **Dealer** from time to time to advise **Dealer** and dealership personnel in connection with **Dealer's** planning of the *Dealer Facilities* and *Dealership Premises*.

V. NET WORKING CAPITAL

Dealer agrees to establish and maintain net working capital in an amount not less than the minimum net working capital agreed upon by **Dealer** and **MMNA** and specified in the *Dealer Development Plan*. If, because of changed conditions, **MMNA** deems it necessary to increase or decrease the minimum amount of **Dealer's** net working capital, the minimum net working capital required of **Dealer** under the *Dealer Development Plan* may be revised by **MMNA** after consultation with **Dealer**. If the amount thereof is increased, **Dealer** agrees to meet the new minimum net working capital standard within the time period reasonably prescribed by **MMNA** after consultation with **Dealer**.

VI. ACCOUNTS, RECORDS AND REPORTS

A. Uniform Accounting System

It is for the mutual benefit of **Dealer** and **MMNA** that uniform accounting systems and practices be maintained by all *Authorized MMNA Dealers*. Accordingly, **Dealer** agrees to maintain such systems and practices as designated by **MMNA** in accordance with the uniform accounting system and practices established by **MMNA** for use by all *MMNA Dealers*. **Dealer** agrees that it will furnish to **MMNA** by the tenth (10th) day of each month, in the form prescribed by **MMNA**, true, complete and accurate financial and operating statements covering the preceding month and showing calendar-year-to-date operations.

B. Sales Reporting

To assist in the evaluation of current market trends and other matters, **Dealer** agrees to:

1. Immediately upon delivery of an *MMNA Vehicle* to the purchaser thereof, complete and transmit to **MMNA** a report of the retail sale called the "Retail Delivery Report"; and
2. Furnish **MMNA** with such other reports or records which may reasonably be required by **MMNA**.

C. Sales and Service Records

Dealer agrees to keep complete, accurate and current records regarding the sale and servicing of *MMNA Products*. In order that policies and procedures relating to applications for reimbursement for warranty and policy work may be applied uniformly to

all *Authorized MMNA Dealers*, **Dealer** agrees to prepare, keep current and retain records in support of requests for reimbursement for warranty and policy work performed by **Dealer** in accordance with the policies and procedures prescribed in the *Warranty Manual* and standards established by **MMNA** consistent with said manual.

D. Examination of Accounts and Records

Dealer agrees that it will permit **MMNA** to make examinations and audits of its accounts and records at any time during regular business hours, and in connection therewith, to reproduce and take for its own use copies of **Dealer's** records including, without limitation, records supporting requests for reimbursement for warranty and policy work performed or to be performed by **Dealer**. A report of any such examination will be furnished to **Dealer**. Failure to allow authorized personnel of **MMNA** to examine, audit, reproduce and take copies for **MMNA's** use of **Dealer's** records, whether or not located at the *Dealership Premises*, shall constitute grounds for termination of *this Agreement* under Section X.B.2.(m) hereof.

VII. PROMOTING AND SELLING MMNA PRODUCTS

A. Responsibilities of Dealer

Dealer agrees to use its best efforts to promote, sell and service *MMNA Vehicles* and *MMNA Parts and Accessories* in the *Sales Locality*. **Dealer** recognizes that **Dealer's** fundamental obligation under *this Agreement* is to stock, sell and service all models and types of *MMNA Vehicles* distributed in the *Sales Locality* by **MMNA**. Accordingly, **Dealer** expressly assumes responsibility for fulfilling this obligation, and in connection therewith, **Dealer** expressly agrees to develop that sales volume necessary to meet **Dealer's** Minimum Sales Responsibility as outlined in *this Agreement* and is more particularly described in the *Dealer Development Plan*.

B. Sales and Performance Criteria

1. Dealer Development Plan

The parties hereto shall periodically, and in any event at least annually, review **Dealer's** performance under *this Agreement*. **Dealer's** performance will be evaluated on the basis of the performance criteria set forth in the *Dealer Development Plan*, which criteria shall include such factors as maintenance of facilities, service and sale of *MMNA Parts and Accessories* and sales performance.

During each such periodic review, **MMNA** shall note in writing any deficiencies it finds in **Dealer's** performance and operations, and **MMNA** will offer suggestions for the improvement thereof. **MMNA** shall give **Dealer** a reasonable opportunity to implement its suggestions and take other steps necessary to cure deficiencies in **Dealer's** performance. **Dealer** agrees to cooperate with **MMNA** during such evaluation and to furnish any data regarding the **Dealer's** operations which may reasonably be requested by **MMNA**. **Dealer** agrees that it will use its best efforts to meet the performance standards established from time to time by **MMNA** and to cure any deficiencies set forth in its *Dealer Development Plan*. Failure by **Dealer** to correct such deficiencies after having had a reasonable opportunity to do so shall constitute grounds for termination of *this Agreement* under Section X.B.3.(a) hereof.

2. Determination of Minimum Sales Responsibility

If **Dealer** is the only *MMNA Dealer* located in the *Sales Locality*, calculation of **Dealer's** Minimum Sales Responsibility will be based upon the ratio of sales and registrations of *MMNA Vehicles* to sales and registrations of competitive vehicles and *MMNA Vehicles* in the *Sales Locality*. In metropolitan markets where multiple *MMNA Dealers* are located, **Dealer** (together with all other *MMNA Dealers* in the *Sales Locality*) will be assigned a percentage share of responsibility for total sales performance in the *Sales Locality* based upon **Dealer's** trading area. **MMNA** may from time to time change the size and/or boundaries of **Dealer's** trading area after appropriate analyses of new car purchasing patterns in the *Sales Locality*. Such trading areas will be used solely for the purpose of determining the percentage of sales responsibility assigned to **Dealer** and should not be interpreted as a market area assigned to **Dealer**. In evaluating **Dealer's** performance, **MMNA** will consider recent trends in **Dealer's** sale performance and any special local conditions which would uniquely affect **Dealer's** performance.

To the extent that **MMNA** for any reason, other than **Dealer's** failure to submit orders or arrange payment, delivers to **Dealer** less than the number of new *MMNA Vehicles* that represents **Dealer's** Minimum Sales Responsibility, **Dealer's** Minimum Sales Responsibility set forth in the *Dealer Development Plan* will be reduced accordingly.

The term "competitive vehicles" as used in this section shall mean those new vehicles which are from time to time designated by **MMNA** as competitive with *MMNA Vehicles*. The term "**Dealer's** trading area" as used in this section shall mean an area immediately surrounding the *Dealership Premises* which is determined by **MMNA** from time to time based upon an analysis of census tracts or other geographical boundaries.

C. Sales Operations

1. Sales Organization

To enable **Dealer** to fulfill satisfactorily its responsibilities under *this Agreement*, Dealer agrees to organize and maintain the minimum number of trained sales and customer relations personnel required by **MMNA** in the *Dealer Development Plan*.

2. Representations in the Sale of *MMNA Vehicles*

Dealer agrees that it will sell all *MMNA Vehicles* in accordance with directives issued by **MMNA** designating model and model year classifications and will not make any misleading statements or misrepresentations regarding *MMNA Products*, including without limitation, selling as new any *MMNA Vehicle* which is not in fact new and unused, misrepresenting the model year or year of manufacture, or the items or prices of the items making up the total selling price of any *MMNA Vehicle*. Dealer shall not make any statements tending to lead any customer to believe that a greater portion of the selling price of an *MMNA Vehicle*

represents destination charges and/or factory handling charges than the amounts of such items actually charged to and paid for by **Dealer**.

3. Customer Deposits

Dealer will hold in trust until completion of sale any down payment and all other property it may receive from customers in connection with their purchases of *MMNA Products*. **Dealer** will not sell or place any lien on any property taken as a trade-in unless at the same time it segregates and holds in trust an amount equal to the trade-in allowance agreed upon with the customer for such property until completion of the sale for which such property was taken as a trade-in. **Dealer** will ensure that all purchase order forms signed by its customers contain provisions binding **Dealer** to hold all down payments and other property in the manner specified in this section.

D. Advertising

1. Misleading Advertising

Both **MMNA** and **Dealer** recognize the need for maintaining standards of ethical advertising of a quality and dignity consonant with the reputation and standing of *MMNA Products* in order to maintain public confidence in, and respect for, **Dealer**, **MMNA** and *MMNA Products*. Accordingly, neither **MMNA** nor **Dealer** will publish or cause or permit to be published any advertising relating to *MMNA Products* likely to mislead or deceive the public or to impair the goodwill of **MMNA** or **Dealer** or the reputation of *MMNA Products*. **Dealer** shall, promptly upon written notice from **MMNA**, discontinue any advertising which **MMNA**, in its sole judgment, considers may be injurious to **Dealer's** or **MMNA's** business, or to the reputation of *MMNA Products*, or likely to mislead or deceive the public, or at variance with the business, advertising or public relations policies of **MMNA**.

2. **MMNA Dealer Advertising Association**

MMNA and **Dealer** recognize the benefits which may be derived from a comprehensive joint advertising effort *MMNA Dealers*. Accordingly, **MMNA** agrees to assist *MMNA Dealers* in the formation and effective operation of such cooperative dealer advertising association. **Dealer** agrees to cooperate with **MMNA** in the establishment of such a group and, once it is established, to participate actively and contribute to it in accordance with the bylaws of the association.

The **MMNA** dealer advertising association will finance its advertising programs through the assessment of a fixed charge for each new *MMNA Vehicle* purchased by member *MMNA Dealers*. As a service to the dealer association, **MMNA** will collect the agreed upon charge, provided that the dealer association maintains control over both the amount of the assessment and the manner in which such funds will be expended.

3. Dealer Cooperative Promotional Fund

MMNA will establish and maintain general advertising programs and will make sales promotion and campaign materials available to **Dealer** to promote the sale of *MMNA Vehicles*. **Dealer** recognizes that it will benefit from the simultaneous

use by all *Authorized MMNA Dealers* of new model announcement literature, catalogs, banners and like materials and from the economies attendant upon preparation and purchase by **MMNA** of such basic sales promotion literature, parts and service manuals and other materials for all dealers. Accordingly, **Dealer** agrees to cooperate in **MMNA's** advertising programs and to fully utilize the materials offered **Dealer** by **MMNA**. **MMNA** sales promotion services will include the supply, at no additional cost to **Dealer**, of new model announcement and other sales promotion materials, and parts and service materials as described from time to time in **MMNA** sales letters. **Dealer** agrees to contribute to the cost of **MMNA's** sales promotion services an amount established by **MMNA** from time to time for each *MMNA Vehicle* sold by **MMNA** to **Dealer**. These amounts do not include the cost of special campaigns or special literature not described in **MMNA** sales letters.

E. Assistance Provided by MMNA

1. Sales Training Assistance

To assist **Dealer** in the fulfillment of its responsibilities hereunder, **MMNA** shall offer general and specialized sales management and sales training courses for the benefit and use of **Dealer's** sales organization. **Dealer** understands the importance of having a well trained and knowledgeable staff in the successful operation of a dealership and, therefore, **Dealer** agrees to require the attendance of all its sales personnel at any special courses, meetings or training sessions offered for their benefit from time to time by **MMNA**. Whenever possible, **MMNA** will give **Dealer** thirty (30) days' advance notice of any such mandatory event so that all sales personnel may make arrangements to be present. Repeated failure by **Dealer's** sales personnel (including but not limited to management) to participate fully in such programs shall constitute grounds for termination of *this Agreement* under Section X.B.2.(I) hereof.

2. Field Sales Personnel

To assist **Dealer** in handling its sales responsibilities under *this Agreement*, **MMNA** agrees to provide field sales personnel from time to time to advise and counsel **Dealer** regarding merchandising, training and sales management.

VIII. SERVICING MMNA VEHICLES

A. Responsibilities of Dealer

Dealer agrees to provide service and parts to all *MMNA Vehicles* whether or not under warranty and whether or not the *MMNA Vehicle* to be serviced was purchased from **Dealer**.

1. Warranty Service

Warranty and policy service shall be performed in accordance with the *Warranty Manual* and any related bulletins and directives issued from time to time by **MMNA** to **Dealer**. **Dealer** shall furnish to the purchaser of each *MMNA Product*,

at the time each product is delivered, copies of any applicable warranties. **Dealer** shall be responsible for the timely submission of warranty claims in the format required by **MMNA**. **MMNA** agrees to compensate **Dealer** for all warranty and policy work in accordance with procedures and rates established from time to time by **MMNA** and in accordance with applicable law; and **Dealer** agrees that such rates shall constitute full and complete payment to **Dealer** for such work. **Dealer** agrees that where **MMNA** reimburses **Dealer** for warranty or policy work, the customer shall not be obligated to pay any charges for warranty or policy work except as required by law.

2. New Motor Vehicle Pre-Delivery Service

Dealer agrees that prior to delivery of each new *MMNA Vehicle* to a retail customer, **Dealer** will conduct pre-delivery service and inspections in accordance with the *Pre-delivery Inspection Manual*. **Dealer** shall be reimbursed by **MMNA** for such pre-delivery service and inspection in accordance with procedures and rates established from time to time by **MMNA** and in accordance with applicable law.

3. Free Maintenance

In accordance with directives to be issued from time to time by **MMNA**, certain maintenance services, excluding lubricant and oil filter costs, may be free of charge to the customer; if **Dealer** delivers an *MMNA Vehicle* to a customer pursuant to such directives, **Dealer** shall be reimbursed according to the terms of such directives. In the event that such free maintenance services are performed by another *MMNA Dealer* upon an *MMNA Vehicle* sold by **Dealer**, **Dealer** shall pay to such other *MMNA Dealer* the charge then in effect as established by **MMNA** for such maintenance services. Conversely, in the event that **Dealer** performs such free maintenance with respect to an *MMNA Vehicle* sold by another *MMNA Dealer*, **Dealer** shall be entitled to receive from such other *MMNA Dealer* the amount of such charge. All claims for payment for such charges by or against dealer shall be processed through **MMNA**. All such free maintenance services shall be performed in conformity with current service policies and practices outlined in service manuals, the *Pre-delivery Inspection Manual*, the *Warranty Manual* and warranty bulletins or technical service bulletins and directives issued from time to time by **MMNA**.

4. Use of Parts

Dealer agrees not to use in the repair or servicing of *MMNA Vehicles* parts other than *MMNA Parts and Accessories* or other parts (including accessories) expressly approved by **MMNA** unless:

- a. the replacement parts are equivalent in quality and design to *MMNA Parts and Accessories* or parts expressly approved by **MMNA**; or
- b. the parts to be replaced are not necessary to the mechanical operation of the *MMNA Vehicle* and the replacement parts will not adversely affect the mechanical operation of the *MMNA Vehicle*.

Failure by **Dealer** to use *MMNA Parts and Accessories* or parts expressly approved by **MMNA** (or other parts equivalent thereto in quality and design) in

accordance with the requirements of this section shall constitute grounds for termination of *this Agreement* under Section X.B.2.(r) hereof. In the event of any dispute or litigation between **Dealer** and **MMNA** regarding the use by **Dealer** of parts other than *MMNA Parts and Accessories* or parts expressly approved by **MMNA**, **Dealer** agrees that it shall have the burden of establishing either:

a. that parts used by it are equivalent in quality and design to *MMNA Parts and Accessories* or parts expressly approved by **MMNA**; or

b. that the parts replaced were not necessary to the mechanical operation of the *MMNA Vehicle* and the replacement parts would not adversely affect the mechanical operation of the *MMNA Vehicle*.

Dealer agrees that it will not represent or offer to sell as *MMNA Parts and Accessories*, or parts expressly approved by **MMNA**, any parts used by it in the repair or servicing of *MMNA Vehicles* which are not in fact genuine *MMNA Parts and Accessories*, or parts expressly approved by **MMNA**.

If **Dealer** uses parts for the service or repair of *MMNA Vehicles* which are not *MMNA Parts and Accessories* and which have not otherwise been approved in writing by **MMNA** for use in *MMNA Vehicles*, **Dealer** does so at its own risk and neither **MMNA** nor any manufacturer of *MMNA Products* will be responsible to **Dealer** or any third party for any products liability, warranty or other claim which may arise as a result of the installation and/or use of such parts and **Dealer** agrees to indemnify and hold **MMNA** and any manufacturer of *MMNA Products* harmless from any such claim or liability.

5. Campaign Inspections and Corrections

Dealer agrees to perform campaign inspections and/or corrections for owners and users of all *MMNA Products* that qualify for such inspections and/or corrections, regardless of where or from whom such products were purchased. **Dealer** further agrees to comply with all procedures relating thereto set forth in the *Warranty Manual* and applicable bulletins, manuals, directives and technical data issued from time to time by **MMNA** to **Dealer**. **MMNA** agrees to reimburse **Dealer** for all replacement parts and/or other materials required and used in connection therewith and for labor in accordance with the applicable provisions of the *Warranty Manual* as supplemented by bulletins and directives issued from time to time by **MMNA** to **Dealers**. The term "campaign inspection and/or correction" as used in this section shall mean specially designated service operations initiated by **MMNA** to be performed by **Dealer** on specified vehicles.

6. Compliance With Safety and Emission Control Requirements

Dealer agrees to comply with, and operate consistently with, all applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the federal Clean Air Act, as amended, including applicable rules and regulations issued from time to time thereunder, and all other applicable federal, state and local motor vehicle safety and emission control requirements.

