



**BOARD OF SELECTMEN**

**Town Offices**

**50 Billerica Road**

**Chelmsford, MA 01824-2777**

**(978) 250-5201 FAX: (978) 250-5252**

Kenneth Lefebvre, Chair  
Patricia Wojtas, Vice Chair  
Emily Antul, Clerk

George R. Dixon, Jr.  
Virginia Crocker Timmins

September 22, 2019

Samantha Smith  
DMO Claremont LLC  
158 Manchester St.  
Concord, NH 03301

Dear Ms. Smith:

Notice is hereby given that the Board of Selectmen will conduct a hearing on your application for a Class I Auto Dealer License for DMO Chelmsford LLC DBA Dan O'Brien Nissan to be exercised on the premises at 95 Drum Hill Road (current location of AutoFair Nissan). This hearing will take place on Monday, December 2, 2019 at Town Offices, 50 Billerica Road, Chelmsford at 7:00 p.m. in Room 204.

It is required that the applicant or a representative attend this hearing. If you have any questions regarding this process, please feel free to call me at (978) 250-5289.

Sincerely,

Kristina Bruce  
Support Services Coordinator



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**Town Offices**  
**50 Billerica Road**  
**Chelmsford, MA 01824-2777**  
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**APPLICATION FOR LICENSE**

**INFORMATION TO BE FURNISHED BY APPLICANT - GENERAL**

1. Type of License Applied for Class I dealer
2. Official Name on License Dmg Chelmsford
3. D/B/A/ (if applicable) Dan O'Brien Nissan
4. Address of Establishment 95 Dean Hill RD
5. On Premises Phone Number 978-746-2500
6. Manager's Name, Address and Home Phone # Dan O'Brien  
20 Burgundy Terrace Bedford NH 03110 (603) 227-0550
7. Hours of Operation Requested: m-Thursday 7:30-7 Service  
Friday 7:30-6 Services Saturday 8-5 Services  
Weekdays Monday-Friday Sales 9-6pm  
Sundays 11am-6pm Sales
8. <sup>as to</sup> Seating Capacity 285



## Town of Chelmsford

### PROCESS FOR LICENSE APPLICATION/DEPARTMENTAL SIGN OFF SHEET

Type of License Applying for Class T Auto Dealer + transfer

Name of Business DMO Chelmsford LLC DBA. DAN O'BRIEN Nissan

Address 95 Drum Hill Road Chelmsford MA 01824

Contact Person Dan O'Brien

Phone # (603) 227-6550 E-mail dan@danobrienautogroup.com

Existing Use Auto Dealer Capacity\* 288

Proposed Use Auto Dealer Capacity\* 288

**RESTAURANTS: PLEASE PROVIDE THE DEPARTMENTS LISTED BELOW WITH A FLOOR PLAN.**

**AUTO DEALERS: PLEASE PROVIDE THE DEPARTMENTS LISTED BELOW WITH A PARKING PLAN.**

*Please obtain signatures from the Department Heads listed below. Once these signatures have been obtained, bring this document to the Selectmen's Office for next available agenda.*

Community Development [Signature] Date 11-19-19  
Room LL01 - 978-250-5231

Conservation Department [Signature] Date 11-19-19  
Room LL01 - 978-250-5248

Board of Health [Signature] Date 11/19-19  
Room 102 - 978-250-5241

Tax Collectors Office [Signature] Date 11-19-19  
Room 104 - 978-250-5210

Fire Prevention Office [Signature] Date 11-19-19  
Town Offices - Room LL03 - 978-244-3361

Building Department/ADA [Signature] Date 11-19-19  
Room LL01 - 8:30 - 10:00 AM or by appointment - (978) 250-5225

Applicant must obtain Certificate of Inspection after all licenses/permits have been granted.  
**(OBTAIN THIS SIGNATURE LAST)**

\*Capacity - Restaurants: Seating Capacity  
Auto Dealers: Number of Cars for Sale on Lot



**Town of Chelmsford**  
Police Department

November 26<sup>th</sup>, 2019

To: Kristina Bruce – Support Services Coordinator  
From: Chief James M. Spinney  
Re: Background check regarding Auto Dealer's License

Background check has been completed on;

**Daniel O'Brien**  
**Dan O'Brien Nissan – 95 Drum Hill Road**

Background check yielded no recent or serious offenses. Mr. O'Brien does **NOT** currently have an active Massachusetts, or New Hampshire Driver's License.

Sincerely,

James M. Spinney  
Chief of Police

THE COMMONWEALTH OF MASSACHUSETTS  
Town of Chelmsford

APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE  
OR ASSEMBLE SECOND HAND MOTOR VEHICLES  
OR PARTS THEREOF

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a Class I, Class II, Class III (circle one) license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? DMA Chelmsford LLC DBA Dan O'Brien Nissan

Business address of concern: 95 Drum Hill Rd Chelmsford MA 01824

Phone number: (603) 227-0550

Email: chue@chuechryslerjeep.com

2. Is the above concerned an individual, co partnership, an association or a corporation? Corporation

3. If an individual, state full name and residential address:

4. If a co-partnership, state full names and residential addresses of the persons composing it:

Name	Address	City, State, Zip

5. If an association or a corporation, state full names and residential addresses and title of the principal officers:

Title	Name	Address	City, State, Zip
President:	<u>Dan O'Brien</u>	<u>20 Burgundy Terrace</u>	<u>Bedford, NH 03110</u>
Treasurer:			
Secretary:			

6. Are you engaged principally in the business of buying, selling or exchanging motor vehicles? Yes

If so, is your principal business the buying and selling of second hand motor vehicles? no

Is your principal business that of a motor vehicle junk dealer? no

7. Give a complete description of all the premises to be used for the purpose of carrying on the business:

Auto dealerships & repair facility  
with 14 bays w/ 20800 sq ft

8. Are you a recognized agent of a motor vehicle manufacturer? yes

If so, state name of manufacturer: Nissan

9. Have you a signed contract as required by Section 58, Class I? \_\_\_\_\_

10. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof?

If so, what city or town? no

Did you receive a license? \_\_\_\_\_ For what year? \_\_\_\_\_

11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? no

12. Is this your principal business? yes

13. Do you have repair facilities on the premise? yes

If not, do you have access to repair facilities sufficient to enable you to satisfy the warranty repair obligations of the so-called "Lemon Law"? \_\_\_\_\_

Provide Name, address and telephone number of the facility that will do repairs.  
\_\_\_\_\_

14. Will you be selling and storing vehicles on the premise? yes

If not, where will the vehicles be stored? \_\_\_\_\_

15. Will you be selling to the public or just to other car dealers? public

**\*Please provide a copy of a bond or equivalent proof of financial responsibility.**

\*In accordance with MGL, Chapter 140, §58(c)(1) a used car dealer must obtain a bond, or equivalent proof of financial responsibility ..., and continue in effect a surety bond or other equivalent proof of financial responsibility satisfactory to the municipal licensing authority in the amount of \$25,000 executed by a surety company authorized by the insurance department to transact business in the commonwealth.

Sign your name in full \_\_\_\_\_

*Duly authorized to represent the concern herein mentioned*

Residence \_\_\_\_\_

Important  
EVERY QUESTION MUST BE ANSWERED WITH  
FULL INFORMATION, AND FALSE  
STATEMENTS HEREIN MAY RESULT IN THE  
REJECTION OF YOUR APPLICATION OR THE  
SUBSEQUENT REVOCATION OF YOUR  
LICENSE IF ISSUED

Note: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)









## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, made this 31st day of October, 2019, by and between TEWKSBURY AUTOMOTIVE, LLC, a Delaware limited liability company doing business as AutoFair Nissan of Chelmsford and having an address at 95 Drum Hill Road, Chelmsford, MA 01824 (“Seller”), and DMO CHELMSFORD LLC, a Massachusetts limited liability company with a mailing address of 158 Manchester Street, Concord, New Hampshire 03301 (“Buyer”).

### WITNESSETH:

WHEREAS, Seller is engaged in a business as an automobile dealership (the “Dealership”), operating pursuant to a dealer, sales and service agreement with Nissan North America, Inc. (the “Manufacturer”) to sell and service Nissan vehicles and products; and

WHEREAS, Seller operates the Dealership at 95 Drum Hill Road, Chelmsford, MA 01824 (together with the improvements situated thereon, the “Business Premises”) pursuant to a Lease Agreement dated May 30, 2014, as amended (the “Lease”) between Stonegate Development, Corporation (“Landlord”) and AutoFair Realty Chelmsford, LLC; and

WHEREAS, Seller wishes to sell to Buyer certain Assets (as defined in Section 1.1 hereof) used in its Dealership business, and Buyer desires to purchase from Seller the Assets all upon the terms and subject to the conditions set forth in this Agreement.

## ARTICLE I

### THE ASSETS

**Section 1.1 The Assets.** Subject to the terms and conditions hereinafter set forth, on the Closing Date (as defined below), Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all of the following assets (the “Assets”) used in the operation of the Dealership:

(a) Equipment. All machinery, furnishings, fixtures and equipment used in the Dealership, whether owned or leased by Seller, including, but not limited to, engine analyzers, balance equipment, tools, bins, furniture, fixtures, computers, office equipment, telephone and intercom systems, signs, all tools of any nature, whether special tools or otherwise, lifts, front end machines and compressors, all of which are listed on **Schedule 1(a)-1** attached hereto (collectively, the “Fixed Assets”), free and clear of all liens and encumbrances except as set forth on **Schedule 1(a)-2**. Buyer and Seller shall jointly perform an inventory of the Fixed Assets set forth on **Schedule 1(a)-1** immediately prior to the closing of the transactions contemplated by this Agreement (the “Closing”). All such Fixed Assets shall be in good working order, or Purchaser shall receive a credit for the replacement value thereof.

