

**AGREEMENT RE ACQUISITION OF
OPERATING COVENANT AND RESTRICTIVE COVENANTS**

This AGREEMENT RE ACQUISITION OF OPERATING COVENANT AND RESTRICTIVE COVENANTS (the "Agreement") is entered into this ____ day of _____, 2012, by and between the CITY OF LANCASTER, a charter city and municipal corporation ("City") and Antelope Valley Chevrolet, Inc. , a Delaware corporation (the "Dealer") (collectively, the "parties"), with reference to the following facts:

A. The Dealer has a leasehold interest on that certain real property located at 1160 Motor Lane in Lancaster, California (the "Site"), more particularly described in Exhibit "A" ("Legal Description") which is attached hereto and incorporated herein by reference.

B. The City has determined that the imposition of certain operating and use covenants and restrictive covenants upon the Site for such uses constitutes a valid public purpose, and therefore the City desires to obtain such operating and use covenants and restrictive covenants on the Site and, subject to the terms hereof, Dealer is willing to enter into and be bound by such operating covenants and restrictive covenants.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. COVENANTS AND RESTRICTIONS AFFECTING THE SITE

1.1 Purchase of Covenants. The City agrees to pay Three Hundred Thousand Dollars (\$300,000) (the "Covenant Purchase Price") to the Dealer in consideration of the covenants provided for in this Agreement. The Covenant Purchase Price shall be paid in cash within ten (10) days of the execution of this Agreement by the City and Dealer.

1.2 Use and Operating Covenant. In consideration for City's payment of the Operating Covenant Purchase Price to Dealer, from and after the effective date of this Agreement, and in compliance with the terms of this Section 1.2 the Dealer covenants and agrees for itself, its successors, assigns and any successors in interest to the Site, that the Site shall be occupied and used solely for automotive uses relating to a new automobile and truck dealership activities, including automobile and truck servicing, used automobile and truck sales, and repair of vehicles and ancillary uses reasonably related and connected to new automobile and truck dealerships. The Site and all improvements constructed and maintained thereon shall be used and operated by the Dealer and the Operator for the uses permitted herein and for no other use or purpose; all such use shall be in compliance with the Auto Center CC&R's which were adopted on June 13, 1989. The Dealer and the Operator shall not use or permit any other person to use the Site, or any part thereof, for any purposes tending to injure the reputation thereof or for any improper or offensive use or to constitute a nuisance; and the Dealer and the Operator shall at all times during said terms conform to, and cause all persons using or occupying any part of the Site to comply with, all public laws, ordinances, and regulations from time to time applicable thereto and to all operations thereon. The Dealer further covenants and agrees to continuously operate the Chevrolet Dealership on the Site for a period of ten (10) years from the date of execution of this Agreement, and, except with the prior written consent of the City for each instance, which consent may be granted or withheld in the City's sole and absolute discretion, the failure of the Dealer or an operator approved by the City pursuant to this Section 1.2 to operate such a dealership for ninety (90) consecutive days shall, at the City's option, constitute a

default hereunder, but upon submission of proof satisfactory to City in its sole and absolute discretion that Dealer is diligently pursuing acquisition of a new vehicle franchise for the Site, City may grant an additional ninety (90) days to Dealer to recommence operation of a dealership before considering the failure to operate a default.

The parties acknowledge that the City has negotiated the terms of this Agreement in contemplation of the Sales Tax Revenues to be generated by the continued operation of the Chevrolet Dealership upon the Site. The Dealer may operate a dealership other than the Chevrolet Dealership or may thereafter operate automobile dealerships in addition to or in replacement of the Chevrolet Dealership on the Site, but only with the prior express written consent of the City. Any request to operate an additional or replacement automobile dealership on the Site must be presented by the Dealer to the City in written form. The City shall approve or disapprove the Dealer's written request within thirty (30) days of the City's receipt of all materials necessary to review the request will not unreasonably withhold its approval of any change in dealership(s) if such change is reasonable, taking into consideration the Sales Tax Revenues and such other factors as City determines. If the City disapproves or fails to approve the Dealer's written request, the City shall provide the Dealer with a written statement of the reason(s) why the City disapproved or failed to approve such request, as well as the City's opinion of any information which the Dealer might provide in order to obtain the City's approval. Upon the Dealer's submission to the City of such additional information in written form, the City shall thereafter have thirty (30) days to provide the Dealer with a written statement of the City's approval or disapproval of the Dealer's request. In the event the City fails to provide any such written statement within the times set forth in this Section 1.2, the Dealer's request for such change of dealership shall be deemed approved. Notwithstanding the foregoing, if the City lawfully delegates the decision regarding a replacement of the Chevrolet Dealership to City staff, the thirty (30) day review periods set forth in this paragraph shall be shortened to twenty (20) days.

