

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: Economic Development Dept

APN: 0240-091-63-0000

Exempt from Recording Fees per Govt. Code §27383

CITY OF FONTANA

**OPERATING COVENANT AGREEMENT
(Fontana Automotive Service, Inc.)**

This Operating Covenant Agreement (“Agreement”) is dated January 29, 2020, for reference purposes only and is entered into by and between the CITY OF FONTANA, a California municipal corporation (“City”), and FONTANA AUTOMOTIVE SERVICES, INC., a California corporation, (“Owner”). City and Owner enter into this Agreement with reference to the following recited facts (each a “Recital”):

RECITALS

A. Owner has constructed an automobile sales business (“Business”) at 16800 South Highland Avenue, Fontana, California 92336 (“Property”), which improved the Property from its undeveloped use and enhanced the surrounding neighborhood. Owner estimated the business generated approximately Six Hundred Thousand Dollars (\$600,000) in City Development Fees (“City Development Fees”). Owner’s projected sales for Years one (1) and two (2) is Thirty-Five Million Dollars (\$35,000,000) per year. Owner estimates that this will result in Three Hundred Fifty Thousand Dollars (\$350,000) of Sales Tax per year. The annual projected sales “goal” for Years three and beyond is Fifty-Two Million (\$52,000,000) per year. Owner estimates that this will result in Five Hundred Twenty Thousand Dollars (\$520,000) of Sales Tax per year. City acknowledges that the calculations in this paragraph are estimates of future activity and such projections, goals and estimates are not binding or enforceable in any way. It is projected that Three Million Three Hundred Thousand Dollars (\$3,300,000) of Sales Tax will be generated in the first seven (7) years. Once the Owner has been paid one million eight hundred thousand dollars (\$1,800,000), the City will receive one hundred percent (100%) of the sales tax revenue.

B. As an incentive for the continued operation of the Business on the Property, Owner has requested financial assistance from the City for a period of up to twelve (12) years in an amount equal to fifty percent (50%) of all sales tax revenue per year that is generated from the

Property for Years' one (1) through twelve (12) to a maximum amount of one million eight hundred thousand dollars (\$1,800,000). City's sales tax revenue payments shall not, in the aggregate, exceed One Million Eight Hundred Thousand Dollars (\$1,800,000), subject to the limitations set forth in this Agreement. In addition, Owner will receive a bonus payment in the amount of Two Hundred Forty Thousand Dollars (\$240,000) for its commencement of operations.

C. The City has determined that Owner's operation of the Business results in substantial benefits to the City and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Agreement serves a significant public purpose, while providing only incidental benefits to a private party.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, CITY AND OWNER AGREE AS FOLLOWS:

1. Definitions. All initially capitalized terms used in this Agreement shall have the meanings set forth below or, if not set forth below, where such terms first appear in this Agreement.

2. **“Affiliate”** means any corporation included in Fontana Automotive Services, Inc.'s affiliated group or any other Person or entity, directly or indirectly, Controlling or Controlled by or under the same common Control.

2.1 “Business” means and refers to the operation of a Mazda dealership, or other automobile dealership approved by the City in its reasonable discretion, on the Property as a permanent automobile sales business including a sales building, a service building, and parking, in accordance with the terms and conditions of this Agreement.

2.2 “Business Activities” means and refers to activities of Owner on the Property, over the internet, or otherwise that result in the sale or lease of any tangible personal property (including, but not limited to, automobiles) through the Business where such sale or lease is subject to sales or use tax pursuant to the Sales Tax Law.

2.3 “CDTFA” means the California Department of Tax and Fee Administration and any successor agency.

2.4 “CEQA” means and refers to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*

2.5 “Certificate of Occupancy” means and refers to the written certification of the City that the Business is constructed in compliance with applicable building codes and other laws and is suitable for occupancy.

2.6 “City” means and refers to the City of Fontana, a California municipal corporation.

2.7 “**City Attorney**” means and refers to the City Attorney of the City of Fontana, California.

2.8 “**City Council**” means and refers to the City Council of the City of Fontana, California.

2.9 “**City Manager**” means and refers to the City Manager of the City of Fontana, California, or his or her designee or successor in function.

2.10 “**Control**” means possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

2.11 “**County**” means and refers to the County of San Bernardino, California.

2.12 “**Covenant Payment(s)**” means and refers to payments made to Owner in accordance with Section 8.3.

2.13 “**Default**” shall have the meaning ascribed to the term in Section 20 of this Agreement.

2.14 “**Effective Date**” shall have the meaning ascribed to the term in Section 3 of this Agreement.

2.15 “**Eligibility Period**” means and refers to the time period commencing on October 1, 2019 and ending on the earlier of: (a) the last calendar day of Operating Year 12; or (b) the date on which the cumulative total of the Covenant Payments equals the Maximum Payment, in accordance with Section 8.3.

