

RESOLUTION NO. 14-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER AND VIPER ENTERPRISES, INC. (HUNTER FIAT), A CALIFORNIA CORPORATION

WHEREAS, the City of Lancaster (“City”) is a chartered city organized and operating under its city charter (the “Charter”) and the laws of the State of California; and

WHEREAS, Viper Enterprises, Inc. (Hunter Fiat), a California corporation (“Viper”) has proposed to the City an agreement substantially in the form submitted herewith, entitled Disposition and Development Agreement (the “DDA”); and

WHEREAS, a copy of the DDA, together with a report describing the proposed transaction, has been on file with the City Clerk as a public record; and

WHEREAS, notice of a public hearing to consider the DDA, and which specifically referenced Government Code Section 53083, was published in a newspaper of general circulation serving the City and its inhabitants; and

WHEREAS, under the DDA, the City would convey certain property consisting of approximately 1.96 acres designated land referenced in the DDA as the “Site”, which Site is located within that area known as the Lancaster Auto Mall, to Viper whereupon Viper, and its principals (together, the “Related Persons”), would be obligated to establish and operate a full-service Fiat dealership on the Site, which will be a significant expansion over existing Fiat dealership facilities located within the corporate limits of the City, and to continue to operate on such other properties within the Lancaster Auto Mall dealerships as owned by one or more of the Related Persons for a period of twenty (20) years (the “Operating Covenant Period”); and

WHEREAS, in consideration of such ongoing operations by the Related Persons during the Operating Covenant Period, the City would apply a credit of 1/20 of the amount of the price of the Site for each year during which operations are conducted in compliance with the DDA, with the expectation being that the Related Persons will so perform and that no payments will be paid as purchase money to the City with respect to the Site; and

WHEREAS, Viper would not establish an expanded Fiat dealership within the City but for the approval of the DDA; and

WHEREAS, by the establishment of a new Fiat dealership facility as well as retention of other dealerships operated by the Related Persons within the corporate limits of the City during the Operating Covenant Period, the City will continue to be the beneficiary of substantial sales tax revenues over a significant period of time, all as more particularly set forth in the DDA; and

Section 3. The City Manager is hereby authorized, on behalf of the City, to make revisions to the DDA which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the DDA and to administer the City's obligations, responsibilities and duties to be performed under the DDA and related documents.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }ss
CITY OF LANCASTER }

CERTIFICATION OF RESOLUTION
CITY OF LANCASTER

I, _____, _____ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 14-52, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

**SB 470 (52201) ECONOMIC OPPORTUNITY REPORT
FOR
DISPOSITION OF REAL PROPERTY WITH VIPER ENTERPRISES, INC (HUNTER FIAT)**

The following information is provided pursuant to Section 52201(B) of the Government Code.

52201(B) (i): If the agreement is approved, the City will provide 1.96 acres of land to Viper Enterprises, Inc (Hunter Fiat) to facilitate the firm's expansion. The APN is 3125-024-939. The parcel is currently used for public parking for Lancaster City Park. Based on an appraisal by MAI Real Estate Appraiser, the fair market property value is \$430,000. The dealer will be required to give the City a Covenant, guaranteeing the property be operated as an automobile dealership for the next 20 years. The Covenant substantially restricts the utilization of this property.

52201(B) (ii) The "highest and best use" appraised value of this property in this deal is \$430,000.

52201(B) (iii) The "conditional use" appraised value of this property in this deal is less than \$430,000.

Placing this property back on the tax rolls will generate approximately \$5,375 per year in property taxes. It is estimated that this expansion will allow the dealer to increase sales by 15%.

52201 (B) (iv) The economic opportunity of this deal is substantiated by the number of new jobs to be created. Twenty-five jobs or 17.5 full-time equivalent jobs will be created through this transaction. Specifically, it is expected that this expansion will result in 10 new full-time jobs and 15 part-time positions. These jobs are in addition to the 85 current employees that currently work for Hunter Fiat and exceed the minimum job/investment ratio of 1/\$35,000 per Section 52200.2(a) of the Government Code.

**AB 562 (53083) ECONOMIC DEVELOPMENT INFORMATION SUMMARY
FOR
DISPOSITION OF REAL PROPERTY WITH VIPER ENTERPRISES, INC (HUNTER FIAT)**

The following information is provided pursuant to Section 53083(a) of the Government Code.

- (1) Viper Enterprises, Inc (Hunter Fiat) currently maintains its dealership at 1100 Motor Lane, Lancaster, California 93534
- (2) The agreement to be considered by the City Council, if approved, will commence on July 22, 2014 and end on July 22, 2034 (20 years total).
- (3) If the agreement is approved, the City will provide 1.96 acres of land to Hunter Fiat to facilitate the firm's expansion. The APN is 3125-024-939. The parcel has been used for public parking for Lancaster City Park. Based on an appraisal by MAI Real Estate Appraiser, the property value is \$430,000. The Dealer will be required to give the City a Covenant, guaranteeing that the property will be operated as an automobile dealership for the next 20 years. The Covenant will substantially restrict the utilization of this property.
- (4) This transaction will generate new taxes to fund services needed by the citizens of the City of Lancaster. The largest increase is anticipated to be new sales tax revenue. Sales tax is one of the largest revenue sources for the City's General Fund. This tax pays for a variety of city programs, including police protection and Parks, Recreation and Arts programs.

Many of the taxpayers in the City of Lancaster continue to work "down below" in metropolitan Los Angeles, incentivizing them to purchase goods and services outside of Lancaster. The expansion of Hunter Fiat will provide both the commuters and local residents a greater selection of shopping options in Lancaster, thereby keeping our tax dollars local. The Lancaster Auto Mall and Hunter Fiat in particular has been a great corporate citizen through its extensive participation in local charities. These charities include Lancaster West Rotary; the Antelope Valley Fairgrounds, where the Poppy Pavilion was recently re-named the H.W. Hunter Pavilion in their grandfather's honor; the American Cancer Society; community events such as the Fourth of July Fireworks Spectacular; and many more.

- (5) The estimated appraised value of the property in this deal is \$430,000. Placing this property back on the tax rolls will generate approximately \$5,375 per year in property taxes. It is estimated that this expansion will allow the dealer to increase sales by 15%. This means that the City of Lancaster will receive an additional \$79,000 per year in new sales tax dollars.
- (6) The number of new jobs to be created through this transaction will be 25 jobs. It is estimated that the transaction will result in 10 new full-time jobs and 15 part-time positions. These jobs are in addition to the 85 current employees that currently work for Hunter Fiat.

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF LANCASTER

“CITY”

and

VIPER ENTERPRISES, INC.
a California corporation, dba Hunter Fiat

“DEALER”

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (the "Agreement") is entered into on _____, 2014 (the "Date of Agreement"), by and between THE CITY OF LANCASTER, a charter city organized and existing pursuant to the constitution and the laws of the State of California (the "City") and VIPER ENTERPRISES, INC., a California corporation, dba HUNTER FIAT ("Hunter Fiat").

RECITALS

WHEREAS, the City is a charter city organized and existing pursuant to the constitution and laws of the State of California and is authorized and empowered to enter into agreements for the acquisition, disposition and development of real property; and

WHEREAS, the Lancaster Redevelopment Agency ("Redevelopment Agency") was activated pursuant to Part 1 of Division 24 of the California Health & Safety Code and thereafter Redevelopment Plan for the Amargosa Redevelopment Project (the "Redevelopment Project") was approved and adopted by the City by Ordinance No. 321, on October 17, 1983; and

WHEREAS, the Redevelopment Agency acquired and developed or caused to be developed certain property within the project area of the Redevelopment Project, including certain properties commonly known as the "Lancaster Auto Mall"; and

WHEREAS, by virtue of ABx1 26, as approved by the California Legislature during 2011 and as upheld by a decision of the California Supreme Court issued December 29, 2011, every redevelopment agency in the State of California, including the Redevelopment Agency, was dissolved effective February 1, 2012; and,

WHEREAS, Hunter Fiat currently owns certain real property located within the Lancaster Auto Mall (the "Hunter Fiat Property") upon which Tim Fuller and Tom Fuller (the "Auto Dealer") operates a Fiat dealership known as Hunter Fiat (the "Hunter Fiat Dealership" or the "Existing Dealership"); and

WHEREAS, in connection with the dissolution of the Redevelopment Agency, the City acquired certain property identified in Attachment "A" hereto, incorporated by reference (the "Site") which is adjacent to the Existing Dealership and located within the Lancaster Auto Mall; and

WHEREAS, Hunter Fiat desires to acquire the Site for purposes of expanding the Existing Dealership pursuant to the terms and conditions of this Agreement and for siting of an additional automobile dealership at some time in the future; and

WHEREAS, the City has determined that the disposition of the Site to Hunter Fiat for development would further the ongoing development of the Lancaster Auto Mall, and therefore the City and Hunter Fiat desire to enter into this Disposition and Development Agreement to provide for the disposition and development of the Site and conduct of operations pursuant hereto; and

WHEREAS, Hunter Fiat desires and intends to acquire the Site which will thereupon be devoted to use as a part of the Existing Dealership and/or another new motor vehicle dealership to be operated by Tim Fuller and Tom Fuller (the "Hunter Fiat Principals"), or in which the Hunter Fiat Principals holds an ownership interest as the Principals of the Auto Dealer, including the

development by Hunter Fiat of certain improvements defined herein as the "Dealer Improvements"; and

WHEREAS, the Hunter Fiat Principals presently operate within the Lancaster Auto Mall "Auto Dealerships", as defined below, known as Hunter Dodge, Chrysler, Jeep and Ram (the "Other Principal Dealerships"): these Other Principal Dealerships are to be maintained on an ongoing basis within the Lancaster Auto Mall; and

WHEREAS, Hunter Fiat and the Auto Dealer desire and intend to expand the existing Hunter Fiat operations by providing the Site for additional operating area and as a resource for an additional motor vehicle dealership in the future; and

WHEREAS, Hunter Fiat has made certain good faith representations to the City that the expansion of the Hunter Fiat Dealership to include the Site shall materially and substantially enhance retail sales and use tax revenues to the City throughout a period commencing as of the thirtieth day after the Date of Agreement (the "Start Date") and ending as of the twentieth anniversary thereof (the "Determination Date"), within the twenty-year period as defined thereby being referred to herein as the "Operating Covenant Period."

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the mutual covenants herein contained, agree as follows:

ARTICLE I

SUBJECT OF AGREEMENT

Section 1.1. Purpose of Agreement. The purpose of this Agreement is to promote economic activity within the City including the generation of sales and use tax, thereby enhancing the ability of the City to provide municipal services by providing for the disposition to Hunter Fiat of the Site for the establishment thereon of an Automobile Dealership consisting of an expanded operation of the Hunter Fiat Dealership and/or the establishment of a comparable dealership of equal or higher quality approved by the City, which approval shall not be unreasonably withheld. The conduct of operations on the Site by Hunter Fiat under this Agreement and the fulfillment of the obligations of Hunter Fiat under this Agreement are in the vital and best interests of the City, the City and the residents of the City and shall further the public health, safety and welfare. Furthermore, the terms and conditions of this Agreement are in accord with the purposes and provisions of applicable federal, state and local laws and requirements. In particular, the City and Hunter Fiat are entering into this Agreement in order to permit and encourage the establishment of appropriate commercial activities within the Lancaster Auto Mall, to create employment opportunities within the City and to improve and revitalize, economically and physically, a portion of the City located within the Lancaster Auto Mall, all by means of the conduct of operations on the Site by Hunter Fiat and the operation of the Hunter Fiat Dealership on a larger area (consisting of the Site and the Hunter Fiat Property) or the eventual establishment thereon of an additional or a comparable dealership of equal or higher quality approved by the City, which approval shall not be unreasonably withheld as more fully set forth in this Agreement. As used in this Agreement, "Auto Dealership" shall mean a retail, automotive sales and leasing dealership in which shall be located an automotive business having as primary uses constituting more than fifty percent (50%) of actual gross annual automobile sales

revenues, the retail sale and leasing of new and unused cars, vans (including van conversions), motorhomes, trucks, jeeps and/or motorcycles (“Vehicles”), and having as incidental uses related thereto the sale and leasing of used Vehicles, the sale of new and used parts for new and used Vehicles, and similar uses supportive of said primary uses and customarily part of an Auto Dealership, such that the Site shall be used exclusively for the purposes of an Auto Dealership

Section 1.2. Incorporation of Recitals. The Recitals hereinabove set forth are incorporated herein by reference and made a part of this Agreement with the same force and effect as though set forth in full herein. Each recital of fact concerning the City and Hunter Fiat set forth herein shall be conclusive as between the parties hereto. Such facts shall be incontestable in the event of any dispute between the parties concerning any such fact, and each party agrees not to introduce any evidence in court or administrative proceedings which would in any way serve to dispute any such recited fact.