1.3 Maintenance Covenant. The Dealer shall maintain the Site and all improvements thereon in good condition and in accordance with the custom and practice generally applicable to a "first class" new automobile dealership, and shall keep the Site free from any accumulation of debris or waste materials.

The Dealer shall also maintain the landscaping required to be planted under the Auto Center CC&R's in a healthy condition. If at any time the Dealer fails to maintain said landscaping, and said condition is not corrected after expiration of thirty (30) days from the date of written notice from the City, either the City or the City may perform the necessary landscape maintenance and the Dealer shall pay such costs as are reasonably incurred for such maintenance.

1.4 Rights of Access Covenant. The City, for itself and for the other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Dealer shall indemnify and hold the Dealer harmless from any costs, claims, damages or liabilities pertaining to any entry. Dealer covenants and agrees to allow such entry onto the Site pursuant to this Section.

1.5 Nondiscrimination Covenant. The Dealer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the

Site, nor shall the Dealer or any person claiming under or through it or them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land. The Dealer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person.

1.6 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the term of the Redevelopment Plan, except for the following:

(a) The covenant pertaining to the use and operation of Chevrolet Dealership set forth in Section 1.2 shall remain in effect for a period of not less than ten (10) years from the effective date of this Agreement.

(b) The covenants against discrimination, as set forth in Section 1.5, the indemnification provisions set forth in Section 2.2 shall remain in effect in perpetuity.

2. HAZARDOUS MATERIALS.

2.1 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Environmental Claims” shall mean any claims by third parties for personal injury (including sickness, disease or death), or for injury to property or natural resources or the environment, including, without limitation, lost profits, consequential damages, diminution of property value or loss of use of property, or for any violation or alleged violation of, or noncompliance with, the requirements of any Environmental Law.

(b) “Environmental Cleanup Liability” shall mean any cost or expense incurred to investigate, monitor, remove, remediate, treat, clean up, abate or otherwise respond to any Release or threatened Release of Hazardous Materials, including, without limitation, the cost of obtaining Site closure from applicable governmental agencies and the cost of restoring the affected property upon completion of responsive action.

(c) “Environmental Compliance Costs” shall mean any cost or expense necessary to enable the affected property to comply with all applicable Environmental Laws.

(d) “Environmental Law” shall mean any applicable federal, California, regional or local law, statute, ordinance, rule, regulation or order for the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response,

Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code § 25300 et seq.); the Hazardous Waste Control Law (Health and Safety Code § 25100 et seq.); the Hazardous Waste Disposal Land Use law (Health and Safety Code § 25220 et seq.); the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); Hazardous Materials Release Response Plans and Inventory (Health and Safety Code § 25500 et seq.); Underground Storage of Hazardous Substances (Health and Safety § 25280 et seq.) ; The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (Health and Safety Code § 25249.5-25249.13); the Asbestos Notification Law (Health and Safety Code § 25915 et seq.); the California Occupational Safety and Health Act (Labor Code § 6300 et seq.); Chapters 10 and 11, Division 4.5, Title 22, California Code of Regulations; and any law or regulation implementing, amending or succeeding any of the foregoing, and any similar laws or regulations at any time in effect having any of the purposes designated above.

(e) “Hazardous Materials” shall mean any pollutant, contaminant, hazardous or toxic substance, material or waste which is or becomes identified, listed or regulated as such under any Environmental Law by the United States government, the State of California or any regional or local governmental authority having jurisdiction over the Dealer, Parcel or the Site.

(f) “Release” shall mean the release, as defined in Health and Safety Code §§ 25320 and 25321, of a Hazardous Material or Hazardous Materials.

2.2 Dealer Indemnity. Effective upon the date of this Agreement, the Dealer agrees to indemnify, protect, defend, reimburse and hold its Council members, any other elected or appointed officials, agents, employees and attorneys, harmless from and against any and all claims, actions, proceedings, lawsuits, orders, costs, liabilities, judgments, damages, fines, encumbrances, liens, penalties, punitive damages, losses and expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not such claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and attorneys’ fees) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, any of which are suffered or incurred by said indemnified parties, or assessed, levied or asserted by any person or entity (whether governmental or private) against said indemnified parties (collectively, “Liabilities”), after the Close of Escrow and relating to the following:

Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs arising from the Release or threatened Release of Hazardous Materials in or onto the soil or groundwater in, on, under or from the Site as a result of the use, generation, discharge, storage, handling or disposal of Hazardous Materials by Dealer at the Site whether before or after the execution of this Agreement. The indemnification obligations set forth in this paragraph shall run with the land, and shall be subject to the provisions of Section 8 hereof. This provision shall survive the execution of this Agreement.