In the event that the laws of the state in which **Dealer** is located require motor vehicle dealers or distributors to install in new or used motor vehicles, prior to the retail sale thereof, any safety devices or other equipment not installed or supplied as standard equipment by **MMNA**, then **Dealer**, prior to its sale of any *MMNA Vehicles* on which such installations are so required, shall properly install such equipment on such *MMNA Vehicles*. **Dealer** shall comply with all state and local laws pertaining to the installation requirements of any such equipment including, without limitation, the reporting of such installation. **MMNA** shall not be liable for any failure of **Dealer** or its employees to comply with such state and local laws.

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

B. Service Operations

1. Service and Parts Organization

Dealer agrees to organize and maintain complete service and parts organization, including a qualified service manager, a qualified parts manager and the minimum number of competent service and parts personnel established by **MMNA** in the *Dealer Development Plan*.

2. Paint and Body Facilities

If permissible under local governmental ordinances, regulations and statutes, **Dealer** will use its best efforts to provide paint and body facilities for *MMNA Vehicles*. Such facilities will be subject to **MMNA's** prior written approval and, once approved, shall become part of the *Dealership Premises* and subject to the terms and conditions of *this Agreement*. If local law does not permit the operation of such services on the *Dealership Premises*, **Dealer** agrees to enter into a contract for the services of an independent company in order to provide complete warranty service for *MMNA Vehicles*. The company selected by Dealer for paint and body services must be approved in writing by **MMNA**.

3. Workshop

In the installation and operation of **Dealer's** workshops and body and paint shops, if any, **Dealer** will comply with such standards and requirements as **MMNA** may prescribe from time to time, particularly with respect to:

- a. Procurement and maintenance of general tools and equipment, including hydraulic hoists and lubricating equipment;
- b. Procurement and maintenance of special tools from time to time designated by **MMNA** as necessary to properly provide warranty and repair services to **MMNA** customers;

- c. Use of workshop forms which may be prescribed by **MMNA** and use of **MMNA** customer service promotional material, as well as procurement and maintenance of at least one complete set of **MMNA** service literature; and
- d. Proper execution of all service and repair work with respect to *MMNA Products*.

Failure by **Dealer** to procure and maintain necessary special tools, general tools and equipment shall constitute grounds for termination of *this Agreement* under Section X.B.2.(k) hereof.

4. Handling of Service Complaints

Dealer will receive, investigate and handle all complaints received from **MMNA** customers with a view to securing and maintaining the goodwill of the public toward **Dealer**, **MMNA** and *MMNA Products*. All complaints received by **Dealer** which cannot be readily remedied shall be promptly reported in detail to **MMNA**. **Dealer** recognizes that the repeated failure to properly resolve customer complaints shall constitute grounds for termination of *this Agreement* under Section X.B.2.(l) thereof.

5. Stock of Parts

Dealer agrees to carry in stock at all times during the term of *this Agreement* an inventory of *MMNA Parts and Accessories* and **MMNA** approved parts and accessories adequate at any given time to enable **Dealer** to fulfill customer demands, warranty repairs and its other service obligations under *this Agreement*. For this purpose, **Dealer** agrees to purchase each year an initial supply of parts for the new models of *MMNA Vehicles*. **MMNA** shall at least fifteen (15) days prior to the introduction of new models provide a list of the parts which should be purchased by **Dealer**. **MMNA** shall have the right to audit **Dealer's** inventory from time to time and may require changes in the volume and contents thereof. In addition, **Dealer** agrees to provide adequate equipment for an effective parts supply operation. Failure to maintain an adequate stock of parts in accordance with standards and requirements established by **MMNA** shall constitute grounds for termination of *this Agreement* under Section X.B.2.(o) hereof.

6. Parts Inventory Control

MMNA has elected to implement an electronic data processing parts inventory control system for the purpose of providing adequate records regarding the availability of parts. In recognition of the benefits of such a system, **Dealer** agrees to acquire and install, at its sole expense, on the *Dealership Premises* a computer terminal for the purpose of utilizing the parts inventory control system offered by **MMNA** in accordance with **MMNA's** instructions. Alternatively, at the **Dealer's** own discretion and to meet this requirement, **Dealer** may use at the *Dealership Premises* another inventory control system provided that (1) it is fully integrated with an automated accounting system; (2) the inventory control and

accounting system software are already operating and controlling the operation of two or more other dealerships which are owned by the **Dealer**, and (3) the inventory control and accounting software are operated on a single mainframe computer for all such dealerships. This requirement shall not apply to **Dealer** if **Dealer** began doing business as an *Authorized MMNA Dealer* prior to November 1, 1985, provided however, **Dealer** has already installed on the *Dealership Premises* before said date a parts inventory control system approved by **MMNA**.

7. Service Rentals

In accordance with standards established by **MMNA**, **Dealer** shall maintain or have available for use by **Dealer's** service customers a fleet of rental vehicles adequate to serve the needs of customers who leave their *MMNA Vehicles* with **Dealer** for repair or servicing.

C. Assistance Provided by MMNA

1. Service Training Assistance

Dealer and **MMNA** both recognize the importance of providing consistent, dependable service of the highest quality to **MMNA** customers. Accordingly, **MMNA** agrees to provide service training assistance to **Dealer** designed to continually improve the level of service provided by **Dealer's** service and parts personnel. Since **MMNA** and **Dealer** recognize that the maximum benefit from such training programs may only be derived if all service and parts employees attend the programs, **Dealer** agrees to require the attendance of all such personnel. **MMNA** will endeavor to provide at least thirty (30) days' prior notice of all such mandatory programs to **Dealer**. Repeated failure of **Dealer's** service and parts personnel, including, but not limited to, management, to attend such sessions shall constitute grounds for termination of *this Agreement* under Section X.B.2.(i) hereof.

2. Service Manuals and Materials

MMNA agrees to provide **Dealer** with one copy of each service manual or other publication **MMNA** deems necessary for the operation of **Dealer's** service organization. Additional copies may be purchased by **Dealer** at its option.

3. Field Service Personnel Assistance

To assist **Dealer** in handling its service responsibilities under *this Agreement*, **MMNA** agrees to make available field service personnel who from time to time will advise and counsel **Dealer's** personnel on service-related subjects, including product quality, technical adjustment, repair and replacement of product components, owner complaints, warranty administration, service and parts merchandising, training and service management.

IX. DISPLAY OF TRADEMARKS, SERVICE MARKS AND TRADE NAMES

Dealer acknowledges that **MMNA** is the exclusive owner of, or is authorized to use and to permit **Dealer** and others to use, the *MMNA Trademarks*. During the term of *this Agreement*, **Dealer** is granted a nonexclusive privilege of displaying and otherwise using the *MMNA Trademarks* in connection with and for the purpose of identifying, advertising and selling *MMNA Products*;

provided, however, that **Dealer** shall promptly discontinue the display and use of any such *MMNA Trademarks*, and shall change the manner in which any such *MMNA Trademarks* are displayed and used, whenever requested to do so by **MMNA**. **Dealer** shall not use the *MMNA Trademarks* or the words “Mitsubishi” or “MMNA” or any other word confusingly similar to “Mitsubishi” in its corporate name if **Dealer** is a corporation, or in its partnership names if **Dealer** is a partnership, or in its proprietorship name if **Dealer** is a proprietorship; provided, however, that if **MMNA** gives its prior written consent, Dealer may use the words “Mitsubishi Motors” as part of the trade name under which it conducts its business. If **Dealer** uses the words “Mitsubishi Motors” as part of its trade name, upon the request of **MMNA** or upon the termination of *this Agreement* for any reason whatsoever, **Dealer** shall cease to use the words “Mitsubishi Motors” in its trade name and shall take or cause to be taken all steps to eliminate such words therefrom.

Dealer will do nothing to impair the value of, or contest the right of **MMNA** to the exclusive use of, any trademark, design mark, service mark, or trade name at any time acquired, claimed, used or adopted by **MMNA**.

X. TERMINATION OF AGREEMENT

A. Dealer May Terminate This Agreement Upon Thirty (30) Days Prior Written Notice To MMNA.

B. MMNA May Terminate This Agreement For Cause:

1. Immediately--
 - a. Upon failure of **Dealer** to keep its **MMNA** dealership operations, or any part thereof, open for business for a period in excess of five (5) consecutive business days as required under Section IV.F. hereof, except in the event such closure or cessation of operation is caused by some physical event beyond the control of **Dealer**, such as civil war, riots, fires, floods, earthquakes, or other acts of God; or
 - b. Upon any change in location of the *Dealership Premises*, or upon any change in the amount or usage of the *Dealership Facilities*, or in the event **Dealer** directly or indirectly conducts any of its **MMNA** dealership operations at any other location or in any other facilities, without the prior written consent of **MMNA**; or
 - c. Upon the effective date of the expiration or earlier termination of **MMNA's** right to distribute *MMNA Products*.
2. By Giving Thirty (30) Days Prior Written Notice Upon--
 - a. Failure of **Dealer** to obtain or maintain any license, or the suspension or revocation of any license, necessary for the conduct by **Dealer** of its business pursuant to *this Agreement*; or
 - b. Failure of **Dealer** to pay **MMNA** for any *MMNA Products* in accordance with the terms and conditions governing the purchase of such products; or

- c. The death of any *Owner* or upon the death or incapacity of any *Executive Manager* (provided that the terms and conditions of Section X.D. hereof shall apply in any such case); or
- d. Any sale, transfer, relinquishment or other change, voluntary or involuntary, by operation of law or otherwise, of any majority interest in the direct or indirect ownership or in the management of **Dealer** as set forth in Sections 3 and 4, respectively, of the *MMNA Dealer Sales and Service Agreement*, without the prior written consent of **MMNA**; or
- e. The inability of **Dealer** to generally pay its debts as such debts become due, or the filing of any voluntary or involuntary petition under any bankruptcy law, or the execution by **Dealer** of an assignment for the benefit of creditors, or the appointment for **Dealer** of a receiver or trustee or other officer having similar powers for **Dealer** who is not removed within thirty (30) days from his appointment thereto, or any levy under attachment or execution or similar process which is not within ten (10) days vacated or removed by payment or bonding, or the conviction of **Dealer**, or any principal officer or manager of **Dealer**, of any crime tending to affect adversely the ownership, operation, management, business or interests of **Dealer** or **MMNA**; or
- f. Failure of **Dealer** to establish or maintain the unrestricted availability of lines of credit in the amount set forth in the *Dealer Development Plan* and under terms approved by **MMNA** with financial institutions acceptable to **MMNA** for use in connection with **Dealer's** purchase and maintenance of its inventory of *MMNA Products* as required under the provisions of *this Agreement*, including, but not limited to, Sections III.C.2. and III.C.4. hereof; or
- g. Impairment of the reputation or financial standing of **Dealer** or any of its management subsequent to the execution of *this Agreement*, or ascertainment by **MMNA** subsequent to the execution of *this Agreement* of any fact existing at or prior to the time of execution of *this Agreement* which tends to impair the reputation or financial standing of **Dealer** or any of its management and which would substantially impair the operation of the dealership; or
- h. Any submission by **Dealer** to **MMNA** of a false or fraudulent dealership application report, statement or claim for reimbursement, refund, credit, or financial information, or submission to a customer of a false or fraudulent report or statement of any kind, including but not limited to statements concerning pre-delivery preparation, testing, servicing, repair or maintenance; or
- i. Repeated failure of **Dealer's** sales, service and parts personnel, including but not limited to management, to fully participate in any training and/or mandatory promotional programs offered by **MMNA** to **Dealer** as required under Sections VII.E.1. and VIII.C.1. hereof; or
- j. Failure of **Dealer** to properly obtain, erect, maintain, repair and illuminate signs and other displays in a manner approved by **MMNA** as required under the provisions of *this Agreement*, including, but not limited to,

Section IV.H. hereof; or

- k. Failure of **Dealer** to procure and maintain an adequate supply of general and special tools and equipment designated by **MMNA** as required under the provisions of *this Agreement*, including, but not limited to, Section VIII.B.3. hereof; or
 - l. Failure of **Dealer** to maintain good relations with its customers, including, but not limited to, failure to notify **MMNA** of complaints by customers and repeated failure to properly resolve customer complaints as required under Section VIII.B.4. hereof; or
 - m. Failure of **Dealer** to permit authorized **MMNA** representatives to examine, audit, reproduce and take for **MMNA's** use copies of **Dealer's** records, whether or not located on the *Dealership Premises*, as required under Section VI.D. hereof; or
 - n. Failure of **Dealer** to maintain the minimum inventory of *MMNA Vehicles*, whether for showroom display, demonstration or immediate sale, as required under Section IV.G. hereof; or
 - o. Failure of **Dealer** to maintain an adequate stock of parts as required under section VIII.B.5. hereof; or
 - p. Failure of **Dealer** to accept an amended form of MMNA Dealer Sales and Service Agreement or renewal thereof within thirty (30) days after its presentation to **Dealer**, as required under Section 2 of the MMNA Dealer Sales and Service Agreement; or
 - q. Failure of **Dealer** to promote effectively *MMNA Products* by using sales promotional literature offered by **MMNA**; or
 - r. Failure of **Dealer** to use proper parts and accessories in the repair and servicing of *MMNA Vehicles* as required under Section VIII.A.4. hereof.
3. By Giving Ninety (90) Days Prior Written Notice Upon--
- a. Failure of **Dealer** to reach and maintain its Minimum Sales Responsibility as defined in the *Dealer Development Plan*, or to correct deficiencies described in the *Dealer Development Plan*, as required under Section VII.B.1. hereof, or failure of **Dealer** to otherwise conduct its business in accordance with any of its obligations or requirements set forth herein to the satisfaction of **MMNA**; or
 - b. Any material or continuing breach or violation by **Dealer** of any other term or provision of *this Agreement*; or
 - c. Any dispute, disagreement or controversy between or among partners, managers, officers or stockholders of **Dealer** which in the good faith opinion of **MMNA** adversely affects the ownership, operation,

management, business or interests of **Dealer** or **MMNA**, or the presence in the management of **Dealer** of any person who in **MMNA's** good faith opinion no longer has the requisite qualifications to discharge his or her responsibilities.

C. Notice and Effect of Termination

The date of any notice of termination shall be the date such notice is mailed. Any notice of termination by **MMNA** shall inform **Dealer** of the grounds therefor, and any such notice may be withdrawn if during the applicable notice period **Dealer** cures to **MMNA's** satisfaction the condition or conditions upon which the notice is based. If any period of advance notice of termination required hereunder is less than that required by applicable law, such period of advance notice shall be deemed to be the minimum period required by such laws.

MMNA's election to terminate *this Agreement* shall be without prejudice to any other right or remedy which may be available to **MMNA** hereunder or under applicable law.

D. Establishment of Successor Dealer

1. Because of the Death of an *Owner*

In the event of termination of *this Agreement* by **MMNA** because of the death of an *Owner*, pursuant to Section X.B.2.(c) hereof, the following provisions shall apply:

- a. Subject to the other provisions of *this Agreement*, **MMNA** shall offer an **MMNA Interim Sales and Service Agreement** (a conditional and temporary sales and service agreement the term of which may not exceed one (1) year) in the form then used by **MMNA** to a successor dealer ("Successor Dealer") comprised of the person nominated by such deceased *Owner* as his or her successor, together with the other *Owner(s)*, provided that:
 - (i) the nomination was submitted to **MMNA** in writing, was consented to by all remaining *Owners*, and was approved by **MMNA** prior to the death of such *Owner*;
 - (ii) either (a) there has been no change in the Executive Managers of **Dealer** or (b) the provisions of Section X.D.2. below have been complied with; and
 - (iii) the Successor Dealer has capital and facilities substantially in accordance with **MMNA's** established standards and requirements therefor at the time the **MMNA Interim Sales and Service Agreement** is offered.
- b. If the deceased *Owner* has not nominated a successor in accordance with this section, but all of the beneficial interest of the deceased *Owner* has passed by will or by the laws of intestate succession directly to the deceased *Owner's* spouse and/or children (the "Proposed New Owners"), subject to the other provisions of this section, **MMNA** shall offer an **MMNA Interim Sales and Service Agreement** in the form then used by

MMNA to a Successor Dealer comprised of the Proposed New Owners, together with the other *Owner(s)*, provided that:

- (i) Either (a) there has been no change in the *Executive Managers* of **Dealer** or (b) the provisions of Section X.D.2. below have been complied with; and
- (ii) The Successor Dealer has capital and facilities substantially in accordance with **MMNA's** established standards and requirements therefor at the time the MMNA Interim Sales and Service Agreement is offered.

2. Because of Death or Incapacity of *Executive Manager*

In the event of the termination of *this Agreement* by **MMNA** because of the death, physical or mental incapacity of an *Executive Manager*, subject to the other provisions of this section of *this Agreement*, **MMNA** shall offer an MMNA Interim Sales and Service Agreement to a Successor Dealer comprised of the *Owners*, provided that:

- a. Either (i) the *Owners* have nominated in writing a person to succeed the deceased or disabled *Executive Manager* which nomination was approved by **MMNA** prior to the event causing the death, disability or incapacity of such *Executive Manager*, or (ii) not later than one (1) month after the occurrence of such death or disabling event a new *Executive Manager* is proposed to MMNA by all of the *Owners* and such person is approved by MMNA; and
- b. The Successor Dealer has capital and facilities substantially in accordance with **MMNA's** established standards and requirements therefor at the time the MMNA Interim Sales and Service Agreement is offered.

3. Evaluation of Successor Dealer

During the term of any MMNA Interim Sales and Service Agreement offered pursuant to Sections X.D.1. or X.D.2. hereof, **MMNA** will periodically review the performance of the Successor Dealer using the standards set forth in the Successor Dealer's *Dealer Development Plan*. If such Successor Dealer is able to satisfactorily meet such standards and desires to continue the dealership operation, the Successor Dealer will be given an opportunity to enter into an MMNA Dealer Sales and Service Agreement and such Successor Dealer shall be thereafter treated in the same manner as any *Authorized MMNA Dealer*.