(b) Parts. The entire inventory of new, never used, authorized, sealed factory packaged, returnable, non-obsolete parts and accessories of the Manufacturer for the Dealership, whether in Seller’s possession or in transit to Seller from the Manufacturer (the “Manufacturer Parts”). A part or accessory shall be considered non-obsolete only if: (i) it is listed in the current

Manufacturer's parts catalogues; and (ii) it is a part or accessory for which Seller has had sales activity during the 365 days immediately prior to Closing.

(c) New Vehicle Inventory. Each New Vehicle owned by Seller on the Closing Date as set forth on **Schedule 1(c)-1** hereto, which Schedule shall be amended at the Closing, and which shall include New Vehicles in Seller's possession or in transit. For purposes of this Agreement, "New Vehicles" shall mean new, never-used 2019 and 2020 model year vehicles of the Manufacturer pertaining to the Dealership which have never been registered and have no damages or other defects or mileage, except for mileage with which they were delivered (which shall not exceed 3,000 miles). Each New Vehicle shall be accompanied by: (i) the Manufacturer's certificate of origin; (ii) the original factory invoice; (iii) the owner's manual; and (iv) all keys.

(d) Miscellaneous Items. All of Seller's bulk materials inventories, including body shop materials, shop supplies, nuts, bolts, tires, tubes, batteries, gas, oil, grease, undercoating and anti-freeze (collectively, the "Miscellaneous Items"), as well as all other supplies, sales literature, service and other manuals, parts catalogues, instructional materials, vehicle literature, and supplies used in the sales, marketing or servicing of Nissan motor vehicles and used vehicle and other inventoried items.

(e) Other Assets. All goodwill and rights (including, but not limited to, telephone numbers, e-mail addresses, contract rights with vendors, suppliers, lessors, licensors and customers) and other intangible assets of the Dealership as a going concern, including, but not limited to, customer lists, telephone numbers, trademarks and trade names, all of Seller's rights to sell vehicles within the Dealership's territory and all rights to vehicle allocations from the factories and to obtain delivery of vehicles on order, all rights under the dealership agreements with the Manufacturer (to the extent assignable), all Dealership books and records of Seller relating to its automobile sales and service business, any and all permits or licenses issued by any governmental or regulatory authority, to the extent legally transferable, and relating to the Dealership, all contracts with distributors, and the business of the Dealership as a "going concern", but excluding Excluded Assets.

(f) Excluded Assets. Seller acknowledges that the Assets being purchased by Buyer hereunder shall not include the following (collectively, the "Excluded Assets"): (i) cash and cash equivalents; (ii) accounts receivable; (iii) rights under employment agreements with Seller's employees; (iv) the name "AutoFair," or "AutoFair Chelmsford" or "AutoFair Nissan" or any derivation which is similar to the name "AutoFair"; (v) the URL, domain name or website of Seller; provided, that, for a period of twelve (12) months following Closing Seller shall provide for a redirect of Seller's Dealership website to a URL designated by Buyer; (vi) leased vehicles and the lease agreement pertaining thereto; (vii) used car/truck inventory and daily rentals (except as noted below); (viii) dealer or other reserves, holdbacks or credits held by the Manufacturer, financing institution or acceptance corporation; (ix) service units/ company vehicles; and (x) the items identified on **Schedule 1(f)**. Notwithstanding the foregoing, Seller's used car/truck inventory may be purchased from Seller by Buyer if the parties can reach agreement upon the purchase price (any used vehicles will be sold "as is"). Seller shall deliver to Buyer with respect to each used car or truck the legal odometer statement and all documents and disclosures required by law to be delivered or disclosed to customers concerning damage or usage history of the used vehicle. If Seller and Buyer cannot agree upon a purchase price for the used car/truck inventory,

such inventory shall be removed by Seller from the Business Premises within three (3) business days after prior to Closing.

## **Section 1.2 Non-Assumption of Liabilities.**

(a) Assumed Liabilities. On the Closing Date and in consideration for the Assets to be purchased by Buyer hereunder, and on the terms and subject to the conditions of this Agreement (including, but not limited to, subject to the truth, accuracy and completeness of each of the representations and warranties of Seller given herein), Buyer shall assume and agree to undertake to pay, perform and discharge as and when due, each of the following obligations, responsibilities, liabilities and debts of Seller relating solely to the Assets: (i) the liabilities and obligations incurred from and after the Closing Date in connection with the performance by Buyer of the Seller Agreements (as defined herein) listed on **Schedule 1.2(a)**; (ii) commitments of the Seller to provide services which have not been completed as of the Closing Date as set forth on **Schedule 1.2(a)**; (iii) all obligations and liabilities arising from and after the Closing Date from the Buyer's use, ownership, possession, sale or operation of the Acquired Assets; and (iv) the liabilities set forth on **Schedule 1(a)-2** (the liabilities described in clauses (i), (ii), (iii) and (iv) collectively being the "Assumed Liabilities").

(b) Unassumed Liabilities. Notwithstanding anything in this Agreement to the contrary, and except as expressly set forth in Section 1.2(a) above, the purchase by Buyer of the Assets shall be free and clear of all liens, claims, restrictions, pledges, security interests and encumbrances of any kind and nature (collectively, "Encumbrances"), and without any assumption by Buyer of any debts, taxes, obligations or liabilities whatsoever (collectively, the "Unassumed Liabilities").

## **ARTICLE II**

### **PURCHASE PRICE**

**Section 2.1 Purchase Price.** The aggregate purchase price (the "Purchase Price") for the Assets shall be determined in accordance with this Section 2.1.

(a) Fixed Assets. Buyer shall purchase the Fixed Assets for their Net Book Value, meaning the book value of the Fixed Assets set forth in Seller's unaudited financial statements at the end of the month immediately preceding the month in which Closing occurs, and subject to further depreciation between the date of such financial statements and the Closing Date.

(b) Parts and Accessories. Immediately prior to the Closing Date, a physical inventory of the Manufacturer Parts to be acquired by Buyer shall be conducted by Buyer and Seller and/or their duly authorized representatives bases upon customary industry practice; in the event the parties are unable to mutually agree upon the Manufacturer Parts inventory, a mutually agreed upon third party shall take an inventory and will value said inventory based on this provision. The cost of the inventory shall be borne equally by Buyer and Seller. The purchase price for Manufacturer Parts shall be at the current price set forth in the Manufacturer's parts catalogues. Any inventory of parts and accessories other than Manufacturer Parts may be purchased by Buyer at a price mutually agreed upon by Buyer and Seller; provided that if a purchase price cannot be

mutually agreed upon, all such inventory shall be retained by Seller, Seller shall retain the accrued parts allowance which is not assignable and which must be used prior to termination of the Manufacturer's escrow period (and all refunds due under the open parts and service accounts will be for the benefit of Seller), and such parts shall be removed from the Business Premises by Seller within three (3) business days following Closing.

(c) Miscellaneous Items. Buyer shall purchase all of Seller's Miscellaneous Items for a price equal to Seller's documented cost, with said values being determined at any inventory determined contemporaneously with the Manufacturer Parts inventory provided in Section 2.1(b) above.

(d) New Vehicles. The Buyer will purchase, on the Closing Date, the New Vehicles owned by the Seller on the Closing Date. The Purchase Price for New Vehicles will be the aggregate of "Net Dealer Invoices" as stated for New Vehicles purchased pursuant to this Section 2.1(d). The "Total Dealer Invoice" for each vehicle means the total dealer invoice of such vehicle, which includes freight billed by the Manufacturer, factory installed equipment, port installed equipment, advertising association funds, dealer holdback, and gas guzzlers tax where applicable. (A sample invoice is attached as Exhibit A with the Total Dealer Invoice circled). "Net Dealer Invoice" for each vehicle shall mean the Total Dealer Invoice for such vehicle, plus the cost of any factory authorized accessories added by the Seller, less factory holdbacks and all supplemental factory holdbacks (i.e., 5% carryover allowance, if applicable), consumer, floor plan financing and all similar rebates and credits previously received or to be received by Seller, including cooperative advertising dealer rebates if applicable, allowances and similar cost adjustments provided to Seller by the Manufacturer, and less the dealer invoice cost of any item removed by Seller from a vehicle which is otherwise reflected on the dealer invoice; provided, however, that the purchase price for any Demonstrator Vehicle shall be reduced by an aggregate amount equal to \$0.35 for each mile in excess of 1,000 miles as recorded on the odometer of said vehicle on the Closing Date. Any such vehicles with more than 3,000 miles as reached on the odometer of such vehicle shall be treated as a used vehicle.