3. DEFAULTS AND REMEDIES.

3.1 Occurrence of any or all of the following shall constitute a default (“Default”) under this Agreement:

- (a) Dealer’s default of any of its obligations under the Covenant.
- (b) City’s default of any of its obligations under Section 1 hereof.
- (c) The filing of a petition in bankruptcy by or against the Dealer or appointment of the receiver or trustee of any property of the Dealer, or an assignment by the Dealer for the benefit of creditors, or adjudication that the Dealer is insolvent by a court, and a failure of the Dealer to cause such petition, appointment or assignment to be removed or discharged within sixty (60) days.

In the event of any default under the terms of this Agreement, the nondefaulting party shall give written notice to the defaulting party. The defaulting party shall commence and diligently thereafter pursue the curing of said default to completion within thirty (30) days after receipt of notice of such default; provided, however, if such a cure cannot reasonably be effected within such thirty (30) day period, such failure shall not be a Default so long as such party promptly commences a cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. Failure to cure, as specified above, shall be a “Default” hereunder. Nothing herein is intended to limit or restrict whatever specific performance or other equitable remedies either party may have in accordance with applicable law.

(d) Representations and Warranties of the Parties. The Parties hereby represent and warrant as follows:

(i) Litigation. There is no action, suit, proceeding, or formal or informal claim, demand, or request for information that affects the Site or would affect City’s ability to perform its obligations under this Agreement, pending or being prosecuted in any court or by or before any federal, state, county or municipal department, commission, board, bureau or City or other governmental instrumentality, nor has any such action been threatened.

(ii) No Breach of Other Agreements. The execution of this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any lease, mortgage, deed of trust, or other agreement, instrument, or arrangement to which City is a party.

4. ASSIGNMENT AND ASSUMPTION.

4.1 The terms, covenants, and obligations of Dealer pursuant to this Agreement shall run with the Site and be binding upon Dealer’s lessees, successors and assigns to the Site. It is understood that it is possible that the identity of the fee owner of the Site (the “Owner”) or portions thereof may be different from the operator of the Dealership (the “Operator”). Wherever the term Dealer is used in this Agreement, such term shall be deemed to refer to the Dealer and/or Owner and/or Operator and any authorized successor or assign of the Dealer and/or Owner and/or Operator as provided herein and the obligations of the Dealer and/or Owner and/or Operator shall be joint and

several. During the Covenant Period, the Dealer shall include reference to this Agreement in any lease or operating agreement respecting the Site, and each lessee or Operator must, in such lease or operating agreement, acknowledge and agree (i) that its interests, rights and obligations are subject to this Agreement, (ii) the General Motors Corporation has approved the assignment and (iii) that it must comply, or enable the Dealer to comply, with all terms and provisions of this Agreement applicable and in force and effect following the effective date of such lease or operating agreement.

If the Dealer desires to assign its interests in the Site and/or the Dealerships during the Covenant Period, the consent of the City (which shall not be unreasonably withheld, conditioned or delayed) shall be required for each such assignment or transfer, and such consent shall be granted if (i) the proposed assignee expressly assumes, in writing, Dealer's unexecuted obligations hereunder as to times following the effective date of the assignment (in which event Dealer shall thereafter be released from such assumed obligations); (ii) the proposed assignee has demonstrated to the reasonable satisfaction of the City and the General Motors Corporation that such person or entity has adequate financial capacity and operating experience to own the Site or operate the Dealership, as the case may be; and (iii) no default exists under the Agreement. The City's consent rights under this Paragraph 7 shall terminate and be of no further force or effect upon the expiration or earlier termination of the Covenant Period, and Dealer's right thereafter to assign, transfer or otherwise alienate its interest in the Site or Dealership shall be unrestricted. Nothing herein shall prohibit Dealer from contracting with or causing any third party or parties to perform any of Dealer's obligations hereunder, provided that in such event Dealer shall remain fully responsible to City for the performance of the Covenant during the Covenant Period.

5. NOTICES.

5.1 All notices under this Agreement shall be given in writing by personal delivery, or by certified mail or registered United States Mail, return receipt requested, postage prepaid, or by facsimile and shall be deemed communicated when received if given by personal delivery or upon receipt or rejection if mailed as provided above or upon receipt by facsimile on a business day during business hours in the location where received, and if not then on the next business day, as the case may be. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this article:

CITY: City of Lancaster
44933 N. Fern Avenue
Lancaster, California 93534
Attn: City Manager

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: David R. McEwen, Esq.

To the Dealer: Antelope Valley Chevrolet, Inc. .
1160 Motor Lane
Lancaster, California 93534
Attn: Lou Gonzales

6. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings written and oral. This Agreement may not be modified or amended except in a writing signed by all parties hereto. In the event any litigation is necessary to enforce or interpret any provisions of this Agreement, the prevailing party in such litigation shall be entitled to recover its court costs and attorneys' fees.