2.16 “**Enforced Delay**” means and refers to delays or defaults in performance due to war; acts of terrorism; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy including terrorist activities; referenda; acts of governmental authorities (except that the failure of the City to act as required under this Agreement shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes.

2.17 “**Equity Interest**” means and refers to all or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

2.18 “**Federal**” means and refers to the federal government of the United States of America.

2.19 “**Law**” means every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Federal, State or local government applicable to the Property or the Business in any way, including relating to any development, renovation, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or the Business, or relating to any taxes, or otherwise relating to this Agreement or any

Party's rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

2.20 "Local Sales Tax Revenues" means the net Sales Tax actually received by the City from the CDTFA pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Business in a particular Operating Year. Local Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the CDTFA; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Term; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or required by the State of California to be set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

2.21 "Maintenance Deficiency" means and refers to an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described in Section 11.

2.22 "Maximum Payment" means and refers to Covenant Payments equal to Two Million Forty Three Thousand Dollars (\$2,040,000) which includes the bonus payment for commencement of operations and the Covenant Payments calculated based upon Sales Tax Revenue received by the City.

2.23 "Negotiation Period" means and refers to a period of no less than thirty (30) calendar days.

2.24 "Notice of Appeal" shall have the meaning ascribed to the term in Section 8.6.

2.25 "Notice of Determination" shall have the meaning ascribed to the term in Section 8.5.

2.26 "Operating Year" means and refers to each twelve (12) month fiscal year starting on October 1st in the year following receipt of the Certificate of Completion and each consecutive subsequent twelve (12) month fiscal year until the end of the Eligibility Period. Each Operating Year may be referred to in this Agreement in numerical succession as "Operating Year 1," "Operating Year 2" and so on up to "Operating Year 12."

2.27 "Owner" means and refers to FONTANA AUTOMOTIVE SERVICES, INC., a California corporation, and Owner's successors and assigns, cumulatively.

2.28 "Penalty Assessments" means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

2.29 “Person” means and refers to any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.30 “Prohibited Financial Assistance” means and refers to any direct or indirect payment, subsidy, rebate or other similar or dissimilar monetary or nonmonetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financing, property or sales tax relief or rebates, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner by any public or private person or entity which violates the provisions of Section 9 herein.

2.31 “Property” means that certain real property located at 16800 South Highland Avenue, Fontana, California 92336, in the City of Fontana, California, as further described in Exhibit A attached hereto.

2.32 “Recorded, record or recordation” mean the recordation of the specified document(s) in the official records of the Recorder of the County of San Bernardino, California.

2.33 “Sales Tax” means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Business, excluding that which is to be refunded to Owner because of an overpayment of such tax.

2.34 “Sales Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 *et seq.*, and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the CDTFA and other binding rulings and interpretations relating to (a) and (b) of this Section 2.34.

2.35 “State” means and refers to the State of California.

2.36 “Term” means and refers to the Eligibility Period .

2.37 “Transfer” means and refers to, regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.37, shall be deemed a Transfer by Owner, even though Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received written notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer

tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

3. Effective Date of this Agreement. This Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

3.1 This Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

3.2 Following all legally required notices and hearings, this Agreement has been approved by the City Council; and

3.3 This Agreement has been executed by the appropriate authorities of the City and delivered to Owner.

The Effective Date shall be confirmed in writing by the parties.

4. Representations and Warranties of the City.

4.1 The City represents and warrants to Owner that, to the City’s actual current knowledge:

(a) The City’s entry into this Agreement and/or the performance of the City’s obligations under this Agreement does not violate any contract or agreement to which the City is a party;

(b) There are no pending claims or lawsuits against the City that will delay or prevent the performance of the City’s obligations under this Agreement; and

4.2 The representations and warranties of the City set forth in Section 4.1 are material consideration to Owner and the City acknowledges that Owner is relying upon the representations of the City set forth in Section 4.1 in undertaking its obligations under this Agreement.

4.3 As used in this Agreement, the term “City’s actual current knowledge” shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purposes of making such representation or warranty and without any duty of inquiry or investigation.