4. Termination of Market Representation

Notwithstanding anything stated or implied to the contrary in *this Agreement*, **MMNA** shall not be obligated to offer a dealership agreement to any Successor Dealer if **MMNA** notifies **Dealer** in writing prior to the event causing the termination of *this Agreement* that **MMNA's** market representation plans do not provide for continuation of that dealership operation in the *Sales Locality*.

5. Termination of Offer

Any offer of an MMNA Interim Sales and Service Agreement to a proposed Successor Dealer made under this section shall automatically expire if not accepted within thirty (30) days after presentation by **MMNA**.

E. Continuance of Business Relations

If, after the effective date of termination or expiration, **MMNA** chooses to accept orders from **Dealer** to fill customers' orders received prior to such date by **Dealer**, or if **MMNA** otherwise transacts business with **Dealer** relating to the sale of *MMNA Products*, all such transactions will be governed by the terms of *this Agreement*, so far as those terms are applicable. Nevertheless, no such acceptance of orders or other acts by **MMNA** shall waive termination or constitute a renewal of *this Agreement*.

F. Discontinuance of Use of Marks

Upon expiration or termination of *this Agreement*, **Dealer** agrees that it shall immediately:

1. Discontinue the use of the words "Mitsubishi," "**MMNA**" and all other *MMNA Trademarks*, or any semblance of any of the foregoing, including without limitation, the use of all stationery and other printed material referring in any way to Mitsubishi, **MMNA** or *MMC*, any other manufacturer of *MMNA Products*, or bearing any *MMNA Trademarks*; and
2. Discontinue any use of the words "Mitsubishi," "**MMNA**" or other *MMNA Trademarks*, or any semblance of any of the foregoing, as a part of its trade name, and file a change or discontinuance of such name with appropriate authorities; and
3. Remove all product signs bearing any *MMNA Trademarks* from all *Dealership Premises* at **Dealer's** sole cost and expense; and
4. Not represent itself as an *Authorized MMNA Dealer*; and
5. Refrain from any action including, without limitation, any advertising stating or implying that it is authorized to sell or distribute *MMNA Products*.

In the event **Dealer** fails to comply with the terms and conditions of this Section X.F., **MMNA** shall have the right to enter upon the *Dealership Premises* and remove all such signs bearing any *MMNA Trademarks* without liability to **Dealer**; and **Dealer** agrees that it shall reimburse **MMNA** for any costs and expenses incurred in connection therewith, including but not limited to reasonable attorneys' fees.

G. Repurchase Provisions

Upon the expiration or termination of *this Agreement*, **MMNA** may, at its option, purchase from **Dealer** all or any part of the following:

1. New, unused, undamaged current model year *MMNA Vehicles* then unsold in **Dealer's** inventory. The prices of such vehicles shall be the lower of (i) the price at which they were originally purchased by **Dealer** from **MMNA**, or (ii) the *Invoice Price* last established by **MMNA** for the sale of identical vehicles to *MMNA*

Dealers in the area in which **Dealer** is located, less in either case all prior refunds or allowances, if any, made by **MMNA** with respect thereto, and also less any costs and expenses required to place the repurchased vehicles in new car condition.

2. New, unused and undamaged *MMNA Parts and Accessories* then unsold in **Dealer's** inventory which are in good and saleable condition, provided that they are listed in the then current *MMNA Master Parts Price List* and have not been superseded by another part or accessory. All such parts and accessories must be in the original container bearing a label with the appropriate part identification number. Should **MMNA** elect to purchase parts, the repurchase price shall be the price last established by **MMNA** for the sale of identical *MMNA Parts or Accessories* to *MMNA Dealers* in the area in which **Dealer** is located, less the maximum **Dealer's** discount available under the most favorable purchase terms available to **Dealer** and also less handling and packing charges then in effect as established by **MMNA**.

If **Dealer** purchased *MMNA Parts and Accessories* from sources other than **MMNA**, **Dealer** must present to **MMNA** evidence of the price which it paid for such parts before **MMNA** will consider repurchasing such parts. In no event shall **MMNA** pay a price which exceeds the price for any part as calculated hereinabove.

3. Tools and equipment especially designed for servicing *MMNA Vehicles*. The prices for such tools and equipment shall be as mutually agreed upon by **MMNA** and **Dealer**.
4. Signs recommended by **MMNA** for identification of **Dealer**. The prices of such signs shall be as mutually agreed upon by **MMNA** and **Dealer**.

Within thirty (30) days after the date of expiration or termination of *this Agreement*, **Dealer** shall deliver or mail to **MMNA** a detailed inventory of all items referred to in subsections 1, 2, 3 and 4 above and **Dealer** shall certify the truth thereof. In the event **Dealer** fails to supply such a list to **MMNA** within said period, **MMNA** shall have the right to enter *Dealer Premises*, without liability to **Dealer**, for the purpose of compiling such an inventory list; and **Dealer** shall reimburse **MMNA** for any costs and expenses incurred in connection therewith. If, upon review of the inventory list, **MMNA** decides to purchase any of the items in subsections 1-4 hereinabove, **MMNA** will, within a reasonable period of time, provide **Dealer** with a written offer specifying the items **MMNA** wishes to purchase. **Dealer** shall act promptly in arranging for the sale and delivery of such items to **MMNA**. If **Dealer** fails to promptly cooperate in effectuating the sale, **MMNA** may, at its option, withdraw its offer to repurchase.

Any purchase made hereunder shall be deemed to be only with respect to those items which were purchased by **Dealer** from **MMNA**, unless **MMNA** by its notice of such purchase states otherwise. **Dealer** agrees that products to be purchased by **MMNA** from **Dealer** shall be delivered by **Dealer** to **MMNA's** place of business at **Dealer's** expense; or, if **Dealer** fails to do so, **MMNA** may transport such products and deduct the costs therefor from the repurchase price. **Dealer** agrees to execute and deliver to **MMNA** instruments satisfactory to **MMNA** conveying title to the aforesaid property to **MMNA**. If

such property is subject to any lien or charge of any kind, Dealer agrees to procure the discharge and satisfaction thereof prior to the repurchase of such property by **MMNA**.

XI. POLICY REVIEW BOARD

A. Establishment of Policy Review Board

In the interest of maintaining harmonious relations between **MMNA** and **Dealer** and to provide for the resolution of protests, controversies and claims related to the transactions contemplated under *this Agreement*, **MMNA** shall establish the Mitsubishi Motors North America, Inc. *Policy Review Board* (the "*Policy Review Board*") to be comprised of two corporate officers and one *MMNA Dealer* representative. **Dealer** agrees to abide by the procedures of the *Policy Review Board*, as they may be revised from time to time by **MMNA**.

B. Appeal of Appointment to Policy Review Board

If, as a result of a market analysis undertaken by **MMNA**, **MMNA** proposes to appoint an additional *MMNA Dealer* in the *Sales Locality*, and if **Dealer** objects to such proposed addition, Dealer may file a written objection to such proposed addition with the *Policy Review Board* in accordance with the procedures established therefor within fifteen (15) days from the date of **Dealer's** receipt of notice of **MMNA's** intent to appoint such additional *MMNA Dealer*. **MMNA** will not appoint such additional dealer until the *Policy Review Board* has rendered its decision on the matter and any decision of the *Policy Review Board* shall be binding on **MMNA** but not on **Dealer**.

C. Appeal of Termination to Policy Review Board

Any protests, controversies or claims by **Dealer** (whether for damages, stays of action or otherwise) with respect to any termination of *this Agreement* or the settlement of the accounts of **Dealer** with **MMNA** after termination of *this Agreement* has become effective shall be appealed by **Dealer** to the *Policy Review Board* within fifteen (15) days after **Dealer's** receipt of notice of termination or, as to settlement of accounts after termination, within six (6) months after the termination has become effective. Appeal to the *Policy Review Board* shall be a condition precedent to **Dealer's** right to pursue any other remedy available under *this Agreement* or otherwise available under law. **MMNA**, but not **Dealer**, shall be bound by the decision of the *Policy Review Board*.

D. Arbitration of Claims by Dealer

If **Dealer** is dissatisfied with a decision of the *Policy Review Board* in a case arising under Section XI.C. hereof, **Dealer** may submit the matter to binding arbitration as hereinafter provided.

1. Arbitration shall be initiated by **Dealer** by filing a written request therefor within fifteen (15) days after **Dealer's** receipt of notice of the decision of the *Policy Review Board* issued under Section XI.C. hereof. **Dealer's** written request to arbitrate, together with the appropriate filing fee, shall be filed by **Dealer** with any office of the American Arbitration Association located nearest to the *Dealership Premises*, which shall then become the site of the arbitration proceedings, unless otherwise agreed to by the parties. The arbitration request shall set forth a clear and complete statement of the nature of **Dealer's** claim and its basis, the amount involved, if any, and the remedy sought.

2. Arbitration shall be the sole and exclusive remedy of **Dealer** in such cases, and the decision and award of the arbitrator shall be final and binding on both parties.
3. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect (hereinafter referred to as the "Commercial Rules") and in consonance with the United States Arbitration Act (9 U.S.C. Section 1, *et seq.*).
4. The arbitration shall be heard by a single, impartial arbitrator mutually agreeable to the parties, who shall be an attorney at law admitted to practice for at least five (5) years and selected from a panel of American Arbitration Association arbitrators. If the parties shall fail to reach such an agreement within fifteen (15) days of the **Dealer's** request to arbitrate, an arbitrator meeting such qualifications shall be named by the American Arbitration Association from such panel in accordance with the Commercial Rules.
5. If the arbitrator finds that termination of *this Agreement* by **MMNA** would be in accord with the provisions hereof, the standards set forth in the Automobile Dealer Suits Against Manufacturers Act, 15 U.S.C. Sections 1221-1225 (the "Dealer's Day in Court Act"), and any applicable state or local law, the arbitrator shall render an award in favor of **MMNA**, the termination shall become effective on the date of such award, and the termination shall be expressly recognized by **Dealer** as having been made by **MMNA** without breach by **MMNA** of *this Agreement*, the Dealer's Day in Court Act, or any applicable state or local law. If the arbitrator shall render an award in favor of **Dealer**, **MMNA's** notice of termination shall be void and shall not be deemed to constitute a breach of *this Agreement*. The decision and award of the arbitrator shall be conclusive as to all matters within the arbitrator's jurisdiction in all other proceedings between the parties, their successors or assigns, and judgment upon the award may be entered in any Court of competent jurisdiction.
6. To facilitate the selection of a competent and experienced arbitrator, the parties agree to make reasonable arrangements to compensate the arbitrator for the time spent in the performance of his or her duties. The compensation shall be commensurate with the professional standing of the arbitrator and shall be arranged in conformance with the Commercial Rules. The compensation of the arbitrator, the administrative fees and charges of the American Arbitration Association, and the other expenses of the arbitration shall be borne by the parties as provided in the Commercial Rules. The arbitrator shall, however, have discretion in the arbitrator's award to assess such compensation, administrative fees and charges and other expenses of the arbitration against either party in such proportions (or in their entirety) as the arbitrator may determine to be fair and equitable, provided that in all cases each party shall pay the fees and disbursements of its own legal counsel.
7. Unless **MMNA** and **Dealer** specifically agree to the contrary, and subject to the Commercial Rules and the procedures of the American Arbitration Association, the arbitration hearing shall be concluded not more than sixty (60) days after the date of **Dealer's** written request to arbitrate.

XII. GENERAL PROVISIONS

A. Indemnification

1. **Dealer** shall defend and indemnify **MMNA** and any manufacturer of *MMNA Products* and hold each of them harmless from any and all liabilities that may be asserted or arise by reason or out of: (a) **Dealer's** failure or alleged failure to comply, in whole or in part, with any obligation assumed by **Dealer** pursuant to *this Agreement*; (b) **Dealer's** negligent or improper, or alleged negligent or improper, repairing or servicing of new or used *MMNA Vehicles* or equipment, or such other motor vehicles or equipment as may be sold or serviced by **Dealer**; (c) **Dealer's** breach, or alleged breach, of any contract between **Dealer** and **Dealer's** customer; or (d) **Dealer's** misleading statement or misrepresentation, or alleged misleading statement or misrepresentation, either direct or through advertisement, to any customer of **Dealer**. This indemnification shall include all attorneys' fees, court costs and expenses incurred by **MMNA** and/or any manufacturer of *MMNA Products* in defending any claim or suit asserted as a result of the foregoing.

In the event that any legal action arising out of any of the foregoing causes or alleged causes is brought against **MMNA**, any manufacturer of *MMNA Products* and/or any of their shareholders, then **Dealer** shall undertake, at its sole expense, the defense of said action on their behalf. Should any tender of such defense be refused by **Dealer**, then **MMNA**, any manufacturer of *MMNA Products* and/or any of their shareholders shall conduct such defense; and **Dealer** shall be liable to **MMNA**, any manufacturer of *MMNA Products* and/or any of their shareholders for costs of such defense, including attorneys' fees, together with any judgment or settlement paid by **MMNA**, any manufacturer of *MMNA Products* and/or any of their shareholders.

Dealer shall have no obligation to indemnify **MMNA** and/or any manufacturer of *MMNA Products* pursuant to this paragraph if the injury or damage as to which indemnification is demanded is alleged to have been caused or contributed to in any way by any act or omission by **MMNA** and/or any manufacturer of *MMNA Products*.

2. **MMNA** and/or any manufacturer of *MMNA Products* shall indemnify **Dealer** and hold them harmless from any and all claims for personal injury or property damage resulting from the alleged malfunctioning of an *MMNA Product* claimed to have been caused by a factory defect or deficiency in design of such product. This indemnification shall include all attorneys' fees, court costs and expenses incurred by **Dealer** in defending any claim or suit asserted as a result of the foregoing.

In the event that any legal action arising out of any of the foregoing causes or alleged causes is brought against **Dealer** and/or any of its shareholders, then **MMNA** and/or any manufacturer of *MMNA Products* shall undertake, at its sole expense, the defense of said action on their behalf. Should any tender of such defense be refused by **MMNA** and/or any manufacturer of *MMNA Products*, the **Dealer**, and/or any of its shareholders, shall conduct such defense; and **MMNA** and/or any manufacturer of *MMNA Products* shall be liable to **Dealer**, and/or any of its shareholders for costs of such defense, including attorneys' fees, together with any judgment or settlement paid by **Dealer**, and/or any of their shareholders.

MMNA and/or any manufacturer of *MMNA Products* shall have no obligation to indemnify **Dealer** pursuant to this paragraph if the injury or damage as to which indemnification is demanded is alleged to have been caused or contributed to in any way by any act or omission by **Dealer**, including, but not limited to, improper or unsatisfactory service or repair, misrepresentation or any claim of **Dealer's** unfair or deceptive trade practice.

3. Any party seeking indemnification shall promptly give written notice to the proposed indemnitor of any lawsuit and provide copies of any pleadings which have been served, together with all information then available regarding the circumstances giving rise to the suit. The proposed indemnitee shall at all times take all reasonable steps to insure that the defense of such lawsuit is not prejudiced by its action or inaction. The parties shall cooperate fully in the defense of such lawsuit in such manner and to such extent as the indemnitor may reasonably require.

B. No Implied Waivers

Any failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall any waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision, nor constitute a waiver of the provision itself. The election by either party of a particular remedy on default (including but not limited to termination of *this Agreement*) will not be exclusive of any other remedy provided hereunder or by applicable law, and all rights and remedies of the parties hereto will be cumulative.

C. Waiver of Trial by Jury

For all disputes, controversies or claims which may arise between **MMNA** and **Dealer** out of, or in connection with, *this Agreement*, its construction, interpretation, effect, performance or nonperformance, termination or the consequences thereof, or in connection with any transaction between them contemplated hereby, **MMNA** and **Dealer** hereby waive, to the extent permitted by law, the right to trial by jury.

D. Dealer Not Agent or Representative

This Agreement does not make **Dealer** the agent or legal representative of **MMNA** or any other manufacturer of *MMNA Products* for any purpose whatsoever. **Dealer** is not granted any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of **MMNA** or any other manufacturer of *MMNA Products* or to bind either in any manner whatsoever.

E. Assignment

Neither party may assign *this Agreement* or any of its interest herein without the prior written consent of the other party, except that **MMNA** may assign *this Agreement* without

such consent to any person, firm or corporation succeeding to its business and to any subsidiary or affiliated company of **MMNA**.

F. Expenses

Except as provided in *this Agreement*, **MMNA** shall not be under any liability whatsoever for any expenditure made or incurred by **Dealer** in connection with **Dealer's** performance of its obligations pursuant to *this Agreement*.

G. Taxes

Dealer agrees that it shall be responsible for and shall duly pay any and all sales taxes, use taxes, excise taxes, and other governmental or municipal charges, whenever imposed, levied or based upon the sale of *MMNA Products* by **MMNA** to **Dealer** and shall maintain accurate records of same for reporting purposes. **Dealer** agrees to pay and to hold **MMNA** harmless from any sales tax, use tax or similar tax, and any claims or demands (whether or not lawful) made by tax authorities with respect to such taxes, applicable with respect to the sale of *MMNA Products* from **MMNA** to **Dealer** and from **Dealer** to its customers.