Section 1.3. The Site. The Site consists of certain real property located within the Lancaster Auto Mall (“Auto Mall”) which real property is described in Exhibit “A-1” attached hereto and shown on Exhibit “B” attached hereto. The Dealer Improvements shall be constructed and installed and completed substantially in accordance with the Scope of Development attached as Exhibit “C” hereto (the “Scope of Development”). It is understood and agreed by the parties that the Dealer Improvements shall in all respects be consistent with the Scope of Development. Hunter Fiat further agrees that the construction of the Dealer Improvements and the operation of the Auto Dealership on the Site shall in all respects be consistent with and subject to the Declaration of Covenants, Conditions and Restrictions (the “CC&Rs”) attached hereto as Exhibit “D” which have been recorded against the Site in the Office of the Recorder for the County of Los Angeles, California, as said CC&Rs may be amended from time to time.

Section 1.4. The Hunter Fiat Property. The Hunter Fiat Property consists of certain real property located within the City of Lancaster which real property is described in Exhibit “A-2” attached hereto.

ARTICLE II

DISPOSITION OF PROPERTY

Section 2.1. Conveyance of the Site. The City agrees to convey to Hunter Fiat, and Hunter Fiat agrees to accept from the City, fee title to the Site in consideration of the execution of this Agreement and the payment of the sum of approximately Four Hundred Thirty Thousand Dollars (\$430,000) (the “Purchase Price”) in the form of delivery of a promissory note in the form of Exhibit “G” (the “Dealer Note”). The Purchase Price shall be paid as provided in Section 2.7 hereof. The conveyance of the Site shall be completed on or prior to the date set forth in the Schedule of Performance attached hereto as Exhibit “E.” While this Agreement recites that the Note evidences repayment of the “Purchase Price,” the Note and Deed of Trust are intended solely to enable the City to enforce the conditions on which the Site is being granted to the Dealer.

Section 2.2. Escrow. The parties agree to establish an escrow for the transfer of the Site (the “Escrow”) with an escrow agent mutually agreed upon by the parties (the “Escrow Agent”), within the time set forth in the Schedule of Performance. Sections 2.2 through 2.11 of this Agreement constitute the joint escrow instructions of the parties to the Escrow Agent, and a duplicate original of this Agreement or a copy thereof certified by the City Clerk to be true and correct, shall be delivered to the Escrow Agent upon the opening of the Site Escrow.

The parties shall provide and execute such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent is hereby empowered to act under this Agreement, and upon indicating its acceptance of Sections 2.2 through 2.11 in writing, delivered to the City and Hunter Fiat within five (5) calendar days after the establishment of the Escrow, shall begin to carry out its duties as Escrow Agent hereunder.

At the time provided for in the Schedule of Performance, the City shall deliver to the Escrow Agent the grant deed for the Site, in substantially similar form to that attached hereto as Exhibit "F" ("Site Grant Deed"), and upon satisfaction of the Conditions for Close of the Escrow, the Escrow Agent shall record said Site Grant Deed in accordance with these escrow instructions, subject to the condition that the title to the Site, to the extent provided in this Agreement, can be vested in Hunter Fiat, in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. No insurance policies covering the Site shall be transferred by the City to Hunter Fiat.

The City and Hunter Fiat shall deliver to the Escrow Agent all documents necessary for the conveyance of title to the Site, to the extent provided in this Agreement, in conformity with, within the times and in the manner provided in this Agreement.

The City shall deposit in the Site Escrow the following fees, charges and costs promptly after the Escrow Agent has notified City of the amount of said fees, charges and costs, but not later than one (1) business day before the close of the Site Escrow:

1. The Escrow Agent's fee;
2. The costs of recording the Site Grant Deed.
3. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement;
4. The premium for the title insurance policy to be paid by the City under Section 2.8;
5. Ad valorem taxes, if any, upon the Site, applicable to the period before the conveyance of title; and
6. Any State, County or City documentary stamps or transfer tax.

No later than one (1) business day before the close of the Site Escrow, Hunter Fiat shall deposit the Purchase Price in the form of the Dealer Note with the Escrow Agent.

The Escrow Agent is authorized to:

1. Pay and charge the City and Hunter Fiat for any fees, charges and costs payable under this Section 2.2. Before the close of the Site Escrow, the Escrow Agent shall notify the parties of the estimated cost of any and all fees, charges and costs necessary to clear title and close the Site Escrow;

2. Disburse funds and deliver the Site Grant Deed and other documents to the parties entitled thereto when the conditions for close of the Site Escrow have been satisfied by the applicable party. The Dealer Note shall not be delivered by the Escrow Agent to City unless and until all conditions for the close of the Escrow have been satisfied, including the recordation of all documents required to be recorded as conditions for the close of the Escrow including, but not limited to, the Site Grant Deed, and until the Escrow Agent has delivered to Hunter Fiat the title insurance policy insuring title as provided in Section 2.8 hereof;

3. Record any instruments delivered through the Escrow in the event necessary or proper under this Agreement and, otherwise, to vest title in Hunter Fiat in accordance with the terms and provisions of these escrow instructions; and,

All funds received into Escrow shall be deposited by the Escrow Agent in an interest bearing insured account with any state or national bank doing business in the State of California, as agreed upon between the parties; provided, however, that said funds, in the aggregate, exceed Five Thousand Dollars (\$5,000.00) and provided further that the parties agree that said funds shall be retained by the Escrow Agent for a period of at least ten (10) calendar days. Otherwise, said funds may be held by the Escrow Agent, in a non-interest bearing account, and may be combined with other escrow funds of the Escrow Agent. In the event that said funds are deposited in an interest bearing account, interest shall accrue to the party who has made the deposit thereof with the Escrow Agent.

In the event that the Escrow is not in condition to close on or before the time set forth in the Schedule of Performance, subject to any and all extensions authorized by this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance may, in writing, demand the return of its money, papers or documents from the Escrow Agent. No demand for return of said money, papers or documents shall be recognized until ten (10) calendar days after the Escrow Agent has delivered copies of said demand to the other party at the address and in the manner provided for in Section 6.1. Objections, in the event there are any, shall be raised by written notice submitted to the Escrow Agent and to the other party within said ten (10) calendar day period, in which event the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site Escrow until further instructed by mutual agreement of the parties or, upon failure of the parties to agree, then by means of dispute resolution set forth in this Agreement or by order or decree of a court of competent jurisdiction. In the event that no demands are made, the Site Escrow shall be closed as soon thereafter as possible.

The Escrow Agent shall not be obligated to return any money, papers or documents, except upon the written instructions of both parties, or until the party entitled thereto has been determined by a final decision resulting from the dispute resolution procedures set forth in this Agreement or by a court of competent jurisdiction.

Any amendment to these escrow instructions shall be in writing and signed by both parties. At the time of the execution of any amendment to these escrow instructions, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All official communications among the Escrow Agent and the parties shall be made in accordance with Section 6.1.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 2.2 to 2.11, inclusive, of this Agreement.

Section 2.3. Conveyance of Title and Delivery of Possession. Subject to satisfaction of the conditions for close of the Escrow and to any mutually agreed upon written extension of time or extensions otherwise authorized by this Agreement, conveyance to Hunter Fiat of title to the Site in accordance with this Agreement shall be completed on or before the date set forth therefor in the Schedule of Performance. The parties agree to perform all acts necessary for conveyance of title to the Site, in the form and to the extent required herein, in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession of the Site shall be delivered to Hunter Fiat concurrently with the conveyance of title. Hunter Fiat shall accept title to and possession of the Site on the date of recordation of the Site Grant Deed.

Section 2.4. Form of Site Grant Deed. The City shall convey to Hunter Fiat title to the Site in the condition provided in Section 2.5, by a Site Grant Deed substantially in the form set forth in Exhibit "F" attached hereto (the "Site Grant Deed").

Section 2.5. Condition of Title. The City shall convey to Hunter Fiat fee simple merchantable and insurable title to the Site, free and clear of all recorded liens, encumbrances, leases, taxes, conditions, restrictions and other defects which are matters of record, or unrecorded defects of which the City has knowledge, except for (1) those otherwise approved by Hunter Fiat in its sole but reasonable discretion, (2) the CC&Rs, (3) recorded easements and rights of way, (3) a disclosure that the Site is located within a redevelopment project area, and (4) those which are included in the Site Grant Deed. Hunter Fiat shall not unreasonably disapprove any exception to title, and any disapproval by Hunter Fiat of any exception to title shall be deemed reasonable only in the event that said exception prohibits, limits or materially affects the ability to, or the cost of, the development of the Site by Hunter Fiat.

Section 2.6. Time and Place for Delivery of Documents to Escrow. Subject to any mutually agreed upon written extensions of time or any extensions otherwise authorized by this Agreement, the parties shall deposit with the Escrow Agent promptly at such time as such documents have been fully prepared and executed, but in no event later than one (1) business day before the date for the close of Escrow set forth in the Schedule of Performance, any and all documents which are required in order for the Escrow to close in accordance with this Agreement. The Site Grant Deed conveying the Site from the City to Hunter Fiat shall be prepared by the City.

Section 2.7. Payment of the Consideration and Recordation of the Grant Deed and Other Documents. Payment of the Purchase Price by deposit of the Dealer Note, substantially in the form of the Dealer Note shall be made by Hunter Fiat to the Escrow Agent no later than one (1) business day before the close of the Escrow. The Dealer Note shall be in the full amount of the Purchase Price and shall be secured by a Deed of Trust on the Site, substantially in the form attached hereto as Exhibit "H" (the "Deed of Trust"). Subject to the provisions of Section 2.11, when the parties have deposited into the Escrow all money, papers and documents as required by this Agreement and all conditions for the close of the Escrow have been satisfied, the Escrow Agent shall promptly file for recordation among the land records in the Office of the County Recorder for Los Angeles County: (i) the Site Grant Deed; (ii) a Memorandum of this Agreement; (iii) the CC&Rs; and (iv) the Deed of Trust. The Escrow Agent shall thereafter promptly provide a copy of said recorded documents to

both parties, shall promptly deliver the Dealer Note to the City and shall promptly deliver to Hunter Fiat a title insurance policy insuring title in conformity with this Agreement.

At the time of the Escrow for the conveyance of the Site, in the event Hunter Fiat desires that the City subordinate its deed of trust, it shall inform the City Manager; the City Manager is delegated the authority to review and approve such requests. Subordination may be approved, at the discretion of the City Manager, where (i) financing is to be provided for the acquisition of the Site or improvements thereto and such financing is to be provided by a bank or another institutional lender, or (ii) financing is to be provided by the manufacturer, or an affiliate of the manufacturer, to finance flooring at the Site. Hunter Fiat shall provide the City Manager with such information as is reasonably necessary to evaluate conformity with the preconditions described in this paragraph; the City Manager shall be afforded a reasonable time to evaluate such request. Thirty (30) days shall be deemed to be a reasonable time for this purpose. In event a request for subordination is made after close of Escrow, the same procedure shall be followed as set forth in this paragraph.

Section 2.8. Title Insurance. Concurrently with the recordation of the Grant Deed to the Site or promptly thereafter, the Escrow Agent shall provide and deliver to Hunter Fiat an owners CLTA standard form policy of title insurance, insuring that the title to the Site is vested in Hunter Fiat in the condition required by Section 2.5. The title insurance policy shall be in the amount of the Purchase Price as provided in Section 2.1(b) hereof. The City shall pay for the title insurance premium attributable to the CLTA standard form policy of title insurance. Hunter Fiat shall pay for any and all other premiums for upgrades in title insurance coverage and special endorsements.