5. Representations and Warranties of Owner.

5.1 Owner represents and warrants to the City that, to Owner’s actual current knowledge:

(a) Owner is a California corporation that does business as Fontana Mazda;

(b) The individual(s) executing this Agreement on behalf of Owner is/are authorized to execute this Agreement on behalf of Owner;

(c) Owner's entry into this Agreement and/or the performance of Owner's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Owner;

(d) Owner's entry into this Agreement and/or the performance of Owner's obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(e) There are no pending lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of Owner's obligations under this Agreement;

(f) Owner is not "relocating" to the Property from the territorial jurisdiction of another local agency in the same "market area," as those terms are defined in California Government Code Section 53084 and decisional case law, such that this Agreement would violate the prohibitions of California Government Code Section 53084;

(g) This Agreement does not result in a reduction in the amount of Local Sales Tax Revenue that, in the absence of this Agreement, would be received by another local agency where Owner maintains a physical presence, if applicable, such that this Agreement would violate the prohibitions of California Government Code Section 53084.5; and

(h) Owner has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by Owner and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

5.2 The representations and warranties of Owner set forth in Section 5.1 are material consideration to the City and Owner acknowledges that the City is relying upon the representations of Owner set forth in Section 5.1 in undertaking its obligations under this Agreement.

5.3 As used in this Agreement, the term "Owner's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Owner's Vice President, Ryan Aguilar, as of the date of the making of the representation or warranty, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

6. Restrictions on Assignment or Transfer of this Agreement; Notice Obligations.

6.1 Owner may sell, assign, convey, create any trust estate with respect to or otherwise transfer, assign or encumber any of their rights or interests in this Agreement, the Property, or the Dealership to an Affiliate, with at least thirty (30) days written notice to the City before executing or effectuating such assignment, conveyance, transfer or encumbrance.

6.2 Owner may sell, assign, convey, transfer, or encumber any of their rights or interest in this Agreement, the Property or Dealership to a non-Affiliate with at least thirty (30)

days written notice and the written consent of the City prior to executing or effectuating such assignment, conveyance, transfer or encumbrance. City's consent shall not be unreasonably withheld, delayed, or conditioned. In deciding to give or withhold its approval, the City may consider the financial strength of the proposed transferee and the demonstrated experience and qualification of the proposed transferee and its senior management personnel to undertake and faithfully carry out the assigned rights and obligations. City shall provide Owner with notice of its consent (or lack of consent) a reasonable amount of time, not to exceed twenty-five (25) days, after receiving notice from Owner. If City provides consent this Agreement shall continue pursuant to its then existing terms and conditions.

6.3 Owner may sell, assign, convey, transfer or encumber any of their rights or interest in the Dealership or the Property to a non-Affiliate without the City's consent. Owner agrees and acknowledges that in the event of such transfer this Agreement shall terminate and be of no further force or effect, save for both parties' defense and indemnification obligations which survive such termination.

7. Recordation of Agreement. After this Agreement or a Memorandum of Agreement has been recorded against the Property, the City shall have received a conformed copy thereof showing all recording information, and the City shall have been provided evidence reasonably acceptable to it that the Agreement occupies a recorded priority position senior to all other non-statutory liens and encumbrances against the Property.

8. Owner's Covenant Regarding the Operation the Business. Owner covenants to the City that Owner has commenced operation of the Business on the Property prior to the beginning of the Eligibility Period and will continuously operate the Business on the Property during the time that this Agreement is in effect throughout the entirety of the Term. For purposes of this Section 8 "continuously operate" means not ceasing operation for a time period in excess of ninety (90)consecutive calendar days unless due to an Enforced Delay.

8.1 Designation of City as Point of Sale. Owner shall designate the City as the "point of sale" in all reports to the CDTFA for all Business Activities. Owner shall, for the full Term, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for it to lawfully conduct the Business Activities and to designate the City as the "point of sale" in all reports and returns submitted to the CDTFA regarding the Business Activities by the Business. The provisions of this Section 8.1 shall survive any Default by Owner.

8.2 Owner Sales Tax Information. Owner acknowledges and agrees that the sales and use tax reporting and payment information related to sales and use taxes attributable to Business Activities by the Business may become a public record as a result of the covenants of Owner contained in Section 8.1 and the Covenant Payments to be made by the City to Owner (as further described in Section 8.3). Owner hereby authorizes the City to use the sales and use tax reporting and payment information related to the Business Activities by the Business to allow the City to perform its obligations under this Agreement and to disclose such information when, in the City Attorney's reasonable opinion, such disclosure is required by law.

8.3 City's Covenant Payment to Owner. In consideration of Owner's performance of its obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall pay the Owner \$240,000 15 business days or 30 calendar days

after execution of this Agreement; and (2) on a quarterly basis, for Years one (1) through twelve (12) of the Eligibility Period, pay to Owner an amount equal to the sum of fifty percent (50%) of the Local Sales Tax Revenues received by the City from the Business for that Operating Quarter (“Covenant Payment”), subject to the following limitations:

(a) The cumulative total of all Covenant Payments paid by the City pursuant to this Agreement shall not exceed the Maximum Payment.

(b) The City shall receive 100% of Local Sales Tax Revenues from the Business Activities above the maximum payment amount due under City’s Covenant Payment obligations or at the end of the Eligibility Period, whichever occurs first.