EXHIBIT C



Aut Sales Center

MITSUBISHI
MOTORS

Ashwell
Associates
AVAILABLE
KYLE WILLIAMS 949.293.6788

MITSUBISHI
MOTORS
(851) 372-06
www.AGMtexas.com

vice

EXHIBIT D

Smidlein Steven

From: Felix Linda
Sent: Thursday, March 9, 2023 3:07 PM
To: Smidlein Steven; Tobert Melody; Renier John
Subject: Auto Gallery Murrieta

Good Afternoon,

I am at Auto Gallery Corona today. The remaining staff from Murrieta is now working here in Corona, and indicate they "fully moved out" of the Murrieta store on Tuesday, March 7th, and closed the store. As I listen to the Corona Service Manager speak with customers on the Service Drive and the phone, he indicates the Murrieta location is officially closed. I met with Amir and he would not confirm this information. He indicates there are several offers for the dealership/land as a stand-alone used car facility, and also for the franchise in a different location, and that "the deal should close any day now". He did not indicate with whom. Just keeping you all in the loop.

Thank you,

Linda T Felix
Mitsubishi Motors
District Parts & Service Manager
Linda.felix@na.mitsubishi-motors.com
562-733-8045

EXHIBIT E

Tobert Melody

From: Goodrich, Denny <denny.goodrich@oeconnection.com>
Sent: Tuesday, March 14, 2023 12:16 PM
To: Tobert Melody
Subject: FW: [External] Re: Auto Gallery Mitsubishi-Murrieta / 05482 / General support question CRM:0776207

[EXTERNAL EMAIL: This message originated from outside the Organization. Do not click links or open attachments unless you know the content is safe.]

Additional info below.

Denny Goodrich

OEC | Inventory Consultant, Customer Success, Inventory Solutions

office 877.880.0816

email denny.goodrich@oeconnection.com

www.oeconnection.com

OECBlog

facebook

twitter

LinkedIn



Classification: RESTRICTED

From: Amir Ghadiri <amir@autogalleryca.com>
Sent: Tuesday, March 14, 2023 12:43 PM
To: Goodrich, Denny <denny.goodrich@oeconnection.com>
Subject: Re: [External] Re: Auto Gallery Mitsubishi-Murrieta / 05482 / General support question CRM:0776207

It's already done

Amir Ghadiri | General Manager

Auto Gallery Mitsubishi – Corona

[2550 Wardlow Road. Corona, CA 92882](https://www.google.com/maps/place/2550+Wardlow+Road,+Corona,+CA+92882)

Auto Gallery Mitsubishi – Murrieta

[26825 Auto Mall Pkwy, Murrieta, CA 92562](#)

Office: (951) 372-0008 | Direct: (951) 462-4525

www.AGMitsu.com | Your Mitsubishi Source

On Mar 14, 2023, at 9:41 AM, Goodrich, Denny <denny.goodrich@oeconnection.com> wrote:

Hi Amir, thank you for your quick reply, appreciate it.

Any idea on timeline? I have a few things to do on our side before proceeding.

Denny Goodrich

OEC | Inventory Consultant, Customer Success, Inventory Solutions

office 877.880.0816

email denny.goodrich@oeconnection.com

www.oeconnection.com

<image001.jpg>

<image002.jpg>

<image003.jpg>

<image004.png>

<image005.png>

Classification: RESTRICTED

From: Amir Ghadiri <amir@autogalleryca.com>

Sent: Tuesday, March 14, 2023 12:39 PM

To: Goodrich, Denny <denny.goodrich@oeconnection.com>

Subject: [External] Re: Auto Gallery Mitsubishi-Murrieta / 05482 / General support question
CRM:0776207

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No worries. That location is closing

Thanks

Amir Ghadiri | General Manager

Auto Gallery Mitsubishi – Corona

[2550 Wardlow Road, Corona, CA 92882](#)

Auto Gallery Mitsubishi – Murrieta

[26825 Auto Mall Pkwy, Murrieta, CA 92562](#)

Office: (951) 372-0008 | Direct: (951) 462-4525

www.AGMitsu.com | Your Mitsubishi Source

On Mar 14, 2023, at 8:57 AM, Goodrich, Denny <denny.goodrich@oeconnection.com> wrote:

Good afternoon Amir, I was sent over the email below from you earlier today.

Can you share any insights about your request to cancel MiPARTS / PartsEye? I am asking as we usually do not see these types of inquiries.

Any comments from you would be helpful in figuring out where to go next.

Thank you.

Denny Goodrich

OEC | Inventory Consultant, Customer Success, Inventory Solutions

office 877.880.0816

email denny.goodrich@oeconnection.com

www.oeconnection.com

<image001.jpg>

<image002.jpg>

<image003.jpg>

<image004.png>

<image005.png>

Classification: RESTRICTED

From: SupportVM@partseye.com <SupportVM@partseye.com>

Sent: Tuesday, March 14, 2023 2:42 AM

To: support@partseye.com <support@partseye.com>

Subject: Auto Gallery Mitsubishi-Murrieta / 05482 / General support question

Dealer : Auto Gallery Mitsubishi-Murrieta (05482)

Name : Amir Ghadiri

Contact : amir@autogalleryca.com

Message : Hello, Please cancel all services effective immediately for Auto Gallery Mitsubishi - Murrieta / Dealer Code 05482. Thank you

Type of Inquiry : General support question

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EXHIBIT F



5851 Legacy Circle, Suite 200, Plano, TX 75024

April 18, 2023

Mitsubishi Motors North America, Inc.
Lainy Campbell
4031 Aspen Grove Drive
Franklin, TN 37067

Re: Drafting Agreement dated 6/10/2021 related to:
SORAYA INC
26825 AUTO MALL PKWY
MURRIETA, CA 92562
Drafting Agreement

Ally Region Number: 010
Ally Branch Number: 061
Dealer Division Number: 005482

This is to advise you that the wholesale credit lines extended to the above-referenced dealership have been suspended until further notice. Drafts made after your receipt of this notice will be honored only for the time period set forth in the Drafting Agreement, if any.

If you have any questions, please contact me at 657-247-3553.

Reem Bayaa

Reem Bayaa
Analyst

cc: SORAYA INC

EXHIBIT G



MITSUBISHI MOTORS NORTH AMERICA, INC.
4031 Aspen Grove Dr., Suite 650
Franklin, TN 37067
www.mitsubishicars.com

April 19, 2023

VIA EMAIL AND CERTIFIED U.S. MAIL – RETURN RECEIPT REQUESTED

Mr. Hamid Ghadiri
Soraya Inc. d/b/a Auto Gallery Mitsubishi-Murrieta
26825 Auto Mall Pkwy
Murrieta, CA 92562
Hamid@autogalleryca.com

Re: Notice of Termination of Mitsubishi Dealer Sales and Service Agreement

Dear Mr. Ghadiri:

Soraya Inc. d/b/a Auto Gallery Mitsubishi-Murrieta ("Dealer") and Mitsubishi Motors North America, Inc. ("MMNA") are parties to a Mitsubishi Dealer Sales and Service Agreement dated February 12, 2019 (the "Dealer Agreement"), which established Dealer as an authorized dealer of Mitsubishi Products. Dealer agreed under the terms and conditions of the Dealer Agreement to assume certain obligations and responsibilities as a Mitsubishi dealer in exchange for the rights granted to it under the Dealer Agreement. Among other things, Dealer agreed under Section IV.F. of the Dealer Sales and Service Agreement Standard Provisions incorporated by reference into the Dealer Agreement (the "Standard Provisions") to keep its dealership premises open for business.

As further described below, Dealer has substantially and materially breached the Dealer Agreement in a manner that constitutes good cause for termination of the Dealer Agreement under the express provisions of the agreement and applicable California law. This letter serves as MMNA's statutory notice of its intent to terminate the Dealer Agreement in compliance with the requirements of Cal. Veh. Code § 3060(a).

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Notice of Termination

MMNA has learned that Dealer has not conducted its customary sales and service operations during its customary hours of business for at least seven consecutive business days. Specifically, Dealer's employees advised MMNA that dealership operations in Murrieta were closed and Dealer advised its vendors that it had ceased operations in Murrieta on or about March 7, 2023. This is validated by observations made by MMNA's own personnel, who noted that a sign at the Murrieta dealership advertises the real estate as being "AVAILABLE" and who observed that the dealership was closed for more than seven consecutive business days in February 2023. This observation also is validated by a review of the most recent financial information for Dealer, which shows that Dealer had no new car sales in February and March 2023. Dealer has also disabled its website and Facebook page.

Under Section X.B.1.a. of the Standard Provisions, MMNA may terminate the Dealer Agreement immediately "[u]pon failure of Dealer to keep its MMNA dealership operations, or any part thereof, open for business for a period in excess of five (5) consecutive business days." Recognizing the seriousness of this type of breach, Cal. Veh. Code § 3060(a)(1)(B)(v) states that a franchisor may terminate its franchise agreement with a motor vehicle dealer upon fifteen days written notice upon the "failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days."

Accordingly, MMNA hereby gives notice of its intent to terminate the Dealer Agreement pursuant to Section X.B.1.a. of the Standard Provisions. The termination shall become effective on May 5, 2023, or 15 days from Dealer's receipt of this notice, whichever is later. This notice shall further serve as formal notice of MMNA's intent to terminate the Dealer Agreement in compliance with the requirements of Cal.Veh. Code § 3060(a)(1)(B)(v).

Separately, MMNA received notice from the financial institution providing Dealer's wholesale credit line on April 18, 2023 advising that the wholesale credit lines for Dealer have been suspended until further notice. Under Section III.C.2 of the Standard Provisions, Dealer is obligated to maintain a wholesale credit line in an amount and with a financial institution acceptable to MMNA. Section III.C.4 of the Standard Provisions provides that "any failure of Dealer's financial institution to maintain for a period of sixty (60) or more days the unrestricted availability to MMNA of Dealer's credit line in an amount and In accordance with the terms approved by MMNA shall constitute grounds for termination of this Agreement." MMNA reserves the right to issue a supplemental notice of termination in connection with Dealer's loss of wholesale floorplan financing.

Termination Requirements

As of the earliest effective date of termination referenced above, Dealer must refrain from the further distribution and sale of new Mitsubishi Products; remove from its Dealership Premises and discontinue use of all signs, trademarks, or trade names of MMNA and Mitsubishi used by it in connection with the sale and distribution of Mitsubishi Products; refrain from any further advertising or publicity referring to Mitsubishi Products, "Mitsubishi Motors," or MMNA; return to MMNA all advertising materials provided by MMNA to Dealer free of charge; and otherwise comply fully with all of the provisions of the Dealer Agreement regarding a dealer's duties upon termination. Termination of the Dealer Agreement also terminates any rights provided to Dealer under the Dealer Agreement to use MMNA and Mitsubishi trademarks and/or trade dress, including, without limitation, Dealer's Mitsubishi signage at the Dealership Premises. Termination of the Dealer Agreement also terminates any Dealer Equipment Lease and/or Software License between Dealer and MMNA. Dealer will be advised in writing of its obligations under that license and the procedures for returning the software and/or equipment to MMNA.

Within 30 days from the effective date of termination, Dealer should deliver to MMNA a detailed inventory listing any items referred to in Sections X.G.(1)-(4) of the Standard Provisions, and requesting that MMNA fulfill any repurchase obligations that it may have thereunder or under any applicable state law and of which Dealer wishes to take advantage.

In the meantime, and until the effective date of termination, MMNA will continue to conduct business with Dealer according to the Dealer Agreement, and MMNA expects Dealer to fulfill its responsibilities and obligations under the Dealer Agreement.

Regards,



Ken Konieczka
Senior Vice President, Sales Operations
Mitsubishi Motors North America, Inc.



Daniel Ball
Vice President, Aftersales Service and Parts
Mitsubishi Motors North America, Inc.

cc: Steven Smidlein, Director, West-Central Region (via email)
MMNA Legal Department (via email)
California New Motor Vehicle Board
(via email and certified mail)

EXHIBIT H

RECORDING REQUESTED BY:
First American Title Company
Order No. NHSC-6952721 (RA)
Escrow No. 08-11742-AO
Parcel No. 910-263-002

AND WHEN RECORDED MAIL TO:

WHITE TOPI LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY
26825 AUTO MALL PARKWAY
MURRIETA, CA 92562

DOC # 2023-0148772
05/24/2023 03:27 PM Fees: \$20.00
Page 1 of 3
Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder

**This document was electronically submitted
to the County of Riverside for recording**
Received by: NORMA #248

DTT Approved by: MG

TRA: 024-096

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS \$11,220.00 and CITY \$

- ☒ computed on full value of property conveyed, or
☐ computed on full value less liens or encumbrances remaining at the time of sale.
☐ unincorporated area: ☒ Murrieta, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Hamid Ghadiri, a Married Man as His Sole and Separate Property

hereby GRANT(S) to

White Topi LLC, a California limited liability company

the following described real property in the County of Riverside, State of California:

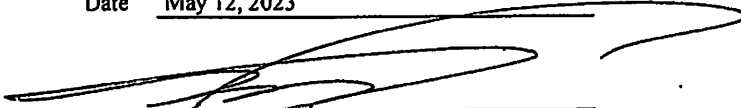
See Attached Exhibit "A" for Complete Legal Description.

Commonly known as: **26825 Auto Mall Parkway, Murrieta, CA 92562**

Title Order No.: NHSC-6952721 (RA)

Escrow No.: 08-11742-AO

APN: 910-263-002

SIGNATURE PAGE**Title of Document: GRANT DEED**Date May 12, 2023
Hamid Ghadiri**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Riverside } S.S.On 5.15.2023, before me, Raeann Tobin, Notary Public,
personally appeared Hamid Ghadiri

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

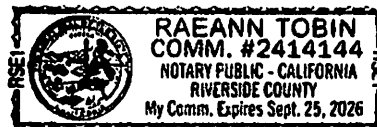
Signature  (Seal)

Exhibit "A"

Legal Description

Real property in the City of Murrieta, County of Riverside, State of California, described as follows:

PARCEL 2 OF PARCEL MAP NO. 30289, IN THE CITY OF MURRIETA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 203 PAGES 32 THROUGH 35 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A.P.N.: 910-263-002

VIA EMAIL

LAW OFFICES OF GAVIN M. HUGHES
GAVIN M. HUGHES State Bar #242119
ROBERT A. MAYVILLE, JR. State Bar #311069
4360 Arden Way, Suite 1
Sacramento, CA 95864
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mayville@hughsdealerlaw.com

New Motor Vehicle Board

Received
7-19-23

FILED

New Motor Vehicle Board

Date: 7-19-23

By: am

ATTORNEYS FOR PROTESTANT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

SORAYA, INC., DBA AUTO GALLERY
MITSUBISHI - MURRIETA,

Protestant,

v.

MITSUBISHI MOTORS NORTH AMERICA,
INC.,

Respondent.

PROTEST NO: PR-2819-23

**PROTESTANT'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS,
OR IN THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION**

1 Protestant, Soraya, Inc., dba Auto Gallery Mitsubishi – Murrieta (“Auto Gallery”) hereby
2 submits its Opposition to Respondent, Mitsubishi Motors North America, Inc.’s (“MMNA”), Motion
3 to Dismiss, or in the Alternative, for Summary Judgement (“Motion”). This Opposition is
4 accompanied by the Declaration of Hamid Ghadiri.

5 **INTRODUCTION**

6 MMNA seeks to move the New Motor Vehicle Board (“Board”) to dismiss Auto Gallery’s
7 California Vehicle Code section 3060¹ protest (“Protest”), or in the alternative, summarily adjudicate
8 in MMNA’s favor all the claims set forth in the Protest. MMNA claims good cause exists for
9 termination and MMNA is entitled to terminate Auto Gallery’s franchise. MMNA’s argument for
10 dismissal or summary adjudication rests solely on its belief there are undisputed facts providing a basis
11 to dismiss the Protest as a matter of law because Auto Gallery allegedly breached its dealer agreement
12 by closing its dealership and ceasing all dealership operations at its facility.

13 Dismissal of the Protest is not warranted here because Protestant submitted a buy-sell for the
14 Murrieta Mitsubishi franchise. (*See*, Exhibit 1.) Moreover, the proposed buyer is currently occupying
15 the Murrieta location and is prepared to commence Mitsubishi operations upon Respondent’s approval
16 of the proposed buy-sell. Protestant is also prepared to temporarily resume operations until such time
17 as Respondent approves the franchise transfer. The temporary closure of a franchise alone does not
18 provide good cause for termination. Dismissal is inappropriate here because the “extent of
19 franchisee’s failure to comply with the terms of the franchise” is to be weighed by the merits hearing
20 Administrative Law Judge (“ALJ”) in light of all existing circumstances as well as the other good
21 cause factors set forth in Section 3061.

22 **BACKGROUND**

23 I. AUTO GALLERY RECEIVED THE NOTICE OF TERMINATION DURING 24 FORMAL SETTLEMENT DISCUSSIONS.

25 Auto Gallery and MMNA are parties to a Dealer Sales and Service Agreement incorporating
26 the Dealer Sales and Service Agreement Standard Provisions (“Standard Provision”) (collectively
27 “Dealer Agreement”) dated February 12, 2019. The Dealer Agreement is collectively attached as

28 ¹ References to statutory code sections are to the California Vehicle Code unless otherwise stated.

1 Exhibit A and Exhibit B to the Declaration of Steve Smidlein filed concurrently with MMNA's
2 Motion.

3 Auto Gallery and MMNA are parties to two existing consolidated Board Protests (PR-2754-21
4 and PR-2755-21) ("Consolidated Protests") concerning Protestant's challenge of proposed audit
5 chargebacks subsequent to MMNA audits. While the Consolidated Protests were ongoing, Auto
6 Gallery and MMNA were actively engaged in settlement discussions. As part of these discussions, it
7 was proposed Auto Gallery would sell or close its Murrieta Mitsubishi location,² in exchange for relief
8 of the proposed audit chargebacks.