Section 2.9. Taxes and Assessments. All ad valorem taxes and assessments, in the event that there are any, on the Site, assessed or imposed as to any period prior to conveyance of title through the Site Escrow, shall be borne by the City. All ad valorem taxes and assessments levied or imposed on the Site as to any period after the close of the Site Escrow shall be paid by Hunter Fiat.

Section 2.10. Possession of the Site. Title to the Site shall be conveyed free and clear of any possession and any right of possession, except that of Hunter Fiat, unless specifically waived by Hunter Fiat in writing.

Section 2.11. Conditions for Close of the Site Escrow. The close of the Site Escrow shall be expressly conditioned upon satisfaction by Hunter Fiat or waiver by City of each of the following:

- (a) Hunter Fiat shall have performed all obligations on its part to be performed on or before the close of the Escrow under this Agreement;
- (b) Hunter Fiat shall have executed and delivered into Escrow (i) the Dealer Note; (ii) the Deed of Trust and (iii) the Memorandum of Agreement;
- (c) Hunter Fiat shall have submitted to the City evidence reasonably satisfactory to the City that Hunter Fiat has insurance meeting the requirements of Section 3.1(h);
- (d) Hunter Fiat shall have approved the preliminary title report for the Site reflecting the condition of title as provided in Section 2.5 hereof;

(e) Hunter Fiat shall have submitted to the City an originally executed waiver in the form of Exhibit “K” attached hereto and incorporated by reference herein as required by the Second Amendment to the CC&Rs attached hereto as part of Exhibit “D.”

Section 2.12. Zoning of the Site and Environmental Approvals. The City represents and warrants that the City’s General Plan and Zoning Ordinance permit the contemplated construction of the Dealer Improvements and the operation of the Hunter Fiat Dealership on the Site in accordance with this Agreement, subject to Hunter Fiat obtaining any and all necessary conditional use permits required pursuant to the Zoning Ordinance, and further subject to Hunter Fiat obtaining any and all modifications or variances, including those modifications or variances necessary for height, parking, signs and any and all other matters. The City further represents and warrants that all environmental requirements of the California Environmental Quality Act (“CEQA”) applicable to this Agreement and the Project have been completed by the City. Hunter Fiat shall apply for all necessary permits applicable to the Project under Section 3.1(k).

Section 2.13. Condition of the Site. Except as provided in this Agreement, the Site will be conveyed in an “as is” condition with no warranty, covenant or liability, express or implied, on the part of the City as to the condition of the soil, its geology or the presence of known or unknown faults or defects.

(a) Without limiting the effect of any representation, warranty or covenant of the City provided in this Agreement, or any right of Hunter Fiat, it shall be the responsibility solely of Hunter Fiat, at Hunter Fiat’s expense, to investigate and determine the soil and seismic conditions of the Site and its suitability for the development of the Auto Dealership. It shall be the responsibility solely of Hunter Fiat, at Hunter Fiat’s expense, to perform all work necessary to prepare the Site for development. Hunter Fiat shall not disapprove any soils report or soils condition which would permit the construction of improvements with normal foundation conditions on the Site.

(b) Hunter Fiat shall have access to all data in the possession of the City concerning the physical and environmental condition of the Site and shall have the further right to make copies of the same.

Section 2.14. Representations and Warranties of the City. The City makes the following representations and warranties to Hunter Fiat:

1. The Site has not been used by the City or, to the best of its knowledge, by anyone else, for the production, storage or disposal of any hazardous wastes or toxic substances;

2. The Site does not lie within a flood plain or an aviation corridor which would prevent construction of the Auto Dealership or restrict the use of the Site for its intended purpose as an Auto Dealership;

3. The City does not know of any seismic, archeological or cultural constraints with respect to the Site; and,

4. The City does not know of any physical or legal constraints with respect to the development of the Auto Dealership on the Site.

ARTICLE III

COVENANT AS TO OPERATIONS; DEVELOPMENT OF THE SITE; DEVELOPMENT STANDARDS

Section 3.1. Development by Hunter Fiat.

(a) Scope of Development. The Site and the Hunter Fiat Property shall be developed by Hunter Fiat in accordance with the Scope of Development, as well as the City's Zoning Ordinance.

The City's Zoning Ordinance, including parking, set-back and height requirements, and the City's building requirements, shall be applicable to the use and development of the Site and the Hunter Fiat Property. Hunter Fiat acknowledges and agrees that any change in the plans for the development or the use of the Site or the Hunter Fiat Property shall be subject to the City's Zoning Ordinance and building requirements. No action by the City with respect to this Agreement or related documents shall be deemed to constitute a waiver of any City parking, set-back, height or other requirements which are applicable to the Auto Dealerships or to Hunter Fiat, any successor in interest or tenant of Hunter Fiat or any tenant or successor in interest with respect to the Site or the Hunter Fiat Property, except by modification or variance approved by the City consistent with this Agreement. The City shall cooperate with and shall assist the Auto Dealer in submittals for the Auto Dealer to obtain modifications or variances, if any, from the City's Zoning Ordinance necessary to develop the Site consistent with this Agreement and, in particular, the Scope of Development.

The Site and the Hunter Fiat Property shall be developed and improvements shall be completed substantially in conformance with the Scope of Development and any and all other plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing between the parties.

Plans are subject to approval by the City Council or the Planning Commission of the City under the City's established processes as required by such bodies in connection with the administration of land use enactments and processes of the City; this Agreement does not constitute a "development agreement" within the meaning of Title 7, Chapter 4, Article 2 of the California Government Code.

(b) Landscaping Plans. Hunter Fiat shall cause landscaping plans in connection with the Dealer Improvements to be prepared by a licensed landscape architect. Hunter Fiat shall prepare and submit to the City for its approval, preliminary and final landscaping plans therefor. Said plans shall be prepared, submitted and approved within the times established therefor in the Schedule of Performance and shall be consistent with the Scope of Development.

(c) Submission of Development Plans, Construction Drawings and Related Documents. Hunter Fiat shall prepare and submit development plans, construction drawings, specifications and related documents for the construction of the Dealer Improvements, as described in the Scope of Development (the "Dealer Improvements") to the City for review (including, but not limited to, architectural review of the exterior of structures) and written approval in accordance with the Schedule of Performance, provided that such plans are consistent with the Scope of Development. Any development plans, construction drawings, specifications and related documents shall be submitted in two stages--preliminary and final drawings (i.e., working drawings), plans,

specifications and related documents. Final drawings, plans, specifications and related documents are hereby defined as those which are approved by the City in a form sufficient to obtain a building permit from the City. Any such items submitted to and approved in writing by the City in connection with design review (and not as part of the entitlement process) shall not be subject to subsequent disapproval by the City; provided that the foregoing shall not operate as a limitation on the City in connection with the implementation of its land use enactments and policies.

During the preparation of all plans, drawings, specifications and related documents for the Dealer Improvements, the City staff and Hunter Fiat shall hold regular progress meetings to coordinate the preparation by Hunter Fiat, and the submission to and review by the City of the same. The City staff and Hunter Fiat shall communicate and consult informally as frequently as is necessary to ensure that any such plans, drawings, specifications and related documents submitted by Hunter Fiat to the City can receive prompt and speedy consideration.

(d) Review by City of Plans, Drawings, Specifications and Related Documents.

The City shall have the right of reasonable architectural review and approval of building exteriors and design of the Dealer Improvements; provided, however, that the City shall approve building exteriors and design which are consistent with this Agreement. The City shall also have the right to review all plans, drawings, specifications and related documents with respect to the construction of the Dealer Improvements in order to ensure that they are consistent with this Agreement including the Scope of Development.

Hunter Fiat shall timely submit to the City for its review and approval any and all plans, drawings, specifications and related documents with respect to the construction of the Dealer Improvements, as required by the City. The City shall cooperate with and shall assist Hunter Fiat in order for Hunter Fiat to obtain the approval or disapproval of any and all development plans, drawings, specifications and related documents submitted by Hunter Fiat to the City consistent with this Agreement, within thirty (30) calendar days after the City's receipt of the same. In the event that the City disapproves of any of such plans, drawings, specifications and related documents, Hunter Fiat shall, within thirty (30) calendar days after receipt of such disapproval, revise and resubmit the same in accordance with the City's requirements and in such form and substance so as to obtain the City's approval thereof. The City Manager may, at his discretion, rely upon determinations of the dealer review process for the purposes of assuring that architectural and design review has been satisfactorily undertaken; however, the City shall retain its statutory authority with regard to the review of plans, the imposition of fees, the issuance of building permits and the conduct of building inspections.

The City shall approve any modified or revised plans, drawings, specifications and related documents to which reference is made in this Agreement within the times established in the Schedule of Performance, as long as said plans, drawings, specifications and related documents are generally consistent with the use of the Site for an Auto Dealership or Auto Dealerships as described under this Agreement and any other plans, drawings, specifications and related documents which have been approved by the City; provided that the foregoing shall not operate as a limitation on the City in connection with implementation of its land use policies. Upon any disapproval of plans, drawings, specifications or related documents, the City shall state in writing the reasons for said disapproval. Hunter Fiat, upon receipt of notice of any disapproval, shall promptly revise said disapproved portions of the plans, drawings, specifications or related documents in a manner that addresses the reasons for disapproval and reasonably meets the requirements of the City or in order to obtain the City's approval thereof. Hunter Fiat shall resubmit said revised plans, drawings, specifications and

related documents to the City as soon as possible after its receipt of the notice of disapproval and, in any event, no later than thirty (30) calendar days thereafter. The City shall approve or disapprove said revised plans, drawings, specifications and related documents in the same manner and within the same times as provided in this Section 3.1 for approval or disapproval of plans, drawings, specifications and related documents initially submitted to the City.

(e) Changes in Final Construction Plans, Drawings, Specifications and Related Documents. In the event that Hunter Fiat desires to make any change in the final construction plans, drawings, specifications and related documents after their approval by the City, Hunter Fiat shall submit the proposed change in writing to the City for approval. The City shall notify Hunter Fiat of approval or disapproval thereof in writing within sixty (60) calendar days after submission to the City. Said sixty (60) calendar day period may be extended by mutual consent of the parties. Any such change shall, in any event, be deemed to be rejected by the City unless approved, in whole or in part, by written notice thereof submitted by the City to Hunter Fiat, setting forth in detail the reasons therefor. The City shall use its best efforts to cause the City to review and approve or disapprove any such change under Section 3.1(d). Nothing herein shall entitle Hunter Fiat to any extension of the time set forth in the Schedule of Performance for the commencement of construction or the completion thereof, unless the City otherwise agrees in writing.

Hunter Fiat, upon receipt of a notice of disapproval by the City, may revise such parts of the proposed change in final construction plans, drawings, specifications and related documents as are rejected and shall thereafter resubmit said revisions to the City for approval in the manner provided in Section 3.1(d).

Hunter Fiat shall have the right, during the course of construction, to make changes in construction concerning and affecting only the interior of structures and “minor field changes” without seeking the approval of the City; provided, however, that said changes do not affect the type of use to be conducted within all or any part of a structure. Said “minor field changes” shall be defined as those changes from the approved final construction plans, drawings, specifications and related documents which have no substantial effect on the improvements and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this Section 3.1 shall be deemed to constitute a waiver of or change in the City’s Building Code requirements governing said “minor field changes” or in any and all approvals by the City otherwise required for said “minor field changes.”

(f) Costs of Construction and Other Costs. The costs of constructing the Dealer Improvements shall be borne by Hunter Fiat. Hunter Fiat shall at its expense cause to be prepared and shall pay any and all fees with respect to the review and approval thereof by the City, all required construction, planning and other documents reasonably required by governmental bodies with respect to the development of the Site hereunder including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications and design review documents (other than documents prepared under CEQA).