8.4 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the State of California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Local Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the State of California legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Local Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Local Sales Tax Revenues and, accordingly, the Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the State of California legislature with respect to the allocation of Local Sales Tax Revenues to the City. Owner agrees that they are undertaking their obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of future legislation. The City acknowledges that the State of California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Local Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City shall treat any such offsetting revenues which are: (a) indexed to Sales Tax and offset the loss of Sales Tax revenues to the City on a dollar for dollar basis; (b) actually received by the City; and (c) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Local Sales Tax Revenues within the meaning of this Agreement.

8.5 City’s Notice of Determination of Operating Year Local Sales Tax Revenues and Covenant Payment. Within thirty (30) days of City’s receipt of the Sales & Use Tax 401-A form (or successor form, if any) from Owner and receipt of Local Sales Tax Revenues from the CDTFA or other government entity for each quarter of an Operating Year within the Eligibility Period, the City will determine the Local Sales Tax Revenues applicable to that quarter of the Operating Year and send the Covenant Payment due for that quarter of the Operating Year to Owner (“Notice of Determination”). For clarification, the City will receive any tax information regarding leases from the CDTFA or other government entity and not the Owner.

8.6 Owner's Notice of Appeal; Negotiation Period. Notwithstanding any other provision of Law, including, without implied limitation, any statutes of limitation provided therefore in the California Government Code or the California Code of Civil Procedure, the City's determination of each Covenant Payment shall be deemed final, conclusive, and non-appealable unless, within sixty (60) calendar days from the receipt of the Covenant Payment by Owner, Owner notifies the City in writing that Owner appeals the Covenant Payment, which notice must specifically identify the matter appealed and all of the bases for such appeal and include the following documentation: (i) certified copies of quarterly reports to the CDTFA which set forth the amount of sales tax paid to the CDTFA during the Operating Year in connection with Business Activities; (ii) any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, and any other documents evidencing the amount of sales tax paid by Owner during such Operating Year; and (iii) any and all invoices, and inventory records for such Operating Year, certified as accurate and complete by an authorized official of the party submitting such records ("Notice of Appeal"). Any Covenant Payment that is not appealed in the manner and within the time limits set forth above, shall be final and conclusive as against Owner and all others claiming by or through Owner. If Owner files a timely Notice of Appeal with the City, the City and Owner shall negotiate in good faith to resolve their dispute for a Negotiation Period. If, by the end of the Negotiation Period, the City and Owner are unable to resolve the dispute set forth in the Notice of Appeal, each of them may exercise any judicial remedy available to them pursuant to this Agreement for the resolution of such dispute; provided, however, that any provision of law to the contrary notwithstanding, such judicial remedy must be instituted (defined as the filing of an action in a court of competent jurisdiction in strict accordance with the terms of this Agreement) within one hundred twenty (120) calendar days following the end of the Negotiation Period or be barred forever. In connection therewith, the City and Owner irrevocably consent to the appointment of a referee to resolve such dispute in accordance with California Code of Civil Procedure Section 638, et seq., and to pay equal amounts of the cost of such referee.

8.7 No Accrual of Interest for Disputed Covenant Payment(s). The City and Owner agree that any disputed amount shall not accrue interest during the pendency of any Negotiation Period or subsequent legal proceeding (including any appeals filed in connection therewith), unless the court makes a determination upon recommendation of the referee that the City acted in bad faith with regard to the dispute, in which case, any amount ultimately adjudged to be owing by the City shall be deemed to have accrued interest at the rate of six percent (6%) simple interest per annum, commencing on the ninetieth (90th) calendar day following the end of the Negotiation Period and continuing thereafter until paid. Owner hereby waives, to the maximum legal extent, the right to the imposition of any different rate of interest in accordance with any provision of law.

8.8 Covenant Payment Paid From Any Source of City Funds. Any Covenant Payment due under Section 8.3 may be payable from any source of any funds of the City legally available for such purpose. The City covenants to reasonably consider such actions as may be necessary to include all payments owed hereunder in each of its annual budgets during the Eligibility Period and to reasonably consider the necessary annual budgetary appropriations for all such payments.

8.9 Making Covenant Payment Is A Contingent Obligation of City. The City's obligations under Section 8.3 are contingent on a fiscal year to fiscal year basis and, for each

Operating Year within the Eligibility Period, the City's obligations to make any payments to Owner under this Agreement are expressly contingent upon Owner, for the entirety of such Operating Year, completely fulfilling its material obligations under this Agreement. If for any reason Owner fails to authorize the release or use of all or any part of sales tax information regarding the Business in a manner satisfactory to the CDTFA or provide any information reasonably required by the City to perform the City's obligations under this Agreement, or if all or any part of the sales tax information of Owner is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, the Covenant Payment shall be based solely upon the information so received, if any.

