2012
OPERATING COVENANT AGREEMENT
(Cardinale)

This 2012 OPERATING COVENANT AGREEMENT ("Agreement") is entered into, by and between the CITY OF CORONA, a California Municipal Corporation ("City"), and Saul Chevrolet Inc,, a California Corporation (hereinafter "Saul"). The City and Saul are sometimes, individually, referred to in this Agreement as a "Party" and, collectively, as the "Parties." The City and Saul enter into this Agreement with reference to the following facts ("Recitals"):

RECITALS

WHEREAS, Saul leases certain real property (APN 102-420-041) located at 2525 Wardlow Road in the City of Corona, County of Riverside, California, as legally described in Exhibit G attached to this Agreement, improved with an existing Hyundai automobile sales and service center and parking ("Hyundai Dealership Property") owned by Corona Automall LLC and operated by Saul Chevrolet Inc., a California corporation dba: CardinaleWay Hyundai ("Hyundai Operator");

WHEREAS, The Joseph A. and Jeannette M. Cardinale Revocable Family Trust dated 07-01-93 and The Cardinale Family Trust dated 09-14-99 (hereinafter cumulatively "Cardinale Trust") owns certain real property (APN 102-020-049), consisting of 6.43 acres in the City of Corona, County of Riverside, California ("Property") as legally described in Exhibit A attached to this Agreement;

WHEREAS, a portion of the Property is improved with an existing Volkswagen automobile sales and service center and parking owned by Saul and operated by Saul Chevrolet Inc., a California corporation, dba: CardinaleWay Volkswagen ("VW Operator"). The VW Dealership is located at 2603 Wardlow Road in the City of Corona, County of Riverside, California;

WHEREAS, Cardinale Trust proposes to subdivide the Property, currently Parcel Map 22687 lot 3 into two parcels to create separate legal parcels for the New Mazda Dealership and the VW Dealership in the City of Corona, County of Riverside, California;

WHEREAS, Cardinale Trust and/or Saul intend to develop a new, state-of-the-art Mazda automobile sales and service center (the "New Mazda Dealership") on the New Mazda Dealership Property, as depicted on the site map attached to this Agreement as Exhibit B and incorporated herein by this reference and more particularly described in the Scope of New Mazda Dealership Development set forth in Exhibit C attached to this Agreement and incorporated herein by this reference;

WHEREAS, the completion of the New Mazda Dealership and the operation of the New Mazda Dealership within the City are expected to result in the generation of significant new local sales tax revenues for the City;

WHEREAS, the City, in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits that are expected to be received by City arising from development of the New Mazda Dealership and the

operation of the New Mazda Dealership within the City, desires to provide certain payments to Cardinale Trust and/or Saul, as an incentive for developing the New Mazda Dealership Project and operating the New Mazda Dealership within the City; and

WHEREAS, the operation of the New Mazda Dealership will provide significant public benefits to the City because additional sales tax revenues generated by such activities represent a significant source of new and additional public revenue for the City, which may be used by the City for the funding of necessary public services and facilities, including public safety services and facilities. The City has further determined that the covenanted operation of the New Mazda Dealership serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting there from.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE CITY AND SAUL 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.

1.1 **"BOE"** means the State of California Board of Equalization and any successor agency.

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

1.3 **"Certificate of Completion"** means and refers to the written certification of the City that the New Mazda Dealership Project is complete in compliance with the terms and conditions of this Agreement, in substantially the form of Exhibit F attached to this Agreement and incorporated herein by this reference.

1.4 **"City"** means and refers to the City of Corona, a California municipal corporation.

1.5 **"City Attorney"** means and refers to the City Attorney of the City of Corona, California.

1.6 **"City Council"** means and refers to the City Council of the City of Corona, California.

1.7 **"City Manager"** means and refers to the City Manager of the City of Corona, California, or his or her designee or successor in function.

1.8 **"City Requirements"** means and refers to the City's zoning, building and land use laws and regulations contained in the City's ordinances, municipal code and conditions of approval.

1.9 **"County"** means and refers to the County of Riverside, California.

1.10 **"Covenant Payment(s)"** means and refers to payments made to Saul in accordance with Section 8 of this Agreement.

1.11 **"Dealership"** means and refers to, individually, either the Hyundai Dealership, the VW Dealership or the New Mazda Dealership, as applicable.

1.12 **"Dealerships"** means and refers to, collectively, the Hyundai Dealership, the VW Dealership and the New Mazda Dealership.

1.13 **"Dealership Activities"** means and refers to activities of Saul or the Operators, whether on the Hyundai Dealership Property, the VW Dealership Property or the New Mazda Dealership Property, over the internet, or otherwise that result in the sale or lease of any tangible personal property (including, but not limited to, new and used automobiles) through the Hyundai Dealership, the VW Dealership or the New Mazda Dealership where such sale or lease is subject to sales or use tax pursuant to the Sales Tax Law.

1.14 **"Default"** shall have the meaning ascribed to the term in Section 20 of this Agreement.

1.15 **"Effective Date"** shall have the meaning ascribed to the term in Section 2 of this Agreement.

1.16 **"Eligibility Period"** means and refers to the time period commencing on the first calendar day of New Mazda Dealership Operating Year 1 and ending on the earlier of: (a) the last calendar day of New Mazda Dealership Operating Year 15; or (b) the date on which the total payments to Saul from the City under this Agreement equal six million dollars ($6,000,000).

1.17 **"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.

1.18 **"Entitlements"** shall have the meaning ascribed to the term in Section 6.

1.19 **"Environmental Laws"** shall mean all Federal, State, local or City laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental entity in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal

Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.]; together with any regulations promulgated under the authorities referenced in this Section 1.19.

1.20 "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.

1.21 "Federal" means and refers to the federal government of the United States of America.

1.22 "Hazardous Substances" shall mean any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical wastes, toxic substance or related material, explosive, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as "hazardous substances" pursuant to 33 U.S.C. § 1321 ; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 , et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 , et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33) ; (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262 ; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 , et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) that is

subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.23 "Hyundai Dealership" means and refers to the automobile sales and service center and parking that The Corona Automall LLC owns and Hyundai Operator operates on the Hyundai Dealership Property in accordance with the terms and conditions of this Agreement.

1.24 "Hyundai Dealership Property" means and refers to that certain real property (APN **102-420-041**)leased by Saul, located at 2525 Wardlow Road in the City of Corona, County of Riverside, California, and legally described in Exhibit G attached hereto where the Hyundai Dealership is constructed and operated.

1.25 "Hyundai Operator" shall have the meaning ascribed to the term in the recitals preceding this Agreement, and such Person's successors and assigns.

1.26 "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 New Mazda Dealership Project, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or the Project, 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.

1.27 "Local Combined Dealership Sales Tax Base" means and refers to Two Hundred Thousand Dollars ($200,000) of Local Combined Dealership Sales Tax Revenues applicable to the particular New Mazda Dealership Operating Year.

1.28 "Local Combined Dealership Sales Tax Revenues" means and refers to the Local Mazda Sales Tax Revenues added to the Local VW Sales Tax Revenues and the Local Hyundai Sales Tax Revenues applicable to the particular New Mazda Dealership Operating Year.

1.29 "Local Hyundai Sales Tax Revenues" means the net Sales Tax actually received by the City from the BOE 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 Hyundai Dealership in a particular New Mazda Dealership 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 Riverside, 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 BOE; (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 Eligibility Period; 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 set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

1.30 "Local Mazda Sales Tax Revenues" means the net Sales Tax actually received by the City from the BOE 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 New Mazda Dealership in a particular New Mazda Dealership 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 Riverside, 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 BOE; (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 Eligibility Period; 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 set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

1.31 "Local VW Sales Tax Revenues" means the net Sales Tax actually received by the City from the BOE 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 VW Dealership in a particular New Mazda Dealership 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 Riverside, 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 BOE; (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 Eligibility Period; 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 set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

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

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

1.34 "New Mazda Dealership" means and refers to a permanent full-service new automobile sales dealership and service center and parking that Saul is to develop on the New Mazda Dealership Property in accordance with the terms and conditions of this Agreement. The New Mazda Dealership shall be operated pursuant to an agreement with the manufacturer of "Mazda" automobiles for sales and service of new automobiles manufactured under the "Mazda" brand name, sales of parts for such brand of automobiles and related sales of used automobiles.

1.35 "New Mazda Dealership Activities" means and refers to on-site and internet activities of Saul's officers, directors, employees, agents or consultants that result in the sale or lease of any tangible personal property (including, but not limited to, new and used automobiles) through the New Mazda Dealership that are subject to sales or use tax pursuant to the Sales Tax Law.

1.36 "New Mazda Dealership Completion Date" means and refers to the day that is twelve (12) months from the date on which Saul obtains all Entitlements (defined in Section 6) for the development of the New Mazda Dealership Project, as provided in Section 6, which New Mazda Dealership Completion Date may be extended pursuant to Section 6.1.

1.37 "New Mazda Dealership Opening Date" means and refers to the date on which the Saul causes the New Mazda Dealership to be open for business to the general public, and shall occur within ninety (90) calendar days following the issuance of the Certificate of Completion for the New Mazda Dealership Project by the City.