(i) Hunter Fiat shall carry out the design, construction and development of any work which may be undertaken by Hunter Fiat on the Site, in conformity with all applicable laws, including without limitation all applicable state labor standards and state labor laws relating to payment of prevailing wages to the extent, if any, that laws relating to prevailing wages are applicable, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all applicable disabled and handicapped access requirements, including without limitation

the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, and Civil Code Section 51, et seq. The previous listing of certain laws is not a statement that such laws will be applicable to activities undertaken by Hunter Fiat; it is only a statement that, where such laws are applicable, Hunter Fiat will comply with them.

(ii) Labor Code Section 1720(b)(3) treats work performed under contract with certain public entities as a “public work” where the work is paid for in whole or in part with public funds, which payment may be accomplished by a transfer of an asset of value for less than a fair market value price. If and to the extent required by applicable law, Hunter Fiat and its contractors and subcontractors shall pay prevailing wages in compliance with Health and Safety Code Sections 33423 through 33426, and Labor Code Section 1770, et seq., and shall be responsible for the keeping of all records required pursuant to Labor Code Section 776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, complying with the requirements of Labor Code Sections 1726 and 1781 (in such regard Hunter Fiat acknowledges and agrees it is and shall remain the “awarding body” for the work of construction to complete the Dealer Improvements as well as any additional or other improvements to the Site), and complying with all regulations and statutory requirements pertaining thereto. The City makes no representations or warranties whatsoever with respect to the applicability of the foregoing prevailing wage and public works requirements, and Hunter Fiat shall make its own determination as to such applicability.

Further, Hunter Fiat agrees that all public works (as defined in California Labor Code Section 1720) if any are performed pursuant to this Agreement (the “work”), if any, shall comply with the requirements of California Labor Code Sections 1770, et seq. In all bid specifications relating to public works, if any, contracts and subcontracts for the work, Hunter Fiat (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1771.

Hunter Fiat does hereby and shall indemnify and hold each of City and City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys’ fees, that may be asserted against or incurred by City or City with respect to or in any way arising from Hunter Fiat’s compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

(g) Schedule of Performance. Hunter Fiat shall begin and complete all construction and development and undertake the responsibilities of Hunter Fiat herein with respect to the construction of the Dealer Improvements within the times specified in the Schedule of Performance, or within such reasonable extensions of such times as may be granted by the City or as otherwise provided in this Agreement. The Schedule of Performance shall be subject to revision from time to time as mutually agreed upon in writing between the parties. Any and all deadlines for

performance by the parties shall be extended for any times attributable to delays described in Section 6.5 which are not the fault of the performing party and are caused by the other party, other than periods for review and approval of reasonable disapprovals by the City of plans, drawings, specifications and related documents or applications for permits as contemplated in this Agreement. The parties may extend the times for performance for a period of up to five years, as all such extensions are aggregated.

Before and during the period of construction of the Dealer Improvements, Hunter Fiat shall submit to the City written progress reports when and as reasonably requested by the City, but in no event more frequently than every two (2) weeks. The reports shall be in such form and detail as may reasonably be required by the City, and shall include a reasonable number of construction photographs taken since the last such report submitted by Hunter Fiat.

(h) Bodily Injury and Property Damage Insurance. Before the commencement of construction on the Site or the Hunter Fiat Property and until the recordation of a Certificate of Completion (as defined in Section 3.7) with respect to the Dealer Improvements, Hunter Fiat shall furnish, or shall cause its contractor or contractors to furnish, to the City, duplicate originals or appropriate certificates of general commercial liability insurance having combined single limits of liability of Two Million Dollars (\$2,000,000.00), naming the City and its officers, employees and agents as additional insureds. Said insurance shall cover comprehensive general liability, including automobile liability covering owned, nonowned and hired vehicles; contractor liability; subcontractor liability; premises-operations; explosion and collapse; broad form property damage and personal injury; and proof of workers compensation insurance. Any and all insurance policies required hereunder shall be obtained from companies admitted in the State of California and rated at least B+: XII in Best's Insurance Guide. In addition, the City shall reasonably consider any self-insurance program in which Hunter Fiat or Hunter Fiat's contractors or subcontractors participate. All of said insurance policies shall provide that they may not be cancelled unless the City receives written notice of cancellation at least ten (10) calendar days prior to the effective date of cancellation. Any and all insurance obtained by Hunter Fiat hereunder shall be primary to any and all insurance which the City and/or City may otherwise carry, including self-insurance, which insurance for all purposes of this Agreement shall be separate and apart from the insurance provided under this Agreement. Appropriate insurance means those insurance policies approved by the City Attorney consistent with the foregoing. Any and all insurance required hereunder shall be maintained and kept in force until the City has issued a Certificate of Completion with respect to the Dealer Improvements.

(i) Anti-discrimination during Construction. Hunter Fiat for itself, individually and collectively, and their successors and assigns agree that in the construction of the Dealer Improvements Hunter Fiat shall not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry.

(j) Local, State, and Federal Laws. Hunter Fiat shall carry out its construction of the Dealer Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and requirements, including prevailing wage laws as set forth in Labor Code §§ 1720, *et seq.*, to the extent applicable to the construction contemplated hereunder as to which the City makes no representations. It shall be the sole responsibility of Hunter Fiat to determine the applicability of such laws to the Dealer Improvements. Hunter Fiat agrees to hold harmless, indemnify and defend the City from any claim or liability in connection with the requirements of this section.

(k) Approval by City and Other Governmental Agencies of Permits. Before commencement of construction and development of any buildings, structures or other work or improvements upon the Site, Hunter Fiat shall, at its own expense, secure or shall cause to be secured, any and all permits for such construction, development or work which may be required by the City or any other government City having jurisdiction thereof. The City shall cooperate in good faith with Hunter Fiat in Hunter Fiat's efforts to obtain from appropriate governmental agency (other than the City) any and all such permits and, upon completion of applicable parts of the Dealer Improvements, certificates of occupancy.

(l) City Rights of Access. In addition to such rights City has by virtue of its operations and rights as a municipality, officers, employees, agents and/or representatives of the City shall have the right of reasonable access to the Site, without the payment of charges or fees, during normal construction hours during the period of construction of Dealer Improvements, for the purposes of this Agreement, including the inspection of the work being performed. Said officers, employees, agents and/or representatives of the City shall be those persons who are so identified by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Site as provided herein shall identify themselves at the job site office upon their entrance onto the Hunter Fiat Property and the Site. The City shall indemnify and hold Hunter Fiat harmless from injury, property damage or liability arising out of the exercise by the City of said rights of access, other than injury, property damage or liability relating to the negligence of Hunter Fiat or its officers, agents or employees.

Hunter Fiat agrees that if it elects to construct improvements on the Site, it shall use reasonable efforts to secure the building area on the Site and the Hunter Fiat Property during construction thereon by standard construction temporary fencing at least six (6) feet, in height in order to prevent unlawful entry by any persons and/or any attractive nuisance.

Section 3.2. Taxes, Assessments, Encumbrances and Liens. Hunter Fiat shall pay prior to delinquency all real property taxes and assessments assessed and levied on or against the Site and the Hunter Fiat Property. Hunter Fiat shall remove, or shall have removed, any levy or attachment made on the Site or the Hunter Fiat Property, or shall assure the satisfaction thereof, within a reasonable time, but in any event within 90 days after such attachment or levy. Nothing herein contained shall be deemed to prohibit Hunter Fiat from contesting the validity or amounts of any tax assessment, encumbrance or lien or to limit the remedies available to Hunter Fiat with respect thereto.

Section 3.3. Prohibition Against Transfer. Except as otherwise permitted in Section 6.15, Hunter Fiat shall not, without the prior written approval of the City (a) assign or attempt to assign this Agreement or any right herein with respect to the Site or the Hunter Fiat Property, or (b) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Site or the Hunter Fiat Property, or the improvements thereon. Said prohibition shall not apply to the reasonable grant of limited easements or permits to facilitate the development of the Site or the Hunter Fiat Property.

It is understood and agreed by Hunter Fiat that neither Hunter Fiat, nor its assigns or successors in interest to the Site, the Hunter Fiat Property, or this Agreement, shall use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Site or the Hunter Fiat Property, or any part thereof to any entity or party, or for any use of the Site or the Hunter Fiat Property, that is partially or wholly exempt from the payment of real property taxes with respect to the Site or the

Hunter Fiat Property, or any part thereof, or which would cause the exemption of the payment of all or any part of said real property taxes, during the Operating Covenant Period.

In the absence of specific written agreement or approval by the City, no unauthorized sale, transfer, conveyance, lease, leaseback or assignment of the Site or the Hunter Fiat Property or any portion thereof shall be deemed to relieve Hunter Fiat or any other party from any obligations under this Agreement. The City shall not unreasonably withhold its approval of the sale of the Site or the Hunter Fiat Property so long as Hunter Fiat and such other Auto Dealership(s) as shall have been established on the Site and/or the Hunter Fiat Property provide (i) evidence of manufacturer approval by the proposed transferees reasonably satisfactory to the City Manager and (ii) the proposed transferee provides evidence of capital sufficient to operate such dealerships reasonably satisfactory to the City Manager, and which conforms to the provisions of Section 6.15 of this Agreement.

Section 3.4. City Cure Rights. In the event of a default or breach by Hunter Fiat of a mortgage, deed of trust or other security interest with respect to the Site (or any part thereof), and in the event that the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from Hunter Fiat of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site (or any part thereof), as applicable, to the extent of said costs and disbursements. Any such lien shall be subordinate and subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to construct the Dealer Improvements as authorized herein.

Section 3.5. Estoppel Certificate. Upon the request of Hunter Fiat or any lender, purchaser, tenant or other party having an interest in the Site or the Hunter Fiat Property, the City shall issue a signed estoppel certificate stating that this Agreement is in full force and effect and that no default hereunder exists on the part of Hunter Fiat or any successor, or in the event that any such default is claimed to exist, the nature of said default. Said estoppel certificate shall be delivered by the City within thirty (30) calendar days after receipt of written request therefor; provide that the City shall not be required to provide more than two (2) estoppel certificates in any calendar year.

Section 3.6. Operating Covenant. For a period commencing as of the Start Date and ending on the Determination Date (such period constituting the Operating Covenant Period), Hunter Fiat shall operate an Auto Dealership on the Site and on the Hunter Fiat Property (which covenant to so operate constitutes the "Fiat Operating Covenant") and Hunter Fiat and the Principals shall operate as Auto Dealerships the Other Principal Dealerships (the "Other Dealership Covenant" and, together with the Fiat Operating Covenant, the "Operating Covenant"). The dealership at the Site shall initially be the Hunter Fiat Dealership, but may include such additional or other Auto Dealerships as the City may hereafter approve. Operation of the Auto Dealership, or Auto Dealerships, shall be on a continuous and uninterrupted basis for an automobile dealership in southern California. Disruption of operation by casualties which interrupt operations shall not be deemed to violate the Operating Covenant so long as operation as an Auto Dealership is resumed as soon as reasonably practicable under the circumstances.

In order to verify that Hunter Fiat is so operating in conformity with the Operating Covenant, Hunter Fiat shall provide to City promptly upon completion of each quarter which occurs in whole or in part during the Operating Covenant Period copies of its quarterly Sales Tax Report filed with the State Board of Equalization accompanied by a report of sales attributable to the Hunter Fiat Dealership and such other evidence reasonably requested by the City to properly allocate taxable

sales (including leases) with respect to the Site. A similar protocol shall be followed by Hunter Fiat and the Principals as to each of the Other Dealerships.

Section 3.7 Certificate of Completion. After (a) the written request therefor by Hunter Fiat, (b) the completion of construction and development of all Dealer Improvements on the Site or the Hunter Fiat Property, as applicable, excluding any normal and customary tenant improvements and minor building “punch-list” items, to be completed by Hunter Fiat, and (c) with respect to the Site, the commencement of the business of an Auto Dealership on the Site as evidenced by the placement of vehicle inventory and an employee sales staff on the Site and the completion of the first automobile sales transaction on the Site, the City shall issue to Hunter Fiat a Certificate of Completion substantially in the form set forth in Exhibit “I” attached hereto (the “Certificate of Completion”). It is the intention of the City and Hunter Fiat that separate Certificates of Completion may be issued with respect to the Site and the Hunter Fiat Property (if construction is to take place on the Hunter Fiat Property). At the option of the City, said Certificate of Completion may be entitled “Agreement Affecting Real Property.” The Certificate of Completion may be issued under the administrative authority of the City Manager.