8.10 CDTFA Determination of Improperly Allocated Local Sales Tax Revenues.

If, at any time during or after the Eligibility Period of this Agreement, the CDTFA determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. This Section 8.10 shall survive the expiration or termination of this Agreement.

8.11 Business Costs and Charges to be Paid by Owner. Except as otherwise expressly provided in this Agreement, Owner and the City agree that the City shall not provide any financial assistance to Owner in connection with the Business.

8.12 Annual Sales Tax Review. Owner shall cooperate with City if City chooses to conduct an annual audit of the receipts and payments to confirm the amount received annually in sales tax and payments made to Owner. Following said audit, City or Owner shall make a true up payment as may be necessary.

8.13 Covenants Run With the Property. The covenants of this Section 8 shall run with the Property and shall remain in effect at all times that this Agreement is in effect during the Term.

9. Owner's Covenant Not To Accept Prohibited Financial Assistance. Owner covenants to the City that during the Term, Owner will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in: (i) the relocation of the point of sale for Business Activities from the City, (ii) a material (i.e.,-five percent (5%) or greater) reduction in the amount of Local Sales Tax Revenues compared with the previous Operating Year which would be generated from the Business Activities in the absence of such an agreement, or (iii) any event of default by Owner. The covenants of this Section 9 shall run with the Property and shall

remain in effect at all times that this Agreement is in effect during the Term. For clarification purposes, a downturn in the economy or market resulting in a reduction of sales tax received by the City does not in itself constitute Prohibited Financial Assistance.

10. Owner's Covenant To Maintain the Property on Tax Rolls During the Term. Owner covenants to the City to maintain the Property on the County of San Bernardino, California, secured real property tax rolls throughout the Term.

10.1 During the Term, Owner, and its successors and assigns, covenants and agrees to pay all property tax bills with respect to the Property and all improvements thereon on or before the last calendar day for the timely payment of each property tax installment on each December 10 and April 10, and to timely pay all supplemental tax bills regarding such property issued by the County of San Bernardino, California.

10.2 The covenants of this Section 10 shall run with the Property and shall remain in effect at all times that this Agreement is in effect for the Term.

11. Owner's Covenant to Maintain the Property in Good Condition. Owner covenants to the City that it shall maintain areas of the Property that are subject to public view (including all existing improvements, paving, walkways, landscaping, exterior signage and ornamentation) in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If, at any time during the Term, there is a Maintenance Deficiency, then the City may notify Owner in writing of the Maintenance Deficiency. If Owner fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days of receipt of notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written notice of the hearing to Owner, at least, ten (10) calendar days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether Owner has failed to comply with the provisions of this Section 11. If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard described above, the City shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency.

11.1 Graffiti, as this term is defined in California Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by Owner by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within two (2) business days following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without notice.

11.2 The City shall retain any rights under applicable law to establish and enforce a lien or other encumbrance against the Property (individually or collectively), or any portion thereof, in the manner provided under California Civil Code Sections 2924, 2924b and 2924c in an amount reasonably necessary to restore the Property to the maintenance standard required under Section 11, including the reasonable attorneys' fees and costs of the City associated with the abatement of the Maintenance Deficiency or removal of graffiti. For the purposes of the

preceding sentence the words “reasonable attorneys’ fees and costs of the City” mean and refer to the salaries, benefits and costs of the City Attorney and the lawyers employed in the office of the City Attorney. Nothing in Section 11 shall be deemed to preclude Owner from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that such changes comply with applicable City Requirements. City shall provide Owner 10 days written notice prior to filing any lien on the Property.

11.3 The covenants of this Section 11 shall run with the Property and shall remain in effect at all times that this Agreement is in effect for the Term.

12. Owner’s Covenant to Use Property In Accordance With Agreement. Owner covenants and agrees for itself, its successors and assigns and all voluntary and involuntary successors in interest to the Property or any part thereof, that the Property shall, for the full Term of this Agreement, be put to no use other than the operation of the Business Activities. The covenant of this Section 12 shall run with the interest in the Property and shall remain in effect at all times that this Agreement is in effect for the Term unless due to an Enforced Delay.

13. Owner’s Covenant Not to Discriminate. Owner covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

13.1 Standards. 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 Property nor shall Owner, itself, himself or herself, or any Person claiming under or through it, 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 Property.

14. Payment of Prevailing Wages.

14.1 Owner acknowledges that the City has made no representation, express or implied, to Owner or any person associated with Owner regarding whether or not laborers employed relative to the construction and installation of improvements on the Property, if any, must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, *et seq.* Owner agrees with the City that Owner shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction of capital improvements on the Property must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, *et seq.*

14.2 Owner, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to California Labor Code Sections 1726 and 1781. Owner acknowledge the protections of California Civil Code

Section 1542 relative to the waiver and release contained in this Section 14.2, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 14:



Owner

14.3 Additionally, Owner shall indemnify, defend with counsel acceptable to the City and hold harmless the City against any claims pursuant to California Labor Code Section 1781 arising from this Agreement or the construction or installation of any improvements on the Property, in accordance with the terms of Section 14 of this Agreement.