9 As the settlement discussions progressed to their final stages, Auto Gallery began winding
10 down its operation at the Murrieta location in anticipation of the impending closure. However, before
11 the settlement discussions were finalized, on April 19, 2023, MMNA issued the Notice of Termination
12 ("NOT") seeking to terminate Auto Gallery's Murrieta location. The NOT is attached as Exhibit G to
13 the Declaration of Steve Smidlein filed concurrently with MMNA's Motion.

14 In the NOT, MMNA alleged Auto Gallery breached the terms of the Dealer Agreement when it
15 closed its dealership at its authorized location at 26825 Auto Mall Pkwy, Murrieta, California 92562
16 ("Authorized Location"). Further, MMNA claimed the alleged breach constitutes good cause for
17 termination of the Dealer Agreement. In response, Auto Gallery timely filed the current Protest within
18 the ten (10) days allowed by Section 3060.

19 On or about July 18, 2023, Protestant submitted a proposed buy-sell to MMNA for its
20 consideration and approval. The proposed buyer is the current tenant of the Authorized Location and
21 has expressed a willingness to cooperate to the fullest extent possible to ensure approval of the
22 proposed franchise transfer.

23 II. AUTO GALLERY CURRENTLY HAS A VALID FRANCHISE AGREEMENT AND
24 A BUY-SELL HAS BEEN SUBMITTED FOR MMNA'S APPROVAL.

25 Auto Gallery commenced sales and service operations at its Authorized Location in 2019.
26 Auto Gallery was required to make a substantial facility investment to achieve MMNA's branding

27 ² Auto Gallery currently has two Mitsubishi franchises. One at its Corona dealership located at 2550
28 Wardlow Rd., Corona, CA 92882, ("Corona") and the other at the Murrieta location at 26825 Auto
Mall Pkwy, Murrieta, CA 92562, ("Murrieta") at issue in this Protest.

1 elements. Auto Gallery's Dealer Agreement remains in effect and cannot be terminated unless
2 voluntarily terminated by Auto Gallery or subsequent to a final Board order determining the existence
3 of good cause to terminate pursuant to Vehicle Code section 3060. The Board may approve
4 termination of a dealer agreement when good cause has been established after consideration of the
5 existing circumstances including but not limited to the factors specifically identified in Section 3061.
6 (Veh. Code §§ 3060 and 3061.) Protestant filed this Protest to preserve its right to complete a buy-sell
7 and transfer of the Murrieta franchise.

8 III. AUTO GALLERY IS ABLE TO RESUME FULL DEALERSHIP OPERATIONS AT
9 THE AUTHORIZED MURRIETA LOCATION.

10 Auto Gallery has discussed with the proposed buyer different options to resume Mitsubishi
11 franchise operations at the Authorized Location, should this be necessary to preserve MMNA's
12 consideration of the pending buy-sell. The proposed buy-sell is currently under consideration by
13 MMNA. It is unlikely MMNA will have made a determination on the proposed buy-sell at the time of
14 the hearing on this Motion. Respondent has sixty (60) days to consider the proposed buy-sell. If the
15 Board were to grant Respondent's Motion, it would likely cause MMNA to cease its ongoing good-
16 faith consideration of the submitted buy-sell.

17 Protestant will take action to resume franchise operations if necessary to avoid franchise
18 termination. However, the reasonable course would be to determine whether the buy-sell and new
19 dealer candidate is likely to be approved. The proposed candidate is already starting with a MMNA
20 approved facility and location, which should be expected to streamline MMNA's consideration of the
21 buy-sell proposal.

22 **DISCUSSION**

23 I. THERE ARE SIGNIFICANT FACTS IN DISPUTE.

24 The Board has the implied authority to dismiss a protest if the undisputed facts demonstrate the
25 matter may be adjudicated as a matter of law and afford no basis for preventing adjudication as a
26 matter of law. (*Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 637-
27 638 ("*Duarte*").) In *Duarte*, the court found dismissal was appropriate where "a franchisor is
28 discontinuing manufacture of the product and the franchise agreement allows for termination upon

1 such discontinuation, good cause for termination of the franchise exists as a matter of law.” (*Id.* at p.
2 638.) However, the court found the Board does *not* have power to dismiss a case based on motions
3 attacking the pleadings, such as a demurrer. (*Id.* at 639 (emphasis added) (“[I]n a contested case
4 before an administrative agency, motions in the nature of demurrers to evidence or motions for
5 nonsuit, based on want of evidence to make a prima facie case, may not be entertained and passed on
6 to agency boards, at least in proceedings where a hearing officer alone takes the evidence.”))

7 As stated in *Duarte*, dismissal is only proper when the undisputed facts demonstrate the Board
8 may determine the issue as a matter of law without the need to make factual determinations.
9 Therefore, dismissal in a Section 3060 termination protest, such as this, is only valid where the
10 undisputed facts demonstrate good cause for termination exists as a matter of law and there is no basis
11 to prevent termination. (*Id.* at pp. 637-638.) Here, there are facts in dispute rendering dismissal
12 unwarranted for this Protest. As there are facts in dispute, the Board cannot determine the issue of
13 good cause without first issuing findings regarding the factual disputes, which should properly be
14 resolved at a merits hearing.

15 In its Motion, MMNA claims good cause for termination exists as a matter of law and a hearing
16 is not necessary because Auto Gallery allegedly ceased all operations and the sold the dealership
17 premises, thereby breaching the Dealer Agreement. (Motion at Sections III(B) and III(C).) MMNA
18 claims these facts demonstrate termination of the Dealer Agreement is appropriate because “Dealer has
19 no inventory or facilities. Dealer is not serving customers in the Murrieta market area. Dealer has no
20 ability or prospect of resuming dealership operations.” (Motion at 6:16-18.)

21 Auto Gallery disputes MMNA’s allegation that Auto Gallery does not have the ability or
22 prospect of resuming dealership operations. Auto Gallery is in the process of transferring the franchise
23 to the current tenant at the Authorized Location. The buyer indicated it is willing to fully cooperate to
24 ensure the buy-sell is approved. There are several mechanisms available to Protestant that would
25 enable it to resume operations at the Authorized Location. Protestant may execute a short-term
26 sublease for the purpose of resuming operations. Protestant may also enter into a management
27 agreement that would provide for the operation of the franchise at the Authorized Location, with
28 Hamid Ghadiri remaining as the Dealer Principal until the franchise transfer is approved.

1 Whether the franchise transfer will be approved or whether Auto Gallery can resume dealership
2 operations remain open questions of fact. These disputed facts preclude the Board from deciding this
3 protest through dismissal. (*Duarte, supra*, at p. 637-638.) MMNA should be required to meet its
4 burden to show good cause for the termination of Protestant's franchise. (Veh. Code §§ 3060 and
5 3061.) MMNA should not be permitted avoid this statutorily mandated burden. This is especially true
6 where a buy-sell has been submitted for Respondent's approval and there remains the factual question
7 of whether Protestant will resume operations prior to the merits hearing.

8 Furthermore, Auto Gallery disputes MMNA's contention it does not have inventory or
9 facilities. As stated in MMNA's Motion, Auto Gallery transferred the new car inventory to its Corona
10 Mitsubishi dealership, which is also owned by Mr. Ghadiri. (Motion at 6:13-14.) Because the
11 inventory was transferred to a dealership under the same ownership, the inventory can be transferred
12 back to Auto Gallery's Murrieta location when operations resume. Moreover, the facilities still exist at
13 the Authorized Location, and would be usable again when operations resume. Protestant also has
14 existing staff that could be reassigned from the Corona store to the Murrieta location. Protestant
15 maintains an existing flooring source for its Corona store and can add the Murrieta location or
16 reestablish a separate flooring line as necessary.

17
18 II. RESPONDENT CONFUSES ITS BURDEN OF PROOF FOR TERMINATION WITH
THE RIGHT TO PROVIDE A 15-DAY NOTICE OF TERMINATION.

19 Respondent issued the NOT pursuant to Section 3060 (a)(1)(B)(v), which provides for a
20 shortened 15-day notice period in circumstances where the franchisor holds a good faith belief the
21 dealer is going out of business. However, 3060 does not establish the burden for franchise termination.
22 Instead, Section 3061 requires the Board consider the existing circumstances including the "good
23 cause" factors set forth therein in determining whether the franchisor has met its burden of establishing
24 good cause for termination. Respondent confuses the shortened notice provision of Section 3060 for
25 the burden it must establish for franchise termination. Respondent's Motion asks the designated Law
26 and Motion ALJ, ALJ Anthony M. Skrocki, to substitute his determination of good cause in place of a
27 Board merits hearing ALJ.

28 Respondent alleges in the NOT Protestant's failure to conduct franchise operations for a period

1 of seven (7) consecutive days is a breach of the Dealer Agreement and therefore good cause for
2 termination—this is not the standard to be applied. Again, this fact merely provides for the shortened
3 notice period under Section 3060. In contrast, Section 3061 (g) requires the Board consider the extent
4 of a franchisee’s failure to comply with the terms of the franchise agreement as but one of the good
5 cause factors to be considered when determining whether good cause for termination exists. The
6 extent of the breach will depend upon whether Protestant has resumed operations at the time of the
7 merits hearing.

8 Respondent does not argue the Board would be unable to grant the relief the Protestant seeks.
9 In prior Board cases it was determined a franchisee had no possibility of resuming franchise operations
10 and therefore a Board decision would be meaningless. That is not the case here. In the instant Protest,
11 Auto Gallery has the opportunity and means to resume operations until such time as the franchise
12 transfer is approved. This contention presents a question of fact that should be reserved for the merits
13 hearing.

14 **CONCLUSION**

15 The fact Protestant sold the property for its Murrieta location did not come as a surprise to
16 Respondent. Respondent was well aware Protestant was in the process of trying to sell both the
17 property and the franchise. Ongoing settlement negotiations for the Section 3065 Consolidated
18 Protests were bogged down in regard to how much time Respondent would provide Protestant to
19 submit a proposed buy-sell. Upon learning of the property sale, Respondent decided to issue the NOT
20 in an effort to eliminate the consideration Protestant was offering as part of the Consolidated Protests
21 settlement discussion.

22 It remains a question of fact whether Protestant can resume operations at the Authorized
23 Location. It remains to be seen whether Protestant will resume operations at the Authorized Location,
24 prior to the merits hearing. The extent of Protestant’s breach of the franchise agreement will depend
25 on whether Protestant resumes operations. The proposed buyer for the Authorized Location remains
26 willing to cooperate as necessary to resume Protestant’s franchise operations to ensure it has the
27 opportunity to complete the franchise transfer and secure Respondent’s approval as the replacement
28 franchisee.

1 The Motion should be denied because it improperly asks the Board to determine questions of
2 fact and make determinations of good cause in place of the merits hearing required by Section 3050(c)
3 and Section 3061.

4
5
6 Dated: July 19, 2023

LAW OFFICES OF
GAVIN M. HUGHES


7
8
9 By: 
10 Gavin M. Hughes
11 Robert A. Mayville, Jr.
12 Attorneys for Protestant
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EXHIBIT 1

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of July 18, 2023 (“**Effective Date**”) by and among SORAYA, INC. d/b/a Auto Gallery Mitsubishi-Murrieta, a California corporation (“**Seller**”), and BRAVO AUTO COLLECTION, LLC., a California limited liability company, or assignee (“**Buyer**”). All parties listed above are the “**Parties.**”

RECITALS

A. Seller is a factory-authorized automobile dealer and authorized to sell and service new Mitsubishi motor vehicles, sell Mitsubishi parts and accessories in the primary market area of Murrieta, California (“**Seller’s Business**”) pursuant to dealer sales and service agreements issued by Mitsubishi Motors North America, Inc. (the “**Manufacturer**”).

B. Seller’s Business is currently not operating but maintains the rights to the Seller’s Business with the Manufacturer.

C. Buyer desires to purchase certain assets, including all intangible assets, or Goodwill (defined below).

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises, covenants, and conditions set forth herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

SECTION 1. DEFINITIONS

In this Agreement, the following words shall have the indicated meanings:

1.2 “Closing” shall refer to the consummation of the transaction contemplated under this Agreement in accordance with the terms hereof, and “**Closing Date**” shall refer to the actual date of Closing. The Closing Date shall be the sooner to occur of (i) Manufacturer approval as set forth in Section 10.3 (provided that other conditions required for Closing have occurred) or (ii) sixty (60) days from the Effective Date (“**Closing Date Deadline**”) unless extending in writing by the Parties.

1.3 “Dealer Financial Statements” means the financial statements pertaining to the Business that Seller has provided to the Manufacturer according to Manufacturer’s form and content requirements.

1.4 “Deposit” means Buyer’s payment of \$250,000 to Escrow Holder prior to the end of the Deposit Period. The Deposit shall be credited to the Purchase Price at Closing. \$250,000 of Deposit will be refundable to Buyer in the event the Agreement is terminated by Buyer for any

lawful reason, including if Manufacturer does not approve Buyer as a dealer, upon failure of any conditions set forth in Section 10, or upon breach of this Agreement by Seller.

1.5 “Deposit Period” means the first business day occurring one (1) business day after the Effective Date.

1.6 “Effective Date” means the most recent date on the Agreement’s signature page.

1.7 “Escrow Holder” means WFG Escrow, 17011 Beach Blvd, Suite 560, Huntington Beach, CA 92647, Attn: Linda Lastelic. Buyer and Seller agree to share the cost of the Escrow Holder equally.

1.8 “Furniture, Fixtures and Equipment” or “FF&E” means all non-inventory items of tangible personal property, excluding leasehold improvements, presently owned by Seller and used by Seller in connection with Seller’s Business, including, but not limited to, all of Seller’s machinery and shop equipment; lifts; tools; signs and displays; phones; computer equipment and related hardware; printers and copy machines; computer programs (to the extent transferable); office equipment; furniture; fixtures; golf carts; trailers; microfiches; parts lists; repair manuals; and sales or service brochures. For the avoidance of doubt, FF&E does not include any New or Used Vehicles.

1.9 “Intangible Assets” means Seller’s goodwill, franchise and proprietary rights, business location, service customer lists, sales customer lists, vehicle service records, and all Seller’s rights, relationships with customers, the franchise rights associated with Seller’s Business, all goodwill associated with Seller’s Business, and all other intangible rights and interests of any value relating to Seller’s Business, excluding any deferred tax assets on the Seller’s books as of the Closing Date. For avoidance of doubt, Intangible Assets excludes all Seller customer lifetime oil service contracts ownership of which will be retained by Seller and its affiliates.

1.10 “Intellectual Property” means Seller’s trade name “Auto Gallery Mitsubishi Murrieta,” slogans, unregistered trademarks, trade names, email addresses, and corporate names and registrations and applications for registration thereof relating solely to Seller’s Business together with any licenses to use such names or parts thereof insofar and to the extent that they are used in connection with Seller’s Business pursuant to Seller’s sales and services agreements with the Manufacturer. Buyer and Seller agree that Seller’s Intellectual Property, as defined herein, is not being sold to Buyer as a component of the Intangible Assets and shall remain the sole and exclusive rights and property of Seller following Closing. Buyer and Seller agree that neither Buyer or Seller shall use the aforementioned Intellectual Property for future use in operating an automobile dealership after Closing.

1.11 “Miscellaneous Parts Inventories” means Seller’s entire inventory of new, unopened, unused, undamaged, unbranded, and non-obsolete automotive supplies and consumable goods of nominal individual value in Seller’s inventory as of the Closing Date including gasoline, oil, grease, paint and body materials, undercoat materials, chemicals, tires, nuts, bolts, screws and the like, exclusive of Seller’s New Jobber Parts, New OEM Parts, Obsolete Parts, and Used Parts.

1.12 “New Jobber Parts” means Seller’s entire inventory of new, returnable, unused, undamaged, and non-Obsolete parts and accessories manufactured by a third-party, other than

by a Manufacturer and/or a Manufacturer's authorized parts distributor, as that inventory exists on the Closing Date, including parts and accessories in transit. New Jobber Parts does not mean Obsolete Parts, defined below, or parts or accessories that are used, damaged, or branded with Seller's name or identity.

1.13 "New OEM Parts" means Seller's entire inventory of new, returnable, unused, undamaged, and non-Obsolete Parts and accessories manufactured by Manufacturer and/or Manufacturer's authorized parts distributor, as that inventory exists on the Closing Date, including parts and accessories in transit. New OEM Parts does not mean Obsolete Parts (defined below).

1.14 "New Vehicles" means new Mitsubishi vehicles from 2023 model year or newer; unregistered and with manufacturer statements of origin ("**MSO(s)**") or eligible for consumer new car incentives, meeting state requirements to be sold as a new vehicles, not reported as sold ("**RDR**") to the factory, and with an odometer reading of less than 500 miles on the Closing Date.

1.15 "Obsolete Parts" means any New Jobber Parts and New OEM Parts that are no longer listed in the applicable third-party manufacturer's or Manufacturer's current price guide and not eligible for a full return credit.

1.16 "Purchased Assets" means those assets that are identified in Section 2 as being purchased and sold by the Parties under this Agreement.

1.17 "Purchase Order" means Seller's rights and obligations, including customer deposits and sales commissions, under outstanding customer vehicle Purchase Orders executed but not delivered prior to Closing.

1.18 "Purchase Price" means the total price to be paid by Buyer to the Seller for the Purchased Assets as determined by Section 3 to include cash and the assumption of the Assumed Obligations.