(e) Executory Contracts. Buyer and Seller anticipate that on the Closing Date, there will be executory contracts (orders) between Seller and third-party purchasers for the sale of New Vehicles. For the purpose of arranging for the proper fulfillment of said orders, the parties agree that at Closing, Seller shall assign to Buyer those contracts representing sales of ordered New Vehicles to third-party purchasers, and concurrently therewith, Seller shall remit to Buyer all deposits received by Seller in connection with said contracts or Buyer shall receive a credit at Closing against the Purchase Price in such amount. Buyer covenants and agrees to perform all obligations of Seller arising from and after the Closing Date under said contracts. Buyer shall not be obligated to pay Seller any portion of the gross profit from the consummation of said executory contracts assigned to it. In no event shall Buyer be obligated to accept executory contracts with any third party purchaser that do not provide for a minimum net profit to Buyer of Three Hundred Dollars (\$300.00) per vehicle (giving effect to the value assigned to trade-in vehicles, the amount of which shall be reasonably acceptable to Buyer). A listing of all New Vehicles for which executory contracts are in effect as of the date immediately preceding the date hereof is set forth on Schedule 2.1(e), which Schedule shall be updated at the Closing. If a purchaser of a New Vehicle defaults on its obligations subsequent to Closing, Buyer shall retain the deposit on that New Vehicle, and Seller shall have no claim therein.

(f) Work in Progress. Buyer shall reimburse Seller for Seller's net direct cost of completed labor and parts installed or in process of installation on any incomplete repair orders and any partially completed sublet repairs in process at the Dealership on the Closing Date. Said incomplete repair orders shall become the property of Buyer. Seller shall remit to Buyer all deposits received by Seller in connection with repair order or Buyer shall receive a credit at Closing against the Purchase Price in such amount. Buyer shall complete such repair work and shall be entitled to collect the entire proceeds covering such repair work from the customers of Seller. A listing of all incomplete repair orders and status of payment therefor, as of the date immediately preceding the date hereof is set forth in **Schedule 2.1(f)**, which Schedule shall be updated at the Closing.

(g) Other Assets. Buyer shall purchase the Other Assets from Seller for a purchase price of One Million Dollars (\$1,000,000.00) less the purchase price payable for the Fixed Assets and Manufacturer Parts under Sections 2.1(a) and 2.1(b), respectively.

(h) Personal Property Taxes; Etc. State and local personal property taxes and similar charges for the tax year in which Closing occurs (the "Closing Tax Year") will be pro-rated between Seller and Buyer in proportion to the number of calendar days in the Closing Tax Year prior to and including the Closing Date and the number of calendar days in the Closing Tax Year subsequent to the Closing Date, with Seller being responsible for charges accruing to and including the Closing Date and Buyer being responsible for charges accruing thereafter. The cash portion of the Purchase Price payable on the Closing Date shall be decreased by Seller's pro rata share of all the Closing Tax Year state and local personal property taxes and similar charges. All utilities and similar operating expenses of the Dealership for the month of Closing will be prorated and adjusted between Purchaser and Seller as of the Closing Date pro rata based upon the actual number of days in such month.

## **Section 2.2 Payment of Purchase Price.**

(a) Payment of Purchase Price. The Purchase Price shall be paid at the Closing by: (i) releasing to Seller the Purchase Price Escrow Deposit (as defined in Section 2.3); and (ii) delivering to Seller the balance of the Purchase Price by wire transfer of immediately available funds or certified check; provided, however, that any portion of the Purchase Price may, at the Buyer's request, be paid by Buyer's floor plan source paying the Seller's floor plan source.

(b) Allocation of Purchase Price. The parties agree to mutually agree upon the allocation of the Purchase Price and further agree to report this transaction for Federal income tax purposes in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder pursuant to such agreed upon allocation.

**Section 2.3 Deposit Against Purchase Price.** Upon execution of this Agreement, Buyer will deposit One Hundred Thousand Dollars (\$100,000.00) of the Purchase Price with Stebbins, Lazos & Van Der Beken PLLC (the "Escrow Agent") to be held in escrow by the Escrow Agent and deposited in an interest-bearing federally insured escrow account (such deposit, together with the interest earned thereon, the "Purchase Price Escrow Deposit"). At the Closing, the Purchase Price Escrow Deposit will be delivered to Seller in accordance with Section 2.2 hereof. Buyer shall be entitled to terminate this Agreement in accordance with Section 7.1(f) if Buyer is

not satisfied with it due diligence investigation of the Dealership and Assets, in which event the Purchase Price Escrow Deposit shall be fully refundable to Buyer. In the event Buyer delivers written notice to the Escrow Agent at any time prior to the Closing Deadline (as defined below) that: (i) Buyer has not received a dealer sales and service agreement from the Manufacturer for the Dealership reasonably acceptable to Buyer, or (ii) in the event Buyer delivers written notice to the Escrow Agent at any time prior to Closing that: (w) Seller has failed to cure a material breach of a representation, warranty or covenant set forth in Article IV and Article V hereof within the earlier of thirty (30) days after written notice from Buyer and the Closing Date, or (x) the conditions precedent set forth in Section 7.1 have not been satisfied (or waived by Buyer) (provided that in the case of Section 7.1(f), the notice period shall be thirty (30) days rather than sixty (60) days, then the Escrow Agent will release the Purchase Price Escrow Deposit to Buyer within three (3) days of receipt of such notice. If the parties mutually agree to terminate this Agreement, the Escrow Agent will release the Purchase Price Escrow Deposit to Buyer within three (3) days of receipt of written notice thereof signed by Buyer and Seller. In the event Seller delivers written notice to the Escrow Agent at any time prior to Closing that (y) Buyer has failed to cure a material breach of a representation or warranty set forth in Article VI hereof or failed to perform a material obligation expressly required of Buyer hereunder within the earlier of thirty (30) days after written notice from Seller and the Closing Date or (z) the conditions precedent set forth in Sections 7.2(b), (c) or (d) have not been satisfied (or waived by Seller), the Escrow Agent shall release the Purchase Price Escrow Deposit to Seller. If a bona fide dispute exists between Buyer and Seller as to which party is entitled to the Purchase Price Escrow Deposit, the Purchase Price Escrow Deposit will be interpleaded into the Court of Common Pleas of Middlesex County, Massachusetts, and will continue to be held by said court until such dispute is resolved by a settlement of the parties or a final judicial determination, at which time the Purchase Price Escrow Deposit will be delivered to the party determined to be entitled thereto. All notices delivered by either party hereunder to the Escrow Agent shall be concurrently delivered to the other party. If Buyer fails to deliver the Purchase Price Escrow Deposit immediately upon the full execution and delivery of this Agreement, Buyer shall be in breach hereof and Seller may terminate this Agreement. Time shall be of the essence for Buyer to deliver the Purchase Price Escrow Deposit and the release of the Purchase Price Escrow Deposit in accordance with the terms of this Section 2.3.

### ARTICLE III

#### CLOSING

**Section 3.1 Closing Date.** The Closing shall take place at the Business Premises or at such other place as the parties shall mutually agree. The Closing shall take place not later than five (5) business days after the first date on which both (a) the Manufacturer shall have approved the transfer of the Dealership to the Buyer and shall have agreed to issue a dealer sales and service agreement for the Dealership to Buyer on commercially reasonable terms; and (b) the conditions to Closing set forth in Article VII shall have been satisfied or waived, but in no event shall Closing take place later than December 15, 2019 (the "Closing Deadline"); provided, however, Buyer shall have the right to extend the Closing Deadline by an additional period of up to forty-five (45) days in order to satisfy any outstanding condition to Closing which Purchaser continues to pursue the satisfaction thereof.

### **Section 3.2 Expenses.**

(a) Payment of Expenses. Except as otherwise set forth herein, each party hereto shall pay all of its own expenses incurred in connection with the transactions contemplated hereby, whether or not Closing occurs.

(b) Environmental Audit. The cost of the environmental audit to be performed with respect to the Business Premises, if so elected by Buyer, shall be borne by Buyer except as provided in Section 5.4.

## **ARTICLE IV**

### **SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller makes the following representations and warranties to Buyer, each of which is true and correct as of the date hereof and each of which will be true and correct as of the Closing Date as if made on the Closing Date:

**Section 4.1 Title.** Seller will convey to Buyer at Closing good and marketable title to the Assets being sold hereunder, free and clear of all Encumbrances, except for the Assumed Liabilities. Seller shall discharge any liens or security interests against the Assets out of the proceeds of the Closing hereunder, except to the extent constituting an Assumed Liability.

**Section 4.2 Compliance With Law; No Conflicts.** Seller is in material compliance with, and the Dealership has been operated and the Assets have been used in material compliance with, all laws, ordinances, rules, regulations and requirements of all governmental authorities having jurisdiction thereof. Seller has not received any written notice, not previously complied with, from any Federal, state or municipal authority or any insurance or inspection body, that any of its properties, facilities, equipment or business procedures or practices fails to comply in any material respect with any applicable law, ordinance, regulation, building or zoning law, or requirement of any public authority or body. The ownership or use of the Assets and the conduct of Seller's business do not conflict with the rights of any other person or entity, and do not violate, conflict with or result in a breach or default of, right to accelerate or loss of rights under, any term or provision of (a) Seller's Limited Liability Company Agreement or (b) any mortgage, indenture, deed of trust, lease, license or agreement, or order, judgment or decree to which Seller is a party or by which its properties, Assets or operations may be bound or affected, except in the case of clause (b), a violation, conflict, breach or default which would not have a material adverse effect on the business, the Business Premises, or Assets (as a whole) of Seller.

**Section 4.3 Employment Matters.** There are no collective bargaining agreements or union contracts now in existence with respect to persons employed at the Dealership, and no demand has been made upon Seller for recognition of a union or collective bargaining agent. There is no existing or, to Seller's knowledge, threatened strike, slowdown, picketing, work stoppage, employee grievance, labor arbitration or proceeding, or any application or complaint filed by any employee of Seller or any other person for or in respect of any organizational activity, lockout or other labor dispute against or affecting Seller or the Dealership. To Seller's knowledge, no facts or circumstances exist which would be reasonably likely to provide the basis for any work stoppage



or other labor dispute. Seller has complied in all material respects with all applicable laws relating to employment, equal employment opportunity, non-discrimination, immigration, wages, hours, benefits, collective bargaining, the payment of Social Security and similar employment taxes and withholdings, and occupational, safety and health regulations, and Seller is not liable for the payment of any taxes, fines, penalties or other amounts, however designated, for failure to comply with any such laws. There are no employment agreements in effect with any of the persons employed at the Dealership except as set forth on **Schedule 4.3**, notwithstanding the same, none of which will become obligations of Buyer after the Closing Date. There are no pension or employee benefit plans or vacation benefits in effect covering any of the persons now or previously employed at the Dealership except as set forth on **Schedule 4.3**, notwithstanding the same, none of which will become obligations of Buyer after the Closing Date. No employee or other person will be entitled to any severance payments or acceleration of the time of payment or vesting or increase in the amount of compensation or benefits due to such person (whether under any employment related plan or otherwise) as a result of the transactions contemplated by this Agreement.

**Section 4.4    Litigation.** There are no judgments against Seller and there is no litigation or action, suit, proceeding or investigation, whether judicial or administrative, pending or, to Seller's knowledge, threatened, relating to or materially adversely affecting the Dealership, the Assets or the Business Premises, except as set forth in **Schedule 4.4**.

**Section 4.5    Real Estate.** Seller has no interest in any real estate except that Seller leases, as tenant, the Business Premises pursuant to the Lease, a true, correct and complete copy of which is attached to **Schedule 4.5**. Seller knows of no pending or proposed eminent domain proceeding or assessment for public improvements with respect to the Business Premises which could adversely affect the use, operation or value of the Assets or the Dealership. Except as set forth on **Schedule 4.5**, Seller has received no written notice from any insurance carrier, the Landlord or the Manufacturer notifying Seller of the need to undertake any repairs, alterations or construction, or to take any action with respect to the Business Premises. The Lease remains in full force and effect and neither Seller nor the Landlord is in default thereof.

**Section 4.6    Power and Authority.** Seller is a limited liability company duly formed and in good standing under the laws of the State of Delaware and has all requisite power and authority to carry on its business as now being conducted. Seller is not required to be qualified to do business in any state other than Massachusetts, and Seller is presently qualified to do business in Massachusetts.

**Section 4.7    Authorization.**

(a)    The execution, delivery and performance of this Agreement by Seller have been duly authorized by all necessary limited liability company action. This Agreement has been duly executed by Seller and constitutes a valid and legally binding obligation of Seller enforceable against Seller in accordance with its terms. Subject to Section 5.5, Seller has received or will by the Closing have obtained all other necessary authorizations, consents and approvals, governmental and otherwise (including from the Manufacturer), required for the execution and delivery of this Agreement and performance of its obligations hereunder.

(b) Except as set forth on **Schedule 4.7**, the execution, delivery and performance of this Agreement by Seller in accordance with its terms will not, with or without the giving of notice or the passage of time, or both, conflict with, result in a breach or default of, right to accelerate or loss of rights under, or result in the creation of any Encumbrance on the Assets, or require the consent of any third party or governmental authority pursuant to (i) any provisions of the Limited Liability Company Agreement of Seller or (ii) any franchise, mortgage, indenture or deed of trust or any lease, license or other agreement or any law, rule, regulation, order, judgment or decree to which Seller is a party or by which it or any of its Assets, properties, operations or business may be bound.

**Section 4.8 Condition of Certain Assets.** Seller has the lawful right to use, by lease or otherwise, all Assets used by Seller in connection with the business of the Dealership, and the Assets being conveyed and transferred to Buyer under this Agreement constitute all of the Assets used by Seller in connection with its business except for the Excluded Assets. All equipment, furniture and fixtures and other material tangible personal property are in good operating condition and repair, normal wear and tear excepted, and all inventory is usable in the ordinary course of business, free of all material defects.

**Section 4.9 Financial Information.** Seller has delivered to Buyer the following financial information (the “Financial Information”) as set forth on **Schedule 4.9** hereto:

(a) the income statement and balance sheet of the Dealership at and for the twelve month period ended December 31, 2018 and the six month period ended June 30, 2019 (the “Accounting Periods”); and

(b) the number of new retail, new fleet, used retail and used wholesale vehicles sold by the Dealership during the Accounting Periods

The Financial Information fairly presents, in all material respects, the financial condition and results of operations of the Dealership at and for the periods covered by the Accounting Periods. Seller will provide Buyer with the information set forth in (a) and (b) above at and for each month ended after the date hereof within twenty (20) days after the end of each month between the date hereof and the Closing Date, which information shall be true, correct and complete in all material respects.

**Section 4.10 Dealership Communications.** **Schedule 4.10** sets forth Seller’s capital and facility requirements from the Manufacturer with respect to the Dealership. Other than routine correspondence sent to Manufacturer’s dealers as a group, Seller has received no written communications from Manufacturer dealing with capital and facility requirements in the past twelve (12) months or otherwise advising Seller of any material non-compliance with the Manufacturer’s Dealer Sale and Service Agreement or other rules and regulations.

**Section 4.11 Contracts, Leases, Agreements and Other Commitments.** Seller is not a party to or bound by any written or oral contract, agreement, lease, power of attorney, guarantee, surety agreement or other legally binding obligation except for the following (collectively, the “Seller Agreements”):

(a) The Lease attached to **Schedule 4.5**;

- (b) Executory contracts for the sale of motor vehicles as set forth in Section 2.1(e);
- (c) The dealer sales and service agreement with the Manufacturer with respect to the Dealership;
- (d) Agreements involving a maximum possible liability or obligation on the part of Seller of not more than Two Thousand Dollars (\$2,000.00) each and more than Twenty-Five Thousand Dollars (\$25,000) in the aggregate; and
- (e) The Agreements listed on **Schedule 4.11**.

True, correct and complete copies of all of the Seller Agreements and all documents on **Schedule 4.11**, including all amendments thereto, have been delivered to Buyer. Seller and, to Seller's knowledge, all other parties to all of the Seller Agreements have performed all of the obligations required to be performed in all material respects under the Seller Agreements as of the date hereof. Neither the Seller nor, to Seller's knowledge, any other party is in default in any material respect under the terms of any Seller Agreement, and no condition exists or event has occurred which, with the giving of notice or lapse of time or both, would constitute such a default under such Seller Agreement. The consummation of the transactions provided for in this Agreement will not result in an impairment or termination of Seller's rights under any Seller Agreement except Seller's dealer sales and service agreement with the Manufacturer.

**Section 4.12 Insurance.** Schedule 4.12 sets forth a brief description of all policies of insurance owned or otherwise pertaining to the Assets, the Dealership and the Business Premises. All such insurance complies in all material respects with all rules and regulations imposed by the Manufacturer for the operation of the Dealership and is consistent in amount, coverage and deductible with policies maintained for similarly situated businesses. There is no claim by Seller pending under any of its policies as to which coverage has been questioned, denied or disputed by the insurer, and Seller has received no written notice from any issuer of any such policy of its intention to cancel or refusal to renew any policy issued by it or of its intention to renew any such policy based on an increase in premium rates other than in the ordinary course of its business.

**Section 4.13 Taxes.** Seller has timely filed all Federal, state, local and foreign tax returns and reports, including information returns that are required to be filed on or before the Closing Date. All such tax returns and reports properly reflect the taxes attributable to Seller's business for the periods covered thereby. Seller has paid all taxes shown due on such returns and reports, other than those currently payable without penalty or interest and those being contested in good faith by appropriate proceedings. Seller has accrued, and withheld where appropriate, sufficient amounts for the payment of all Federal, state and local taxes and all employment and payroll-related taxes, including any penalties or interest thereon accrued through the date hereof. Seller has made all deposits as required by law with respect to Seller's employees' withholding taxes. Seller has not waived any law or regulation fixing, and has not consented to the extension of, any period of time for the assessment of any tax.

**Section 4.14 Permits.** Seller holds all licenses, permits, consents, approvals, waivers and other authorizations (collectively, the "Permits"), which are necessary for the operation of the

Dealership and ownership of the Assets, including, but without limitation, all permits issued by Federal, state, local or foreign governments and governmental agencies except such Permits the failure of which to obtain or hold would not have a material adverse effect on the business of Seller, the Business Premises or the Assets (as a whole). Seller is not in default, and Seller has not received any written notice of any claim of default, with respect to any such Permits or any notice of any other claim or proceeding or threatened proceeding relating to any such Permit. All such Permits are in full force and effect.

**Section 4.15 Environmental Matters.** Seller has not received written notice from any governmental authority, agency or third party of any violation by it of any Environmental Statute (as defined below). The term “Environmental Statute or Statutes” means all statutes, ordinances, regulations and orders concerning the protection of the environment, including those relating to discharges to the air, soil, surface water or ground water and to the treatment, storage, transportation, disposal or remediation of waste or any hazardous substance. Seller has not received from any governmental body, agency or third party any written request for information, notice of claim, demand or other notification that it may be potentially responsible with respect to any investigation or remediation of any threatened or actual release of any hazardous substance at or from any property now or previously owned or leased by Seller or any facility at which any hazardous substances were or are treated, stored or disposed by Seller.

**Section 4.16 Conflicts of Interest.** No shareholder, director, officer or, to Seller’s knowledge, employee of Seller, or any relative or any affiliate of any of the foregoing, has any pecuniary interest in any supplier or customer of Seller or has any interest in any other property or asset used by Seller or has any contractual or other claim, express or implied, of any kind whatsoever against Seller other than obligations of Buyer to Lessor under the Lease.

**Section 4.17 Intellectual Property.** To the knowledge of Seller, Seller owns or has the right to use (through permission of Manufacturer) all intellectual property necessary for the operation of the Dealership as presently conducted. The intellectual property owned by Seller is not required by Buyer to operate the Dealership in the ordinary course of business consistent with past practice.

## **ARTICLE V**

### **COVENANTS OF SELLER**

**Section 5.1 Conduct of Business Pending Closing.** Seller covenants that, from and after the date hereof and until the Closing, and except as otherwise consented to in writing by Buyer, Seller shall: (a) diligently conduct its business in the ordinary course consistent with prior practice; without limiting the generality of the foregoing, Seller shall not assign or transfer any employee of the Dealership to any other business owned or operated by Seller or its affiliates; (b) maintain, keep and preserve its Assets and properties in good condition and repair, normal wear and tear excepted, and maintain insurance thereon in accordance with present practice; (c) use commercially reasonable efforts to preserve its business and organization intact; (d) use commercially reasonable efforts to retain the services of its present employees; (e) maintain its books of account and records to accurately reflect its financial condition and results of operations;

and (f) not convey or transfer any Assets being sold hereunder, except motor vehicles and parts that are sold within the ordinary course of business.

**Section 5.2 Access, Information and Documents.** During the period from the date hereof to the Closing, Seller will give to Buyer and to its accountants, counsel and other representatives full access during normal business hours and on reasonable prior notice to all of its properties, Assets, contracts, books and records, and will furnish to Buyer, at Buyer's cost, with all such documents and copies of documents and information with respect to its affairs as Buyer may from time to time reasonably request. Neither Buyer nor its representatives shall have physical access to the Business Premises prior to the Closing Date unless accompanied by an authorized representative of Seller. All information and statements provided to Buyer shall remain confidential and subject to the Confidentiality Agreement dated as of September 19, 2019 among MD Johnson, Inc., MDJ Realty, Inc. and Obrien Auto Group and its affiliates, of which Seller is an express third-party beneficiary.

**Section 5.3 Employment Matters.** Seller shall pay all accrued vacation benefits of any employees of Seller on or before Closing. Buyer will have no obligation for any accrued vacation benefits, accrued and unpaid pension obligations, or any other obligation or liability arising from the termination of employment of any employee of Seller, even if Buyer rehires such employee. Seller agrees and acknowledges that Buyer has no obligation to hire or otherwise employ any of Seller's employees, sales agents or independent contractors. Nothing in this Agreement is intended to confer upon any employee of Seller any rights or remedies, including any right to continued or new employment.

**Section 5.4 Environmental Matters.** Seller acknowledges that Buyer may elect to commission, at Buyer's expense, a Phase I environmental investigation concerning the Business Premises, including, without limitation, to determine the presence of conditions that may affect Buyer's intended use of the Business Premises and to confirm that the Business Premises conforms with all applicable laws. Seller will provide complete cooperation to Buyer and Buyer's agents in Buyer's Phase I environmental investigation, including, without limitation: (i) complying with requests for information and records; (ii) warranting that the responses to such requests are true and complete; and (iii) assisting Buyer in obtaining governmental agency or other records and, upon Buyer's request, communicating directly with any governmental agencies. In the event Buyer's Phase I environmental investigation of the Business Premises indicates the need for environmental clean-up work or remediation to be performed on the Business Premises for the Business Premises to comply with all applicable environmental laws and regulations, Buyer shall deliver a copy of its investigation report to the Seller, together with an estimate from Buyer's environmental consultant of the costs to perform the environmental remediation. If the estimated cost of remediation is equal to or less than \$25,000, Buyer shall undertake the remediation at Buyer's cost following Closing. If the estimated cost of remediation is greater than \$25,000, within 10 (ten) days from receipt of the investigation report, Seller shall advise Buyer in writing whether Seller intends to perform the remediation indicated by the investigation report and to pay the cost of such remediation. If Seller notifies Buyer of its intention to perform the remediation and pay the costs thereof, Seller shall be entitled to engage such environmental contractors and other persons as shall be necessary to undertake and complete such remediation in accordance with the investigation report, and shall provide Buyer with such evidences as Buyer shall reasonably request to confirm the completion of remediation, including, without limitation, the delivery of

any clearance or other regulatory certificates required under applicable law. In the event Seller advises Buyer that Seller shall not undertake or otherwise pay the costs associated with remediation, Buyer shall be entitled to undertake such remediation, at Buyer's sole cost, after Closing, or shall have the right to terminate this Agreement, whereupon the Purchase Price Escrow Deposit will be returned to Buyer.

**Section 5.5 Required Consents.** The consents set forth on Schedule 5.5 shall be deemed to be "required consents" (the "Required Consents"), and the receipt thereof by Seller prior to the consummation of the transactions contemplated hereby shall be deemed a condition precedent to Buyer's obligations to close hereunder in accordance with Section 7.1.

**Section 5.6 Restrictive Covenants.**

(a) As part of the consideration for this Agreement, Seller agrees that for a period three (3) years from the Closing Date, neither Seller nor any of its equity owners nor their respective affiliates will directly or indirectly for itself or for others, within a twenty-five (25) mile radius of the Business Premises: (i) engage in the ownership or operation of a Nissan franchise vehicle dealership; or (ii) render advice, services to, financing for, or otherwise assist, any other person, association, or entity who is engaged, directly or indirectly, in any Nissan franchise dealership; provided, however, that Seller may sell any and all used vehicles and demonstrators not purchased by Buyer, or otherwise excluded in Section 1.1(f) herein.

(b) As part of the consideration for this Agreement, Seller agrees that for a period of three (3) years after the Closing Date, neither Seller nor any of its equity owners nor their respective affiliates, will, without the prior written consent of Buyer (which may be withheld by Buyer in its absolute discretion), directly or indirectly for itself or for others: (i) solicit, offer employment, retain, hire or assist in the solicitation, recruitment or hiring of any employee of Seller who becomes an employee of Buyer promptly following the Closing or (ii) solicit, or assist in the solicitation of, Dealership customers of Seller (both current and those who have been customers during the preceding twelve (12) months from the Closing) or otherwise induce Dealership customers of Seller to terminate their relationship with Buyer following the Closing (excluding general solicitations or advertisings not specifically directed to Dealership customers).

(c) Seller acknowledges that money damages would not be sufficient remedy for any breach of Sections 5.6(a) or (b) by Seller, and Buyer shall be entitled to seek specific performance and injunctive relief as remedies for such breach or any threatened breach. Such remedies shall not be deemed the exclusive remedies for a breach of Sections 5.6(a) or (b), but shall be in addition to all remedies available at law or in equity to Buyer including, without limitation, the recovery of damages from Seller or its respective agents involved in such breach.

(d) If any of the aforesaid restrictions are found by a court of competent jurisdiction to be unreasonable, or overly broad as to geographic area or time, or otherwise unenforceable, then the parties intend for the restrictions therein set forth to be modified by such court so as to be reasonable and enforceable and, as so modified by the court, to be fully enforced.

**Section 5.7 Digital Records.** Buyer and Seller acknowledge and understand that the transfer of a copy of a digital form of the Dealership's records ("Records") involves a joint and

collaborative effort of the parties along with Seller's Dealership Management System ("DMS") vendor and requires the cooperation of the parties and the Seller's DMS vendor. Promptly upon Buyer's request prior to Closing, but in any event not less than ten (10) business days before the Closing Date, Seller agrees, at Buyer's sole expense, to contact its DMS vendor and arrange for the transfer of a copy of its Records that are in digital form on its DMS to Buyer, either through (at Buyer's election) the creation of a separate sign-on and creation of a mirror store on Seller's DMS or transfer of a copy of the Records to a location and DMS vendor of Buyer's choice in a format acceptable to Buyer's DMS vendor, it being contemplated that Buyer shall have all necessary access to these Records immediately upon the Closing Date.

**Section 5.8 Further Acts.** Seller shall use commercially reasonable efforts at its sole expense to diligently satisfy and complete all the conditions precedent to its obligations to close and fulfill the covenants and representations given hereunder.

## **ARTICLE VI**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER.**

To induce Seller to enter into this Agreement, Buyer makes the following representations and warranties to Seller, each of which is true and correct as of the date hereof and each of which shall be true and correct as of the Closing Date as if made on the Closing Date:

**Section 6.1 Organization and Standing.** Buyer is a limited liability company duly formed and validly subsisting under the laws of the Commonwealth of Massachusetts.

**Section 6.2 Authority; Execution, Delivery and Performance of Agreement.** Buyer has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby; all proceedings required to be taken by Buyer to authorize the execution and delivery of this Agreement by Buyer and the performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby have been, or prior to the Closing will have been, properly taken; and this Agreement constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. The execution, delivery and performance of this Agreement by Buyer will not, with or without the giving of notice or the passage of time, or both, conflict with, result in a breach or default of, right to accelerate or loss of rights under, or result in the creation of any encumbrance pursuant to, or require the consent of any third party or governmental authority pursuant to (a) any provision of Buyer's constituent documents and agreements or (b) any franchise, mortgage, indenture or deed of trust or any lease, license or agreement or any law, rule, regulation, order, judgment or decree to which Buyer is a party or by which it may be bound.