The City shall not unreasonably withhold the issuance of a Certificate of Completion. The Certificate of Completion shall be, and shall so state, that it is a conclusive determination of satisfactory completion of the construction of the Dealer Improvements by Hunter Fiat on the Site and, if applicable, the Hunter Fiat Property, as stated in the Certificate of Completion. After the recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or, if applicable, the Hunter Fiat Property, respectively, shall not (because of said ownership, purchase, lease or acquisition) incur any obligation or liability for construction of the Dealer Improvements under this Agreement, except that (a) said party shall be bound by any covenants contained in Sections 3.6 and Sections 4.1 through 4.5 hereof and in the Grant Deed, lease or other instrument of transfer, which Grant Deed, lease or other instrument of transfer shall include the provisions of Sections 3.6, 4.1 through 4.5, inclusive, of this Agreement, and (b) any and all covenants and obligations set forth in Section 3.6 hereof shall survive the issuance of a Certificate of Completion. Neither the City nor any other person, after the recordation of a Certificate of Completion, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement with respect to the construction of the Dealer Improvements on the Site, as the case may be, as a result of a default in or breach of any provision of this Agreement, other than the respective rights and obligations of the parties as set forth in Sections 3.6, 4.1 through 4.5 hereof and in the Grant Deed and/or the rights and obligations set forth in Section 3.6 hereof. The Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder for the County of Los Angeles.

In the event that the City refuses or fails to issue a Certificate of Completion after written request from Hunter Fiat, the City shall, within thirty (30) calendar days after the written request or within fifteen (15) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide to Hunter Fiat a written statement setting forth the reasons for the City’s refusal or failure to issue a Certificate of Completion. The statement shall also contain the City’s opinion of the action that Hunter Fiat must take to obtain a Certificate of Completion. In the event that the City fails to provide said written statement within the foregoing period, Hunter Fiat shall be deemed conclusively and without further action of the City to have satisfied the requirements of this

Agreement with respect to the completion of the Dealer Improvements as if a Certificate of Completion had been issued therefor.

The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Hunter Fiat to any holder of a mortgage (including without limitation the City), or any insurer of a mortgage securing money loaned to finance the improvements which constitute the Auto Dealership, or any part thereof, nor shall it constitute evidence of satisfaction of any of Hunter Fiat's obligations to the City pursuant to Section 3.6, Article IX or any other executory provisions of this Agreement. The Certificate of Completion shall not be deemed to constitute a notice of completion under Section 3093 of the California Civil Code.

ARTICLE IV

USE OF THE SITE

Section 4.1. Uses. Hunter Fiat covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site, or any part thereof, that following the conveyance of the Site to Hunter Fiat and continuing until full satisfaction of the Note Amount, Hunter Fiat, said successors and said assigns shall use the Site (and any and all parts thereof) for purposes of an Auto Dealership and shall devote the Site (and any and all parts thereof) solely to the uses specified therefor in this Agreement and in the Grant Deed conveying the Site from the City to Hunter Fiat, whichever document is most restrictive as to the uses permitted on the Site. Without limiting the effect of the foregoing, it is understood and agreed by Hunter Fiat that neither Hunter Fiat nor their assigns or successors in interest to the Site or this Agreement, shall use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Site, or any part thereof, to any entity or party, or for any use of the Site, that is partially or wholly exempt from the payment of real property taxes with respect to the Site, or any part thereof, or which would cause the exemption of the payment of all or any part of said real property taxes with respect to the Site, during the Operating Covenant Period.

Section 4.2. Maintenance of the Site. Hunter Fiat covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site, or any part thereof, that Hunter Fiat, said successors and said assigns shall maintain in good condition the improvements on the Site, shall keep the Site, free from any accumulation of debris or waste material, subject to normal construction jobsite conditions, and shall maintain in a neat, orderly, healthy and good condition the landscaping planted on the Site.

Section 4.3. Obligation to Refrain from Discrimination. Hunter Fiat covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Section 4.4. Form of Nondiscrimination and Nonsegregation Clauses. Hunter Fiat covenants and agrees for themselves, their successors, their assigns, and every successor in interest to the Site, or any part thereof, that Hunter Fiat, said successors and said assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Site, (or any part thereof) on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land;

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

(c) “That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased.”

(d) In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Section 4.5. Effect and Duration of Covenants. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon Hunter Fiat and any successor in interest to the Site, or any part thereof, for the benefit and in favor of the City, its successors and assigns, and the City, and shall automatically cease and terminate upon the issuance of a Certificate of Completion with respect to the Site, except as otherwise provided in the Grant Deed by which the Site is conveyed by the City to Hunter Fiat hereunder or as hereinafter provided; upon condition, however, that the covenants set forth in Section 3.6 hereof shall remain in effect until they are satisfied in full, the covenants set forth in Sections 4.1 and 4.2 hereof shall remain in effect until the expiration date of the Redevelopment Plan, and the covenants set forth in Sections 4.3 and 4.4 hereof shall remain in effect in perpetuity.

Section 4.6. Release of Hunter Fiat from Covenants. Notwithstanding any provision in this Article IV to the contrary, after the conveyance by Hunter Fiat to another party of all or any part of the Site, which conveyance is not in violation of any of the terms and conditions of this Agreement and subject to the prior written approval of the transferee by the City and the acceptance of liability by such transferee for performance by Hunter Fiat under this Agreement, Hunter Fiat shall not thereafter be liable for any violation of the terms and conditions set forth in Sections 4.1 through 4.4 hereof with respect to the portion of the Site so conveyed; upon condition that any and all successors in interest to Hunter Fiat hereunder accept liability for any such violation.

ARTICLE V

DEFAULTS, REMEDIES AND TERMINATION

Section 5.1. Defaults - General. Subject to extensions of time as set forth in Section 6.5 hereof, the failure or delay by either party to perform any term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that in the event that a party otherwise in default commences to cure, correct or remedy said default within thirty (30) calendar days after receipt of written notice specifying said default and diligently and continuously prosecutes said cure, correction or remedy to completion (and where any time limits for the completion of said cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), said party shall not be deemed to be in default hereunder.

The nondefaulting party shall give written notice of default to the defaulting party, specifying the default complained of by the non-defaulting party. Any delay in giving said notice shall not constitute a waiver of any default nor shall it change the time of default.

Any failure or delay by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by said party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which are permitted by this Agreement and which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 5.2. Legal Actions.

(a) Institution of Legal Actions. Except with respect to the resolution of certain disputes under Section 6.11, either party may commence legal action to cure, correct or remedy any default under this Agreement, on the terms provided in this Agreement. Said legal actions must be

instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

(b) Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process. In the event that any legal action is commenced by Hunter Fiat against the City, service of process shall be made by personal service, or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against Hunter Fiat, service of process on Hunter Fiat shall be made by either personal service upon Hunter Fiat or any agent which Hunter Fiat has designated to accept service for him, where the City has received notice of such designation, or in such other manner as may be provided by law.

Section 5.3. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, and until the nondefaulting party has elected its remedies under applicable law, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of said rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. Notwithstanding the foregoing, no default with respect to Hunter Fiat Property shall entitle the City to any right or remedy with respect to the Site.

Section 5.4. Damages. In the event that either party defaults with respect to any provision of this Agreement, the non-defaulting party shall serve written notice of said default upon the defaulting party. In the event that the defaulting party does not diligently commence to cure said default within thirty (30) calendar days after service of said notice of default, the defaulting party shall be liable to the other party for and only for the following damages caused by said default. In the event Hunter Fiat voluntarily moves Hunter Fiat from the Site or the Hunter Fiat Property or one or more of the Other Dealerships is voluntarily removed without replacing such Auto Dealership with a high line new car dealership within six (60) months from the day of the move or closure, the full amount due under the Dealer Note shall immediately be accelerated and shall immediately come due and payable.

Section 5.5. Equitable Relief. In the event that either party defaults with respect to any provision of this Agreement, the nondefaulting party shall serve written notice of said default upon the defaulting party. In the event that the defaulting party does not commence to cure said default and diligently and continuously proceed with said cure within thirty (30) calendar days after service of the notice of default, and in the event that said default is not cured within a reasonable time thereafter (and where any time limits for the completion of said cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), the nondefaulting party may, at its option, institute an action for any available equitable relief under this Section 5.5, as follows:

(a) In the event the City shall fail to convey the Site despite Hunter Fiat having satisfied all conditions to closing, Hunter Fiat may enforce by specific performance the obligation of the City to convey the Site; and,

(b) In the event of any default by Hunter Fiat under Sections 4.1, 4.2, 4.3 and 4.4, the City shall be entitled to injunctive relief, specific performance or any other available equitable relief against Hunter Fiat, as applicable.

Section 5.6. Termination.

(a) Termination by Hunter Fiat. Without limiting any other right or remedy of Hunter Fiat under this Article V, Hunter Fiat may terminate this Agreement prior to conveyance of the Site to Hunter Fiat, in the event that Hunter Fiat satisfies the conditions for close of the Site Escrow as set forth in Section 2.11 of this Agreement but the City fails to convey title to the Site and such failure is not cured within sixty (60) days following the giving of notice by Hunter Fiat to City. Except for the foregoing portion of this Section 5.6(a), Hunter Fiat shall not have the right to terminate this Agreement.

(b) Termination by the City.

(i) Without limiting the effect of any other right or remedy of the City under this Article V, the City may terminate this Agreement in the event that Hunter Fiat fails to close Escrow in the manner and condition and by the date provided in this Agreement (or any and all extensions thereof as authorized by this Agreement) due to a default by Hunter Fiat, and in the event that any said failure is not cured within the time provided in Section 5.1 after written demand therefor submitted by the City to Hunter Fiat. Said written demand shall specify the default and the action required to cure the same.

(ii) Without limiting the effect of any other right or remedy of the City under this Article V, the City may terminate this Agreement in the event that Hunter Fiat, in breach of this Agreement, assigns or attempts to assign this Agreement, or any right herein, or attempts to make any total or partial sale, lease or leaseback, transfer or conveyance of the whole or any part of the Site, or the Dealer Improvements to be constructed thereon in violation of the terms of this Agreement, and in the event that any such failure is not cured as provided in Section 5.1. Said written demand shall specify the default and the action required to cure the same.

(iii) Without limiting the effect of any other right or remedy of the City under this Article V, the City may terminate this Agreement with respect to the Site, in the event that Hunter Fiat (a) does not carry out its other responsibilities under this Agreement with respect to the completion of any improvements undertaken as to the Site or in accordance with any modification or variance, precise plan, design review and other environmental or governmental approvals or (b) fails to proceed with reasonable diligence to complete the construction such improvements once construction is initiated and in the event that any such failure described in (a),or(b) of this paragraph is not cured as provided in Section 5.1. Said written demand shall specify the default and the action required to cure the same.

In the event of any termination of this Agreement under this Section 5.6(b) without further demand by the City, Hunter Fiat shall return any sums which have previously been paid by the City to Hunter Fiat and shall convey fee simple, merchantable title to the Site, as applicable.

ARTICLE VI

GENERAL PROVISIONS

Section 6.1. Notices, Demands and Communications Between the Parties. Any and all notices, demands or communications submitted by either party to the other party pursuant to or as required by this Agreement shall be proper and shall be deemed to be given in accordance with this Agreement in the event that it is in writing and dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested or overnight mail delivery service, to the principal office of the City and Hunter Fiat, as applicable, as designated in this Section 6.1. Said written notices, demands and communications may be sent in the same manner to such other addressees and/or addresses as either party may from time to time designate in the form and manner as provided in this Section 6.1. Any such notice, demand or communication shall be deemed to be received by the addressee on the day received by the addressee or, in the event that said notice, demand or communication is mailed or sent by registered or certified mail or overnight mail delivery service, upon receipt or rejection by the addressee, or return undelivered. In the event that said notice, demand or other communication is mailed and received by the addressee, it shall be deemed received by the addressee, regardless of (a) whether any return receipt is received by the sender or (b) the date that is set forth on any such return receipt.