1.19 "Used Parts" means any parts and accessories other than New OEM Parts, New Jobber Parts, and Obsolete Parts that are not used in the ordinary course of business.

1.20 "Used Vehicles" means vehicles that are not New Vehicles, including company vehicles, demonstrator vehicles, and service loaner vehicles.

SECTION 2. PURCHASED ASSETS

Seller agrees to sell, and Buyer agrees to purchase only Seller's Intangible Assets as listed and identified in this Section 2. For the avoidance of any doubt, Buyer is not purchasing any vehicles (new, used, company vehicles, service loaners or demonstrators), furniture, fixtures, equipment, parts, accessories, miscellaneous supplies, work in process, deposits, nor assuming any of Seller's contracts or obligations.

2.1 Intangible Assets and Goodwill. Buyer shall acquire from Seller all of Seller's Intangible Assets and Goodwill related to Seller's Business for the sum of two hundred fifty thousand dollars (\$250,000). Seller shall describe all Intangible Assets used in Seller's Business on **Schedule 2.1**, which itemized list is attached to this Agreement and shall be updated at

Closing.

2.2 “AS IS” and Limitation of Liability. Except as expressly set forth in the Agreement, all Purchased Assets are sold to Buyer “AS IS” and “With All Faults”.

2.3 Schedules Delivered and Reviewed. Prior to the execution of this Agreement Seller shall have provided to Buyer, and attached hereto, each of the Schedules required herein (subject to those schedules that are required to be updated pursuant to the terms of this Agreement). Buyer acknowledges and agrees that Buyer has received and reviewed those schedules prior to the Effective Date.

SECTION 3. PURCHASE PRICE AND ADDITIONAL CONSIDERATION

3.1 Purchase Price. The Purchase Price will be the aggregate price of all the Purchased Assets and shall be due and payable in cash at Closing. Unless the Parties expressly agree otherwise, all cash amounts payable to Seller at Closing shall be paid by wire transfer.

3.2 Tax Clearance Certificates. Escrow shall have obtained and furnished Buyer with the Tax Clearance Certificates from the EDD and a tax release from the California Department of Tax and Fee Administration (“DTFA”) at the Closing, if reasonably possible, and, if not possible, as soon thereafter as is possible. If any such Tax Clearance Certificate is not received by the Closing: (i) Seller shall provide to Buyer copies of filed returns for the prior calendar year and the full months of the current year preceding the Closing, along with copies of the payments for all such taxes; and (ii) Seller shall provide such certificates to Buyer when received.

3.3 Bulk Sale. Seller shall comply with the requirements of Part 6 of the Commercial Code of California, commonly known as the Bulk Sales Act, by providing all affidavits, list of creditors, and such other documents or instruments as may be requested by the Escrow Holder in furtherance with Escrow Holder’s compliance with the Bulk Sale Act.

[INTENTIONALLY BLANK]

SECTION 4. EXCLUDED ASSETS AND EMPLOYEES

4.1 Vehicle Inventory. Except as expressly provided in this Agreement, all of Seller's vehicle inventory, including New Vehicles, Used Vehicles, Demonstrators, Service Loaners, and Company Vehicles shall be excluded from sale to Buyer.

4.2 Parts Inventory. Except as expressly provided in this Agreement, all of Seller's parts and accessories inventory, including New OEM, New Jobber and Miscellaneous Parts, Used Damaged, Branded and Obsolete Parts shall be excluded from sale to Buyer.

4.3 Furniture, Fixtures and Equipment. Except as expressly provided in this Agreement, all of Seller's furniture, fixtures and equipment inventory shall be excluded from the sale to Buyer.

4.4 Contracts, Leases and Obligations. Except as expressly provided in this Agreement, all of Seller's contracts, leases and obligations, including outstanding purchase orders for vehicles and parts, and work in process, shall be excluded from sale to Buyer.

4.5 Other Assets. Except as expressly provided in this Agreement, all of Seller's cash, cash equivalents, bank accounts, accounts receivable, contract rights, minute books, stock records, tax and accounting files, book and records shall be excluded from the sale to Buyer.

4.6 Employees. Buyer shall have no obligation to hire any of Seller's current or former employees.

SECTION 5. CLOSING

The Parties shall make all reasonable efforts to close the purchase and sale under this Agreement on or before the Closing Date. Closing shall take place at 10:00 a.m. on the date of Closing at such other location as shall be selected by mutual agreement of the Parties.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer with the intent that Buyer rely thereon. All Schedules described in this Section have been delivered to Buyer within ten (10) of the execution of this Agreement and shall be updated at Closing:

6.1 Organization, Power and Authority. Seller is a California corporation duly incorporated, validly existing and in good standing (where applicable) under the laws of the state of California. Seller has all corporate power and authority required to (i) carry on its business as currently conducted and (ii) to execute and deliver to Buyer this Agreement and to complete the transaction contemplated by this Agreement and the lease (the "**Transaction**").

6.2 No Conflicts. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with its terms and provisions will (i) violate, conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, (a) Seller's organizational documents, (b) any contract, agreement, mortgage, deed of trust, or other

instrument or obligation to which the Seller are parties or by which any of them is bound, or (c) any applicable law or regulation or any order, decree, writ or injunction of any court or governmental body; or (ii) result in the creation or imposition of any lien, charge, restriction, security interest, or encumbrance of any nature whatsoever on any property or asset transferred by Seller.

6.3 Consents. No consent from, or other approval of, any governmental entity or agency, or any other person or entity, is necessary in connection with the execution, delivery, or performance of this Agreement, other than consent from Manufacturer and the California Department of Motor Vehicles.

6.4 Litigation. Except as disclosed on **Schedule 6.4**, no lawsuit, action, administrative proceeding, arbitration proceeding, governmental investigation, or other legal or equitable proceeding of any kind is pending or, to Seller's knowledge, threatened against Seller that might adversely affect the value of the Purchased Assets, the operation of Seller's Business; and Seller is not aware of any facts or circumstances that may give rise to any of the foregoing.

6.5 Title to Properties; Encumbrances. Seller, as applicable, has, or will have at Closing, good and defensible title to all of the Purchased Assets free and clear of all liens and encumbrances, and Landlord has, or will have at Closing.

6.6 Brokers and Finders. Seller has retained the services of a broker, Ashwill Associates Commercial Real Estate ("Broker") in connection with this Agreement or the transactions contemplated by this Agreement. Seller will pay the fee of Broker at Closing. No other brokerage fees, commissions or finders' fees will be due and payable by and from Seller as a result of completion of the transaction contemplated under this Agreement. In the event any claim is asserted by a third party against Buyer for brokerage fees, commissions, or finders' fees in connection with this Agreement or the transactions contemplated by this Agreement based upon an asserted agreement or understanding with or commitment by Seller, Seller will indemnify and hold harmless Buyer from and against any such claims.

6.7 Seller's Employees. Seller timely paid all wages, salaries, commissions, accrued vacation pay, accrued sick leave (if any) and other accrued benefits and compensation earned by its Seller's employees as of Closing (together with all accrued FICA and withholding taxes) within the time provided by law.

6.8 Taxes. Seller has timely filed and paid, or caused to be filed and timely paid, all income taxes, employment taxes, and payroll withholding taxes relating to the operation of Seller's Business up to and through Closing. Seller has no knowledge of any material unpaid tax or assessment.

6.9 Prepaid Service and Maintenance Programs. Seller has no understanding, agreement or other obligation of any kind, written or otherwise, with any third party or customer to provide maintenance, service, repairs and/or products to customers, or customers of any third party, at no charge or a discounted charge to a customer, that a customer would reasonably expect Buyer to honor and perform after Closing.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller:

7.1 Organization, Power and Authority. Buyer is a California limited liability company duly organized, validly existing and in good standing (where applicable) under the laws of the State of California. Buyer has all company power and authority required to execute and deliver to Buyer this Agreement and to complete the transaction contemplated by this Agreement.

7.2 No Conflicts. Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with its terms and provisions will (i) violate, conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, (a) such company's articles of organization or operating agreement; (b) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which Buyer is a party or by which they are bound; (c) any applicable law or regulation or any order, decree, writ or injunction of any court or governmental body; or (ii) result in the creation or imposition of any lien, charge, restriction, security interest or encumbrance of any nature whatsoever on any asset transferred to Buyer.

7.3 Consents. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery, or performance of this Agreement, other than consent from the Manufacturer and licensing by applicable governmental agencies.

7.4 Brokers and Finders. Buyer has not retained the services of a broker in connection with this Agreement or the transactions contemplated by this Agreement and no brokerage fees, commissions or finders' fees will be due and payable by and from Buyer as a result of completion of the transaction contemplated under this Agreement. In the event any claim is asserted by a third party against Seller for brokerage fees, commissions, or finders' fees in connection with this Agreement or the transactions contemplated by this Agreement, based upon an asserted agreement or understanding with or commitment by Buyer, Buyer will indemnify and hold harmless Seller from and against any such claims.

SECTION 8. COVENANTS OF SELLER

Seller agrees that:

8.1 Notice to Manufacturers. Promptly after execution of this Agreement, Seller will (i) submit to Manufacturer written notice of the proposed transaction and authorizing Manufacturer to discuss with Buyer all relevant matters pertinent to completing this transaction as contemplated by this Agreement and (ii) provide necessary documentation and information requested by Buyer to facilitate the completion of a new dealer sales and service application to Manufacturer.

8.2 Notices and Consents. Seller shall cooperate with Buyer and make commercially reasonable efforts as necessary to assist Buyer's efforts to obtain any required approvals or consents to this Agreement, and the transactions and assignments contemplated by this Agreement, from all lenders, lessors, or other necessary parties.

8.3 Buyer's Examination. Beginning upon the Effective Date, and continuing through that date which is thirty (30) days following the execution of this Agreement (the "**Due Diligence Period**"), Buyer, its employees, agents, attorneys, accountants and other representatives shall have the right to investigate the condition of the Purchased Assets. Seller agrees to give Buyer, its employees, agents, attorneys, accountants and other representatives access, upon reasonable request, to the books and records of Seller relating to Seller's Business. Buyer shall keep all information provided to it by Seller confidential and, in the event the transaction contemplated by this Agreement fails to close for any reason, Buyer shall promptly return all such information (including any copies made thereof) to Seller. Buyer shall have the right to terminate this Agreement and the transaction contemplated hereby at any time prior to the expiration of the Due Diligence Period for any or no reason, in Buyer's sole and absolute discretion. In the event Buyer exercises such right and timely terminates this Agreement, the Deposit and any interest accrued thereon, shall be returned to Buyer.

8.4 Delivery of Schedules. Within five (5) days of the Effective Date Seller shall deliver to Buyer the Schedules as set forth below:

- Schedule 2.1: Intangible Assets
- Schedule 6.4: Litigation

Seller represents and warrants that each of such Schedules are accurate and complete in all material respects. Subject to the preceding sentence, by executing this Agreement, Buyer acknowledges that has had the opportunity to review the Schedules in this Section 8.4.

8.5 Title to Purchased Assets. Seller shall transfer to Buyer, good title to the Purchased Assets, free and clear of all liens, mortgages, encumbrances, conditional sales agreements, security interests, claims, or restrictions of any kind or character. Prior to Closing, Seller shall pay all current and accrued taxes, including those that are or may become a lien against any of the Purchased Assets.

8.6 Compliance with Laws. Seller complied with, and is not in violation of, applicable federal, state or local statutes, laws or regulations affecting the Seller's Business which would have a material adverse effect on the financial condition of Seller's Business.

SECTION 9. COVENANTS OF BUYER

9.1 Manufacturer's Consents. Buyer shall, upon execution of this Agreement, promptly, diligently, and expeditiously take all commercially reasonable actions that are reasonably necessary on its part to obtain the consent of the Manufacturer to the issuance to Buyer of dealer sales and service agreement for the sale of Manufacturer's vehicles in the same geographical area of responsibility as Seller's Business, subject to conditions, if any, that are reasonably acceptable to Buyer in its sole discretion. Buyer shall use its best efforts to submit a completed new dealer sales and service application to Manufacturer within fourteen (14) days of receiving notice from Manufacturer that the application is available for completion.

9.2 Notices and Consents. Buyer shall use commercially reasonable efforts to obtain any required approvals or consents to this Agreement and the transactions contemplated by this Agreement from all lenders, lessors, and any federal, state, or local regulatory agencies.

9.3 Books and Records. For a period of three (3) years after Closing, Buyer shall retain any records being sold to Buyer pursuant to Section 2, above, including but not limited to electronic copies customer sales, lease, finance and service records, customer lists, and employee records (“**Transferred Records**”) and shall allow Seller access to review and copy the Transferred Records Buyer’s regular business hours if the information in the Transferred Records is reasonably necessary and limited to winding down such Seller’s business affairs.

9.4 Confidentiality. Buyer agrees that prior to the Closing Date (and thereafter for a period of five (5) years, if the Closing fails to occur), Buyer and its representatives will hold in strict confidence all data and information obtained in connection with this transaction, including, but without limitation, all financial and other information of or related to the Seller’s Business and the terms of this Agreement, and will not directly or indirectly at any time reveal, report, publish, disclose or transfer to any person any of such data and information or utilize any of such data or information for any purpose; provided, however, Buyer may disclose information to Manufacturer and legal, tax, accounting advisors, lenders and potential lenders and other parties deemed by Buyer to be necessary or appropriate in connection with the transactions described herein, provided that such persons acknowledge that they too are bound by the confidentiality provisions contained herein.

SECTION 10. CONDITIONS PRECEDENT TO OBLIGATION OF BUYER

The obligation of Buyer to affect the transactions contemplated by this Agreement is subject to the satisfaction on or prior to the Closing Date of the following conditions, any of which may be waived by Buyer:

10.1 Representations, Warranties and Agreements of Seller. All Schedules, representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though such representations and warranties were made on the Closing Date, except to the extent that such representations and warranties expressly relate to any earlier date; and Seller shall have performed and complied with all the covenants and agreements, and satisfied all the conditions required by this Agreement to be performed, complied with or satisfied by Seller on or prior to the Closing Date. Seller shall have delivered to Buyer a certificate dated as of the Closing Date certifying that this condition has been fulfilled.

10.2 Transfer of Purchased Assets. Seller shall deliver to Buyer, or its designated affiliate(s), all bills of sale, assignments and other instruments of transfer, in form and substance reasonably satisfactory to Buyer, that are necessary to convey the Purchased Assets to Buyer; all bulk sale requirements shall have been satisfied; and Seller shall have delivered a Bill of Sale in form acceptable to Buyer.

10.3 Approval of Buyer as the Dealer. Manufacturer shall have approved and awarded Buyer or its assignee a dealer sales and service agreement and/or franchise agreement in the same geographical area as Seller’s Business.

10.4 No Proceedings. No proceeding in which the Buyer or Seller shall be a debtor, defendant or party seeking an order for its own relief or reorganization shall have been brought

or be pending by or against such Person under any United States or state bankruptcy or insolvency law.

10.5 Buyer's Examination. Buyer shall be satisfied in its sole discretion with the results of its financial and accounting, operational and legal due diligence investigations of Seller, the Purchased Assets, including, without limitation, the Manufacturer's current facility and image requirements as well as any future facility and image requirements which will be applicable to Buyer as a result of the transaction contemplated by this Agreement; provided, however, this condition must be satisfied or waived prior to the expiration of the Due Diligence Period.

10.6 Additional Information. Seller shall have furnished to Buyer and Buyer's counsel such additional information, certificates, and other documents as Seller shall have reasonably requested.

SECTION 11. CONDITIONS PRECEDENT TO OBLIGATION OF SELLER

The obligation of Seller to affect the transactions contemplated by this Agreement is subject to the satisfaction on or prior to the Closing Date of the following conditions, any of which may be waived by Seller:

11.1 Representations, Warranties and Covenants of Buyer. All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though such representations and warranties were made on the Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, and Buyer shall have performed and complied with all of the covenants and agreements and satisfied all the conditions required by this Agreement to be performed, complied with or satisfied by Buyer on or prior to the Closing Date. Buyer shall have delivered to Seller a certificate dated as of the Closing Date certifying that this condition has been fulfilled.

11.2 Delivery of Deposit and Purchase Price. Buyer shall have (i) delivered to Escrow Holder the Deposit within the Deposit Period and (ii) paid the Purchase Price to Seller as provided for in Section 3.

11.3 Approval of Documentation. The form and substance of all certificates and other documents required to be delivered to Seller in connection with this Agreement shall be satisfactory in all reasonable respects to Seller and Seller's counsel.

11.4 Additional Information. Buyer shall have furnished to Seller and Seller's counsel such additional information, certificates, and other documents as Seller shall have reasonably requested.

SECTION 12. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

Notwithstanding any investigation or examination conducted before or after the Closing or the decision of any Party to complete the Closing, each Party shall be entitled to rely upon the representations and warranties set forth in this Agreement. All representations and warranties made in this Agreement or in any certificate, exhibit, document, schedule, or instrument furnished in connection with this Agreement shall survive the Closing for a period of six (6)

months; provided, however, that any warranties pertaining to payment of taxes with regard to the Purchased Assets shall survive for the applicable limitations period.