14.4 Notwithstanding any other provision of this Agreement, the City shall not be under any duty to monitor or ensure the compliance of Owner with any State of California labor laws, including, without limitation, prevailing wage laws.

15. Indemnification.

15.1 City shall indemnify, defend, and hold Owner harmless from any and all third party claims and damages arising from the City's negligence or willful misconduct relating to this Agreement, except for claims and damages due to the negligent or intentional acts of Owner, its officers, representatives, employees, contractors, agents or assigns.

15.2 Owner shall indemnify, defend, and hold the City harmless from any and all third party claims and damages arising from Owner's negligence or willful misconduct relating to this Agreement, except for claims and damages due to the negligent or intentional acts of City, its elected officials, officers, representatives, employees, contractors, agents or assigns.

15.3 It is the intent of the Parties that where negligence is determined to have been joint or contributory as between the Parties, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

16. Defense of this Agreement. Owner acknowledges that the City is a "public entity" as defined under applicable State of California law. Therefore, the City must satisfy the requirements of certain State of California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement, injunctive

relief or damages. Owner assumes the risk of delays and damages that may result to Owner from any third-party legal actions related to the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, the City may terminate this Agreement on thirty (30) calendar days' written notice to Owner of the City's intent to terminate this Agreement, referencing this Section 16, without any further obligation to perform the terms of this Agreement and without any liability to Owner resulting from such termination, unless Owner unconditionally agree to indemnify and defend the City against such third-party legal action, as provided hereinafter in this Section 16. Within thirty (30) calendar days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, Owner may offer to defend the City in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action and the Owner shall then have the right to control such litigation (including the settlement thereof with the City's reasonable consent), and/or may terminate this Agreement, however, Owner's defense and indemnity obligations survive any such termination until that time such litigation is resolved. Any such offer from Owner must be in writing and in a form reasonably acceptable to the City. Nothing contained in this Section 16 shall be deemed or construed to be an express or implied admission that the City is or may be liable to Owner or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA.

17. No Effect on City's Legislative Authority. Nothing in this Agreement shall limit or restrict the authority of the City Council to take any other actions with respect to the Property and/or Owner without notice to or consent from Owner, except as may otherwise be expressly provided by applicable law.

18. Nonliability of the City or City Officials and Employees. No council member, official, contractor, consultant, attorney or employee of the City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to Owner or to its successors or assignees, or on any obligations arising under this Agreement.

19. Conflict of Interests. No council member, official, contractor, consultant, attorney or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such council member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation or partnership in which he/she is directly or indirectly interested.

20. Defaults. Subject to any extensions of time provided for in this Agreement for event of Enforced Delay, the occurrence of any of the following shall constitute a "Default."

20.1 The failure by any Party to perform any obligation of such Party under this Agreement for the payment of money, if such failure is not cured within ten (10) calendar days

after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due (which notice shall specifically state that a failure to cure by the recipient shall constitute a Default under the parties' Operating Covenant Agreement); or

20.2 The failure by any Party to perform any of its obligations set forth in this Agreement, other than obligations subject to Section 20.1, if such failure is not cured within thirty (30) calendar days after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due or, if such failure is of a nature that cannot reasonably be cured within thirty (30) calendar days, the failure by such Party to commence such cure within thirty (30) calendar days after receipt of such notice and to, thereafter, diligently prosecute such cure to completion (which notice shall specifically state that a failure to cure by the recipient shall constitute a Default under the parties' Retention Agreement); or

20.3 Any representation or warranty by any Party in this Agreement proves to have been false and misleading in any material respect when made and said Party does not take the necessary action, following notice pursuant to Section 20.2, to remedy said misrepresentation or breach of warranty within the time period set forth in Section 20.2, such that the original misrepresentation or warranty becomes truthful and accurate.

20.4 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by any Party in asserting any of their rights and/or remedies shall not deprive any Party of its right to institute and maintain any action or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

21. Remedies.

21.1 For any Default by City under this Agreement, Owner's sole and exclusive remedy shall be to receive the payments provided for in Section 8.3 above. Owner shall be entitled to the payments under this Agreement as they become due provided Owner is not in Default, but Owner shall have no right to have the payments hereunder accelerated.