Any and all notices, demands or communications shall be addressed and sent to parties as follows:

To the City: CITY OF LANCASTER
44933 North Fern Avenue
Lancaster, CA 93534
Attn: City Manager

(with copy to) Attn: Community Development Director

(with copy to) STRADLING YOCCA CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attn: Allison Burns, Esq.

To the Dealer: VIPER ENTERPRISES, INC.
a California corporation, dba HUNTER FIAT

_____, California _____
Attn: Tim Fuller, Tom Fuller

Section 6.2. Conflict of Interest. No member, official or employee of the City having any conflict of interest, direct or indirect, related to this Agreement and the development of the Site shall participate in any decision with respect to the Agreement. The parties represent and warrant that they do not have knowledge of any such conflict of interest.

Section 6.3. Warranty Against Payment of Consideration for Agreement. The Dealer and Hunter Fiat warrant that they have not paid or given, and shall not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this

Section, shall not include persons to whom fees are paid for professional services in the event that they are rendered by attorneys, financial consultants, accountants, engineers, architects real estate brokers and the like when such fees are considered necessary by Hunter Fiat.

Section 6.4. Nonliability of City Officials and Employees. No member, official or employee of the City shall be personally liable to Hunter Fiat, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Dealer, Hunter Fiat or to its successor, or on any obligations under this Agreement, except for gross negligence or willful acts of such member, officer or employee.

Section 6.5. Enforced Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes or lack of transportation; weather caused delays; inability to secure necessary labor, materials or tools; delays of any contractors, subcontractor or supplier; acts of the other party other than as permitted or required by the terms of this Agreement; acts or failure to act of any public or governmental City or entity other than as permitted or required by the terms of this Agreement (except that action or failure to act by the City shall not extend the time for the City to act unless said action or failure to act is the result of a lawsuit or injunction including by way of illustration, but not limited to, lawsuits pertaining to the adoption of the Agreement, any environmental documentation and procedures, eminent domain, and the like), any other causes beyond the control or without the fault of the party claiming an extension of time to perform or any other event provided herein which entitles either party to claim an extension of time to perform. Any extension of time for any such cause hereunder shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, in the event that notice by the party claiming said extension is sent to the other party within thirty (30) calendar days after the commencement of the cause.

Times for performance under this Agreement may also be extended by mutual agreement in writing between the parties. Notwithstanding any provision set forth herein to the contrary, any and all time limitations and dates for performance set forth in the Schedule of Performance are subject to the provisions set forth in this Section 6.5.

Section 6.6. Inspection of Books and Records. The City shall have the right at all reasonable times at the City's cost and expense to inspect the books and records of Hunter Fiat with respect to the Site and/or the development of the Dealer Improvements as necessary for the City, in its reasonable discretion, to enforce its rights under this Agreement. Matters discovered by the City shall not be disclosed to third parties unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights of the City hereunder.

Section 6.7. Approvals; Good Faith; Further Acts.

(a) Approvals required of the City or Hunter Fiat, or any officers, agents or employees of either the City or Hunter Fiat, shall not be unreasonably withheld and approval or disapproval shall be given within the time set forth in this Agreement or in the Schedule of Performance or, in the event that no time is given, within a reasonable time.

(b) The City Manager is authorized to sign on his own authority, amendments to this Agreement which are of routine or technical nature, including minor adjustments to the Schedule of Performance.

(c) In exercising their rights and in discharging their obligations under this Agreement, the parties shall conduct themselves in the utmost good faith, so the purposes of this Agreement can be attained.

(d) The parties shall take such further steps and sign such further documents as may be necessary from time to time to attain the purposes of this Agreement.

Section 6.8. Real Estate Commissions. The City and Hunter Fiat represent and warrant to one another that no real estate commissions, brokerage fees or finder fees shall be payable with respect to the sale of the Site to Hunter Fiat, and each party agrees to indemnify the other with respect to any claims therefor.

Section 6.9. Indemnification. Hunter Fiat agrees to indemnify and hold the City, and its officers, employees and agents, harmless from and against all claims, demands, suits, damages, judgments, costs, expenses and fees arising from or related to any act or omission of Hunter Fiat in performing its obligations hereunder, including without limitation the failure of Hunter Fiat to discharge any mechanic's or contractor's liens against the Site or the Hunter Fiat in conjunction with the construction of the Dealer Improvements.

Section 6.10. Attorneys' Fees. In the event that either party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, seeks the resolution of disputes under Section 6.11, or is made a party to any action or proceeding brought by the Escrow Agent, then as between the parties, the prevailing party shall be entitled to recover as an element of its costs of suit or resolution of disputes under Section 6.11 hereof, and not as damages, its reasonable attorney's fees and expert witness fees as fixed by the Court or other forum for resolution of disputes as set forth in Section 6.11, in such action or proceeding or in a separate action or proceeding brought to recover said attorney's fees.

Section 6.11. Dispute Resolution. In the event that, after a good faith effort to resolve any dispute with respect to the interpretation of this Agreement, and in order to provide for an expeditious resolution of any such dispute, said dispute shall be subject to reference under California Code of Civil Procedure, Sections 638 et seq. This provision shall constitute the consent of the parties to reference under California Code of Civil Procedure, Section 638 et seq. for the limited purposes set forth in this Section 6.11.

All fees of the referee shall initially be equally borne by each party, which fees shall be treated as costs of litigation. In the event that the parties and the referee are unable to agree on the referee's fees, then the reasonableness of said fees shall be determined by an appropriate law and motion or master calendar department judge of the Los Angeles County Superior Court.

The referee shall be a retired Superior Court Judge and shall be selected by written agreement of the parties from those available from the Judicial Arbitration & Mediation Services, Inc., located at 3340 Ocean Park Boulevard, Suite 1050, Santa Monica, California 90405, or from any other arbitration or mediation service which then exists in Southern California (the "Panel") or, in the event that the parties are unable to so agree, on petition by either party to the Presiding Judge of the

Los Angeles County Superior Court, who shall make the selection from the Panel. The reference may be initiated by either party by the filing of a complaint and motion for appointment of a referee.

The referee appointed shall set a reasonable schedule for the conduct of any necessary discovery, preparation of briefs and all other procedures necessary to speedily, economically and fairly bring the matter to trial before him. The referee shall be empowered to decide all law and motion, discovery, pleading and evidentiary issues brought before him, shall not be bound by formal rules of evidence and may admit such evidence as is determined by him to be relevant and probative of the issues raised by the reference. The parties shall make available to the referee, and to each other, all books, records, schedules and other information reasonably requested. The referee may employ experts not associated with, employed by or affiliated with either party as he determines is necessary to aid him in deciding the reference.

The referee's decision shall be in writing, with findings of fact and conclusions of law, in the event that they are requested by either party, and shall be rendered no later than thirty (30) calendar days after the conclusion of the trial, unless the parties agree to a later date.

The referee shall be empowered to award litigation costs and attorneys' fees to the party who, in the light of the issues litigated and the referee's decision on those issues, is determined by the referee to be the prevailing party in the action. In the event that a party voluntarily dismisses an action after it has been submitted for reference, a reasonable sum shall be awarded by the referee as attorneys' fees to the other party.

Section 6.12. Agreements with Other Parties. Nothing contained herein shall in any manner limit or preclude the City from entering into any agreement or agreements, either similar to this Agreement or otherwise, with any dealer, participating owner or other party with respect to other real property or projects, whether or not said dealer, participating owner or other party owns, has an interest in or represents a competing business or facility which involves the retail sale or leasing of Vehicles and related uses.

Section 6.13. Financial Assistance. The City shall have no obligation or commitment to provide any form of financial assistance to Hunter Fiat with respect to the Site or the construction and development of the Project, except as is specifically set forth in this Agreement.

Section 6.14. [Reserved].

Section 6.15. Successors and Assigns; Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties. However, Hunter Fiat shall not assign, transfer or in any manner hypothecate any or all of the rights and obligations of Hunter Fiat under this Agreement or with respect to the Site except to the extent permitted by this Agreement. Without limiting the effect of any other provision of this Agreement, Hunter Fiat or any permitted transferee of Hunter Fiat shall have the right, with the consent of the City, which consent shall not be unreasonably withheld, (a) to sell, convey, transfer, lease, leaseback, assign, hypothecate or in any manner dispose of all or any part of its interests in the Site, this Agreement or the Auto Dealership, to any person or entity which controls or which is under common control with Hunter Fiat or (b) to transfer by will, trust or operation of law all or any part of its interests in the Site, this Agreement or the Auto Dealership, or (c) to transfer in trust all or any part of its interests in the Site, this Agreement or the Auto Dealership. Hunter Fiat shall give notice of said proposed transfer not less than thirty (30) days, in advance, to the City.

Without limiting the effect of any other provision of this Section 6.15, in the event of any sale, conveyance, transfer, lease, leaseback, assignment, hypothecation or other disposition which is permitted by this Agreement or, otherwise, which is made with the consent of the City, the Dealer shall have the right to retain and not delegate the obligations under the Dealer Note. The City shall be given thirty (30) days' notice in advance and either (i) the City shall have received evidence satisfactory to it, that such proposed successor in interest to Hunter Fiat has manufacturers' approval and Hunter Fiat shall remain liable for all amounts due under the Dealer Note hereof or such successor has assumed in writing, in a form and manner acceptable to the City, the obligations of the Dealer under this Agreement and specifically the obligation to pay all amounts due under the Dealer Note in which case, Hunter Fiat shall be released from all amounts payable under the Dealer Note, or (ii) all amounts payable under Dealer Note shall have been paid. It is the intent of the parties hereto that notwithstanding any other provision of this Agreement, Hunter Fiat or their successors in interest shall not remove Fiat or other auto franchise established on the Site at any time during the Operating Covenant Period or while any monies are owing to the City without the express written approval of the City. Except as otherwise provided in this Section 6.15, upon any sale, conveyance, transfer, lease, leaseback, assignment, hypothecation or other disposition which is permitted by this Agreement or, otherwise, which is made with the consent of the City, Hunter Fiat shall be relieved of liability with respect to any obligation which has been delegated and assumed with such City consent.

Section 6.16. Section Headings. The headings of the several sections of this Agreement are inserted solely for convenience of reference, and are not a part of and are not intended to govern, limit or aid in the construction of any term or condition of this Agreement.

Section 6.17. Severability. Notwithstanding the fact that each and every Section of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement, in the event that any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the parties hereby agree that the Agreement shall continue in full force and effect unless otherwise agreed in writing by the parties.

Section 6.18. Meaning of Terms. Where the context so requires, the use of the masculine gender shall include the feminine and the neuter gender, and the singular shall include the plural, and vice versa.

ARTICLE VII

ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

Section 7.1. Incorporation of Exhibits. The following Exhibits are attached to and incorporated in this Agreement, and such Exhibits, as applicable, are incorporated by reference in their entirety wherever reference is made in this Agreement to any such Exhibit, as applicable:

EXHIBITS

- A Legal Description
- B Site Map
- C Scope of Development
- D CC&Rs, as Amended
- E Schedule of Performance

- F Site Grant Deed
- G Dealer Note
- H Deed of Trust
- I Certificate of Completion
- J Memorandum of Agreement
- K Waiver

Section 7.2. Entire Agreement; Counterparts. This Agreement shall constitute the entire agreement between the parties and shall supersede all prior agreements. This Agreement shall be executed by the parties hereto in five (5) duplicate originals, each of which is deemed to be an original, and this Agreement may be executed in original counterparts each of which shall be deemed to be an original for all purposes and such counterparts shall constitute one and the same instrument.

This Agreement includes twenty-nine (29) pages and Exhibits “A” through “K” which constitute the entire understanding and Agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site, and the development thereof.

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with the Grant Deed conveying title to the Site and this Agreement shall continue in full force and effect throughout the Operating Covenant Period.

Section 7.3. Waivers and Amendments. Any and all waivers of the terms and conditions of this Agreement and any and all amendments of this Agreement must be in writing and must be duly approved and executed by the applicable party hereto.

Section 7.4. Administration. This Agreement shall be administered and executed by the City Manager, or his designated representative, following approval of this Agreement by the City.