SECTION 13. INDEMNIFICATION

13.1 Seller Indemnity. Seller agrees to indemnify, defend, and hold harmless Buyer, its successors and assigns and their officers, managers, directors, agents (the “**Buyer Indemnified Parties**”) from and against any Claims. Claims, as used in this paragraph, include any claims, damages, losses, liabilities, penalties, actions, suits, proceedings, demands, assessments, costs, and expenses, including, without limitation, reasonable attorneys’ fees, expenses of investigation, tax implications and interest on any payment or expense at the rate of six percent (6%) per annum, incurred by Buyer Indemnified Parties arising from or related to (i) any material breach by Seller, of any representation, warranty, covenant, or agreement made by Seller in this Agreement; (ii) any debts, liabilities, or obligations of any nature (whether absolute, accrued, contingent, or otherwise and whether due or to become due) of Seller occurring before Closing and not assumed by Buyer; (iii) any debt, liability or obligation arising out of Seller’s Business, related to the Purchased Assets prior to the Closing, including without limitation charge backs and tax liabilities;; and (iv) the infringement or claimed infringement by Seller on the rights or claimed rights of any person or entity under or in respect to any Intellectual Property. If any Claim is filed or brought against any Buyer Indemnified Party that is or may be subject to Seller’s obligation to indemnify a Buyer Indemnified Party as set forth in this subparagraph, then the Buyer Indemnified Party shall promptly give Seller written notice of that Claim and Seller thereafter shall have the option to defend that Claim at Seller’s expense using attorneys selected by Seller.

13.2 Buyer Indemnity. Buyer agrees to indemnify, defend, and hold harmless Seller and its respective successors and assigns and their officers, managers, directors, agents (the “**Seller Indemnified Parties**”) from and against any Claims. Claims, as used in this paragraph, include any losses, claims, damages, liabilities, penalties, actions, suits, proceedings, demands, assessments, costs, and expenses, including without limitation reasonable attorneys’ fees, expenses of investigation, tax implications and interest on any payment or expense at the rate of six percent (6%) per annum, incurred by Seller Indemnified Parties arising from or related to (i) any material breach of any representation, warranty, covenant or agreement made by Buyer in this Agreement; (ii) any liabilities and obligations of Seller assumed by Buyer in accordance with this Agreement; and (iii) any condition, activity or event, related to the Purchased Assets arising after Closing. If any Claim is filed or brought against a Seller Indemnified Party that is or may be subject to Buyer’s obligation to indemnify a Seller Indemnified Party as set forth in this subparagraph, then the Seller Indemnified Party shall promptly give Buyer written notice of that Claim and Buyer thereafter shall have the option to defend that Claim at Buyer’s expense using attorneys selected by Buyer.

13.3 Other Indemnification Provisions; Indemnify Cap. The foregoing indemnification provisions are in addition to, and not in derogation of, any other indemnification provisions in this Agreement, or any contractual, statutory, equitable or common law remedy any Party may have for the breach of any term, representation, warranty or covenant; provided, however, that without limitation to Buyer’s duty to pay the Purchase Price and any amounts due hereunder for

the Purchased Assets, in no event will either Party be liable for any and all Claims in the aggregate pursuant to Section 13.1 or 13.2 respectively, in excess of two hundred and fifty thousand dollars (\$250,000).

SECTION 14. TERMINATION.

14.1 Mutual Consent. This Agreement may be terminated prior to Closing by the mutual written consent of the Parties.

14.2 By Buyer. Buyer may terminate this Agreement prior to Closing by giving written notice of termination to Seller if: (i) Seller has made a material misrepresentation or are in material breach of the representations and warranties contained in this Agreement; (ii) Seller is in material default in observance of or in the due and timely performance of any of the agreements and covenants contained in the Agreement, which default is not cured within thirty (30) days after Seller's receipt of notice of such default from Buyer; (iii) for any reason during the Due Diligence Period; or (iv) any condition of Closing, specifically including Section 10.3, Manufacture's Approval, that has not been previously waived by Buyer, has failed to be satisfied on or prior to the Closing Date Deadline or any extensions thereof.

14.3 By Seller. Seller may terminate this Agreement prior to Closing by giving written notice of termination to Buyer if: (i) Buyer has made a material misrepresentation or is in material breach of the representations and warranties contained in this Agreement; (ii) Buyer is in material default in observance of or in the due and timely performance of any of the agreements and covenants contained in the Agreement, which default is not cured within thirty (30) days after Seller's receipt of notice of such default from Seller; or (iii) any condition of Closing that has not been previously waived by Seller, has failed to be satisfied on or prior to the Closing Date Deadline including, without limitation, the Escrow Holder not receiving the full amount of the Deposit prior to the end of the Deposit Period. Buyer hereby authorizes Escrow Holder to make this disclosure to Seller upon Seller's request.

14.4 Failure to Close. The Parties agree to execute and deliver all documents and complete all actions necessary to consummate this transaction.

14.4.1 Failure Without Fault. If Closing does not take place on or before the Closing Date Deadline because there has been a failure of any condition precedent set forth herein without the fault or breach of either Party, then either Party may terminate this Agreement by giving written notice of termination to the other Party, in which event all rights and obligations of both Parties under this Agreement shall terminate, and this Agreement shall thereafter be void and of no effect; provided, however, that in the event the Manufacturer shall have not communicated whether Manufacturer will approve and award a dealer sales and service agreement and/or franchise agreement to Buyer as set forth in Section 10.3, then the Closing Date may be extended by Seller for up to forty-five (45) days thereafter or the receipt of notification of the Manufacturer's said approval and award, or disapproval, as set forth in Section 10.3.

14.4.2 Failure Due to Seller's Breach. If Closing does not take place on or before the Closing Date Deadline because of Seller's material breach of this Agreement, Buyer

shall be entitled to pursue liquidated damages in the amount of \$50,000.

14.4.3 Failure Due to Buyer's Breach. If Closing does not take place on or before the Closing Date Deadline because of Buyer's material breach of this Agreement, Seller shall have and be entitled to pursue all remedies at law or in equity or liquidated damages in the amount of \$50,000.

14.4.4 Cure. A breach may not be declared (except for the non-payment of the Purchase Price) if the action or inaction of a Party is capable of cure and the non-breaching Party has not given the Party in breach at least fourteen (14) days prior written notice within which such impending breach may be cured (except where such cure period is otherwise stated in this Agreement).

14.5 Effect of Termination. Upon a termination of this Agreement pursuant to Sections 14.1 to **Error! Reference source not found.**4, subject to the rights and remedies available to the Parties set forth in this Section 14, all further obligations of the Parties under this Agreement will terminate except those in Section 9.4 or as otherwise expressly stated in this Agreement. If this Agreement is terminated by the Parties pursuant to Section 14.1, or by Buyer pursuant to Section 14.2(i), (ii), (iii) or (iv), or Section 14.4.2, such termination shall be without prejudice to any of Buyer's rights or remedies and the Deposit shall be refunded to Buyer. In addition to the foregoing, in the event of termination because of (i) the failure to obtain Manufacturer's approval as provided in Section 10.3, or as otherwise provided in this Agreement, Buyer shall receive reimbursement of the Deposit from Escrow Holder.

SECTION 15. DISPUTE RESOLUTION – BINDING ARBITRATION

In the event a dispute arises pursuant to this Agreement, the Parties agree to resolve all disputes by the following alternate dispute resolution process. The Parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury.

15.1 Binding Arbitration. Any and all disputes, claims, or controversies between the Parties, including, but not limited to, any assignee of a Party, arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before JAMS, or its successor, in Riverside County, California pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1, et seq. The dispute shall be submitted to one Arbitrator, who shall have sole authority to determine procedural questions, such as arbitrability, standing, and real party in interest, as well as the merits of the claim.

15.2 Procedures. Any Party may commence the arbitration process by filing with JAMS a written demand for arbitration in Riverside County, California, and concurrently sending a copy to the other Party. The arbitration will be conducted in accordance with the provisions of JAMS's Comprehensive Arbitration Rules and Procedures as in effect when the demand is filed. The Parties to the dispute, claim, or controversy will cooperate with JAMS and each other in selecting an arbitrator from JAMS's panel of neutrals and in scheduling the arbitration proceedings. The costs and fees of JAMS and of the arbitrator shall be borne equally by the Parties to the dispute, claim, or controversy. The provisions of this paragraph are specifically enforceable by any court

with subject matter jurisdiction sitting in Riverside County, California. The prevailing Party shall be entitled to an award of its reasonable attorney fees and costs through every stage of the proceeding and in obtaining and enforcing any judgment. The arbitrator shall have sole discretion to determine which is the prevailing Party or Parties and the amount of reasonable attorney fees and costs. The arbitrator shall be required to apply California law.

SECTION 16. GENERAL PROVISIONS

16.1 Entire Agreement. This Agreement, including all Exhibits and Schedules, contains and constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements and understandings between the Parties relating to the subject matter of this Agreement. Other than such Agreement, there are no agreements, understandings, restrictions, warranties or representations between the Parties relating to the subject matter hereof other than those set forth in this Agreement.

16.2 Exhibits and Schedules. The Exhibits and Schedules provided with this Agreement are made a part of this Agreement by this reference.

16.3 Publicity. The Parties hereto agree that no public release or announcement concerning the transactions contemplated by this Agreement shall be issued by any Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except as such release or announcement may be required by law.

16.4 Amendment. This Agreement may not be amended, modified, or terminated except by an instrument in writing signed by all Parties to this Agreement.

16.5 Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, or neuter gender thereof or to the plurals of each, as the identity of the person or persons or the context may require. The descriptive headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision contained in this Agreement.

16.6 Invalidity. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void or unenforceable provision while still remaining valid and enforceable; and the remaining terms or provisions contained herein shall not be affected thereby.

16.7 Payment of Expenses. Except as provided otherwise in the Agreement, each of the Parties to this Agreement shall be responsible for its own costs and expenses incurred in connection with the preparation and negotiation of this Agreement and the transactions contemplated hereby.

16.8 Binding Effect and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns. Buyer may assign its rights under this Agreement to a Buyer Controlled Company; provided that, Buyer and its assignee shall be jointly and severally obligated, responsible, and liable up to Closing for the performance of Buyer's obligations hereunder

regardless of any such assignment. Seller may not assign any of their rights or delegate any of their obligations hereunder. Any assignment in violation hereof shall be void.

16.9 Broker Fees. Except as set forth in Sections 6.6, the Parties agree that no brokers have been engaged in relation to this transaction. Each Party agrees to defend, indemnify, and hold the other Party harmless from and against any claim for commission or finder's fee by any other person or entity who alleges that it was engaged or retained by such Party, or that, at the request of such Party, it was the procuring cause or instrumental in consummating the purchase and sale transaction contemplated by this Agreement.

16.10 Attorneys' Fees. In the event any Party engages legal counsel to enforce or protect its rights under this Agreement, by demand, mediation, arbitration, litigation, or any other proceedings, the Party substantially prevailing in any such efforts shall be entitled, in addition to all other relief, to reasonable attorney's fees, out-of-pocket costs, and disbursements relating to such efforts including any appeals.

16.11 Notices. All notices and other communications hereunder shall be (i) in writing, dated with the current date of such notice, and signed by the Party giving such notice, and (ii) delivered by (a) registered or certified mail, return receipt requested, addressed to the Party to be notified; (b) personal delivery or overnight courier, or (c) email followed by delivery effected through another delivery method described above; provided, however, that if the intended recipient responds to the noticing email or otherwise confirms receipt of the noticing email, the notice recipient shall have waived the requirement that the emailed notice be followed by a notice delivered through another delivery method in order for notice to be deemed effective. If written notice is delivered according to the procedures established above, such notice shall be deemed given when received by the Party to be notified or when the Party to be notified refuses to accept delivery of the notice. The initial addresses of the Parties shall be as follows:

If to Seller:

Hamid Ghadiri
846 Hearst Way
Corona, California 92882
hamid@autogalleryca.com
ella@autogalleryca.com

With a copy to:

Rogers Smith, APC
10620 Treena St., Ste. 230,
PMB#916,
San Diego, California 92131-1140
Attn: Michael C. Rogers
mrogers@rogerssmithlaw.com

If to Buyer:

BRAVO AUTO COLLECTION, LLC.
Attn: Iyad Dyman Ewis
26825 Auto Mall Parkway
Murrieta, California 92562
eddiedyman@gmail.com

With a copy to:

Law Office of Jason B. Cruz
18 E. State Street, Suite 203
Redlands, California 92373
Attn: Jason B. Cruz
jcruz@jcruzlaw.com

The Parties hereto shall have the right from time to time to change their respective addresses, contacts, or numbers by written notice to the other Parties.

16.12 Definition of Knowledge. As used in this Agreement, Seller's "knowledge" shall include the knowledge of the Chief Executive Officer, Chief Financial Officer, and General Manager at Seller's Business, and Landlord.

16.13 Time Is of the Essence. Time shall be of the essence with respect to this Agreement and the consummation of the transactions contemplated hereby.

16.14 Survival of Obligations. To the extent necessary to carry out the terms and provisions of this Agreement, the obligations and rights arising from or related to this Agreement shall survive the Closing and shall not be merged into the various documents executed and delivered at the time of the Closing.

16.15 Limitation of Liabilities Assumed. Except as expressly set forth in this Agreement and the attached Exhibits and Schedules, Buyer shall not take responsibility for or assume any liability, debt, or obligation of Seller by reason of this Agreement or Buyer's purchase of the Purchased Assets.

16.16 Risk of Loss. If this transaction closes as provided herein, then actual possession and all risk of loss, damage or destruction with respect to the Purchased Assets, shall be deemed to have been delivered to Buyer at Closing.

16.17 Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

16.18 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.19 Governing Law. This Agreement shall be construed, enforced, and governed in accordance with the laws of the State of California without regard to conflict of law principals.

16.20 Venue. The obligations of the Parties to this Agreement are performable, and venue for any arbitration proceeding or legal action arising out of this Agreement shall lie in Riverside County, California.

16.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed with a signature transmitted by facsimile or by e-mail in PDF or similar format, and no Party shall deny the validity of a signature or this Agreement signed and transmitted by electronically or by facsimile on the basis that a signed document is represented by a copy or facsimile and not an original.

16.22 No Strict Construction. The Parties and their counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

16.23 Further Assurances. The Parties shall execute and deliver such documents, and take such other action, as shall be reasonably requested by any other party hereto to carry out the purposes, intent, and transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as the most recent date in time listed below.

DATED: 7/18/2023

DATED: 7/18/2023

SELLER:

BUYER

SORAYA, INC.

DocuSigned by:
a California corporation
HAMID GHADIRI

By: Hamid Ghadiri
Its: President

"Seller"

BRAVO AUTO COLLECTION, LLC

DocuSigned by:
a California limited liability company

By: lyad Dyman Ewis
Its: Manager

"Buyer"

Exhibit A - BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

Purchased Assets

- The Seller's assignable rights and privileges under the contracts identified on Schedule 2.4 attached hereto (the "Assumed Obligations")
- All of the Seller's perpetual inventory records, customer lists, customer service records and all other customer data, supply and manufacturer lists, technical data, and sales and marketing literature, advertising materials, promotional materials, including merchandising literature from the Manufacturer, whether in hard or digital copies, including all assignable franchise rights under the Manufacturer's dealer sales and service agreements.

SELLER:

SORAYA, INC.

a California corporation

DocuSigned by:

HAMID GHADIRI

838635F8522E4E1...

By: Hamid Ghadiri

Its: President

"Seller"

BUYER

BRAVO AUTO COLLECTION, LLC

a California limited liability company

DocuSigned by:

Iyad Dyman Ewis

0398EDAF4C64CC...

By: Iyad Dyman Ewis

Its: Manager

"Buyer"

Schedule 2.1: Intangible Assets

- Seller's:
 - service customer lists, sales customer lists, vehicle service records
 - all assignable licenses and permits
 - all rights of Seller under contracts assigned to and assumed by Buyer
 - relationships with employees and customers
 - the franchise rights associated with Seller's Business
 - all goodwill associated with Seller's Business
 - and all other intangible rights and interests of any value relating to Seller's Business, excluding any deferred tax assets on the Seller's books as of the Closing Date

Schedule 6.4: Litigation

- Soraya, Inc. (Petitioner) v. Mitsubishi Motors North America (Respondent), New Motor Vehicle Board.

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 I, John David Wooten, declare that I am employed in the County of Sacramento, State of
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.
4 My business address is 4360 Arden Way, Suite 1, Sacramento, California 95864.

5 I declare that on July 19, 2023, I caused to be served a true and complete copy of:

6
7 ***PROTESTANT'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS, OR IN***
8 ***THE ALTERNATIVE, FOR SUMMARY ADJUDICATION***

9 ***DECLARATION OF HAMID GHADIRI IN SUPPORT OF OPPOSITION TO***
10 ***RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY***
11 ***ADJUDICATION***

12 **SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA**

13 **v.**

14 **MITSUBISHI MOTORS NORTH AMERICA, INC.,**

15 ***Protest No.: PR-2819-23***


16 By Electronic Mail:

17
18 Dean Martoccia, Esq.
19 Seyfarth Shaw LLP
20 601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017-5793
dmartoccia@seyfarth.com

21 Brandon Bigelow, Esq.
22 William F. Benson, Esq.
23 Seyfarth Shaw LLP
24 Two Seaport Lane, Suite 1200
Boston, Massachusetts 02210
bbigelow@seyfarth.com
25 wbenson@seyfarth.com

26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed this 19 July 2023 Sacramento, California.

28 
John David Wooten

PROOF OF SERVICE

VIA EMAIL

LAW OFFICES OF GAVIN M. HUGHES
GAVIN M. HUGHES State Bar #242119
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New Motor Vehicle Board

Received
7-19-23

FILED

New Motor Vehicle Board

Date: 7-19-23

By: am

ATTORNEYS FOR PROTESTANT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

SORAYA, INC., DBA AUTO GALLERY
MITSUBISHI - MURRIETA,

Protestant,

v.