1.38 "New Mazda Dealership Operating Year" means and refers to the twelve (12) month period starting on the first day following the date on which the New Mazda Dealership receives a final Certificate of Occupancy from the City and each consecutive subsequent twelve (12) month period until the 15th anniversary of the first day following the date on which the New Mazda Dealership receives a final Certificate of Occupancy from the City. Each New Mazda Dealership Operating Year may be referred to in this Agreement in numerical succession as "New Mazda Dealership Operating Year No. 1," "New Mazda Dealership Operating Year No. 2" and so on up to "New Mazda Dealership Operating Year No. 15."

1.39 "New Mazda Operator" means and refers to, **Saul Chevrolet Inc,** dba CardinaleWay Mazda at Corona a **California corporation,** the operator of the New Mazda Dealership, and such Person's successors and assigns.

1.40 "New Mazda Dealership Project" means and refers to Saul's development of the New Mazda Dealership on the New Mazda Dealership Property, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in the Scope of New Mazda Dealership Development attached hereto as Exhibit C, and to be developed in accordance with plans and specifications approved by the City and any conditions imposed by the City in its consideration of Saul's development application related to the New Mazda Dealership Project.

1.41 "New Mazda Dealership Property" means and refers to that certain real Property as defined in Section 1.49. The Property as part of the terms of the Agreement will be subdivided into two (2) parcels to provide a separate legal parcel for the New Mazda Dealership Property and a parcel for the VW Dealership Property.

1.42 "Notice of Agreement" means and refers to that certain "Notice of Agreement" in substantially the form attached to this Agreement as Exhibit E and incorporated herein by this reference.

1.43 "Notice of Appeal" shall have the meaning ascribed to the term in Section 8.3.

1.44 **"Notice of Determination"** shall have the meaning ascribed to the term in Section 8.2.

1.45 **"Operators"** shall mean the Hyundai Operator, the VW Operator, and the New Mazda Operator and such Persons' successors and assigns.

1.46 **"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 Saul.

1.47 **"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.

1.48 **"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 Saul by any public or private person or entity.

1.49 **"Property"** means and refers to that certain real property owned by Cardinale Trusts located on Wardlow Road in the City of Corona, County of Riverside, California and legally described in Exhibit A attached hereto. Upon completion of the subdivision of the Property, Exhibit A shall be amended by the City Manager or his/her designee to reflect the legal property description of the New Mazda Dealership Property and the VW Dealership Property.

1.50 **"Properties"** means and refers to, collectively, the VW Dealership Property, the Hyundai Dealership Property and the New Mazda Dealership Property.

1.51 **"Recorded, record or recordation"** mean the recordation of the specified document(s) in the official records of the Recorder of the County of Riverside, California.

1.52 **"Sales Tax"** means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the New Mazda Dealership, Hyundai Dealership or VW Dealership, excluding that which is to be refunded to Saul because of an overpayment of such tax.

1.53 **"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 Saul; and (c) regulations of the BOE and other binding rulings and interpretations relating to (a) and (b) of this Section 1.53.

1.54 "Saul" means and refers to Saul Chevrolet Inc., a California Corporation, and its successors and assigns, cumulatively.

1.55 "Schedule of Performance" means and refers to the schedule for the performance of certain actions by the City or Saul, pursuant to this Agreement, attached to this Agreement as Exhibit D and incorporated herein by this reference.

1.56 "Scope of New Mazda Dealership Development" means and refers to the detailed description of the primary elements of the New Mazda Dealership Project attached to this Agreement as Exhibit C and incorporated herein by this reference.

1.57 "State" means and refers to the State of California.

1.58 "Term" means and refers to the period of fifteen (15) years commencing on the first calendar day of New Mazda Dealership Operating Year 1 and ending on the last calendar day of New Mazda Dealership Operating Year 15.

1.59 "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 1.59, shall be deemed a Transfer by Developer, even though Developer 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.

1.60 "VW Dealership" means and refers to the automobile sales and service center and parking that Saul owns and VW Operator operates on the VW Dealership Property in accordance with the terms and conditions of this Agreement.

1.61 "VW Dealership Property" means and refers to that certain real property (APN 102-020-049) owned by Saul, located at 2603 Wardlow Road in the City of Corona, County of Riverside, California, and legally described in Exhibit A attached hereto where the VW Dealership is constructed and operated.

1.62 "VW Operator" shall have the meaning ascribed to the term in the recitals preceding this Agreement, and such Person's successors and assigns.

2. Effective Date of this Agreement.

2.1 This Agreement is dated as of June 20, 2012, for reference purposes only. This Agreement will not become binding on either of the Parties unless and until the first date on which all of the following occur, if at all ("Effective Date"):

(a) Saul has approved this Agreement, this Agreement has been signed by Saul's duly authorized representative(s), and Saul has delivered three (3) signed originals of this Agreement to the City; and

(b) This Agreement is approved by the City Council of the City at a public meeting of the City.

3. Representations and Warranties of the City.

3.1 The City represents and warrants to Saul 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

3.2 The representations and warranties of the City set forth in Section 3.1 are material consideration to Saul and the City acknowledges that Saul is relying upon the representations of the City set forth in Section 3.1 in undertaking its obligations under this Agreement.

3.3 As used in this Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Bradly Robbins (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.

4. Representations and Warranties of Saul.

4.1 Saul represents and warrants to the City that, to Saul's actual current knowledge:

(a) Saul is a duly formed Corporation, organized, qualified and in good standing to do business in the State of California and in the City;

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

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

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

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

(f) Saul 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 Saul and no other action by Saul is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

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

4.3 As used in this Agreement, the term "Saul's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of **Joseph Cardinale**, President, 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.

5. Restrictions on Assignment or Transfer of this Agreement, the Properties and the New Mazda Dealership. Saul shall not 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 Properties, the VW Dealership, the Hyundai Dealership or the New Mazda Dealership without the prior written consent of the City and unless the transferee is another legal entity that Saul has the right to control by ownership (controlling interest) or contract. The City's approval of any such transfer shall not be unreasonably withheld, delayed or conditioned. In deciding to give or withhold its approval, the City may consider the extent or strength of ownership or contractual control Saul has over the legal entity, the financial strength of the proposed transferee and the demonstrated experience and qualifications of the proposed transferee and its senior management personnel to undertake and faithfully carry out the assigned rights and obligations.

6. Saul's Covenant to Undertake Development of the New Mazda Dealership Project. Saul covenants and agrees for itself, its successors and assigns, for the sole and exclusive benefit of the City that Saul shall obtain all necessary City and other governmental approvals and entitlements for the development of the New Mazda Dealership Project within nine (9) months from the Effective Date, including the creation of a new parcel map for the Property (collectively, "Entitlements"), and that promptly following receipt of all such Entitlements, Saul shall carry out the development of the New Mazda Dealership Project. The City acting by and through its City Manager in his/her sole discretion may extend the time by which Saul shall obtain all Entitlements pursuant to this Section for up to an additional ninety (90) calendar days. The New Mazda Dealership Project shall be developed and completed in conformity with all applicable laws, the Scope of New Mazda Dealership Development and the Schedule of Performance, and any and all other plans, specifications and similar development documents

required by this Agreement. The covenants of this Section 6 shall run with the land of the Property, until the date on which the Certificate of Completion is recorded.

6.1 Notice of Agreement. After a Notice of Agreement has been recorded against the Properties, 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 Notice of Agreement occupies a recorded priority position senior to all other non-statutory liens and encumbrances against the Properties; and

6.2 Construction Start and Completion of New Mazda Dealership Project. Saul shall commence construction of the New Mazda Dealership Project promptly following receipt of all Entitlements, in accordance with the Schedule of Performance and, thereafter, shall diligently proceed to complete the construction of the New Mazda Dealership Project, in a good and workmanlike manner in accordance with the approved plans, specifications and conditions for the New Mazda Dealership Project approved by the City. Saul shall complete the New Mazda Dealership Project on or before the New Mazda Dealership Completion Date. The City acting by and through its City Manager in his/her sole discretion may extend the New Mazda Dealership Completion Date for up to an additional one hundred fifty (150) calendar days. Saul shall, promptly upon completion of the New Mazda Dealership Project, cause the New Mazda Dealership Project to be inspected by each governmental body with jurisdiction over the Property and the New Mazda Dealership Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed New Mazda Dealership Project. Saul shall do and perform all of the foregoing acts and things and cause to be issued and executed all such occupancy certificates, licenses and authorizations on or before the New Mazda Dealership Completion Date. After commencement of the development of the New Mazda Dealership Project, Saul shall not permit the development of the New Mazda Dealership Project to cease or be suspended for a time period in excess of sixty (60) calendar days, either consecutively or in the aggregate, for any reason other than as a result of an Enforced Delay. Notwithstanding the foregoing, such sixty (60) calendar day period may be extended by the City, acting by and through its City Manager, in his/her sole discretion, up to an additional aggregate maximum of sixty (60) calendar days.

6.3 Compliance with Laws; Environmental Laws; Hazardous Substances. All work performed in connection with the development of the New Mazda Dealership Project shall comply with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or which may be enacted or amended hereafter (including but not limited to CEQA), and with all applicable directions, rules and regulations of the fire department, health department, building department or other departments of every governmental agency now having or hereafter acquiring jurisdiction over the Properties or construction or operation of the New Mazda Dealership Project. Saul shall be responsible for: (a) cleaning-up, removing or disposing of any and all Hazardous Substances located on, under or about the Properties in accordance with all applicable Environmental Laws; and (b) paying all costs and expenses associate with or related to such clean-up, removal or disposal.