21.2 For any Default by Owner under this Agreement, City's sole and exclusive remedy shall be that: it will not have to make the payments to Owner that would otherwise be due under Section 8.3. With respect to any Default by Owner of an obligation arising under any of Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12, City may suspend any Covenant Payments due hereunder for any period during which such a Default exists. If two consecutive Covenant Payments are properly suspended in accordance with this Section 20 due to Owner's Default, then the City may, at its option, elect to immediately terminate this Agreement and all of its obligations hereunder, including any obligations concerning unaccrued and suspended Covenant Payments, without cost, expense or liability. Notwithstanding anything stated elsewhere in this Agreement, if the Agreement is terminated or City is no longer making the payments hereunder, Owner shall not be required to perform its obligations under this Agreement.

21.3 Inasmuch as payments hereunder shall only be made after Owner has met all of its obligations for a given quarter of the applicable Dealership Operating Year, there shall be no claw back of payments already made to Owner.. Once made, the payments to Owner are final

(other than as provided under Sections 8.6 and 8.10 hereof or for any payments made due to fraud by Owner) and may not be retroactively recovered from or charged back to Owner.

22. Legal Actions. Any Party may institute legal action to obtain any remedy available to that Party under this Agreement. Except as may be required for third-party indemnification under Section 14 hereof, neither Party shall be liable for consequential or punitive damages under any circumstances

23. Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles.

24. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and the exercise by any Party of one or more of such 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 another Party.

25. Incorporation of Recitals. The Recitals of fact set forth in this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

26. Notices, Demands and Communications Between the Parties.

26.1 Any and all notices, demands or communications submitted by a Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of the Party, as designated in Section 26.2. Such written notices, demands and communications may be sent in the same manner to such other addresses as the Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the calendar day that it is dispatched by messenger for immediate personal delivery, on the date of delivery by a nationally recognized overnight courier service or seven (7) calendar days after it is placed in the United States mail, as provided in this Section 26.1.

26.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

To Owner:

Fontana Automotive Services, Inc.
9440 Autoplex Drive
Montclair, CA 91763
Attn: David A. Marvin

With courtesy copy to:

Fontana Mazda
16800 South Highland Avenue

Fontana, CA 92336
Attn: General Manager

To the City:

City of Fontana
Attn: City Manager
8353 Sierra Avenue
Fontana, CA 92335

With courtesy copy to:

Best Best & Krieger LLP
Attn: Fontana City Attorney
2855 E. Guasti Rd.
Ontario, CA 91761b b

27. Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party to this Agreement against the other Party to this Agreement by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party or Parties all costs and expenses of suit or claim, including reasonable attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including reasonable attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 27, Costs shall include, without implied limitation, reasonable attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 27 shall survive any termination of this Agreement.

28. Jurisdiction and Venue. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate state or federal court in the County of San Bernardino, State of California. All Parties to this Agreement irrevocably consent to the personal jurisdiction of that court.

29. Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties.

30. Counterpart Originals; Integration. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement and the Exhibit attached to this Agreement represent the entire understanding of the Parties and supersedes all negotiations,

letters of intent, memoranda of understanding or previous agreements between the Parties with respect to all or any part of the subject matter of this Agreement.

31. No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

32. Time is of the Essence/Force Majeure. Time is of the essence in the performance of the Parties' obligations under this Agreement. In addition to specific provisions of this Agreement providing for extensions of time, times for performance under this Agreement shall be extended when there occurs an Enforced Delay, provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the Enforced Delay within thirty (30) calendar days from the occurrence thereof; and, provided further, that the extension of time shall be only for the period of the Enforced Delay.

32.1 ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES.



Owner

32.2 OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.



Owner

33. No Third Party Beneficiaries. Except as may be expressly provided otherwise in this Agreement, (a) the performance of the Parties' respective obligations under this Agreement is not intended to benefit any party other than the City and Owner, and (b) no person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

34. No Effect on Eminent Domain Authority. Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's

eminent domain powers with respect to the Property, the Business or any other improvements on the Property.

35. Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

36. Warranty against Payment of Consideration for Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 36, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

37. Exhibits. The following is a list of the Exhibits attached to this Agreement. Each of the exhibits referenced in this Section 37 are incorporated by this reference into the text of this Agreement.

Exhibit A Legal Description of Property

38. Amendment. This Agreement may be amended only by a written instrument executed by Owner and the City.

39. Severability. If any provision of this Agreement shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining provisions of this Agreement, which are hereby declared by the City and Owner to be severable from any other provision that is found by a court to be invalid or unenforceable.

40. Titles and Headings for Reference Only. The titles and headings of the Sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part of this Agreement and shall not in any way modify or restrict the meaning of any of the terms or provisions of this Agreement.

41. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

42. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

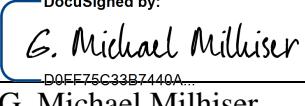
[Signatures on following page]

SIGNATURE PAGE
TO
OPERATING COVENANT AGREEMENT
(Fontana Automotive Service, Inc.)