MITSUBISHI MOTORS NORTH AMERICA,
INC.,

Respondent.

PROTEST NO: PR-2819-23

**DECLARATION OF HAMID GHADIRI IN
SUPPORT OF OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS,
OR IN THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION**

I, Hamid Ghadiri, declare as follows:

1. I am the Dealer Principal for Soraya, Inc., dba Auto Gallery Mitsubishi - Murrieta. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them under oath if called as a witness.

2. I have been in discussions to sell the Murrieta Mitsubishi franchise for several months. The final executed agreement took longer than anticipated, but was executed July 18, 2023, and was submitted to MMNA for approval.

3. The proposed buyer is the current tenant of the authorized Mitsubishi Murrieta location. I have discussed with him the possibility of needing to resume operations while the proposed buy-sell is under consideration.

4. I have the ability to resume operations at the Murrieta location and the proposed buyer is willing to cooperate as necessary. I continue to operate a Mitsubishi franchise located in Corona California. I can relocate sales staff, a service technician, and new vehicle inventory as necessary to resume sales and service operations at the authorized Murrieta location.

5. I believe the proposed buyer to be well qualified for MMNA's approval. The facility and location are already authorized by MMNA. I'm not aware of any basis for MMNA to disapprove the proposed transfer.

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

Executed this **July 19th** 2023 at Corona, California.

Hamid Ghadiri
Hamid Ghadiri

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 I, John David Wooten, declare that I am employed in the County of Sacramento, State of
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.
4 My business address is 4360 Arden Way, Suite 1, Sacramento, California 95864.

5 I declare that on July 19, 2023, I caused to be served a true and complete copy of:

6
7 ***PROTESTANT'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS, OR IN***
8 ***THE ALTERNATIVE, FOR SUMMARY ADJUDICATION***

9 ***DECLARATION OF HAMID GHADIRI IN SUPPORT OF OPPOSITION TO***
10 ***RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY***
11 ***ADJUDICATION***

12 **SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA**

13 **v.**

14 **MITSUBISHI MOTORS NORTH AMERICA, INC.,**

15 ***Protest No.: PR-2819-23***

16 By Electronic Mail:

17
18 Dean Martoccia, Esq.
19 Seyfarth Shaw LLP
20 601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017-5793
dmartoccia@seyfarth.com

21 Brandon Bigelow, Esq.
22 William F. Benson, Esq.
23 Seyfarth Shaw LLP
24 Two Seaport Lane, Suite 1200
Boston, Massachusetts 02210
bbigelow@seyfarth.com
25 wbenson@seyfarth.com

26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed this 19 July 2023 Sacramento, California.

28 
John David Wooten

PROOF OF SERVICE

VIA EMAIL

SEYFARTH SHAW LLP

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Attorneys for Respondent
MITSUBISHI MOTORS NORTH AMERICA, INC.

New Motor Vehicle Board

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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

SORAYA, INC. DBA AUTO GALLERY
MITSUBISHI-MURRIETA,

Protestant,

v.

MITSUBISHI MOTORS NORTH AMERICA,
INC.,

Respondent.

Protest No. PR-2819-23

**RESPONDENT'S REPLY
MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

Mitsubishi Motors North America, Inc. ("MMNA") submits this reply memorandum in support of its motion to dismiss, or in the alternative, for summary adjudication of the protest filed by Protestant, Soraya, Inc. d/b/a Auto Gallery Mitsubishi-Murrieta ("Dealer") under California Vehicle Code § 3060 (the "Protest").

1 **I. DEALER DOES NOT DISPUTE ANY MATERIAL FACTS**

2 While Dealer claims “there are facts in dispute rendering dismissal unwarranted for this Protest”
3 (Opp. at 5), it does not dispute any of the material facts identified by MMNA. Significantly, Dealer
4 does not dispute that it (1) ceased all operations in early March 2023 and (2) sold the dealership
5 premises in May 2023. Yet, Dealer contends MMNA must wait until an evidentiary hearing scheduled
6 for October 2023 for the Board to determine there is good cause for termination. Not necessary.
7 Because a closed and defunct dealership should not be allowed to maintain its franchise agreement, good
8 cause exists as a matter of law for termination of the Dealer Agreement. Based on the undisputed facts,
9 no evidentiary hearing is needed. Dealer also states it was engaged in settlement discussions with
10 MMNA and, as part of those discussions, proposed to sell or close its Murrieta dealership location.
11 Opp. at 3. Notably absent is any statement in the Declaration of Hamid Ghadiri (“Ghadiri Decl.”)
12 concerning those settlement discussions, let alone any statement that he ceased doing business at the
13 Murrieta location due to settlement discussions with MMNA. In any event, to the extent settlement
14 negotiations between the parties are admissible (they are not), Dealer had no contractual right to cease
15 operations while settlement negotiations were ongoing. MMNA certainly did not give Dealer
16 permission to close shop. That was a blatant breach of the Dealer Agreement.

17 **II. DEALER’S POSITION THAT IT HAS THE ABILITY TO “TEMPORARILY” RESUME**
18 **DEalersHIP OPERATIONS IS NOT SUPPORTED BY ANY FACTS**

19 MMNA issued its Notice of Termination on April 19, 2023. At that time, Dealer could have
20 attempted to resume operations at its authorized location in Murrieta, California (the “Dealership
21 Premises”). It did not. Instead, it sold the Dealership Premises in May 2023. As noted, Dealer does not
22 dispute that it sold the Dealership Premises and thus has no facilities to resume permanent dealership
23 operations.

24 Nonetheless, Dealer contends there are mechanisms available to enable it to resume “temporary”
25 dealership operations at its authorized location. Opp. at 5. First, Dealer contends it “may execute a
26 short-term sublease for the purpose of resuming operations.” *Id.* There is no admissible evidence,
27 however, demonstrating that the new owner of the property would allow such a sublease or that the
28 current tenant would agree to such a sublease. Instead, there is only a vague statement from Hamid

1 Ghadiri (Dealer’s owner and prior owner of the Dealership Premises) that the current tenant “is willing
2 to cooperate as necessary.” Ghadiri Decl., ¶ 4. There is not even a statement from Mr. Ghadiri that he is
3 willing to enter into a sublease with the current tenant or for what period of time, let alone any statement
4 from the current owner of the property that it would allow such a sublease or from the current tenant that
5 it would enter into such a sublease. And, Dealer concedes that any such purported sublease would be
6 “short-term” evidencing that any ability to resume operations at the Dealership Premises would be short-
7 lived at best (which assumes Dealer and the current owner and tenant could agree to the terms of this
8 purported short-term sublease). Even if Dealer could hypothetically enter into a sublease in the future,
9 the Board should not allow Dealer to close shop for five months (or more) and then avoid termination
10 simply by stating (without evidentiary support) that it has the ability to temporarily resume dealership
11 operations. Dealer’s opposition simply confirms that Dealer has not entered into a sublease with the
12 current tenant of the Dealership Premises to resume operations as a Mitsubishi dealer.

13 Second, Dealer contends that it “may also enter into a management agreement that would
14 provide for the operation of the franchise at the Authorized Location.” Opp. at 5. No such management
15 agreement (not even a draft) was attached to Dealer’s opposition. Notably absent from the Ghadiri Decl.
16 is any statement concerning this purported management agreement. And, Dealer did not provide any
17 statement from the current owner or tenant of the Dealership Premises concerning such a purported
18 management agreement. Thus, it is unclear who would be the parties to this purported management
19 agreement, let alone what the terms would encompass.¹ One thing is clear: it is undisputed that no such
20 management agreement exists. Merely stating that Dealer could enter into such a hypothetical
21 agreement should not be enough to avoid termination.

22 In its opposition, Dealer does not dispute that it has not sold a new Mitsubishi vehicle since
23 November 2022, has no new car inventory, no flooring arrangement to purchase new vehicles and no
24 dealership premises from which to operate (or reopen) its dealership. While Dealer states that it could
25

26 ¹ Dealer does not explain why such a purported management agreement is necessary to resume
27 operations at the authorized location. Since Dealer sold the Dealership Premises, it no longer has the
28 ability to resume operations at that location. No hypothetical management agreement changes that
undisputed fact.

1 transfer everything from its store in Corona to Murrieta (from one separate corporate entity to another),
2 there is no information contained in the Ghadiri Decl. stating he is able or willing to take these actions
3 (or that the new owner or current tenant at the Dealership Premises would allow such a transfer). Since
4 Dealer sold the Dealership Premises in May 2023 (which is undisputed), this proposal seems far-fetched
5 at best. One thing remains evident: Dealer has not taken these steps since being served with the April
6 19, 2023 Notice of Termination.

7 Dealer's position that there remain open questions of fact concerning whether it can resume
8 dealership operations is belied by the undisputed facts submitted by MMNA and confirmed by Dealer's
9 opposition. Since being served with the Notice of Termination, Dealer has taken no steps to resume
10 dealership operations. To the contrary, the only step Dealer took was to sell the Dealership Premises.
11 Assuming, *arguendo*, that Dealer could resume operations at some unidentified point in the future, it is
12 undisputed that Dealer has failed to conduct customary sales and service operations at the Dealership
13 Premises since March 2023 (five months). That fact alone justifies termination of the Dealer
14 Agreement.

15 **III. DEALER'S SUBMISSION OF A BUY-SELL AGREEMENT IS IRRELEVANT TO**
16 **WHETHER THERE IS GOOD CAUSE FOR TERMINATION**

17 On July 18, 2023, the day before filing its Opposition, Dealer entered into an Asset Purchase
18 Agreement with Bravo Auto Collection, LLC (the "APA") (Opp., Ex. 1), and submitted it to MMNA for
19 its review and approval. Pursuant to Cal. Veh. Code § 11713.3(d)(2)(A), a transferring dealer must
20 provide written notice of the transfer, which includes a copy of the sale agreement and "[t]he proposed
21 transferee's application for approval to become the successor franchisee." To date, MMNA has not
22 received an application from the proposed buyer. Upon the receipt of all required information (which
23 includes the dealer application), MMNA then has 60 days to notify dealer whether it will approve or
24 disapprove the proposed sale. *Id.*, § 11713.3(d)(2)(B). Dealer requests that the Board wait for this
25 sixty-day time period to expire before making a decision concerning whether MMNA has good cause
26 for termination. While MMNA will review the APA in good faith (once it receives all of the required
27 information), the submission of an APA does not stay a termination proceeding under California law.
28

1 Since at least March 2023, Dealer has indicated it was on the verge of entering an APA but never
2 submitted one to MMNA. The Board should not now reward Dealer for its dilatory tactics by denying
3 or delaying its decision on MMNA's motion to dismiss or continuing the evidentiary hearing while
4 MMNA's review of the APA is pending. It is undisputed that Dealer has not been operating since
5 March 2023 and sold the Dealership Premises in May 2023—that constitutes good cause for
6 termination. The execution of an APA the day before Dealer's opposition to MMNA's motion to
7 dismiss was due does not somehow mean MMNA no longer has good cause to terminate the Dealer
8 Agreement.

9 **IV. CONCLUSION**

10 Based on the undisputed evidence, good cause exists for the termination of Dealer because
11 Dealer breached the Dealer Agreement, Dealer ceased all operations months ago, Dealer sold the
12 Dealership Premises, Dealer is providing no benefit to the public, and there is no likelihood that Dealer
13 will be fully operational in the future. Accordingly, Respondent MMNA requests that the Board enter
14 an Order dismissing the Protest with prejudice or, in the alternative, summarily adjudicating the Protests
15 in Respondent's favor, and for such other relief that the Board deems just and equitable.

16 DATED: July 31, 2023

17
18 SEYFARTH SHAW LLP

19
20 By:



21 Dean A. Martoccia
22 Brandon L. Bigelow (*pro hac vice*)
23 William F. Benson (*pro hac vice*)

24 Attorneys for Respondent
25 Mitsubishi Motors North America, Inc.
26
27
28

PROOF OF SERVICE

I am a resident of the Commonwealth of Massachusetts, over the age of eighteen years, and not a party to the within action. My business address is 2 Seaport Lane, Suite 1200, Boston, Massachusetts 02210. On July 31, 2023, I served the within document:

**RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.

☒ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

☐ electronically by using the Court's ECF/CM System.

Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
4360 Arden Way, Suite 1
Sacramento, CA 95864
gavin@hughesdealerlaw.com
mayville@hughesdealerlaw.com

Attorney for Petitioner,
Soraya, Inc. d/b/a Auto Gallery
Mitsubishi-Murrieta

New Motor Vehicle Board (Via Email)
nmvb@nmvb.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence 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 July 31, 2023, at Boston, Massachusetts.



William F. Benson

VIA EMAIL

New Motor Vehicle Board

Received
4-20-23

FILED

New Motor Vehicle Board

Date: 4-20-23

By: am

LAW OFFICES OF GAVIN M. HUGHES
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ATTORNEYS FOR PROTESTANT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

SORAYA, INC., DBA AUTO GALLERY
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Protestant,

v.

MITSUBISHI MOTORS NORTH AMERICA,
INC.,

Respondent.

PROTEST NO: PR-2819-23

PROTEST
[Vehicle Code Section 3060]

Protestant, Soraya, Inc, dba Auto Gallery Mitsubishi – Murrieta (“Protestant”), a California corporation, qualified to do business in California, through its attorneys, files this Protest under provisions of California Vehicle Code section 3060 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Mitsubishi vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at 26825 Auto Mall Pkwy, Murrieta, CA 92562; Protestant’s telephone number is (951) 476-0418.

2. Respondent, Mitsubishi Motors North America, Inc. (“MMNA”), distributes Mitsubishi products and is the franchisor of Protestant.

1 3. Protestant is represented in this matter by the Law Offices of Gavin M. Hughes, whose
2 address and telephone number are 4360 Arden Way, Suite 1, Sacramento, California 95864; (916) 900-
3 8022.

4 4. On or about April 19, 2023, counsel for Protestant received from Respondent a letter
5 dated April 19, 2023 ("NOT"), stating its intention to terminate Protestant's Mitsubishi franchise.

6 5. Protestant generally denies each and every allegation contained in the written notice of
7 termination.

8 6. Respondent does not have good cause to terminate the franchise by reason of the
9 following facts:

10 (a) Protestant has made a substantial and permanent investment in the dealership.

11 (b) Protestant has transacted and is transacting an adequate amount of Mitsubishi
12 business compared to the business available to it.

13 (c) Protestant fulfills the warranty obligations to be performed by it.

14 (d) The extent of any failure of Protestant to comply with the terms of the franchise
15 agreement is immaterial.

16 (e) Protestant has adequate motor vehicle sales and service facilities, equipment,
17 vehicle parts, and qualified service personnel to reasonably provide for the needs of Mitsubishi buyers
18 and owners in the market area and is rendering adequate service to the public.

19 (f) It would be injurious to the public welfare for the franchise to be terminated or
20 for Respondent to refuse to continue the existing franchise.

21 (g) Protestant's failure to fulfill Respondent's sales and/or service expectations, if
22 any, is in whole or in part the result of Respondent's action or inaction, market analysis deficiencies,
23 product deficiencies, product scarcities and/or market conditions, and Respondent's unreasonable
24 method of evaluating performance.

25 7. Respondent and Protestant are parties to two existing consolidated Board Protests (PR-
26 2754-21 and PR-2755-21). Active settlement discussions concerning these consolidated protests
27 involved the closure of Protestant's Murrieta location. Believing a formal settlement agreement was
28 imminent, Protestant began winding down its operations. However, before a final settlement

1 agreement was executed, Respondent issued the NOT.

2 8. Protestant is prepared to resume full operations at the Murrieta location. The winding
3 down of Protestant's operations was done in reliance upon discussions with Respondent whereby
4 Protestant was to terminate the Murrieta franchise as consideration for the resolution of the
5 consolidated protests.

6 9. Protestant and its attorneys desire to appear before the Board and/or its designated
7 hearing officer and estimate the hearing in this matter will take fifteen (15) days to complete.

8 WHEREFORE, Protestant prays as follows:

9 1. That the Board sustain this protest and order Respondent not to terminate Protestant's
10 Mitsubishi franchise nor refuse to continue its existing franchise.


11 2. That pending the hearing in this matter, the Board or its executive director or authorized
12 representative immediately order Respondent not to terminate or refuse to continue Protestant's
13 franchise until such time as Respondent has established good cause for such actions under the
14 provisions of Vehicle Code Sections 3060 and 3061.

15 3. That a pre-hearing conference be set and the parties notified thereof.

16 4. That Protestant be awarded such other and further relief as the Board deems just and
17 proper.

18
19
20 Dated: April 20, 2023

LAW OFFICES OF
GAVIN M. HUGHES

21
22
23 By: 
24 Gavin M. Hughes
25 Robert A. Mayville, Jr.
26 Attorneys for Protestant
27
28

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 I, John David Wooten, declare that I am employed in the County of Sacramento, State of
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.
4 My business address is 4360 Arden Way, Suite 1, Sacramento, California 95864.

5 I declare that on April 20, 2023, I caused to be served a true and complete copy of:

6
7 ***PROTEST [Vehicle Code Section 3060]***

8 **SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA**

9
10 **v.**

11 **MITSUBISHI MOTORS NORTH AMERICA, INC.,**

12
13 By Electronic Mail:

14 Dean Martoccia, Esq.
15 Brandon Bigelow, Esq.
16 William F. Benson, Esq.
Seyfarth Shaw LLP
17 601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017-5793
18 DMartoccia@seyfarth.com
BBigelow@seyfarth.com
19 WBenson@seyfarth.com

20
21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed this 20 April 2023 Sacramento, California.

23
24 
John David Wooten