**Section 6.3 Manufacturer Approval.** Buyer has no knowledge of any fact, event or circumstance as a result of which Buyer would not obtain Manufacturer approval to purchase the Dealership.

**Section 6.4 Confidentiality.** Buyer acknowledges and agrees that if Closing does not occur hereunder, all information in its possession concerning the Seller, including but not limited, to information concerning the Dealership and Seller's dealer sales and services agreement with the

Manufacturer, shall be returned to Seller or destroyed as directed by Seller and as confirmed by a certificate of an officer of Buyer.

**Section 6.5 Further Acts.** Buyer covenants that it shall use commercially reasonable efforts at its sole expense to diligently satisfy and complete all the conditions precedent to its obligations to close and fulfill the covenants and representations given hereunder, which conditions involve actions to be taken or refrained from by Buyer.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT.**

**Section 7.1 Conditions Precedent to Obligations of Buyer.** The obligation of Buyer to purchase the Assets and close hereunder is subject to the satisfaction of each of the conditions set forth in this Section 7.1 at or prior to the Closing. Buyer may, however, waive the fulfillment of any of these conditions prior to Closing, but any waiver must be in writing duly executed by Buyer.

(a) The Manufacturer shall have offered Buyer a new dealer sales and service agreement for the Dealership on terms reasonably acceptable to Buyer; and the Manufacturer shall have approved Buyer as an approved Dealer-Principal. Buyer and Seller covenant to the other that they will each cooperate in the execution of any required forms or documents to be submitted to the Manufacturer to obtain the Manufacturer's approval for Buyer's purchase of the Dealership. Buyer shall have received confirmation that the Dealership's facility is image-compliant with Manufacturer dealership standards.

(b) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects when made and shall be deemed to have been made again at and as of the date of the Closing, and shall then be true and correct in all material respects.

(c) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Seller at or prior to the Closing shall have been duly and properly performed or fulfilled in all material respects.

(d) At the Closing, Seller shall provide a certificate of its President to the effect that there has been no material adverse change in the Assets (taken as a whole) or business of the Dealership from and after the date hereof.

(e) All proceedings, required with by Seller's Limited Liability Company Agreement or otherwise, required to be taken by Seller in connection with the consummation of the transactions contemplated by this Agreement shall have been duly and validly taken, and copies of all documents, resolutions and certificates incident thereto, duly certified by an officer of Seller as of the Closing, shall have been delivered to Buyer.

(f) Buyer shall have completed its due diligence investigation and shall have had notified Seller in writing within thirty (30) Days from the date hereof (the "Due Diligence Period") that the results thereof are not satisfactory in its sole discretion. Failure by Buyer to notify



Seller of its election to terminate this Agreement by 5:00 p.m. on the first business days following expiration of the Due Diligence Period on account of its due diligence investigation shall be deemed as a waiver by Buyer of this condition precedent.

(g) Floor plan financing for Dealership inventory shall be offered to Buyer on terms and in amounts as are commercially reasonable, with Buyer having used best commercial and diligent efforts from and after the date hereof to procure the same from available sources, including but not limited to Nissan Motor Acceptance Corporation.

(h) Buyer shall have obtained a Massachusetts Auto Dealer License with respect to the Dealership, with Buyer having used best commercial and diligent efforts from and after the date hereof to procure the same.

(i) Seller shall have obtained all Required Consents.

(j) The parties shall have complied with applicable statutory provisions of Massachusetts law relating to bulk transfers, and, if required, Seller shall have furnished Buyer with the required Affidavit of Seller to Creditors within a sufficient time prior to the Closing to permit compliance with applicable bulk sales laws.

(k) Buyer and Landlord shall have agreed upon a written instrument by which Buyer shall assume Seller's obligations under the Lease (the "Assumption Agreement").

**Section 7.2 Conditions Precedent to Obligations of Seller.** The obligation of Seller to sell the Assets and close hereunder is subject to the satisfaction of each of the conditions set forth in this Section 7.2 at or prior to the Closing. Seller may, however, waive the fulfillment of any of these conditions prior to Closing, but any waiver must be in writing duly executed by Seller.

(a) The Manufacturer shall have offered Buyer a new dealer sales and service agreement for the Dealership on commercially reasonable terms; and the Manufacturer shall have approved Buyer as an approved Dealer-Principal.

(b) All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects when made and shall be deemed to have been made again at and as of the date of the Closing, and shall then be true and correct in all material respects.

(c) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Buyer at or prior to the Closing shall have been duly and properly performed or fulfilled in all material respects.

(d) All proceedings, required with by Buyer's Operating Agreement or otherwise, required to be taken by Buyer in connection with the consummation of the transactions contemplated by this Agreement shall have been duly and validly taken, and copies of all documents, resolutions and certificates incident thereto, duly certified by an officer of Buyer as of the Closing, shall have been delivered to Seller.

(e) Buyer and Landlord shall have agreed upon the Assumption Agreement.

## ARTICLE VIII

### EMPLOYEES

**Section 8.1** Within ten (10) days of the date of this Agreement, Seller will supply a list of all employees together with pay scales to Buyer, and thereafter, upon Buyer's receipt of Manufacturer approval, Seller and Buyer shall conduct a joint meeting with said employees to announce the transactions contemplated by this Agreement. Prior to such joint meeting, Buyer may not independently contact any employee of Seller without Seller's written consent. Subsequent to said joint meeting, Buyer may independently contact employees regarding employment for Buyer.

**Section 8.2** Seller agrees to remain liable for, and shall indemnify and hold Buyer harmless from and against, any and all compensation, vacation and other benefits accruing to its employees prior to the Closing Date. To that end, Seller will pay all compensation and benefits due and owing to all its respective employees as of the date prior to the Closing Date (including but not limited to accrued and unpaid vacation, severance, and unpaid sick and holiday pay), whether or not said employees may be hired by Buyer. All employees of Seller shall be terminated by Seller effective as of the close of business on the day prior to the Closing Date. Any such employees retained by Buyer on or after the Closing Date shall be employees of Buyer and Buyer shall be fully responsible therefor. Seller shall also be authorized to cancel all health insurance and other benefits as of the Closing Date and, absent assumption in writing of the applicable plans and policies therefor by Buyer (if available and pursuant to such terms and with such evidence as Seller shall reasonably require), and shall notify employees accordingly. Without limiting the foregoing, Buyer does not assume the medical insurance plans and the 401K retirement plans sponsored by Seller for its employees, and Seller shall be responsible for all costs, expenses and obligations associated with the termination of participation in such plans by any of Seller's employees. Any plan or policy expressly assumed in writing by Buyer shall be subject to proration as of the Closing Date. Buyer and Seller agree to coordinate their activities in order to effect a smooth transition of employees.

**Section 8.3** Seller shall pay and be liable to Buyer and shall assume, indemnify, defend and hold harmless Buyer from and against and in respect of any and all losses, damages, liabilities, taxes, and sanctions that arise under the Consolidated Omnibus Budget Reconciliation Act of 1984 ("COBRA") and the Code, interest and penalties, costs, and expenses (including without limitation disbursements and reasonable legal fees incurred in connection therewith, and in seeking indemnification therefor, and any amounts or expenses required to be paid or incurred in connection with any action, suit, proceeding, claim, appeal, demand, assessment, or judgment) imposed upon, incurred by, or assessed against, Buyer and any of its employees arising by reason of or relating to any failure by Seller to comply with the continuation of health care coverage of COBRA and Sections 601 through 608 of ERISA which failure occurred with respect to any current or prior employee of Seller or any qualified beneficiary of such employee (as defined in COBRA) on or prior to the Closing Date or otherwise required as a result of any of the transactions or matters contemplated by this Agreement.

**Section 8.4** The parties acknowledge that it is Buyer's present intention to offer employment to all or substantially all of Seller's existing employees, which action will cause the

transactions described herein to be exempt from the notice requirements of the Federal Worker Adjustment and Retraining Notification Act of 1988 (“WARN”); provided, however, Buyer is and shall not be under any obligation to hire any of Seller’s existing employees. Should Buyer for any reason fail at Closing to hire sufficient numbers of Seller’s employees to cause this transaction to be exempt, Closing shall be delayed for such period as shall be necessary to give any required notices, which notices shall be given by Seller at its sole cost.

## **ARTICLE IX**

### **TRANSACTIONS AT CLOSING**

At the Closing, the following transactions shall occur, all of which shall be deemed to occur simultaneously:

**Section 9.1 Seller’s Deliveries.** Seller shall deliver or cause to be delivered to Buyer:

(a) A Warranty Bill of Sale from Seller in form and substance reasonably satisfactory to counsel for Buyer, together with such other instruments of conveyance and transfer reasonably satisfactory in form and substance to Buyer and its counsel (including certificate of title to all motor vehicles) which will effectively transfer and assign to Buyer title to the Assets being purchased hereunder.

(b) Resolutions of the Manager and members of Seller with respect to the execution and delivery of this Agreement and the transactions contemplated herein.

(c) Assignments of Seller’s right, title and interest in and to all of the Seller Agreements to be assumed by Buyer pursuant to this Agreement, and of Seller’s right, title and interest in and to any certificates, permits and other documents, if any, to be delivered to Buyer at Closing, all duly executed by Seller.