6.4 New Mazda Dealership Project Costs and Charges to be Paid by Saul. Saul and the City agree that the City shall not provide any financial assistance to Saul in connection

with the development of the New Mazda Dealership Project. Saul shall be solely responsible for paying for the costs of all demolition, design work, construction, labor, materials, relocation costs, fees and permit expenses related to or associated with the New Mazda Dealership Project. Saul shall pay any and all fees pertaining to the review and approval of the New Mazda Dealership Project by the City and any other governmental bodies and utility service providers, including the cost and preparation of all required construction, planning and other documents reasonably required by governmental bodies pertinent to the development or operation of the New Mazda Dealership Project on the New Mazda Dealership Property including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. Saul shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the New Mazda Dealership Project, whether located on or off of the Property. Saul shall obtain any and all necessary approvals, prior to the commencement of applicable portions of said construction.

6.5 New Mazda Dealership Project Subject to City Regulatory Approval. The City Requirements shall be applicable to the development of the New Mazda Dealership Project on the New Mazda Dealership Property by Saul, pursuant to this Agreement. Saul acknowledges that all plans and specifications and any changes to plans and specifications for the New Mazda Dealership Project on the Property shall be subject to the City Requirements. No action by the City with reference to this Agreement or related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the VW Dealership, the Hyundai Dealership, the New Mazda Dealership Project, Saul, any successor-in-interest of Saul or any successors-in-interest to the Property. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. Notwithstanding any provision to the contrary in this Agreement, Saul agrees to accept and comply fully with any and all reasonable and lawful conditions of approval applicable to all approvals, permits and other governmental actions or Entitlements regarding the development or operation of the New Mazda Dealership Project on the New Mazda Dealership Property, consistent with the Scope of New Mazda Dealership Development and this Agreement. Saul shall prepare and submit a complete development application and any other required application or document (including, without limitation, deposit, fund or surety) for the New Mazda Dealership Project, pursuant to the requirements of the City and consistent with the Scope of New Mazda Dealership Development, to the City, within the time period(s) for such actions set forth in the Schedule of Performance.

6.6 Saul Attendance at City Meetings. Saul agrees to have one (1) or more of its employees or consultants who are knowledgeable regarding this Agreement and the New Mazda Dealership Project, such that these person(s) can meaningfully respond to the City's questions regarding the progress of the New Mazda Dealership Project, attend meetings of the City Council, when requested to do so by City staff.

6.7 City Right to Inspect New Mazda Dealership Project and Properties. Officers, employees, agents or representatives of the City shall have the right of reasonable access to the, without the payment of charges or fees, during normal construction hours, during the period of construction of the New Mazda Dealership Project. Such officers, employees,

agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the New Mazda Dealership Property for purposes of this Agreement shall identify themselves at the construction management office or apparent on the New Mazda Dealership Property, upon their entrance on to the Properties. Saul shall make a representative of Saul available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold Saul and Cardinale Trusts harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the New Mazda Dealership Property provided in this Section 6.7, other than injury, property damage or liability arising from the negligence or willful misconduct of Saul or its officers, agents or employees. The City shall inspect relevant portions of the New Mazda Dealership Property, prior to issuing any written statements reflecting adversely on Saul's compliance with the terms and conditions of this Agreement pertaining to development of the New Mazda Dealership Project on the New Mazda Dealership Property. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the work and verify compliance by Saul with the provisions of this Agreement. Saul understands and agrees that any such City inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the City's inspections may be general in nature, and are for the purposes of informing the City of the progress of the development of the New Mazda Dealership Project on the Property and the conformity of the New Mazda Dealership Project with the terms and conditions of this Agreement, and that Saul shall not be entitled to rely on any such inspection(s) as constituting the City's approval, satisfaction or acceptance of any materials, workmanship, conformity of the New Mazda Dealership Project with this Agreement or otherwise. Saul agrees to make its own regular inspections of the work of construction of the New Mazda Dealership Project to determine that the quality of the New Mazda Dealership Project and all other requirements of the work of construction of the New Mazda Dealership Project are being performed in a manner satisfactory to Saul. Saul also agrees to immediately notify the City in writing should Saul's inspections show any matters that will prevent the New Mazda Dealership Project from being completed by the New Mazda Dealership Completion Date. Without limiting the foregoing, Saul shall permit the City to examine and copy all books and account records and other papers relating to the Properties and the construction of the New Mazda Dealership Project. Saul will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the City to enable such examination.

6.8 Certificate of Completion. Following the completion of construction of the New Mazda Dealership Project, excluding any normal and minor building "punch-list" items to be completed by Saul, and written request from Saul for issuance of the Certificate of Completion, the City shall inspect the New Mazda Dealership Project to determine whether or not the New Mazda Dealership Project has been completed in compliance with this Agreement. If the City determines that the New Mazda Dealership Project is complete and in compliance with this Agreement, the City shall furnish Saul with a Certificate of Completion for the New Mazda Dealership Project, executed in recordable form. If the City determines that the New Mazda Dealership Project is not in compliance with this Agreement, the City shall send written notice of each non-conformity to Saul.

(a) **The City shall not unreasonably withhold the issuance of a Certificate of Completion.** A Certificate of Completion shall be evidence of the City's conclusive determination of satisfactory completion of the New Mazda Dealership Project, pursuant to the terms of this Agreement. After the recordation of the Certificate of Completion, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Properties shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the New Mazda Dealership Project, except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Properties pursuant to this Agreement.

(b) If the City fails or refuses to issue a Certificate of Completion for the New Mazda Dealership Project, after written request from Saul, the City shall, within fifteen (15) calendar days of Saul's written request or within seven (7) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide Saul with a written statement setting forth the reasons for the City's failure or refusal to issue a Certificate of Completion. The statement shall also contain the City's opinion of the action(s) Saul must take to obtain a Certificate of Completion from the City. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Saul or other minor building "punch-list" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable standby letter of credit by Saul in a form reasonably acceptable to the City in an amount representing the fair value of the work not yet completed, as reasonably determined by the City. If the City fails to provide such written statement, within the foregoing time period, Saul shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the New Mazda Dealership Project, as if a Certificate of Completion had been issued by the City pursuant to this Agreement.

(c) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Saul to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the New Mazda Dealership Project, or any part thereof. A Certificate of Completion shall not be deemed to constitute a notice of completion under California Civil Code Section 3093, nor shall it act to terminate the continuing covenants, restrictions or conditions subsequent contained in any instruments recorded against the Properties pursuant to this Agreement. A Certificate of Completion is not evidence of the compliance of the New Mazda Dealership Project with any City Requirements or any laws or regulations of a governmental entity with jurisdiction over the Properties.

6.9 No Foreclosure by Senior Lienholders. Mortgages, deeds of trust, or any other form of lien required for any reasonable method of financing the construction of the New Mazda Dealership Project on the Property are permitted, however, the City's rights under this Agreement shall be senior to any and all such forms of lien. Saul and or Cardinale Trusts shall notify the City in writing in advance of any mortgage, deed of trust, or other form of lien for financing if Saul or Cardinale Trusts propose to enter into the same before the recordation of the Certificate of Completion. The words "mortgage" and "deed of trust" as used herein shall be deemed to include all customary and appropriate modes of financing real estate construction and land development.

6.10 Agreement Contingent on New Mazda Dealership Construction. This agreement is contingent on the completed construction of the New Mazda Dealership and issuance of the Certificate of Completion on or before the New Mazda Dealership Completion Date.

7. Saul's Covenant Regarding the Opening and Operation the New Mazda Dealership. Saul covenants to the City to cause the New Mazda Operator to open the New Mazda Dealership to or before the public on the New Mazda Dealership Opening Date, and to cause the New Mazda Operator to continuously operate the New Mazda Dealership on the New Mazda Dealership Property throughout the entirety of the Term. Saul further covenants to the City to cause the VW Operator to continuously operate the VW Dealership on the VW Dealership Property and the Hyundai Operator to continuously operate the Hyundai Dealership on the Hyundai Dealership Property throughout the entirety of the Term. For purposes of this Section 7 "continuously operate" means not ceasing operation for a time period in excess of ninety (90) consecutive calendar days.

7.1 Designation of City as Point of Sale. Saul shall cause the Operators of each Dealership to designate the City as the "point of sale" in all reports to the BOE for all Dealership Activities. Saul shall cause the Operators of each Dealership to, for the full Term, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for it to lawfully conduct Dealership Activities by the applicable Dealership and to designate the City as the "point of sale" in all reports and returns submitted to the BOE regarding Dealership Activities by the Dealership. The provisions of this Section 7.1 shall survive any Default by Saul.

7.2 Saul Sales Tax Information. Saul acknowledges and agrees that the sales and use tax reporting and payment information related to sales and use taxes attributable to Dealership Activities by the Dealerships may become a public record as a result of the covenants of Saul contained in Section 7.1 and the Covenant Payments to be made by the City to Saul (as further described in Section 8). Saul hereby authorizes the City to use the sales and use tax reporting and payment information related to Dealership Activities by the Dealerships 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.

7.3 Covenants Run With the Properties. The covenants of this Section 7 shall run with the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect at all times during the Term.

8. City's Covenant Payment to Saul. In consideration of Saul's performance of its obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall, for each New Mazda Dealership Operating Year during the Eligibility Period that the City receives Local Combined Dealership Sales Tax Revenues in excess of the Local Combined Dealership Sales Tax Base, pay to Saul an amount equal to the sum of fifty percent (50%) of the Local Combined Dealership Sales Tax Revenues received by the City in excess of the Local Combined Dealership Sales Tax Base ("Covenant Payment"). In no event shall Saul be entitled to any payments during a New Mazda Dealership Operating Year unless the City receives Local Combined Dealership Sales Tax Revenues in excess of the Local

Combined Dealership Sales Tax Base during that New Mazda Dealership Operating Year. Notwithstanding any other provision of this Agreement, the cumulative total of any and all Covenant Payments paid by the City pursuant to this Agreement shall not exceed Six Million Dollars ($6,000,000) in the aggregate.