The City shall maintain authority of this Agreement through the City Manager (or his authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the City as specified herein as agreed to by the City Council, and such amendments may include extensions in time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

ARTICLE VIII

ACCEPTANCE OF AGREEMENT BY CITY AND RECORDATION

Section 8.1. Approval and Execution. After the execution of this Agreement by Hunter Fiat and the prompt delivery of this Agreement thereafter by Hunter Fiat to the City, this Agreement must be approved and executed by the City and delivered by the City to Hunter Fiat within sixty (60) calendar days after the date of submission of the Agreement by Hunter Fiat to the City in order for the Agreement to become effective. In the event that the City has not approved, executed and delivered the Agreement to Hunter Fiat within said period, this Agreement shall be deemed to be of no further force or effect unless the time for said approval, execution and delivery is extended by

written notice from Hunter Fiat to the City. The date of this Agreement shall be the date when the Agreement shall have been executed by the parties. The parties agree that this Agreement shall not be binding if Chrysler does not approve the plans for the Dealer Improvements or the relocation of the Dealership to the Site.

Section 8.2. Recordation. The parties agree to permit the recordation of this Agreement or a Memorandum of Agreement, substantially in the form attached hereto as Exhibit "J," against the Site in the Office of the Recorder for the County of Los Angeles, California.

ARTICLE IX

ESTABLISHMENT OF ADDITIONAL DEALERSHIPS

Section 9.1. Additional Dealerships. Hunter Fiat and the Principals shall use diligent efforts to establish additional Auto Dealerships within the Lancaster Auto Mall. In addition, in the event one or more of Hunter Fiat or the Principals shall consider establishing an Auto Dealership within California but in a location other than the City, Hunter Fiat and the Principals shall notify the City in writing of such proposed establishment, including detailed terms, and shall afford City the opportunity to match or exceed such terms based upon location of such dealership within the Lancaster Auto Mall or otherwise within the corporate limits of the City; notice shall be given to City at least ninety (90) days prior to Hunter Fiat or any of the Principals to committing to establish a dealership outside the corporate limits of the City. If the City matches or exceeds such terms, Hunter Fiat and the Principals shall be precluded from establishing such dealership outside the City and shall instead exercise diligent efforts to consummate the establishment of such dealership at the Lancaster Auto Mall or another location within the corporate limits of the City.

Section 9.2. Permanent Insurance Coverage. In the event that Hunter Fiat becomes a member of any property owners association with respect to the Auto Mall, Hunter Fiat shall use its best efforts to cause said property owners association to name the City as an additional insured under its commercial general liability insurance policy, in the event that such can be accomplished without any additional premium cost to said property owners association.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

CITY

CITY OF LANCASTER

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

APPROVED AS TO PROGRAM:

By: _____
Economic Development Director

DEALER

VIPER ENTERPRISES, INC.
a California corporation, dba Hunter Fiat

By: _____
Its: _____

TIM FULLER (as a "Principal" per Section 9.1)

TOM FULLER (as a "Principal" per Section 9.1)

EXHIBIT "A-1"

**LEGAL DESCRIPTION
OF
THE SITE**

The real property located in the City of Lancaster, County of Los Angeles, described as:

Parcel 8, of Parcel Map No. 20314, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 216 Pages(s) 80 through 82 inclusive of Parcel Maps, in the office of the County Recorder of said County.

EXHIBIT "A-2"

**LEGAL DESCRIPTION
OF
THE HUNTER FIAT PROPERTY**

The real property located in the City of Lancaster, County of Los Angeles, described as:

Parcels 10, 11, and 12 of Parcel Map No. 20314, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 216 Pages(s) 80 through 82 inclusive of Parcel Maps, in the office of the County Recorder of said County.

EXHIBIT "B"

SITE MAP



EXHIBIT "C"

SCOPE OF DEVELOPMENT

I. GENERAL DESCRIPTION

The Site is specifically delineated on the Site Map (Exhibit "B") and more particularly described in the Legal Description contained in Exhibit "A-2". The Site consists of approximately 85,337 square feet.

II. DEVELOPMENT OF THE SITE

Hunter Fiat shall use and develop the Site for (1) vehicular display and storage and/or (2) construction and operation of Auto Dealership facilities for a Fiat franchise which conforms in all respects to the standards of the manufacturer for a premium dealership and the requirements of the Hunter Fiat's dealership agreement. No portion of the Site shall remain unimproved. Buildings shall be constructed of masonry, concrete, concrete block, wood frame and stucco, or such other materials as may hereafter be approved by the City [and shall also be in compliance with the Design Guidelines (attached hereto as Attachment "C-1") and Conditional Use Permit No. 88-15 (attached hereto as Attachment "C-2") approved by the City of Lancaster Planning Commission on January 9, 1989].

Hunter Fiat shall develop those improvements to be situated on the Site pursuant to this Exhibit "C" (the "On Site Improvements") and those off-site improvements required to be constructed as conditions of approval imposed by the City in its entitlement or approval process (the "Off Site Improvements"). The On Site Improvements and the Off Site Improvements collectively constitute the Dealer Improvements with respect to the Site.

Hunter Fiat shall commence and complete the Dealer Improvements by the respective times established therefor in the Schedule of Performance (Exhibit "E").

III. DEVELOPMENT STANDARDS

The Dealer Improvements shall conform to local zoning, conditional use permit, design guidelines and applicable provisions of the Lancaster Municipal Code and the following development standards:

A. **Building Setbacks.** Minimum building setbacks for buildings and parking areas shall conform to City approval.

B. **Building Coverage.** The amount of land within the Site and the Hunter Fiat Property covered by buildings shall satisfy requirements of the City and this Agreement and shall equal a minimum of ten (10%) percent of the property such that the Site and the Hunter Fiat Property are fully utilized as automotive dealership facilities.

C. **Building Height.** Buildings shall not exceed the height permitted by the City.

D. **Vehicular Access.** The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow. In the interest of minimizing traffic congestion, the City will

control the number and location of curb breaks for access, for off-street parking and truck loading. All access driveways shall require written approval of the City.

E. Loading. Adequate loading and unloading space shall be provided as approved by the City. Loading spaces visible from streets shall be landscaped or screened to prevent an unsightly or barren appearance. Said requirements shall also conform to Lancaster Municipal Code.

F. Building Signs. Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. All signs shall conform to the approved final signage plan, as approved by the City. Any additional signs identifying building use will be permitted, but their height, size, location, color, lighting and design will be subject to City approval and shall be in conformance with the conditional use permit approved for the project.

G. Screening. All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by the City and shall be in conformance with the conditional use permit approved for the project.

H. Landscaping. Hunter Fiat shall provide and maintain landscaping within the setback area, along all street frontages and conforming with the Final Design Drawings as hereafter approved by the City.

Landscaping shall consist of trees, shrubs and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to City approval prior to planting.

I. Utilities. All utilities shall be underground or enclosed at Hunter Fiat's expense.

J. Painting. All exterior walls shall be painted by Hunter Fiat with color(s) subject to City approval.

K. Building Design. Buildings shall be constructed such that the Dealer Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed.

L. Parking. Hunter Fiat shall provide and maintain sufficient on-site parking for employees and customers as approved by the City.

IV. OFF-SITE IMPROVEMENTS AND UTILITIES

Hunter Fiat, at its own cost and expense shall provide or cause to be provided the following off-site improvements within the time set forth for the completion of the Dealer Improvements in the Schedule of Performance (Exhibit "E"):

1. Installation of driveway approaches, and repair of existing sidewalks, curbs, gutters and street paving as may be required by Hunter Fiat's development plan and the relocation of any improvements previously installed by the City.

2. Stub utilities to the Site as may be required by Hunter Fiat's development plan.

3. Other improvements required by the City in connection with the approval of the development.

EXHIBIT "D"

CC&R'S

[ORIGINAL CC&Rs DATED JUNE 13, 1989]

AND AMENDMENTS

RECORDING REQUEST BY

96 153764

WHEN RECORDED MAIL TO

NAME Attention: Mr. John Wood
City of Lancaster
MAILING ADDRESS Redevelopment Agency
44933 North Fern Avenue
CITY, STATE Lancaster, CA 93534-2461
ZIP CODE

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
1:01 PM JAN 26 1996

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FEE \$ 52 S

16 (16)

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "E"

SCHEDULE OF PERFORMANCE

- | | | |
|---|---|---|
| 1 | Opening of Escrow for the Site (Section 2.2). The City and Hunter Fiat agree to open Escrow for the Conveyance of the Site. | Within ten (10) days after the Date of Agreement. |
| 2 | Close of Escrow for the Site (Section 2.1(b)). Close of Escrow is to occur upon satisfaction of the conditions set forth in Section 2.11. | Upon satisfaction of the conditions set forth in § 2.11, but not later than December 17, 2014. |
| 3 | Recordation of the Memorandum of Agreement (Section 2.03). The Escrow Agent shall cause the Memorandum of Agreement to be recorded. | Concurrently with the Close of Escrow. |
| 4 | Submission of Development Plans, Landscape Plans, Construction Drawings and Related Documents for the Site (Section 3.1(c)). Hunter Fiat shall submit to the City for approval development plans, landscape plans, construction drawings and related documents. | Not later than ninety (90) days following the fourth anniversary of the Date of Agreement. |
| 5 | Commencement of Construction of Dealer Improvements (Section 3.1(g)). Hunter Fiat shall obtain all permits necessary to begin and shall begin construction of the Dealer Improvements. | Not later than (i) twenty-four (24) months after the Date of Agreement or (ii) by such later time as mutually designated by the parties. |
| 6 | Completion of improvements. Hunter Fiat shall complete construction of such improvements on the Site as it may elect to undertake. | Not later than twelve (12) months after start of construction but in any event not later than thirty six (36) months following the Date of Agreement. |

In the event of any conflict between any provision of this Schedule of Performance and any provision set forth in the main body of the Agreement, the latter shall control.

EXHIBIT "F"
SITE GRANT DEED

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
Viper Enterprises, Inc., a)
California corporation, dba)
Hunter Fiat)
)
)
Lancaster, CA 93534)
Attn: _____)

APN: 3125-024-939

DOCUMENTARY TRANSFER TAX: \$ _____

Signature of declarant or agent determining tax

For valuable consideration, receipt of which is hereby acknowledged,

The CITY OF LANCASTER, a public body, corporate and politic (the "Grantor"), hereby grants to Viper Enterprises, Inc., a California corporation, dba Hunter Fiat (the "Grantee"), the real property hereinafter referred to as the "Site," described in Attachment No. 1 attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. Grantor excepts and reserves from the conveyance herein described all interest of Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through and to use and occupy all parts of the Site lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. The Site is conveyed in accordance with and subject to the Disposition and Development Agreement entered into among Grantor and Grantee dated _____, 2014 (the "Agreement"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference. The Agreement generally provides for the conveyance of the Site to the Grantee. In addition, the Agreement requires Grantee to develop the Site as an Auto Dealership, as defined in the Agreement. All terms used herein and not otherwise defined shall have the same meaning as those used in the Agreement.

3. Grantee 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,

and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Grantee 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. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased.

(c) In contracts entered into relating to the sale, transfer or leasing of the Site or any interest therein: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

5. All covenants contained in this Grant Deed shall be covenants running with the land and shall remain in effect in perpetuity.

6. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

GRANTOR:

THE CITY OF LANCASTER, a public body
corporate and politic

By: _____
City Chairman

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
City Attorney

ATTACHMENT NO. 1
LEGAL DESCRIPTION
(Site)

The real property located in the City of Lancaster, County of Los Angeles, described as:

Parcel 8, of Parcel Map No. 20314, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 216 Pages(s) 80 through 82 inclusive of Parcel Maps, in the office of the County Recorder of said County.

EXHIBIT "G"
DEALER NOTE

Principal Amount: \$430,000

Maturity: November 1, 2034

Lancaster, California _____, 2014

1. FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay to the order of the CITY OF LANCASTER ("Holder"), at 44933 North Fern Avenue, Lancaster, California 93534 or such other place as the Holder may from time to time designate in writing, the "Note Amount" (as herein defined), in lawful money of the United States of America, together with other charges as set forth below, until fully paid.