(d) Executed dealer sales and service agreements for the Dealership from the Manufacturer in favor of Buyer on terms reasonably acceptable to Buyer.

(e) True, correct and complete copies of all Seller Agreements included in the Assets.

(f) Evidence of termination of all Encumbrances against the Assets other than the Assumed Liabilities.

(g) All motor vehicle deposits referred to in Section 2.1(e).

(h) All motor vehicles deliveries referenced under Section 1.1(c).

(i) A certificate of the Manager of Seller, dated the Closing Date, to the effect that (a) all representations and warranties of Seller contained in this Agreement are true and correct in all material respects, (b) Seller has fully performed in all material respects all obligations, agreements, conditions, and commitments to be fulfilled by Seller pursuant to the terms hereof on

or prior to the Closing Date, and (c) there has been no material adverse change in the Assets or in Seller's business operations from that which existed on the date of this Agreement.

(j) All business and financial records relating solely to the Dealership, including reports on work-in-progress.

(k) Possession and unencumbered right of occupancy and use of the Assets.

(l) All Dealer Invoices and all certificates of title for all New Vehicles and demonstrator vehicles and/or used vehicles, if any.

(m) The Assumption Agreement signed by the Landlord.

(n) Such other documents as may be reasonably necessary to complete the transactions contemplated by this Agreement as requested by counsel to Buyer.

**Section 9.2 Buyer's Deliveries.** Buyer shall deliver or cause to be delivered to Seller:

(a) The wired funds or certified check for the Purchase Price of the Assets required pursuant to Section 2.2 hereof.

(b) Resolution of Buyer with respect to this Agreement and the transactions contemplated herein.

(c) A certificate of the Manager of Buyer, dated the Closing Date, to the effect that (a) all representations and warranties of Buyer contained in this Agreement are true and correct in all material respects and (b) Buyer has fully performed in all material respects all obligations, agreements, conditions, and commitments to be fulfilled by Buyer pursuant to the terms hereof on or prior to the Closing Date.

(d) The Assumption Agreement signed by Buyer.

(e) Such other documents as may be reasonably necessary to complete the transactions contemplated by this Agreement as requested by counsel to Seller.

**ARTICLE X**

**RISK OF LOSS PENDING CLOSING.**

The risk of loss or damage to the Assets by fire or other casualty between the date hereof and the Closing Date shall be borne by Seller. If a substantial casualty (such that there would be a material adverse effect on Buyer's contemplated use of the Business Premises) occurs prior to the Closing, Buyer may elect to (a) terminate this Agreement, in which event the Purchase Price Escrow Deposit will be released by the Escrow Agent to Buyer; or (b) receive the proceeds of insurance payable with respect thereto and may proceed to close hereunder.

## ARTICLE XI

### INDEMNIFICATIONS.

**Section 11.1 Indemnification by Seller.** Seller hereby agrees to indemnify, defend and hold harmless Buyer and its managers, members, officers, agents and employees (each, a “Buyer Indemnatee”) from and against any and all losses, damages, liabilities and expenses, including, without limitation, legal fees and court costs (“Losses”), to which any of them may become subject as a direct result of:

(a) any and all loss or damage resulting from any misrepresentation, breach of warranty, or any non-fulfillment of any covenant or agreement on the part of Seller contained in this Agreement;

(b) any and all loss or damage resulting to Buyer by reason of any claim, debt, liability or obligation not expressly assumed by Buyer hereunder, including without limitation, the Unassumed Liabilities, or otherwise; and

(c) any and all acts, suits, proceedings, demands, assessments, judgments, reasonably attorneys’ fees, costs and expenses incident to any of the foregoing.

**Section 11.2 Indemnification by Buyer.** Buyer hereby agrees to indemnify, defend and hold harmless Seller and its directors, officers, agents and employees (each a “Seller Indemnatee”) from and against any and all Losses which any of them may become subject to as the result of:

(a) any and all loss or damage resulting from any misrepresentation, breach of warranty, or any non-fulfillment of any covenant or agreement on the part of Buyer contained in this Agreement;

(b) any and all loss or damage resulting to Seller by reason of any claim, debt, liability or obligation constituting an Assumed Liability; and

(c) any and all acts, suits, proceedings, demands, assessments, judgments, reasonably attorneys’ fees, costs and expenses incident to any of the foregoing.

### **Section 11.3 Procedures for Establishment of Indemnification.**

(a) Third Party Claims. If a Buyer Indemnatee or a Seller Indemnatee (each, an “Indemnatee”) receives notice of the assertion or commencement of any action or claim (an “Action”) made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (a “**Third Party Claim**”) against such Indemnatee with respect to which the Seller or Buyer, as applicable (an “Indemnitor”), is obligated to provide indemnification under this Agreement, the Indemnatee shall give the Indemnitor prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnitor of its indemnification obligations, except and only to the extent that the Indemnitor forfeits rights or defenses by reason of such failure. Such notice by the Indemnatee shall describe the Third Party Claim in reasonable detail. The Indemnitor shall have the right to

assume the defense of any Third Party Claim at the Indemnitor's expense and by the Indemnitor's own counsel, and the Indemnatee shall cooperate in good faith in such defense; *provided, that* Indemnitor shall not have the right to defend of any such Third Party Claim if such defense is not diligently pursued or if a Third Party Claim seeks an injunction or other equitable relief against the Indemnatee. The Indemnitor and the Indemnatee shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnitor shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnatee, unless a firm offer is made to settle the Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnatee and provides, in customary form, for the unconditional release of each Indemnatee from all liabilities and obligations in connection with such Third Party Claim.

(c) Direct Claims. Any Action by an Indemnatee on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**"), but in respect of which an Indemnitor is obligated to provide indemnification under this Agreement, shall be asserted by the Indemnatee giving the Indemnitor reasonable prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnatee becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnitor of its indemnification obligations, except and only to the extent that the Indemnitor forfeits rights or defenses by reason of such failure. Such notice by the Indemnatee shall describe the Direct Claim in reasonable detail. If the Indemnitor, within a period of fifteen (15) days after the giving of the Indemnatee's notice, shall not give written notice to the Indemnatee announcing its intention to contest such assertion of the Indemnatee (such notice by the Indemnitor being hereinafter called the "Contest Notice"), such assertion of the Indemnatee shall be deemed accepted and the amount of the Loss shall be deemed established. If a Contest Notice is timely delivered, then Indemnitor and the Indemnatee shall attempt to resolve the dispute; provided that if the dispute is not resolved within thirty (30) days, either party may submit the dispute to a court of competent jurisdiction.

(d) The Indemnatee and the Indemnitor may agree in writing, at any time, as to the existence and amount of a Loss, and, upon the execution of such agreement, such Loss shall be deemed established.

**Section 11.4 Limitation on Indemnification.** Notwithstanding anything contained in this Article XI to the contrary, no indemnification shall be made by Seller with respect to claims made under Section 11.1(a) and no indemnification shall be made by Buyer with respect to claims made under Section 11.2(a) unless the aggregate amount of Losses incurred by Buyer (or by Seller, as the case may be) exceeds Twenty Thousand Dollars (\$20,000) and, in such event, indemnification shall be made by Seller to Buyer (or by Buyer to Seller, as the case may be) only to the extent Losses exceed Twenty Thousand Dollars (\$20,000) and, provided further, in no event shall Seller's aggregate liability with respect to all losses made under Section 11.1(a) or Buyer's aggregate liability with respect to all losses made under Section 11.2(a) exceed One Million Dollars (\$1,000,000); provided, however, that the foregoing limitation shall not apply with respect to Losses arising from or related to: (i) Seller's breach(es) of representations and warranties contained in Sections 4.1, 4.6 and 4.7 or Seller's fraud

## ARTICLE XII

### POST CLOSING ACCESS.

For a period of three (3) years after the Closing Date, Seller shall have access, on reasonable prior notice to Buyer during regular business hours, to the repair orders, other business records and personnel records of Seller solely relating to events which took place prior to the Closing Date as may be required by Seller for proper business purposes and not in violation of this Agreement. Buyer agrees to exercise commercially reasonable due diligence in protecting and preserving Seller's records of the business for such three (3) year period.

## ARTICLE XIII

### ABSENCE OF ANY BROKERS.

Buyer and Seller represent each to the other that neither has employed or dealt with any broker or other intermediary with respect to this Agreement and the transactions contemplated hereby other than M.D. Johnson, Inc. on behalf of Seller. Each party agrees to indemnify and save the other harmless from any liability, including without limitation, reasonable attorneys' fees and expenses, as to any claim by a broker or intermediary arising out of this Agreement alleging an agreement with a party hereto.

## ARTICLE XIV

### MISCELLANEOUS

**Section 14.1 Right to Assign.** Seller may not assign this Agreement. Buyer may assign this Agreement to an affiliate of Buyer upon prior notice to Seller provided that such assignment shall not relieve Buyer of its obligation to Seller hereby without Seller's prior written consent.