8.1 State of California Legislation Impact on Covenant Payment. Saul 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 be payable to the City. Saul 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 Saul a corresponding reduction and/or delay in the payment of the Covenant Payments due to Saul during such time as such legislation is in effect. Furthermore, Saul 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. Saul 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 Saul 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.

8.2 City's Notice of Determination of New Mazda Dealership Operating Year Local Sales Tax Revenues and Covenant Payment. Within one hundred twenty (120) calendar days following a New Mazda Dealership Operating Year, the City will determine the Local Combined Dealership Sales Tax Revenues applicable to that New Mazda Dealership Operating Year and send the Covenant Payment due for that New Mazda Dealership Operating Year to Saul.

8.3 Saul'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 Saul, Saul notifies the City in writing that Saul 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 BOE which set forth the

amount of sales tax paid to the BOE during the New Mazda Dealership Operating Year in connection with Dealership 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 Saul during such New Mazda Dealership Operating Year; and (iii) any and all invoices, and inventory records for such New Mazda Dealership 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 Saul and all others claiming by or through Saul. The provisions of this Section 8.3 shall be strictly construed and Saul waives, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter set forth in a Notice of Appeal that is not timely appealed in strict accordance with this Section 8.3. If Saul files a timely Notice of Appeal with the City, the City and Saul shall negotiate in good faith to resolve their dispute for a Negotiation Period. If, by the end of the Negotiation Period, the City and Saul 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 Saul 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.

8.4 No Accrual of Interest for Disputed Covenant Payment(s). The City and Saul 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. Saul 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.

8.5 Covenant Payment Paid From Any Source of City Funds. Any Covenant Payment due under Section 8 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.

8.6 Making Covenant Payment Is A Contingent Obligation of City. The City's obligations under this Section 8 are contingent on a fiscal year to fiscal year basis and, for each New Mazda Dealership Operating Year within the Eligibility Period, the City's obligations to make any payments to Saul under this Agreement are expressly contingent upon Saul, for the entirety of such New Mazda Dealership Operating Year, completely fulfilling its material

obligations under this Agreement. If for any reason Saul fails to authorize the release or use of all or any part of sales tax information regarding the New Mazda Dealership, the Hyundai Dealership or the VW Dealership in a manner satisfactory to the BOE 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 Saul 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.

8.7 Covenant Payment Calculated on Year-To-Year Basis. The City and Saul agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a New Mazda Dealership Operating Year to New Mazda Dealership Operating Year basis. Revenues generated in one New Mazda Dealership Operating Year may not be carried forward or back to any prior or future New Mazda Dealership Operating Year, it being the express understanding of the Parties that for each New Mazda Dealership Operating Year the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other New Mazda Dealership Operating Year.

8.8 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Agreement, the BOE determines that all or any portion of the Local Hyundai Sales Tax Revenues, Local VW Sales Tax Revenues, or Local Mazda Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Hyundai Sales Tax Revenues, Local VW Sales Tax Revenues, or Local Mazda Sales Tax Revenues, then Saul shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Saul which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Saul fails to make such repayment within thirty (30) calendar days after the City's written demand, then Saul 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 8.8 shall survive the expiration or termination of this Agreement.

9. Saul's Covenant Not To Accept Prohibited Financial Assistance. Saul covenants to the City that during the Term Saul 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 Dealership Activities from the City, (ii) a material (i.e., five percent (5%) or greater) reduction in the amount of Local Sales Tax Revenues which would be generated from the Dealership Activities in the absence of such an agreement, or (iii) any event of default by Saul. Saul further covenants to the City that during the Term Saul will cause the Operators of the Dealerships to 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 in accordance with the restrictions on Saul under this Section 9. The covenants of this Section 9 shall run with the Properties and shall be set forth in

the Notice of Agreement recorded against the Properties and shall remain in effect at all times during the Term.

10. Saul's Covenant To Maintain the Properties on Tax Rolls During the Term. Saul covenants to the City to maintain (or cause the Operators of the Dealerships to maintain) the Properties on the County of Riverside, California, secured real property tax rolls throughout the Term.

10.1 During the Term, Saul, and its successors and assigns, covenants and agrees to pay (or cause the Operators of the New Mazda Dealership, the Hyundai Dealership, and VW Dealership to pay) all property tax bills with respect to the Properties 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 Riverside, California.

10.2 The covenants of Section 10 shall run with the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

11. Saul's Covenant to Maintain the Property in Good Condition. Saul covenants to the City that it shall cause the Operators of the Dealerships to maintain areas of the Properties 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 Saul in writing of the Maintenance Deficiency. If Saul 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 Saul, at least, ten (10) calendar days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether Saul 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 Properties 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 Properties that is visible from any public right-of-way adjacent or contiguous to the Properties, shall be removed by Saul 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 Properties and remove the graffiti, without notice.

11.2 The City and Saul further mutually understand and agree that the rights conferred upon the City under Section 11 expressly include the power to establish and enforce a lien or other encumbrance against the Properties (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 Properties 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 Saul from making (or causing the New Mazda Operator to make) any alteration, addition, or other change to any structure or improvement or landscaping on the Properties, provided that such changes comply with applicable City Requirements.

11.3 The covenants of Section 11 shall run with the Properties and shall be included in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

12. Saul's Covenant to Use Properties In Accordance With Agreement. Saul covenants and agrees for itself, its successors and assigns and all voluntary and involuntary successors in interest to the Properties or any part thereof, that the Properties shall, for the full Term of this Agreement, be put to no use other than development of the New Mazda Dealership Project and the Dealership Activities. Saul further covenants to the City that during the Term, Saul will cause the Operators of the Dealerships to conduct operations on the Properties in accordance with this Section 12. The covenant of this Section 12 shall run with the interest in the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

13. Saul's Covenant Not to Discriminate. Saul 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 Properties nor shall Saul, 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 Properties.

14. Payment of Prevailing Wages.

14.1 Saul acknowledges that the City has made no representation, express or implied, to Saul or any person associated with Saul regarding whether or not laborers employed relative to the construction and installation of improvements on the Properties, 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. Saul agrees with the City that Saul shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction of capital improvements on the Properties 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 Saul, 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. Saul 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM/HER MUST HAVE MATERIALLY AFFECTED HIS/HER SETTLEMENT WITH THE DEBTOR.
>
> BY INITIALING BELOW, SAUL KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 14:
>
> _____
> Saul

14.3 Additionally, Saul 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 capital improvements on the Properties, 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 Saul with any State of California labor laws, including, without limitation, prevailing wage laws.

15. Indemnification. The Parties hereby agree to indemnify and save and hold one another harmless from and against all "damages" (which term shall mean actual cash expenditures arising out of, resulting from, or relating to any damage, liability, loss, cost or deficiency, including, but not limited to, reasonable attorneys' fees and other costs and expenses incident to proceedings or investigations for the defense of any claim) incurred by any of the Parties arising out of, resulting from, or relating to any failure by any of the Parties to duly perform and observe any term, provision or covenant to be performed by any of the Parties pursuant to this Agreement.

16. Defense of this Agreement. Saul 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. Saul assumes the risk of delays and damages that may result to Saul 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 Saul 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 Saul resulting from such termination, unless Saul 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, Saul 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. Any such offer from Saul 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 Saul 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 Properties and/or Saul without notice to or consent from Saul, 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 Saul, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Properties, in the event of any default or breach by the City, or for any amount which may become due to Saul 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 - General. 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; 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; 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. City Remedies. The City's rights and remedies for a Default by Saul shall be any one or more of the following, as applicable:

21.1 For any Default, pursue any available legal or equitable action or remedy to (1) recover damages to the City arising from such Default, including, without limitation, to collect any amount of money due to the City from Saul, or (2) preclude a breach of this Agreement or compel Saul to perform in accordance with the requirements of this Agreement, following the notice and opportunity to cure provided in Section 20.1; and

21.2 For any Default, off-set any amount of money due to the City from Saul, following the notice and opportunity to cure provided in Section 20.1 or 20.2, as applicable, against any Covenant Payment(s) due or becoming due to Saul; and

21.3 For any Default of an obligation arising under any of Sections 4, 5, 6, 7, 9, 12, or 13, suspend any Covenant Payments due hereunder during any period during which such a Default exists. If two consecutive Covenant Payments are suspended in accordance with this Section 21.3, 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; and

21.4 For any Default which consists of the failure by Saul to complete all material elements of the New Mazda Dealership Project (excluding failure caused by an Enforced Delay) by the New Mazda Dealership Completion Date, immediately terminate this Agreement and all of the City's obligations hereunder, including any obligations concerning unaccrued and suspended Covenant Payments, without cost, expense or liability; and

21.5 For any Default, the City may, at its option, require Saul to pay to City an amount equal to the number of Operating Years in the Term in which the Default occurred multiplied by the average Sales Tax during the Eligibility Period.

22. Legal Actions. In addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any Default, to recover general or consequential damages for

any Default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity.