Owner and City sign and enter into this Agreement by and through the signatures of their authorized representatives set forth below:

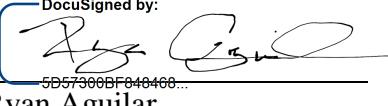
CITY:

CITY OF FONTANA
a California municipal corporation

By: 
G. Michael Milhiser
Interim City Manager

OWNER:

FONTANA AUTOMOTIVE SERVICES,
INC., A CALIFORNIA CORPORATION

By: 
Ryan Aguilar
Vice President

Attest:


Tonia Lewis
City Clerk

Approved as to legal form:

Best Best & Krieger LLP


Ruben Duran
622D5F9CCD6240C...
City Attorney

EXHIBIT A
TO
OPERATING COVENANT AGREEMENT
(_____)

Legal Description of Property

LEGAL DESCRIPTION

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

- **Fontana Automotive Services, Inc., a California corporation, is the owner of the automobile dealership doing business on that certain real property located at 16800 South Highland Avenue, Fontana, CA 92336 (“Property”) APN: 0240-091-63**

Certificate Of Completion

Envelope Id: 8D397F36D7CB413BA19B703520871273

Status: Completed

Subject: Operating Covenant Agreement - Mazda

Source Envelope:

Document Pages: 22

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 3

Purchasing Office

AutoNav: Enabled

8353 Sierra Avenue

EnvelopeD Stamping: Enabled

Fontana, CA 92335

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

purchasing@fontana.org

IP Address: 192.146.186.96

Record Tracking

Status: Original

1/29/2020 2:58:02 PM

Holder: Purchasing Office

Location: DocuSign

purchasing@fontana.org

Signer Events

Signature

Timestamp

Mary Aguilar

 Completed

Sent: 1/29/2020 3:05:23 PM

maguilar@fontana.org

Using IP Address: 192.146.186.96

Viewed: 1/29/2020 3:32:59 PM

Security Level: Email, Account Authentication
(None)

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Electronic Record and Signature Disclosure:

Accepted: 1/29/2020 3:32:59 PM

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 DocuSigned by:
Mary Aguilar
5D57300BF848468...

Ryan Aguilar

ryan@phmazda.com

VP

Security Level: Email, Account Authentication
(None)

Signature Adoption: Drawn on Device
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Signed using mobile

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Resent: 1/29/2020 4:05:04 PM

Viewed: 1/29/2020 4:06:43 PM

Signed: 1/30/2020 11:10:00 AM

Electronic Record and Signature Disclosure:

Accepted: 1/29/2020 4:06:43 PM

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 DocuSigned by:
Ruben Duran
622D5F9CCD6240C...

Ruben Duran

ruben.duran@bbklaw.com

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style
Using IP Address: 74.116.243.2

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Viewed: 2/6/2020 3:59:19 PM

Signed: 2/6/2020 4:00:37 PM

Electronic Record and Signature Disclosure:

Accepted: 2/6/2020 3:59:19 PM

ID: cffbe9e6-bd16-40c0-aa06-738695e90128

 DocuSigned by:
G. Michael Milliser
D0FF75C33B7440A...

G. Michael Milliser

mmilliser@fontana.org

Interim City Manager

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style
Using IP Address: 192.146.186.96

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Viewed: 2/6/2020 4:04:20 PM

Signed: 2/6/2020 4:04:53 PM

Electronic Record and Signature Disclosure:

Accepted: 2/6/2020 4:04:20 PM

ID: acb7a795-0716-4e04-919a-341b38844196

Signer Events	Signature	Timestamp
<p>Toni Lewis tlewis@fontana.org City Clerk City of Fontana Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  EBCDCFDA17754F5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 76.218.56.24</p>	<p>Sent: 2/6/2020 4:04:55 PM Viewed: 2/6/2020 5:39:31 PM Signed: 2/6/2020 5:40:11 PM</p>
Electronic Record and Signature Disclosure:		
Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Kathy Kasinger kkasinger@fontana.org Security Level: Email, Account Authentication (None)</p>	COPIED	Sent: 2/6/2020 5:40:13 PM
Electronic Record and Signature Disclosure:		
Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/6/2020 5:40:13 PM
Certified Delivered	Security Checked	2/6/2020 5:40:13 PM
Signing Complete	Security Checked	2/6/2020 5:40:13 PM
Completed	Security Checked	2/6/2020 5:40:13 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Fontana (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Fontana:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: ctejeda@fontana.org

To advise City of Fontana of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ctejeda@fontana.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Fontana

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Fontana

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERs):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none">•Allow per session cookies•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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- Until or unless I notify City of Fontana as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Fontana during the course of my relationship with you.