**Section 14.2 Notices.** Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be in writing, and shall be deemed duly given and received: (i) when delivered in person; or (ii) on the next business day after deposit with a recognized overnight delivery service, for example, UPS, Federal Express, U.S. Post Office, Express Mail; or (ii) on the second day after being sent by certified or registered mail, return receipt requested, postage paid; or (iii) when sent via telecopier or via e-mail and followed by one of the foregoing methods, to the following addresses:

If to Seller:                      Tewksbury Automotive, LLC  
   c/o AutoFair  
   1477 S. Willow Street  
   Manchester, NH 03103  
   Attn: H. Andrew Crews  
   e-mail: [acrews@autofair.com](mailto:acrews@autofair.com)

With a copy to:                      Cozen O'Connor  
   1650 Market Street – Suite 2800

Philadelphia, PA 19103  
Attention: Steven N. Haas, Esq.  
e-mail: [shaas@cozen.com](mailto:shaas@cozen.com)

If to Buyer: DMO Chelmsford LLC  
158 Manchester Street  
Concord, New Hampshire 03301  
Attention: Dan O'Brien  
e-mail: [dan@danobriengroup.com](mailto:dan@danobriengroup.com)

With a copy to: Integral Business Counsel, PLLC  
155 Fleet Street  
Portsmouth, New Hampshire 03802  
e-mail: [eb@integralcounsel.com](mailto:eb@integralcounsel.com)

**Section 14.3 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and permitted assigns, if any.

**Section 14.4 Gender.** In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

**Section 14.5 Entire Agreement; Amendments.** This Agreement and the schedules, exhibits and agreements referred to herein, contain the entire Agreement between Seller and Buyer with respect to the transactions contemplated hereby and thereby and supersedes any prior or contemporaneous agreement and understanding between the parties hereto. This Agreement may not be modified or amended except by written agreement signed by Buyer and Seller.

**Section 14.6 Further Acts and Extension.** Each of the parties hereto shall execute such further documents and instruments, and take such further actions, before or after the Closing, as may be necessary to carry out the terms of this Agreement.

**Section 14.7 Registry of Motor Vehicles.** Seller agrees to provide reasonable assistance to Buyer to cause Buyer's name to be substituted for Seller's name on the official Massachusetts Registry of Motor Vehicles Inspection list provided that such substitution is permissible and that Buyer reimburses Seller for out-of-pocket expenses incurred in providing such assistance.

**Section 14.8 Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any Article or Section hereof.

**Section 14.9 Governing Law.** The execution, delivery and performance of this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, notwithstanding any conflict-of-laws provisions to the contrary.



**Section 14.10 Partial Invalidity.** In the event that any provision of this Agreement would be held to be invalid, prohibited or unenforceable in any jurisdiction for any reason, unless such provision is narrowed by judicial construction, this Agreement shall, as to such jurisdiction, be construed as if such invalid, prohibited or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited or unenforceable.

**Section 14.11 No Waiver.** No waiver or 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.

**Section 14.12 Survival.** The representations, warranties, covenants and agreements made by Seller and Buyer in this Agreement shall be deemed independently material and shall survive for a period of eighteen (18) months following the Closing. Notwithstanding anything in Article XI to the contrary, no claim for indemnification may be made pursuant to Section 11.1(a) or 11.2(a) unless notice as required under Section 11.3 is delivered prior to the expiration of eighteen (18) months after the Closing Date.

**Section 14.13 Knowledge.** For purposes of this Agreement, the terms “knowledge of Seller”, “to Seller’s knowledge” and terms of similar import shall mean the actual current knowledge of H. Andrew Crews after reasonable inquiry, consistent with such Mr. Crew’s title and responsibilities.

**Section 14.14 Legal Fees.** In the event that legal proceedings are commenced by Buyer against Seller, or by Seller against Buyer, in connection with this Agreement or the transactions contemplated hereby, the party or parties which do not prevail in such proceedings shall pay the reasonable attorneys’ fees and other costs and expenses, including investigation costs, incurred by the prevailing party in such proceedings.

**Section 14.15 Termination of Agreement.**

(a) Termination of Agreement. This Agreement and the transactions contemplated herein may be terminated at or prior to the Closing Date as follows:

- (i) By mutual written consent of both parties.
- (ii) By Buyer pursuant to written notice delivered at or prior to the Closing if all of the conditions of Closing set forth in Section 7.1 have not been satisfied in all material respects.
- (iii) By Buyer or Seller pursuant to Section 2.3 hereof.
- (iv) By either party, upon the entry of a final non-appealable and permanent court order prohibiting the consummation of the transaction contemplated hereby.
- (v) By Buyer, as provided in Section 5.4 hereof.

(vi) By Seller pursuant to written notice delivered at or prior to the Closing if all of the conditions of Closing set forth in Section 7.2 have not been satisfied in all material respects

(b) Effect of Termination of Agreement. In the event of termination of this Agreement, each party will return to the other all documents and material obtained from the other in connection with the transaction contemplated by this Agreement. In the event of termination under Section 14.15(a)(i) or 14.15(a)(iv) the parties shall be deemed to have released the other from liability arising from the termination of this Agreement. In the event of termination under Section 14.15(a)(iii) or 14.15(a)(v), the rights of the parties shall be governed by Section 2.3 or Section 5.4, as applicable, hereof. In the event of termination under Section 14.15(a)(ii) or 14.15(a)(vi), the parties shall retain all rights and remedies pertaining to any claim for breach of this Agreement.

(c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document. The electronic signature of a party or the signature of a party transmitted electronically by facsimile will be deemed to be that party's original signature for all purposes.

[Signatures on Following Page]

[Signatures to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, or caused these presents to be properly executed by their proper corporate officers or managers on the day and year first above written.

BUYER:

DMO CHELMSFORD LLC

By: 

Daniel O'Brien, Manager

SELLER:

TEWKSBURY AUTOMOTIVE, LLC

By: AUTOFAIR, INC., Manager

By: 

H. Andrew Crews, President

**SCHEDULE 1(a) – 1**

**FIXED ASSETS**

**SCHEDULE 1(a) – 2**

**ENCUMBRANCES**

**SCHEDULE 1(c) – 1**  
**NEW VEHICLE INVENTORY**

**SCHEDULE 1(f)**

**EXCLUDED ASSETS**

**SCHEDULE 1.2 (a)**

**ASSUMED SELLER AGREEMENTS**



**SCHEDULE 2.1(c)**  
**EXECUTORY CONTRACTS**

**SCHEDULE 2.1(f)**

**WORK IN PROGRESS**

**SCHEDULE 4.3**  
**EMPLOYMENT AGREEMENTS**

**SCHEDULE 4.4**

**LITIGATION**

**SCHEDULE 4.5**

**LEASES**

**SCHEDULE 4.7**

**CONFLICTS**

**SCHEDULE 4.9**  
**FINANCIAL STATEMENTS**

**SCHEDULE 4.10**

**DEALERSHIP COMMUNICATIONS**



**SCHEDULE 4.11**  
**SELLER AGREEMENTS**

**SCHEDULE 4.12**

**INSURANCE**

**SCHEDULE 5.5**  
**REQUIRED CONSENTS**



## BOARD OF SELECTMEN

Town Offices  
50 Billerica Road  
Chelmsford, MA 01824-2777  
Phone (978) 250-5201  
Fax (978) 250-5252


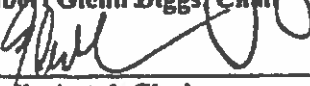


## 2019 License



License Type: **Class I Motor Vehicle Dealer**  
Issued to: **Tewksbury Automotive LLC**  
D.B.A.: **AutoFair Nissan Of Chelmsford**  
Managed by: **Scott Popkin**  
Located at: **95 Drum Hill Road**  
Described Premises: **automotive dealership with repair facility**  
Restrictions: **vehicle capacity 288**

**COPY**

Based on the application submitted, the foregoing license has been voted favorably by the Board in accordance with the regulations and restrictions of the Board, and Massachusetts General Laws Chapter 140. This license is issued to the above named licensee only and is not transferable without the express approval of the Board.

  
Albert Glenn Diggs, Chair  
  
Emily Antul, Clerk

  
Patricia Wojtas

  
Kenneth LeFebvre, Vice Chair  
  
George R. Dixon, Jr.

This license certificate must be posted in a conspicuous place upon the premises that is in full public view.

**The above license shall expire on December 31, 2019.**

## **Bruce, Kristina**

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**From:** Bruce, Kristina  
**Sent:** Friday, November 22, 2019 11:04 AM  
**To:** scadden@autofair.com  
**Subject:** license transfer to Dan O'Brien Nissan

Hi Sarah,

Thank you for talking with me today. As you know, we have received an application from Dan O'Brien Nissan to operate a Class I Auto Dealership at the current Autofair Nissan location at 95 Drum Hill Road. I am treating this as a license transfer. The timing is a bit complicated since 2020 license renewals are being processed at this time as well.

I will put the license renewal for Autofair Nissan on the December 2, 2019 Board of Selectmen as planned. The transfer application will be on that agenda as well. If the transfer is approved, I will hold off on issuing the license to Dan O'Brien Nissan until I am informed that both parties are ready for the transfer based on closing of the sale.

I have checks for the \$200 license fee from both parties. I will hold them both for now .

Please touch base with me in mid-December so I'll know whether Autofair needs a 2020 license and we can determine which check to deposit at that time. (I will return the other check.)

Feel free to contact me with any questions.

Thank you,

Kristina Bruce  
Support Services Coordinator  
Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824  
978-250-5289  
978-250-5252 (fax)

**New hours for the Chelmsford Town Offices as of July 1, 2019:**

**Monday, Wednesday, Thursday: 8:30 AM – 4:00 PM**

**Tuesday: 8:30 AM – 7:00 PM**

**Friday: 8:30 AM – 1:00 PM**

*Please be advised that the Secretary of the Commonwealth has determined that all email messages and attached content sent from and to this email address are public records unless qualified as an exemption under the Massachusetts Public Records Law (MGLc.4, §7(26)).*