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 three (3) 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 Saul:	**Cardinale Automotive Group** 2 Heitzinger Plaza Seaside, CA 93955 Attn: **Joseph Cardinale**
With courtesy copy to:	**Cardinale Automotive Group** 2 Heitzinger Plaza Seaside, CA 93955 Attn: **Teresa Fountain**
To the City:	City of Corona 400 South Vicentia Avenue Corona, CA 92882 Attention: City Manager

With courtesy copy to: Best Best & Krieger LLP
3500 Porsche Way, Suite 200
Ontario, CA 91764
Attn: Dean Derleth, Esq.

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. Conflict of Interest. No member, official or employee of the City having any conflict of interest, direct or indirect, related to this Agreement or the development of the New Mazda Dealership Project on the Property shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

29. 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 Riverside, State of California. All Parties to this Agreement irrevocably consent to the personal jurisdiction of that court.

30. 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.

31. 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 Exhibits 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.

32. **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.

33. **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.

33.1 ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, SAUL 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.

Saul

33.2 SAUL EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF SAUL 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. SAUL EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Saul

34. **No Third Party Beneficiaries.** Except as may be expressly provided otherwise in this Agreement, (1) the performance of the Parties' respective obligations under this Agreement is not intended to benefit any party other than the City and Saul, and (2) 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.

35. **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 New Mazda Dealership or any other improvements on the Property.

36. Tax Consequences. Saul 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.

37. Warranty against Payment of Consideration for Agreement. Saul 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 37, 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 Saul.

38. Exhibits. The following is a list of the Exhibits attached to this Agreement. Each of the exhibits referenced in this Section 38 are incorporated by this reference into the text of this Agreement.

Exhibit A	Legal Description of Property
Exhibit B	Site Map of Property Depicting New Mazda Dealership
Exhibit C	Scope of New Mazda Dealership Development
Exhibit D	Schedule of Performance of New Mazda Dealership Project
Exhibit E	Notice of Agreement
Exhibit F	Form of Certificate of Completion
Exhibit G	Legal Description of Hyundai Dealership Property

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

40. 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 Saul to be severable from any other provision that is found by a court to be invalid or unenforceable.

41. 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.

42. 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.

43. **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
2012 OPERATING COVENANT AGREEMENT
(Saul)

CITY:

CITY OF CORONA
a California Municipal Corporation

By: _____
Bradly Robbins
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

SAUL:

Saul Chevrolet Inc.
a California Corporation

By: _____
Joseph Cardinale
President

ATTEST:

_____
Thomas Cardinale
Secretary

APPROVED AS TO LEGAL FORM:

Robert Rosenthal

By: _____
Legal Counsel

STATE OF CALIFORNIA)
)
COUNTY OF Riverside

On 7/19/12 before me Sandra D. Campos, Notary Public, personally appeared Bradley Robbins, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Sandra D. Campos
Signature of Notary Public

SANDRA D. CAMPOS
Commission # 1929280
Notary Public - California
Riverside County
My Comm. Expires Apr 15, 2015

Place Notary Seal Above

EXHIBIT A
TO
OPERATING COVENANT AGREEMENT
(Saul)

Legal Description of Property

LEGAL DESCRIPTION

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

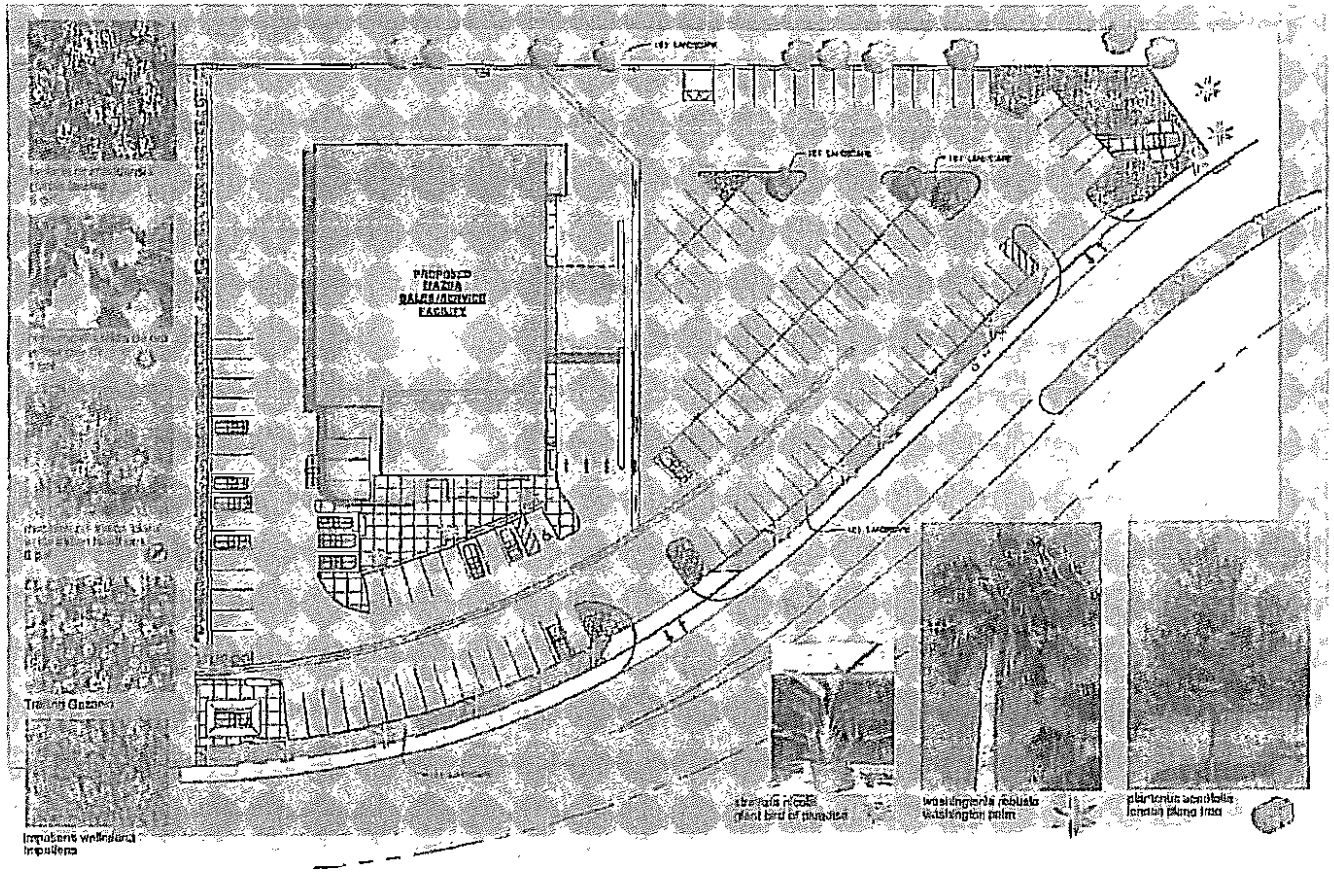
PARCELS 2 AND 3 AS SHOWN BY PARCEL MAP NO. 22687, ON FILE IN BOOK 158 PAGES 92 THROUGH 96 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; EXCEPT ALL MINERALS, OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SAME AS RESERVED BY HALBERT I. HICKMAN IN DEED RECORDED MARCH 31, 1978 AS INSTRUMENT NO. 60926 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPT ALL OIL AND GAS RIGHTS BELOW 1,000.00 FEET WITH NO RIGHT OF SURFACE ENTRY AS RESERVED BY SHAW SALES AND SERVICE CO., A CORPORATION, RECORDED JULY 20, 1972 AS INSTRUMENT NO. 95729 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 102-020-049

EXHIBIT B
TO
OPERATING COVENANT AGREEMENT
(Saul)

Site Map of Property Depicting New Mazda Dealership

[Attached Behind This Page]



PRELIMINARY LANDSCAPE PLAN

HOWARD PARSELL COMPANY

architecture
structural engineering
civil engineering

New Building Development for
Mazda Dealership

2603 Warrow Road
Corona, California

PRELIMINARY LANDSCAPE PLAN

L1

27157.07600\73668164

EXHIBIT C
TO
OPERATING COVENANT AGREEMENT
(Saul)

Scope of New Mazda Dealership Development

[Attached Behind This Page]

SCOPE OF DEVELOPMENT OF
NEW MAZDA DEALERSHIP PROJECT

I. Construction of New Mazda Dealership

Saul shall construct the New Mazda Dealership, including, but not limited to, the following improvements: (i) a new estimated 17706 (total facility) square foot, state-of-the-art Mazda automobile and products dealership; consisting of a new estimated 6500 square foot, state-of-the-art automobile service center with an estimated 10 service bays and an express car wash; (iii) a new, estimated 7000 square foot, state-of-the-art sales/office/showroom area; and (iv) an estimated 175 on-site parking spaces for customers, employees and vehicle display.

The facility will be in keeping with Saul quality exterior design and in accordance with all applicable City requirements/approvals. Color renderings to be provided upon completion by architect.

Exhibit C

EXHIBIT D
TO
OPERATING COVENANT AGREEMENT|
(Saul)

Schedule of Performance for New Mazda Dealership Project

[Attached Behind This Page]

EXHIBIT D

SCHEDULE OF PERFORMANCE

	Action	**Date Action to be Completed By**
1.	Saul Obtains Entitlements for the New Mazda Dealership Project	9 months (or sooner) following the Effective Date
2.	Saul Completes Construction of New Mazda Dealership Project	12 months (or sooner) following Entitlements
3.	Opening Date for New Mazda Dealership Project to General Public	30 days following the issuance of the Certificate of Completion for the New Mazda Dealership Project by the City.

EXHIBIT E
TO
OPERATING COVENANT AGREEMENT
(Saul)

Notice of Agreement
(Saul)

[Attached Behind This Page]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Corona
400 South Vicentia Avenue
Corona, CA 92882
Attention: City Manager

APN 102-020-049; 102-420-041 Exempt from Recording Fees per Govt. Code §27383

NOTICE OF AGREEMENT
(Saul)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that as of July 18, 2012, Saul Chevrolet Inc., a California Corporation ("Saul"), and the City of Corona, a California municipal corporation ("City"), entered into an agreement entitled "2012 Operating Covenant Agreement (Saul)," dated as of July 18, 2012 (the "Agreement"). A copy of the Agreement is on file with the City Clerk and is available for inspection and copying by interested persons as a public record of the City at the City's offices located at 400 South Vicentia Avenue, Corona, California 92882, during the regular business hours of the City.

The Agreement affects that certain real property (APN 102-020-049), to be subdivided per the Agreement, which is located at 2603 Wardlow Road in the City of Corona, County of Riverside, as legally described in Exhibit 1 attached to this Notice of Agreement and incorporated herein by this reference, and the use of certain real property (APN 102-420-041) located at 2525 Wardlow Road in the City of Corona, County of Riverside, as legally described in Exhibit 2 attached to this Notice of Agreement and incorporated herein by this reference (collectively, "Properties"). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement and not defined in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain covenants running with the land of the Properties and other agreements between Saul and City affecting the Properties, including, without limitation, the following covenants which are set forth in Sections 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Agreement:

5. **Restrictions on Assignment or Transfer of this Agreement, the Properties and the New Mazda Dealership.** Saul shall not 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 Properties, the VW Dealership, the Hyundai Dealership or the New Mazda Dealership without the prior written consent of the City and unless the transferee is another legal entity that Saul has the right to control by ownership (controlling interest) or contract. The City's approval of any such transfer shall not be unreasonably withheld, delayed or conditioned. In deciding to give or withhold its approval, the City may consider the extent or strength of ownership or contractual

control Saul has over the legal entity, the financial strength of the proposed transferee and the demonstrated experience and qualifications of the proposed transferee and its senior management personnel to undertake and faithfully carry out the assigned rights and obligations.

6. Saul's Covenant to Undertake Development of the New Mazda Dealership Project. Saul covenants and agrees for itself, its successors and assigns, for the sole and exclusive benefit of the City that Saul shall obtain all necessary City and other governmental approvals and entitlements for the development of the New Mazda Dealership Project within nine (9) months from the Effective Date, including the creation of a new parcel map for the Property (collectively, "Entitlements"), and that promptly following receipt of all such Entitlements, Saul shall carry out the development of the New Mazda Dealership Project. The City acting by and through its City Manager in his/her sole discretion may extend the time by which Saul shall obtain all Entitlements pursuant to this Section for up to an additional ninety (90) calendar days. The New Mazda Dealership Project shall be developed and completed in conformity with all applicable laws, the Scope of New Mazda Dealership Development and the Schedule of Performance, and any and all other plans, specifications and similar development documents required by this Agreement. The covenants of this Section 6 shall run with the land of the Property, until the date on which the Certificate of Completion is recorded.

6.1 Notice of Agreement. After a Notice of Agreement has been recorded against the Properties, 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 Notice of Agreement occupies a recorded priority position senior to all other non-statutory liens and encumbrances against the Properties; and

6.2 Construction Start and Completion of New Mazda Dealership Project. Saul shall commence construction of the New Mazda Dealership Project promptly following receipt of all Entitlements, in accordance with the Schedule of Performance and, thereafter, shall diligently proceed to complete the construction of the New Mazda Dealership Project, in a good and workmanlike manner in accordance with the approved plans, specifications and conditions for the New Mazda Dealership Project approved by the City. Saul shall complete the New Mazda Dealership Project on or before the New Mazda Dealership Completion Date. The City acting by and through its City Manager in his/her sole discretion may extend the New Mazda Dealership Completion Date for up to an additional one hundred fifty (150) calendar days. Saul shall, promptly upon completion of the New Mazda Dealership Project, cause the New Mazda Dealership Project to be inspected by each governmental body with jurisdiction over the Property and the New Mazda Dealership Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed New Mazda Dealership Project. Saul shall do and perform all of the foregoing acts and things and cause to be issued and executed all such occupancy certificates, licenses and authorizations on or before the New Mazda Dealership Completion Date. After commencement of the development of the New Mazda Dealership Project, Saul shall not permit the development of the New Mazda Dealership Project to cease or be suspended for a time period in excess of sixty (60) calendar days, either consecutively or in the aggregate, for any reason other than as a result of an Enforced Delay. Notwithstanding the foregoing, such sixty

(60) calendar day period may be extended by the City, acting by and through its City Manager, in his/her sole discretion, up to an additional aggregate maximum of sixty (60) calendar days.

6.3 Compliance with Laws; Environmental Laws; Hazardous Substances. All work performed in connection with the development of the New Mazda Dealership Project shall comply with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or which may be enacted or amended hereafter (including but not limited to CEQA), and with all applicable directions, rules and regulations of the fire department, health department, building department or other departments of every governmental agency now having or hereafter acquiring jurisdiction over the Properties or construction or operation of the New Mazda Dealership Project. Saul shall be responsible for: (a) cleaning-up, removing or disposing of any and all Hazardous Substances located on, under or about the Properties in accordance with all applicable Environmental Laws; and (b) paying all costs and expenses associate with or related to such clean-up, removal or disposal.

6.4 New Mazda Dealership Project Costs and Charges to be Paid by Saul. Saul and the City agree that the City shall not provide any financial assistance to Saul in connection with the development of the New Mazda Dealership Project. Saul shall be solely responsible for paying for the costs of all demolition, design work, construction, labor, materials, relocation costs, fees and permit expenses related to or associated with the New Mazda Dealership Project. Saul shall pay any and all fees pertaining to the review and approval of the New Mazda Dealership Project by the City and any other governmental bodies and utility service providers, including the cost and preparation of all required construction, planning and other documents reasonably required by governmental bodies pertinent to the development or operation of the New Mazda Dealership Project on the New Mazda Dealership Property including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. Saul shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the New Mazda Dealership Project, whether located on or off of the Property. Saul shall obtain any and all necessary approvals, prior to the commencement of applicable portions of said construction.

6.5 New Mazda Dealership Project Subject to City Regulatory Approval. The City Requirements shall be applicable to the development of the New Mazda Dealership Project on the New Mazda Dealership Property by Saul, pursuant to this Agreement. Saul acknowledges that all plans and specifications and any changes to plans and specifications for the New Mazda Dealership Project on the Property shall be subject to the City Requirements. No action by the City with reference to this Agreement or related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the VW Dealership, the Hyundai Dealership, the New Mazda Dealership Project, Saul, any successor-in-interest of Saul or any successors-in-interest to the Property. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. Notwithstanding any provision to the contrary in this Agreement, Saul agrees to accept and comply fully with any and all reasonable and lawful conditions of approval applicable to all approvals, permits and other governmental actions or Entitlements regarding the development or operation of the New Mazda Dealership Project on the New Mazda Dealership Property.

consistent with the Scope of New Mazda Dealership Development and this Agreement. Saul shall prepare and submit a complete development application and any other required application or document (including, without limitation, deposit, fund or surety) for the New Mazda Dealership Project, pursuant to the requirements of the City and consistent with the Scope of New Mazda Dealership Development, to the City, within the time period(s) for such actions set forth in the Schedule of Performance.

6.6 Saul Attendance at City Meetings. Saul agrees to have one (1) or more of its employees or consultants who are knowledgeable regarding this Agreement and the New Mazda Dealership Project, such that these person(s) can meaningfully respond to the City's questions regarding the progress of the New Mazda Dealership Project, attend meetings of the City Council, when requested to do so by City staff.

6.7 City Right to Inspect New Mazda Dealership Project and Properties. Officers, employees, agents or representatives of the City shall have the right of reasonable access to the, without the payment of charges or fees, during normal construction hours, during the period of construction of the New Mazda Dealership Project. Such officers, employees, agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the New Mazda Dealership Property for purposes of this Agreement shall identify themselves at the construction management office or apparent on the New Mazda Dealership Property, upon their entrance on to the Properties. Saul shall make a representative of Saul available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold Saul and Cardinale Trusts harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the New Mazda Dealership Property provided in this Section 6.7, other than injury, property damage or liability arising from the negligence or willful misconduct of Saul or its officers, agents or employees. The City shall inspect relevant portions of the New Mazda Dealership Property, prior to issuing any written statements reflecting adversely on Saul's compliance with the terms and conditions of this Agreement pertaining to development of the New Mazda Dealership Project on the New Mazda Dealership Property. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the work and verify compliance by Saul with the provisions of this Agreement. Saul understands and agrees that any such City inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the City's inspections may be general in nature, and are for the purposes of informing the City of the progress of the development of the New Mazda Dealership Project on the Property and the conformity of the New Mazda Dealership Project with the terms and conditions of this Agreement, and that Saul shall not be entitled to rely on any such inspection(s) as constituting the City's approval, satisfaction or acceptance of any materials, workmanship, conformity of the New Mazda Dealership Project with this Agreement or otherwise. Saul agrees to make its own regular inspections of the work of construction of the New Mazda Dealership Project to determine that the quality of the New Mazda Dealership Project and all other requirements of the work of construction of the New Mazda Dealership Project are being performed in a manner satisfactory to Saul. Saul also agrees to immediately notify the City in writing should Saul's inspections show any matters that will prevent the New Mazda Dealership Project from being completed by the New Mazda Dealership Completion Date. Without limiting the foregoing, Saul shall permit

the City to examine and copy all books and account records and other papers relating to the Properties and the construction of the New Mazda Dealership Project. Saul will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the City to enable such examination.

6.8 Certificate of Completion. Following the completion of construction of the New Mazda Dealership Project, excluding any normal and minor building "punch-list" items to be completed by Saul, and written request from Saul for issuance of the Certificate of Completion, the City shall inspect the New Mazda Dealership Project to determine whether or not the New Mazda Dealership Project has been completed in compliance with this Agreement. If the City determines that the New Mazda Dealership Project is complete and in compliance with this Agreement, the City shall furnish Saul with a Certificate of Completion for the New Mazda Dealership Project, executed in recordable form. If the City determines that the New Mazda Dealership Project is not in compliance with this Agreement, the City shall send written notice of each non-conformity to Saul.

(a) **The City shall not unreasonably withhold the issuance of a Certificate of Completion**. A Certificate of Completion shall be evidence of the City's conclusive determination of satisfactory completion of the New Mazda Dealership Project, pursuant to the terms of this Agreement. After the recordation of the Certificate of Completion, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Properties shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the New Mazda Dealership Project, except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Properties pursuant to this Agreement.

(b) If the City fails or refuses to issue a Certificate of Completion for the New Mazda Dealership Project, after written request from Saul, the City shall, within fifteen (15) calendar days of Saul's written request or within seven (7) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide Saul with a written statement setting forth the reasons for the City's failure or refusal to issue a Certificate of Completion. The statement shall also contain the City's opinion of the action(s) Saul must take to obtain a Certificate of Completion from the City. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to Saul or other minor building "punch-list" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable standby letter of credit by Saul in a form reasonably acceptable to the City in an amount representing the fair value of the work not yet completed, as reasonably determined by the City. If the City fails to provide such written statement, within the foregoing time period, Saul shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the New Mazda Dealership Project, as if a Certificate of Completion had been issued by the City pursuant to this Agreement.

(c) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Saul to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the New Mazda Dealership Project, or any part

thereof. A Certificate of Completion shall not be deemed to constitute a notice of completion under California Civil Code Section 3093, nor shall it act to terminate the continuing covenants, restrictions or conditions subsequent contained in any instruments recorded against the Properties pursuant to this Agreement. A Certificate of Completion is not evidence of the compliance of the New Mazda Dealership Project with any City Requirements or any laws or regulations of a governmental entity with jurisdiction over the Properties.

6.9 No Foreclosure by Senior Lienholders. Mortgages, deeds of trust, or any other form of lien required for any reasonable method of financing the construction of the New Mazda Dealership Project on the Property are permitted, however, the City's rights under this Agreement shall be senior to any and all such forms of lien. Saul and or Cardinale Trusts shall notify the City in writing in advance of any mortgage, deed of trust, or other form of lien for financing if Saul or Cardinale Trusts propose to enter into the same before the recordation of the Certificate of Completion. The words "mortgage" and "deed of trust" as used herein shall be deemed to include all customary and appropriate modes of financing real estate construction and land development.

6.10 Agreement Contingent on New Mazda Dealership Construction. This agreement is contingent on the completed construction of the New Mazda Dealership and issuance of the Certificate of Completion on or before the New Mazda Dealership Completion Date.

7. Saul's Covenant Regarding the Opening and Operation the New Mazda Dealership. Saul covenants to the City to cause the New Mazda Operator to open the New Mazda Dealership to or before the public on the New Mazda Dealership Opening Date, and to cause the New Mazda Operator to continuously operate the New Mazda Dealership on the New Mazda Dealership Property throughout the entirety of the Term. Saul further covenants to the City to cause the VW Operator to continuously operate the VW Dealership on the VW Dealership Property and the Hyundai Operator to continuously operate the Hyundai Dealership on the Hyundai Dealership Property throughout the entirety of the Term. For purposes of this Section 7 "continuously operate" means not ceasing operation for a time period in excess of ninety (90) consecutive calendar days.

7.1 Designation of City as Point of Sale. Saul shall cause the Operators of each Dealership to designate the City as the "point of sale" in all reports to the BOE for all Dealership Activities. Saul shall cause the Operators of each Dealership to, for the full Term, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for it to lawfully conduct Dealership Activities by the applicable Dealership and to designate the City as the "point of sale" in all reports and returns submitted to the BOE regarding Dealership Activities by the Dealership. The provisions of this Section 7.1 shall survive any Default by Saul.

7.2 Saul Sales Tax Information. Saul acknowledges and agrees that the sales and use tax reporting and payment information related to sales and use taxes attributable to Dealership Activities by the Dealerships may become a public record as a result of the covenants of Saul contained in Section 7.1 and the Covenant Payments to be made by the City to Saul (as further described in Section 8). Saul hereby authorizes the City to use the sales and use tax

reporting and payment information related to Dealership Activities by the Dealerships 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.

7.3 Covenants Run With the Properties. The covenants of this Section 7 shall run with the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect at all times during the Term.

8. City's Covenant Payment to Saul. In consideration of Saul's performance of its obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall, for each New Mazda Dealership Operating Year during the Eligibility Period that the City receives Local Combined Dealership Sales Tax Revenues in excess of the Local Combined Dealership Sales Tax Base, pay to Saul an amount equal to the sum of fifty percent (50%) of the Local Combined Dealership Sales Tax Revenues received by the City in excess of the Local Combined Dealership Sales Tax Base ("Covenant Payment"). In no event shall Saul be entitled to any payments during a New Mazda Dealership Operating Year unless the City receives Local Combined Dealership Sales Tax Revenues in excess of the Local Combined Dealership Sales Tax Base during that New Mazda Dealership Operating Year. Notwithstanding any other provision of this Agreement, the cumulative total of any and all Covenant Payments paid by the City pursuant to this Agreement shall not exceed Six Million Dollars ($6,000,000) in the aggregate.

8.1 State of California Legislation Impact on Covenant Payment. Saul 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 be payable to the City. Saul 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 Saul a corresponding reduction and/or delay in the payment of the Covenant Payments due to Saul during such time as such legislation is in effect. Furthermore, Saul 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. Saul 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 Saul 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.

8.2 City's Notice of Determination of New Mazda Dealership Operating Year Local Sales Tax Revenues and Covenant Payment. Within one hundred twenty (120) calendar days following a New Mazda Dealership Operating Year, the City will determine the Local Combined Dealership Sales Tax Revenues applicable to that New Mazda Dealership Operating Year and send the Covenant Payment due for that New Mazda Dealership Operating Year to Saul.

8.3 Saul'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 Saul, Saul notifies the City in writing that Saul 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 BOE which set forth the amount of sales tax paid to the BOE during the New Mazda Dealership Operating Year in connection with Dealership 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 Saul during such New Mazda Dealership Operating Year; and (iii) any and all invoices, and inventory records for such New Mazda Dealership 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 Saul and all others claiming by or through Saul. The provisions of this Section 8.3 shall be strictly construed and Saul waives, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter set forth in a Notice of Appeal that is not timely appealed in strict accordance with this Section 8.3. If Saul files a timely Notice of Appeal with the City, the City and Saul shall negotiate in good faith to resolve their dispute for a Negotiation Period. If, by the end of the Negotiation Period, the City and Saul 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 Saul 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.

8.4 No Accrual of Interest for Disputed Covenant Payment(s). The City and Saul 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. Saul 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.

8.5 Covenant Payment Paid From Any Source of City Funds. Any Covenant Payment due under Section 8 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.

8.6 Making Covenant Payment Is A Contingent Obligation of City. The City's obligations under this Section 8 are contingent on a fiscal year to fiscal year basis and, for each New Mazda Dealership Operating Year within the Eligibility Period, the City's obligations to make any payments to Saul under this Agreement are expressly contingent upon Saul, for the entirety of such New Mazda Dealership Operating Year, completely fulfilling its material obligations under this Agreement. If for any reason Saul fails to authorize the release or use of all or any part of sales tax information regarding the New Mazda Dealership, the Hyundai Dealership or the VW Dealership in a manner satisfactory to the BOE 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 Saul 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.

8.7 Covenant Payment Calculated on Year-To-Year Basis. The City and Saul agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a New Mazda Dealership Operating Year to New Mazda Dealership Operating Year basis. Revenues generated in one New Mazda Dealership Operating Year may not be carried forward or back to any prior or future New Mazda Dealership Operating Year, it being the express understanding of the Parties that for each New Mazda Dealership Operating Year the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other New Mazda Dealership Operating Year.

8.8 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Agreement, the BOE determines that all or any portion of the Local Hyundai Sales Tax Revenues, Local VW Sales Tax Revenues, or Local Mazda Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Hyundai Sales Tax Revenues, Local VW Sales Tax Revenues, or Local Mazda Sales Tax Revenues, then Saul shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Saul which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Saul fails to make such repayment

within thirty (30) calendar days after the City's written demand, then Saul 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 8.8 shall survive the expiration or termination of this Agreement.

9. Saul's Covenant Not To Accept Prohibited Financial Assistance. Saul covenants to the City that during the Term Saul 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 Dealership Activities from the City, (ii) a material (i.e., five percent (5%) or greater) reduction in the amount of Local Sales Tax Revenues which would be generated from the Dealership Activities in the absence of such an agreement, or (iii) any event of default by Saul. Saul further covenants to the City that during the Term Saul will cause the Operators of the Dealerships to 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 in accordance with the restrictions on Saul under this Section 9. The covenants of this Section 9 shall run with the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect at all times during the Term.

10. Saul's Covenant To Maintain the Properties on Tax Rolls During the Term. Saul covenants to the City to maintain (or cause the Operators of the Dealerships to maintain) the Properties on the County of Riverside, California, secured real property tax rolls throughout the Term.

10.1 During the Term, Saul, and its successors and assigns, covenants and agrees to pay (or cause the Operators of the New Mazda Dealership, the Hyundai Dealership, and VW Dealership to pay) all property tax bills with respect to the Properties 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 Riverside, California.

10.2 The covenants of Section 10 shall run with the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

11. Saul's Covenant to Maintain the Property in Good Condition. Saul covenants to the City that it shall cause the Operators of the Dealerships to maintain areas of the Properties 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 Saul in writing of the Maintenance Deficiency. If Saul 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 Saul, at least, ten (10) calendar days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether Saul 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 Properties 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 Properties that is visible from any public right-of-way adjacent or contiguous to the Properties, shall be removed by Saul 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 Properties and remove the graffiti, without notice.

11.2 The City and Saul further mutually understand and agree that the rights conferred upon the City under Section 11 expressly include the power to establish and enforce a lien or other encumbrance against the Properties (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 Properties 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 Saul from making (or causing the New Mazda Operator to make) any alteration, addition, or other change to any structure or improvement or landscaping on the Properties, provided that such changes comply with applicable City Requirements.

11.3 The covenants of Section 11 shall run with the Properties and shall be included in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

12. Saul's Covenant to Use Properties In Accordance With Agreement. Saul covenants and agrees for itself, its successors and assigns and all voluntary and involuntary successors in interest to the Properties or any part thereof, that the Properties shall, for the full Term of this Agreement, be put to no use other than development of the New Mazda Dealership Project and the Dealership Activities. Saul further covenants to the City that during the Term, Saul will cause the Operators of the Dealerships to conduct operations on the Properties in accordance with this Section 12. The covenant of this Section 12 shall run with the interest in the Properties and shall be set forth in the Notice of Agreement recorded against the Properties and shall remain in effect for the Term.

13. Saul's Covenant Not to Discriminate. Saul 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 Properties nor shall Saul, 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 Properties.

THIS NOTICE OF AGREEMENT is dated as of July 18, 2012, and has been signed on behalf of Saul and City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

[Signatures on following page]

SIGNATURE PAGE
TO
NOTICE OF AGREEMENT
(Saul)

IN WITNESS WHEREOF, Saul and the City have caused this Notice of Agreement to be signed, acknowledged and attested on their behalf by their duly authorized representatives, as set forth below:

CITY:

CITY OF CORONA
a California municipal corporation

By: _____
Bradly Robbins
City Manager

SAUL:

SAUL CHEVROLET INC.
a California Corporation

By: _____
Joseph Cardinale
President

ATTEST:

_____
City Clerk

ATTEST:

_____
Thomas Cardinale
Secretary

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

APPROVED AS TO LEGAL FORM:

Robert Rosenthal

By: _____
Legal Counsel

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California }
County of Riverside }

On 7/19/12 (Date) before me, Sandra D. Campos, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Bradley Robbins (Name(s) of Signer(s))

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

SANDRA D. CAMPOS
Commission # 1929280
Notary Public - California
Riverside County
My Comm. Expires Apr 15, 2015

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

WITNESS my hand and official seal.

Signature: Sandra D. Campos (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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Item #5907

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA

STATE OF CALIFORNIA
COUNTY OF Monterey

On June 25, 2012 (Date), before me, Susan A Kofnovec (Name And Title Of Officer (e.g. "Jane Doe Notary Public")),

personally appeared Joseph Cardinale + Thomas Cardinale (Name(s) of Signer(s)),

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

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

SUSAN A. KOFNOVEC
Commission # 1867504
Notary Public - California
Santa Clara County
My Comm. Expires Oct 8, 2013

Place Notary Seal Above

WITNESS my hand and official seal.

Susan A Kofnovec
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☒ Corporate Officer
  President + Secretary
  Title(s)
- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

EXHIBIT 1
TO
NOTICE OF AGREEMENT
(Saul)

Legal Description of 2603 Wardlow Road

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

PARCELS 2 AND 3 AS SHOWN BY PARCEL MAP NO. 22687, ON FILE IN BOOK 158 PAGES 92 THROUGH 96 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; EXCEPT ALL MINERALS, OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SAME AS RESERVED BY HALBERT I. HICKMAN IN DEED RECORDED MARCH 31, 1978 AS INSTRUMENT NO. 60926 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; ALSO EXCEPT ALL OIL AND GAS RIGHTS BELOW 1,000.00 FEET WITH NO RIGHT OF SURFACE ENTRY AS RESERVED BY SHAW SALES AND SERVICE CO., A CORPORATION, RECORDED JULY 20, 1972 AS INSTRUMENT NO. 95729 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 102-020-049

EXHIBIT 2
TO
NOTICE OF AGREEMENT
(Saul)

Legal Description of 2525 Wardlow Road

PARCEL 5 OF PARCEL MAP 22687, IN THE CITY OF CORONA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 158 PAGES 92 THROUGH 96 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE ENTIRE MINERAL ESTATE IN THE PROPERTY DESCRIBED LYING NOT LESS THAN 500 FEET BENEATH THE NATURAL SURFACE FOR PURPOSES OF THIS RESERVATION THE MINERAL ESTATE SHALL INCLUDE ALL SUBSTANCES WHICH HAVE BEEN DISCOVERED OR WHICH MAY IN THE FUTURE BE DISCOVERED UPON OR UNDER THE PROPERTY DESCRIBED, WHICH ARE NOR OR MAY IN THE FUTURE BE VALUABLE AND WHICH ARE NOW OR MAY BE IN THE FUTURE ENJOYED THROUGH EXTRACTION FROM THE PROPERTY DESCRIBED WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE MINERAL ESTATE SHALL INCLUDE ALL FORMS OF GEOTHERMAL ENERGY, ALL COAL, ALL GASES, ALL HYDROCARBON SUBSTANCES, ALL METALLIC MINERALS, AND ALL NON-METALLIC MINERALS.

SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THAT GRANT DEED RECORDED DECEMBER 8, 1987 AS INSTRUMENT NO. 346720 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, WHERE SAID MINERAL RIGHTS WERE RESERVED TO SANTA FE LAND IMPROVEMENT COMPANY, A CALIFORNIA CORPORATION.

EXHIBIT F
TO
OPERATING COVENANT AGREEMENT
(Saul)

Form of Certificate of Completion
(Saul)

[Attached Behind This Page]

FORM OF CERTIFICATE OF COMPLETION

When Recorded, Mail to:

_____

_____

_____

I, the City Manager of the City of Corona ("City"), hereby certify as follows:

Section 1. The New Mazda Dealership Project required to be constructed in accordance with that certain 2012 Operating Covenant Agreement ("Agreement") dated [INSERT DATE] by and between the City and Saul Chevrolet Inc., a California Corporation ("Saul") on certain real property, as more specifically described in the Agreement ("New Mazda Dealership Property"), has been completed in accordance with the provisions of the Agreement.

Section 2. This Certificate of Completion shall constitute a conclusive determination by the City of Saul's satisfaction of its obligation under the Agreement to commence and complete the development of the New Mazda Dealership Project on the New Mazda Dealership Property, including any and all buildings, parking areas, landscaping areas and related improvements necessary to support or meet any requirements applicable to the New Mazda Dealership Project and its use and occupancy on the New Mazda Dealership Property, excluding any normal and customary tenant improvements and minor building "punch-list" items. The Agreement is an official record of the City and a copy of the Agreement may be inspected in the office of the City Clerk located at 400 South Vicentia Avenue, Corona, California 92882, during the regular business hours of the City.

DATED AND ISSUED this __ calendar day of _____, _____.

_____

City Manager

EXHIBIT G
TO
OPERATING COVENANT AGREEMENT
(Saul)

Legal Description of Hyundai Dealership Property

PARCEL 5 OF PARCEL MAP 22687, IN THE CITY OF CORONA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 158 PAGES 92 THROUGH 96 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE ENTIRE MINERAL ESTATE IN THE PROPERTY DESCRIBED LYING NOT LESS THAN 500 FEET BENEATH THE NATURAL SURFACE FOR PURPOSES OF THIS RESERVATION THE MINERAL ESTATE SHALL INCLUDE ALL SUBSTANCES WHICH HAVE BEEN DISCOVERED OR WHICH MAY IN THE FUTURE BE DISCOVERED UPON OR UNDER THE PROPERTY DESCRIBED, WHICH ARE NOR OR MAY IN THE FUTURE BE VALUABLE AND WHICH ARE NOW OR MAY BE IN THE FUTURE ENJOYED THROUGH EXTRACTION FROM THE PROPERTY DESCRIBED WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE MINERAL ESTATE SHALL INCLUDE ALL FORMS OF GEOTHERMAL ENERGY, ALL COAL, ALL GASES, ALL HYDROCARBON SUBSTANCES, ALL METALLIC MINERALS, AND ALL NON-METALLIC MINERALS.

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