2. This Promissory Note ("Promissory Note") is made and delivered pursuant to and in implementation of an Disposition and Development Agreement by and between the Holder and the Maker dated _____ (the "DDA"), copies of which are on file as public records with the Holder and are incorporated herein by reference. The DDA provides for the disposition and development of real property. The Promissory Note is made to assure payment of the Purchase Price under the DDA, and to provide security for the Holder (the "City") as to such payment. The Maker acknowledges that but for the execution and delivery of this Promissory Note, the Holder would not enter into the DDA. Unless definitions of terms are expressly set out at length herein, each term shall have the same definition as set forth in the DDA.

3. The failure of the Maker to timely pay in full when due the "Note Amount" (as hereinafter defined) shall constitute a default of Maker under the terms of this Promissory Note. In the event the Maker fails to timely pay in full when due the Note Amount, any portion which is not timely paid in full shall accrue interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution.

4. Pursuant to the DDA, the Maker shall pay to the Holder an amount equal to \$21,500 (the "Annual Payment Amount") on November 1, 2015 (the "Initial Payment Date") and on each anniversary thereof (each a "Subsequent Payment Date") continuing to and including November 1, 2034 as payment for the Site pursuant to Section 2.7 of the DDA; provided that for the annual period ending as of the Initial Payment Date, if the Maker has operated the Hunter Fiat Dealership in conformity with the Operating Covenant as in not in default of the DDA, the City shall apply a credit equal to the payment which would otherwise be due on the Initial Payment Date. The foregoing process shall be repeated as to each subsequent annual period (determined as of each Subsequent Payment Date, with a credit being applied equal to the Annual Payment Amount in the event the Operating Covenant is being implemented and there are no defaults under the DDA. The amounts evidenced by this Promissory Note (originally, \$430,000) shall be subject to acceleration in the event of any default under the DDA.

This Promissory Note is secured by a Deed of Trust (the "Deed of Trust") of even date herewith.

5. Any amount remaining payable as the Note Amount as of November 1, 2034, after applying such credits as shall become applicable under Section 4, shall be paid in full within thirty (30) days of November 1, 2034.

6. Upon payment in full of the Note Amount, the Holder shall return this Promissory Note to the Maker.

7. The Maker promises to pay reasonable attorneys' fees and costs and expenses incurred by the Holder hereof in connection with any default or in any action or other proceeding brought to enforce any of the provisions of this Promissory Note.

VIPER ENTERPRISES, INC., A California
corporation, dba HUNTER FIAT

By: _____

Its: _____

EXHIBIT "H"
DEED OF TRUST

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

APN: 3125-024-939

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS
(SHORT FORM)

This DEED OF TRUST, _____ between

Viper Enterprises, Inc., a California corporation, dba Hunter Fiat, herein collectively called TRUSTOR,

whose address is _____,
(Number and Street) (City) (State)

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called TRUSTEE,
and

CITY OF LANCASTER, a Redevelopment City created and existing pursuant to the Community
Redevelopment Law, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of **\$430,000** according to the terms of the Promissory Note executed by Viper Enterprises, Inc., a California corporation, dba Hunter Fiat and dated as of _____, 20__, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Los Angeles County on August 18, 1964 at Book T-3878, Page 874, among the Official Records of the Los

Angeles County Recorder shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

STATE OF CALIFORNIA }
COUNTY OF _____ }ss
On _____ }
before me,

_____, personally appeared

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

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

(continued on next page)

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay; at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may; make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defeat any action purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said not for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of said having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply to proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO FIRST AMERICAN TITLE INSURANCE COMPANY, TRUSTEE:

The under signed is the legal owner and holder of the note and of all indebtedness secured by the foregoing Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust,
Note and Reconveyance to _____

Do Not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

EXHIBIT "J"

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY AND)
MAIL TO:)
)
City of Lancaster)
44933 North Fern Avenue)
Lancaster, California 93534)
Attn: Geri K. Bryan, City Clerk)

FEES WAIVED AND FREE RECORDING
REQUESTED PURSUANT TO GOVERNMENT
CODE SECTION 6103

MEMORANDUM OF AGREEMENT

This is a Memorandum of Agreement ("Memorandum") as more particularly provided for in that certain Disposition and Development Agreement (the "Agreement") entered into as of _____, 2014 by and between the City of Lancaster ("City") and Viper Enterprises, Inc., a California corporation, dba Hunter Fiat ("Hunter Fiat"), concerning the following described real property (the "Site") located in the City of Lancaster, County of Los Angeles, State of California:

See Exhibit A-1, attached hereto and incorporated herein by reference.

This Memorandum is prepared for the purpose of recordation and is not a complete summary of the Agreement. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement. In the event of conflict between this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control.

CITY OF LANCASTER

Dated: _____, 2014

By: _____
City Manager

(SEAL)

ATTEST:

Geri K. Bryan, City Clerk

VIPER ENTERPRISES, INC., a California
corporation, dba HUNTER FIAT

Dated: _____, 2014

By: _____
Its: _____

EXHIBIT "K"

WAIVER

THIS WAIVER is executed on the ____ day of _____, 2014, by Viper Enterprises, Inc., a California corporation, dba Hunter Fiat, ("Hunter Fiat"). A Waiver in the form of this Waiver has been previously executed by and among the CITY OF LANCASTER, a municipal corporation ("City"), VIPER ENTERPRISES, INC., a California corporation, dba HUNTER FIAT ("Hunter Fiat"); TOM FULLER, and TIM FULLER.

RECITALS

A. Hunter Fiat, Tom Fuller, Tim Fuller and the City each own real property subject to that certain Declaration of Covenants, Conditions and Restrictions For The Antelope Valley Auto Mall, dated June 13, 1989, which was recorded as Document No. 89-1098946 in the Official Records of the Los Angeles County Recorder's Office on July 11, 1989 (the "Declaration") and are each an "Owner" and are collectively "Owners" within the meaning of the Declaration. The term "Owner" includes successors in interest.

B. The Declaration was recorded against certain real property located within the City of Lancaster, County of Los Angeles, California, which is legally described in Attachment "A" attached hereto and incorporated herein by reference (the "Property") intended to be developed as a master-planned retail automotive sale and leasing center (the "Auto Mall").

C. Hunter Fiat is in escrow to acquire from the City fee title to a parcel located within the Property subject to the Declaration and upon close of such escrow Hunter Fiat shall be an "Owner".

D. Each Owner is a member of the Lancaster Auto Mall Association, a California nonprofit mutual benefit corporation (the "Association").

E. The Association was formed for the purpose of exercising the powers and functions set forth in the Declaration, including administering, managing and maintaining certain aspects of the Auto Mall and the Property, including any portion of the public right-of-way located within or contiguous to the Property required to be maintained by the Association as set forth in a duly authorized written agreement entered into among the Association, the City and any portion of a parcel required to be maintained by the Association as set forth in a duly authorized written agreement entered into between the Association and the owner of such parcel.

F. As a condition to the subdivision of parcels in the Auto Mall, Parcel Map No. 20314 required the establishment of Zone "A" of the Landscape Maintenance District ("Zone "A") pursuant to the Landscape and Lighting Act of 1972 (California Streets & Highways Code Section 22500 et seq.) (the "Act") to provide for the maintenance of the ten-foot wide landscaped areas adjacent to the street right-of-ways in the Auto Mall.

G. In order to fairly assess the benefit derived from landscaping adjacent to major and secondary streets in the Auto Mall, annual assessments are levied on the Owners to pay for maintenance and contractor costs incurred by City in connection with the maintenance of the landscaped strips included within Zone "A".

H. The Owners desire that the real property included within Zone “A” be detached from the Landscape Maintenance District and that the Owners be permitted to maintain or cause to be maintained the landscaped areas within the Auto Mall.

I. In order to effectuate the detachment of Zone “A” from the Landscape Maintenance District and ensure the continued maintenance of the landscaped areas in the Auto Mall, it is necessary that the Declaration be amended as set forth in the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for the Antelope Valley Auto Mall (the “Second Declaration Amendment”).

J. The City are willing to conditionally detach Zone “A” from the Landscape Maintenance District provided the Owners (i) waive any rights which Owners may have to contest or protest such detachment, (ii) acknowledge City’s right to re-annex the Property into Zone “A” of the Landscape Maintenance District in the event of default by the Owners in their obligation to maintain the landscape areas in the Auto Mall in accordance with the Second Declaration Amendment and (iii) waive any rights which Owners may have to contest or protest such annexation and subsequent levy of assessments.

K. Upon the satisfaction of certain conditions precedent, including, but not limited to, the execution of this Waiver, the City have agreed in the Second Declaration Amendment to initiate such detachment proceedings and to authorize such private work in accordance with certain conditions and procedures set forth in the Second Declaration Amendment in order to ensure a continued level of quality and service in the maintenance of the landscaped areas in the Auto Mall.

L. Pursuant to Section 11 of the Second Declaration Amendment, as a condition precedent to the sale or transfer of fee title to any parcel located within the Property, the Owner is required to submit to the City this Waiver executed by the proposed transferee.

NOW, THEREFORE, Hunter Fiat hereby acknowledges and agrees for himself, his assignees and any and all successors in interest to the Property as follows:

Section 1: Hunter Fiat hereby waives the resolutions, reports, notices of hearing, and rights of majority protest as set forth in California Streets and Highway Code Sections 22609 and 22585 et seq. and any other form of notice, contest or protest provided under such sections or permitted under any other applicable local, state or federal law with respect to the detachment of “Zone A” from the Landscape Maintenance District.

Section 2: Hunter Fiat hereby acknowledges and agrees that City shall have the right to re-annex the Property into Zone “A” of the Landscape Maintenance District (“the Re-Annexation”) upon the occurrence of an “Event of Default” as defined in Section 12 of the Second Declaration Amendment.

Section 3: In accordance with Streets and Highways Code Section 22608, Hunter Fiat hereby waives the resolutions, reports, notices of hearing and right of majority protest and any other form of contest or protest as provided under such sections or permitted under any other applicable local, state or federal law with respect to the Re-Annexation.

Section 4: In the event of Re-Annexation, Hunter Fiat hereby waives the right to protest as set forth in Streets and Highways Code Sections 22589 and 22628 and any other form of contest

or protest as provided under such sections or other applicable local, state or federal law with respect to assessments subsequently levied to reimburse the City for all costs incurred in connection with the Re-Annexation and for all costs of reconstruction and/or relandscaping of any portion of the Property and the landscaped areas therein damaged by or as a result of Owners' default under the Second Declaration Amendment and otherwise necessary to maintain Zone "A" of the Landscape Maintenance District.

Section 5: Hunter Fiat hereby agrees, warrants and represents that he has carefully read the contents of this Waiver and that, in executing this Waiver he does so with full knowledge of any right which he may have, that he has received independent legal advice from his attorneys, or in the alternative, knowingly has determined not to seek legal advice with respect to the matters set forth herein, and that Hunter Fiat has freely signed this Waiver without relying on any agreement, promise, statement or representation by or on behalf of either City, or their respective officers, agents, employees, attorneys except as specifically set forth in the Second Declaration Amendment and this Waiver. Hunter Fiat further acknowledges that the waivers set forth herein represent substantial incentive and consideration for the detachment of Zone "A" from the Landscape Maintenance District and that but for the waivers by each Owner, the City would not commence detachment proceedings.

Section 6: The statements, representations and recitals contained in this Waiver are to be considered contractual in nature and not merely recitations of fact. This Waiver shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, agents, successors, legal representatives and assigns.

Section 7: The laws of the State of California shall govern this Waiver in all respects, including, but not limited to, matters of construction, validity, enforcement and interpretation.

Section 8: The drafting and negotiation of this Waiver has been participated in by City, City and Owners, and for all purposes this Waiver shall be deemed to have been drafted jointly by all parties.

IN WITNESS WHEREOF, Hunter Fiat has executed this Waiver as of the date set forth below.

VIPER ENTERPRISES, INC.
a California corporation, dba HUNTER FIAT

Dated: _____, 2014.

By: _____
Its: _____

ATTACHMENT "A"
LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 in Parcel Map 20314, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 2116, Pages 80 to 82 of maps, in the Office of the County Recorder of said County.