7. CONSTRUCTION.

The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

8. FORCE MAJEURE.

Time for performance hereunder shall be extended by any period of delay caused by circumstances beyond the reasonable control of the party claiming the delay despite the party's diligent efforts, other than financial ability, provided the party claiming the delay, provides written notice to the other party within a reasonable period following commencement of any such circumstances which circumstances shall include, without limitation, fire/casualty losses; dealer protests; strikes; litigation; unusually severe weather; inability to secure necessary labor, materials, or tools; environmental remediation; including governmental review and processing of environmental remediation; delays of any contractor, subcontractor, or supplier; delay caused by the other party, and acts of God (collectively, "force majeure").

9. INTERPRETATION.

In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association where the context so requires.

10. TIME OF THE ESSENCE.

Time is of the essence of this Agreement and all parties' obligations under this Agreement.

11. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of the Dealer warrant and represent that they have the authority to execute this Agreement on behalf of their corporation, partnership or business entity and warrant and represent that they have the authority to bind the Dealer to the performance of its obligations hereunder.

12. WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT.

The Dealer warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

13. RELEASE OF CITY OFFICIALS.

No member, official, agent, employee, or attorney of the City shall be personally liable to the Dealer, or any successor in interest of the Dealer, in the event of any default or breach by the City or for any amount which may become due to the Dealer or its successors, or on any obligations under the terms of this Agreement. The Dealer hereby waives and releases any claim it may have personally against the members, officials, agents, employees consultants, or attorneys of the City with respect to any default or breach by the City or for any amount which may become due to the Dealer or its successors, or on any obligations under the terms of this Agreement. The Dealer makes such release with full knowledge of Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable California Civil Code Section 1542 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.”

14. HEADINGS.

The headings to the paragraphs of this Agreement have been inserted for convenience reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Agreement.

15. VENUE.

In the event of any litigation under this Agreement, all such actions shall be instituted in the Superior Court of the County of Los Angeles, State of California, or in an appropriate municipal court in the County of Los Angeles, State of California.

16. APPLICABLE LAW.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

17. SUCCESSORS AND ASSIGNS.

The provisions of this Agreement constitute covenants running with the land and shall be binding upon, and inure to the benefit of, the City and the Dealer and their permitted successors and assigns as the case or context may require. The obligations set forth herein shall be binding upon Dealer and Dealer's heirs, successors and assigns who become fee owners of the Site, or any portion thereof; provided, however, that if Dealer or any successor fee owner of the Site, or any portion thereof, transfers any portion or all of its interests in and to the Site such that the transferee becomes liable hereunder as a fee owner, the transferor shall thereupon be released and discharged from any and all further obligations under this Agreement or the Memorandum of Agreement in connection with the interests transferred by it, but only as to the interests transferred and only as to such obligations accruing and to be performed from and after the date of such transfer, it being understood that such transfer does not release obligations accrued prior to such transfer.

18. NO JOINT VENTURE.

Nothing contained in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture, or associated in any relationship with Dealer, nor shall this Agreement be construed to authorize any party to act as agent for the other.

19. WAIVER.

The waiver by the City, or the Dealer of any breach by the other Party of any term, covenant, or condition in this Agreement contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. Any Party's acceptance of any performance by the other Party after the due date of such performance shall not be deemed to be a waiver by any Party or any preceding breach by the other Party of any term, covenant, or condition of this Agreement, regardless of such Party's knowledge of such preceding breach at the time of acceptance of such performance.

20. COUNTERPARTS.

This Agreement may be executed and acknowledged in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) Agreement, binding on the parties hereto.

21. LEGAL ACTIONS.

Institution of Legal Actions. In the event of a dispute arising out of or under the terms of this Agreement, and such dispute is not otherwise time barred, the parties hereto agree to first try in good faith to settle the dispute amicably by mediation administered at Lancaster, California, before a single mediator before the Judicial Arbitration and Mediation Service ("JAMS") or similar service in Lancaster acceptable to the parties. Notice of the demand for mediation shall be filed in writing with the other party and with JAMS or similar service and shall be made within a reasonable time after the dispute has arisen. The mediator shall be selected by agreement of both parties. Both parties agree that they shall participate in mediation for not less than eight (8) hours in one or more sessions involving the mediator. In the event that the parties cannot reach agreement within two weeks as to the selection of a mutually agreeable mediator, each side shall select a mediator and the two mediators shall select a third mediator to act as the appointed mediator. Any resultant agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, any still unresolved disputes may be resolved by an action in court proceedings at law or equity to seek remedies or damages. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the United States District Court for the Central District of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

CITY:

CITY OF LANCASTER, a charter city and municipal corporation

By: _____
Its: _____

ATTEST:

City Clerk

DEALER:

Antelope Valley Chevrolet, Inc. .

By: _____
Its: _____

APPROVED AS TO FORM:
STRADLING YOCCA CARLSON & RAUTH

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF "PROPERTY"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LANCASTER,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: