

CITY OF GARDEN GROVE

Garden Grove Agency for Community Development

To: Matthew Fertal

From: Economic Development

Dept: Director

Subject: OWNER PARTICIPATION
AGREEMENT WITH COUNTY-WIDE
RAMBLER INC. (GARDEN GROVE
VOLKSWAGEN)

Date: June 28, 2011

OBJECTIVE

It is requested that the Garden Grove Agency for Community Development, ("Agency") adopt the attached Resolution approving an Owner Participation Agreement ("OPA") with County-Wide Rambler, Inc., a California corporation ("Participant").

BACKGROUND

In late 2001, a new Chrysler/Jeep dealership opened on Trask Avenue, between Euclid Street and Taft Street. Previously, it had been located on Garden Grove Boulevard for several decades. The site of the new dealership was assembled with Agency assistance via a Disposition and Development Agreement (DDA) dated January 25, 2000. The Participant then constructed the dealership as part of a corporate partnership.

Around October of 2007, the Chrysler/Jeep points were sold to Union Dodge and on January 8, 2008, the Agency approved a request to replace the Chrysler/Jeep dealership with a Volkswagen (VW) dealership. The Participant was required to convert the building to meet the standards required by VW Corporation. Over one million four hundred thousand dollars (\$1,400,000) was expended by the Participant to convert the dealership, with additional costs required to reorganize the corporation after the death of one of the principals in February of 2009.

DISCUSSION

The Participant has requested financial assistance in the form of sales tax sharing in return for extending the existing covenant that was put into place when the first Agency financial assistance deal was negotiated until 2023. The existing covenant was placed pursuant to the 2000 DDA.

In exchange for the extended operating covenant, the Agency and Participant will divide fifty percent (50%) of any sales tax generated from auto sales after the

initial seventy five thousand dollars (\$75,000) in annual sales tax, until Participant receives seven hundred thousand dollars (\$700,000) or ten (10) years elapses, whichever comes first.

While the DDA approved in 2000 will be terminated when the OPA is approved, certain provisions of the original DDA will remain in effect, including a property maintenance agreement, which requires the Participant to maintain the private and public improvements to the curblin(e)s and runs with the land.

The new partnership is in the process of replacing the existing electronic reader board sign with a modern sign. As the Agency currently has the ability to advertise on the existing sign until October of this year, the partnership intends to honor the balance of that agreement and will consider allowing us to continue using some reasonable amount of time on the new sign when the current sign agreement expires.


FINANCIAL IMPACT

- The financial impact of this transaction is limited to fifty percent (50%) of sales tax generated over seventy five thousand dollars (\$75,000) annually, with a ten (10) year earn-out period or a maximum of seven hundred thousand dollars (\$700,000).

RECOMMENDATION

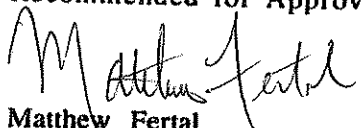
Staff recommends that the Agency:

- Adopt the attached Agency Resolution approving an Owner Participation Agreement between the Agency and County-Wide Rambler, Inc.


GREG BROWN
Real Property Division Manager

Attachment 1: Resolution
Attachment 2: Owner Participation Agreement

mm(h:Staff/GAB/OPA-County-Wide Rambler Inc sr 062811v1.doc)

Recommended for Approval

Matthew Fertil
Director

RESOLUTION NO. ____-11

A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY
DEVELOPMENT APPROVING AN OWNER PARTICIPATION AGREEMENT
BETWEEN THE AGENCY AND COUNTY-WIDE RAMBLER, INC. AND
MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Garden Grove Agency for Community Development ("Agency") is a California redevelopment agency duly formed and exercising powers pursuant to the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("Redevelopment Law"); and

WHEREAS, County-Wide Rambler, Inc. ("Participant") owns an approximately 152,460 square foot parcel of improved real property, which is located at the southeast corner of Taft Street and Trask Avenue in the City of Garden Grove ("Site"); and

WHEREAS, the Site is located in Agency's Garden Grove Community Project ("Redevelopment Project"); and

WHEREAS, Agency and Participant are parties to that certain Disposition and Development Agreement dated as of January 25, 2000 ("Original DDA"), pursuant to which Agency conveyed the Site to Participant and Participant agreed to construct, complete, and operate a new Chrysler/Jeep automobile dealership ("Dealership") thereon; and

WHEREAS, Agency and Participant now desire for Participant to operate a Volkswagen of Garden Grove dealership at the Site; and

WHEREAS, the Redevelopment Plan for the Redevelopment Project provides for Agency to encourage owners and tenants of real property within the Redevelopment Project to participate in the redevelopment of their property and authorizes Agency to acquire interests in real property, including operating covenants with respect to the use, operation, and maintenance of real property located in the Redevelopment Project; and

WHEREAS, the parties desire to terminate the Original DDA and enter into an Owner Participation Agreement ("Agreement") in order to provide for the sale by Participant to Agency of an "Operating Covenant," pursuant to which Participant covenants to operate the Dealership at the Site continuously during an "Operating Period" commencing on the date of the Agreement and terminating on December 13, 2023; and

WHEREAS, under the Agreement, subject to the satisfaction of conditions set forth therein, the Agency will be required to make certain payments provided for in the Agreement; and

WHEREAS, the financial participation by the Agency under the Agreement is in consideration of the obligation of Participant to operate the Dealership at the Site in accordance with the Operating Covenant during the entire Operating Period; and

WHEREAS, the City of Garden Grove will not be obligated to make any payments to the Developer under the Agreement; and

WHEREAS, the terms and conditions of the Agreement are more particularly set forth in the Agreement; and

WHEREAS, the Agreement furthers the goals of the Agency set forth in the Agency's adopted five-year Implementation Plan (2010-2014) as it will facilitate the retention and improvement of an existing business within the community; and

WHEREAS, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

WHEREAS, the Agency has duly considered all of the terms and conditions of the proposed Agreement and believes that the redevelopment of the Site pursuant to the Agreement is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

1. The Agency finds and determines that based upon substantial evidence provided in the record before it, the level of support provided under the Agreement is reasonable and necessary.
2. The Agency hereby finds and determines that the Agreement will further the implementation of the Redevelopment Plan and the Implementation Plan by providing for the retention and improvement of an existing, established business within the community, thereby promoting the retention and creation of jobs, the provision of additional goods and services and by enhancing and diversifying public revenues.
3. The Agency hereby approves the Agreement, subject to such revisions, if any, as may be made by the Director of the Agency or his designee. The Director of the Agency is and shall be authorized to execute the Agreement (including without limitation all attachments thereto) on behalf of the Agency. A copy of the Agreement when executed by the Agency shall be placed on file in the office of the Secretary of the Agency.
4. The Director of the Agency (or his designee) is authorized, on behalf of the Agency, to make revisions to the Agreement which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary

or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

5. This Resolution shall take effect immediately upon its adoption.

OWNER PARTICIPATION AGREEMENT

by and between

THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

and

COUNTY-WIDE RAMBLER, INC.

OWNER PARTICIPATION AGREEMENT

This **OWNER PARTICIPATION AGREEMENT** ("Agreement") is entered into as of _____, 2011 ("Date of Agreement") by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Agency"), and **COUNTY-WIDE RAMBLER, INC.**, a California corporation ("Participant").

RECITALS

A. Agency is a California redevelopment agency duly formed and exercising powers pursuant to the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("Redevelopment Law").

B. Participant owns an approximately 152,460 square foot parcel of improved real property, which is located at the southeast corner of Taft Street and Trask Avenue in the City of Garden Grove, County of Orange, State of California, as more particularly described in the Legal Description attached hereto as Attachment No.1 and incorporated herein by this reference ("Site"). The Site is located in Agency's Garden Grove Community Project ("Redevelopment Project").

C. Agency and Participant are parties to that certain Disposition and Development Agreement dated as of January 25, 2000 ("Original DDA"), pursuant to which Agency conveyed the Site to Participant and Participant agreed to construct, complete, and operate a new Chrysler/Jeep automobile dealership thereon.

D. Agency and Participant now desire for Participant to operate a Volkswagen of Garden Grove dealership at the Site.

E. The Redevelopment Plan for the Redevelopment Project provides for Agency to encourage owners and tenants of real property within the Redevelopment Project to participate in the redevelopment of their property and authorizes Agency to acquire interests in real property, including operating covenants with respect to the use, operation, and maintenance of real property located in the Redevelopment Project.

F. The parties desire to terminate the Original DDA and enter into this Agreement in order to provide for the sale by Participant to Agency of the Operating Covenant, as described in more detail herein.

G. The operation by Participant of the Approved Dealership on the Site, as provided for in this Agreement, is in the vital and best interest of the City of Garden Grove and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Participant hereby agree as follows:

100. DEFINITIONS

All terms not otherwise defined herein shall have the meanings set forth below:

"Agency" means the Garden Grove Agency for Community Development, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"Quarterly Disbursement" and **"Quarterly Disbursement Payment"** each mean the disbursement of the Operating Covenant Purchase Price to be made by Agency each Quarter pursuant to Section 202, *et seq.*

"Agency Second Deed of Trust" means the deed of trust attached hereto as Attachment No. 4 and incorporated herein, which shall be recorded against the Site concurrently with the Operating Covenant pursuant to Section 407.1.

"Agreement" means this Owner Participation Agreement between Agency and Participant.

"Approved Dealership" means the Volkswagen of Garden Grove automobile dealership located on the Site and operated as a new vehicle dealership devoted to the sale of new automobiles and trucks, together with incidental and accessory uses such as vehicle repairs, sales of parts, and the sale and purchase of used vehicles.

"Authorized Product Line" means Volkswagen and such other and additional product lines, if any, as may be permitted in this Agreement or may hereafter be designated by the mutual written agreement of Agency and Participant.

"Certificate of Compliance" means the Certificate of Continuing Compliance with Operating Covenant and Owner Participation Agreement in the form set forth as Attachment No. 3 and incorporated herein.

"City" means the City of Garden Grove, California.

"Closure" means the failure of Participant to operate an Approved Dealership on the Site for ninety (90) or more consecutive days.

"County" means the County of Orange, California.

"Date of Agreement" means the date set forth in the first paragraph hereof.

"Default" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 401 hereof.

"Developer's Cost" means the total actual cost to the Participant of planning, designing, financing, constructing, and developing the Improvements (in accordance with the plans and specifications approved by the City and Agency as provided in the Original DDA) through the issuance of the Release of Construction Covenants, but specifically excluding any other costs, including without limitation the costs of inventory, furnishings, fixtures, telephone, computer and

other equipment, and other personal property which is used on the Site, and the costs of operating and maintaining the Conforming Automobile Dealership Facility (as defined in the Original DDA). The Developer's Cost shall include but not be limited to the following: reasonable closing costs; costs of grading and site preparation; the cost of construction of all of the Improvements, including architectural, engineering and design fees, and development, permit, and inspection fees charged by any public agency incurred and paid by the Participant under the Original DDA and the Development Agreement described therein; a construction management/development fee charged to the project not to exceed three percent (3%) of the direct cost of excavation, site preparation, and construction of the Improvements; construction interest during the construction period; construction loan fees and points, including those paid to third parties, which loan fees and points shall not exceed an amount reasonable and customary in the industry; performance and completion bond premiums; permanent loan fees and points; consulting and professional fees paid to third parties with respect to the construction of the Improvements only; property taxes imposed with respect to the Site attributable to the construction period, insurance costs during the construction period, security costs during the construction period, utility costs during the construction period, maintenance expenses during the construction period, all expenses incurred during the construction period pursuant to the Maintenance Agreement (defined in the Original DDA), and any other actual costs to the Participant of planning, designing, financing, constructing, and developing the Improvements which have not been paid by the Agency. The parties hereby acknowledge and agree that the Developer's Cost includes the cost to construct the freeway sign constructed in connection with the Improvements as well as the cost to rehabilitate the Improvements to enable the Site to be operated as the Approved Dealership (specifically, Volkswagen of Garden Grove) under this Agreement.

"Director" means the Agency's Director or his authorized designee.

"Environmental Law" means any state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation: (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (vi) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903), (vii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 *et seq.*, or (viii) any state or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

"Excused Closure" means a Closure due to: (i) required or necessary rehabilitation of the Improvements on the Site (provided that the period during which an Approved Dealership is not operated as a result of the rehabilitation shall in no event exceed ninety (90) days), or (ii) floods, earthquakes, fires, or other acts of God which are not in any way due to the acts or omissions of Participant.

"First Covenant Period" shall commence as of the Date of Agreement and continue until and terminate on December 13, 2016.

“Franchise Agreement” means one or more franchise agreement(s) entered into by Participant with Volkswagen of America and/or other automobile Manufacturer(s) of one or more Authorized Product Lines relative to the operation of the Authorized Dealership on the Site.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, the Participant or the Site, including, without limitation, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City Municipal Code, all applicable disabled and handicapped access requirements, including, all applicable federal, state, and local public works requirements, including the requirement to pay prevailing wages and hire apprentices pursuant to Labor Code Section 1720 *et seq.*, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and all other applicable federal, state, and local laws.

“Grant Deed” means that certain Grant Deed conveying title to the Site from Agency to Participant which is recorded in the Official Records of the County as Instrument No. 2000-0346823 on June 30, 2000.

“Hazardous Materials” means any substance, material or waste which is or becomes, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (x) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. Section 9601), (xi) Methyl-Tertiary Butyl Ether, or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

“Improvements” means the improvements to be rehabilitated and/or constructed on the Site in accordance with the plans, specifications, entitlements, and permits obtained from and/or approved by the City as well as any and all applicable Governmental Requirements and Regulatory Approvals.

"Legal Description" means the legal description of the Site which is attached hereto as Attachment No. 1 and incorporated herein.

"Manufacturer" means the manufacturer of one or more of an Authorized Product Line.

"Notice" means a notice in the form prescribed by Section 501 hereof.

"Operating Covenant" means the Operating Covenant which is attached hereto as Attachment No. 2 and incorporated herein.

"Operating Covenant Period" means the First Covenant Period and the Second Covenant Period.

"Operating Covenant Purchase Price" means the purchase price to be paid by Agency to Participant in exchange for the Operating Covenant, as set forth in Section 202.1.

"Original DDA" means that certain Disposition and Development Agreement dated as of January 25, 2000 entered into by and between Agency and Participant with respect to the Site.

"Participant" means County-Wide Rambler, Inc., a California corporation, and its permitted successors and assigns.

"Permanent Closure" means that the business operation of the Approved Dealership on the Site has ceased for more than one (1) year; however, a closure of the Approved Dealership on the Site shall not be deemed to be a Permanent Closure if the closure is an Excused Closure.

"Point of Sale or Lease" means the geographical location to which the State Board of Equalization attributes the occurrence of a sale or lease as occurring for purposes of allocation taxes pursuant to the Sales Tax Law.

"Purchase Price" means the price paid to Agency in exchange for the Site by the Developer under the Original DDA.

"Quarter" means one calendar Year divided into four quarters, with the quarters commencing on January 1, April 1, July 1, and October 1 of each calendar year during the term of payments of the Operating Covenant Purchase Price. The first Quarter hereunder shall commence on the first January 1, or April 1, or July 1, or October 1 first following the Date of Agreement and shall end on the next following applicable January 1, or April 1, or July 1, or October 1 thereafter. During the term of Agency Assistance hereunder there are up to (but in no event to exceed) forty (40) Quarters; subject to the provisions of Section 202, *et seq.* and all provisions of the Agreement referenced therein. During each of the up to forty (40) Quarters, the amount of Sales and Use Tax Revenue generated by operation of the Dealership at the Site and allocated to and received by the City shall be calculated by the Agency to determine an amount equal to such revenues eligible to be paid as the Quarterly Disbursement Payment, all subject to the provisions of Section 202, *et seq.* and all provisions of the Agreement referenced therein.

"Quarterly Sales and Use Tax Revenue Period" is equivalent in time to one (1) Quarter, with the first Quarterly Sales and Use Tax Revenue Period commencing on the first January 1, or April 1, or July 1, or October 1 first following the Date of Agreement and ending on the next following applicable January 1, or April 1, or July 1, or October 1 and continuing thereafter for the

ten years during which the Operating Covenant Purchase Price is to be paid to Participant pursuant to Section 202, *et seq.*

“Redevelopment Law” means the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.*

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project, adopted by Ordinance No. 1339 and amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232 of the City Council of the City of Garden Grove, and incorporated herein.

“Redevelopment Project” means the Garden Grove Community Project, adopted by the City Council of City pursuant to the Redevelopment Plan.

“Regulatory Approvals” means any and all such approvals as may be required from the California New Motor Vehicle Board, and any other applicable governmental agency, to allow the Site to be utilized as part of the Approved Dealership for the sale and storage of new motor vehicles and other products manufactured by a Manufacturer of an Authorized Product Line.

“Sales and Use Tax Revenue” means that portion of taxes derived and received by the City and available in the City’s general fund for unrestricted use from the imposition of the Sales Tax Law, on transactions having the Site as a Point of Sale or Lease. Sales and Use Tax Revenue shall include those taxes attributable to lease payments made during the period of the Operating Covenant for leases of automobiles which were originated at the Site during the term of the Operating Covenant but shall not include those taxes attributable to lease payments made after the commencement of the Operating Covenant Period for leases of automobiles which were originated at the Site prior to the commencement of the Operating Covenant Period.

“Sales Tax Law” means the Bradley Burns Uniform Local Sales and Use Tax Law, California Revenue and Taxation Code Section 7200, *et seq.*, as amended, or any successor statute, law or regulation.

“Second Covenant Period” shall commence on December 14, 2016 and terminate on December 13, 2023.

“Site” means that certain real property located at the southeast corner of Taft Street and Trask Avenue in the City of Garden Grove, County of Orange, State of California, as more particularly described in the Legal Description.

“State Board of Equalization” and ***“SBE”*** mean the Board of Equalization of the State of California or any successor entity charged with the responsibility of collecting and allocating taxes pursuant to the Sales Tax Law.

“Transfer” is defined in Section 503.1 hereof.

“Year” means a twelve (12) month period, the first of which shall commence on the first day of the first calendar Quarter following the Date of Agreement and terminate on the date which is twelve (12) months thereafter; and the remainder of which shall commence on the day following the termination date of the previous Year and terminate twelve (12) months thereafter.

200. AGENCY'S PURCHASE OF OPERATING COVENANT.

201. Termination of Original DDA. Except as to any covenants, conditions, restrictions, agreements, or other provisions in the Original DDA which state that they shall survive termination of the Original DDA, the Original DDA is hereby terminated and shall no longer be of any force or effect. The Operating Covenant shall state that the covenants set forth in Sections 3, 4, 6, 7, and 8 of the Grant Deed are terminated and of no further force and effect. The Maintenance Agreement recorded against the Site as Instrument No. 2000-0346824 on June 30, 2000 shall remain in full force and effect according to its terms.

202. Consideration for Operating Covenant.

202.1 Operating Covenant Purchase Price. In accordance with its authority as a redevelopment agency under the Redevelopment Law and in consideration of the sale by Participant to Agency of the covenants set forth in Section 300, *et seq.* hereof and in the Operating Covenant, Agency hereby agrees to pay to Participant Seven Hundred Thousand Dollars (\$700,000) ("Operating Covenant Purchase Price"), or as much thereof as is disbursed by the Agency as set forth in Section 202.2. In no event shall Agency's obligation hereunder to pay the Operating Covenant Purchase Price be considered or interpreted to be a pledge of tax revenues by Agency within the meaning of Health and Safety Code Sections 33671 or 33671.5, or any other authority.

202.2 Payment of Operating Covenant Purchase Price. In each of the first ~~ten~~(10) Years in which the Authorized Dealership is in operation, and continuously operates, at the Site and in which Participant is not in Default under this Agreement or the Operating Covenant, the Sales and Use Tax Revenue received by the City shall be used as the basis and benchmark for calculating the Operating Covenant Purchase Price payment to Participant as follows:

(a) The first Seventy-Five Thousand Dollars (\$75,000) of Sales and Use Tax Revenue received by the City in each of the first ten (10) Years following the Date of Agreement shall not be counted toward, and shall be excluded from, the Operating Covenant Purchase Price.

(b) Agency shall pay to Participant an amount equal to one half (1/2) of the Sales and Use Tax Revenue received by the City in each of the first ten (10) Years following the Date of Agreement exceeding and over Seventy-Five Thousand Dollars (\$75,000), up to the amount of the Operating Covenant Purchase Price, but in no event shall the cumulative amount paid to Participant by Agency exceed the Operating Covenant Purchase Price.

(c) Operating Covenant Purchase Price Payments shall be disbursed to Participant in the form of Quarterly Disbursements as described in this Section 202.2(c). For example, if the Sales and Use Tax Revenues generated in a Year from the operation of the Dealership at the Site is \$25,000 per Quarter, the Quarterly Distribution Payment would be \$0 after the first Quarter, \$0 after the second Quarter, \$12,500 after the third Quarter and \$12,500 after the fourth Quarter. And if the Sales and Use Tax Revenues generated in the next Year from the operation of the Dealership at the Site is \$40,000 per Quarter, the Quarterly Distribution Payments for the next Year would be \$0 after the first Quarter, \$15,000 after the second Quarter, \$20,000 after the third Quarter and \$20,000 after the fourth Quarter, up to a maximum cumulative amount of \$700,000.

The Operating Covenant Purchase Price payments shall be made quarterly pursuant to subdivision (d) below and according to the formula set forth above, until the total,

cumulative aggregate amount of such payments equals the Operating Covenant Purchase Price; provided, in no event shall Agency be required to make any Operating Covenant Purchase Price payment with respect to Sales and Use Tax Revenue received by the City after the tenth (10th) Year following the Date of Agreement.

(d) Upon the Participant's satisfaction of the Conditions Precedent to disbursement of Quarterly Disbursements as set forth in Section 202.3 hereof, each payment of an Quarterly Disbursement shall occur within ninety (90) days after the receipt by City of (1) the State Board of Equalization final sales and use tax report with respect to the applicable Quarterly Sales and Use Tax Revenue Period (from the up to 40 Quarters), (2) complete, legible, and verifiable documentation showing the Sales and Use Tax Revenue generated by the Authorized Dealership operations at the Site over the previous Quarter, as described in Section 202.4, and (3) an executed Certificate of Compliance in the form attached hereto as Attachment No. 3 and incorporated herein, certifying Participant's continuous compliance with all requirements of this Agreement and the Operating Covenant throughout the prior Year but in no event prior to City's actual receipt of the Sales and Use Tax Revenues for the Quarterly Sales and Use Tax Revenue Period in question. Participant is aware that as of the Date of Agreement, the Agency intends that the SBE report will be supplemented and summarized by an outside third party fiscal consultant.

202.3 Conditions Precedent to Disbursement of Each Quarterly Disbursement of the Operating Covenant Purchase Price. Each Quarterly Disbursement of the Operating Covenant Purchase Price is expressly conditioned upon the satisfaction by Participant of the respective conditions precedent (a) through (k) inclusive, described below ("Conditions Precedent"). Such Conditions Precedent are solely for the benefit of the Agency, and shall be fulfilled by Participant (or waived by the Agency in its sole and reasonable discretion) within the time periods provided for herein. Participant may satisfy (and submit evidence of such satisfaction to the Agency Director) one or more of such Conditions Precedent at any time prior to the first Quarterly Disbursement, so that at the time the first Quarterly Disbursement is due, Participant may have already provided satisfactory evidence of compliance with each of such Conditions Precedent. Thereafter, for each subsequent Quarterly Disbursement, Participant shall satisfy compliance, or continued compliance, with each and all of the respective Conditions Precedent, and still subject to performance hereunder, unless renewal or update of any prior submittal is required hereunder, in which case that Condition Precedent shall remain outstanding and not satisfied unless and until the renewal or update is provided in conformity with the requirements of this Agreement.

(a) **Deduction of Third Party Costs Incurred for Calculation of Sales and Use Tax Revenue for Applicable Quarterly Disbursement.** Each Quarterly Disbursement shall be subject to deduction by Agency for all third party costs incurred by Agency (or City) for review and calculation of the applicable payment by an independent, professional fiscal consultant, if any is retained and used by Agency therefor. Participant acknowledges and agrees it is and shall be responsible for all third party costs incurred by the Agency (and/or City) for calculation of each Operating Covenant Purchase Price payment, and such costs will be paid through the withholding and offset described in this subsection as one of the Conditions Precedent. As and when the Agency uses the services of an outside fiscal consultant, the charges, fees, and costs billed and paid by the Agency for the services rendered relating to this Agreement (and thereafter deducted from the applicable payment) shall be reasonable and within the standards of comparable qualified fiscal consultants for similar services in California.

(b) **Execution and Delivery of Documents.** Participant shall have delivered to the Agency all documents required by this Agreement.

(c) **Recordation of Agency Second Deed of Trust and Operating Covenant.** The Operating Covenant and Agency Second Deed of Trust shall have been executed by Participant and recorded against the Site in second and third lien position, respectively, subordinate only to the Participant's first lien mortgage construction and/or permanent financing and such Operating Covenant and Agency Second Deed of Trust shall be and remain an encumbrance against the Site in second and third lien priority, respectively, until the end of the Operating Covenant Period as more fully described in Section 407 herein.

(d) **Insurance.** Participant shall have provided proof of insurance as required by this Agreement.

(e) **Regulatory Approvals.** Assuming no protests have been lodged against the location and opening of the Dealership, Participant shall have obtained any legally required Regulatory Approval(s) from applicable governmental agency(ies) related to Participant's ownership and operation of the Approved Dealership on the Site.

(f) **Manufacturer Approval.** Participant shall have received any required approval(s) from the Manufacturer for the Participant's operation of the Approved Dealership upon the Site.

(g) **Payment of Taxes.** No ad valorem real property taxes or assessments assessed with respect to the Site shall be delinquent, nor shall any sales and use taxes assessed with respect to the Site pursuant to the Sales Tax Law be delinquent.

(h) **No Default.** There shall exist no condition, covenant, event or act which would constitute an event of Default hereunder, or which, upon the giving of notice or the passage of time, or both, would constitute an event of Default.

(i) **Continuous Operation of Dealership.** Participant shall be in full compliance with the Operating Covenant and the Franchise Agreement(s). Participant shall have executed and delivered the Certificate of Compliance to the Agency for the previous Year. In addition, Participant shall have executed and delivered the certification described in Section 309 relating to relocation of automobile dealerships to Agency.

(j) **Environmental Condition of the Site.** Participant shall not be in default of the requirements of this Agreement regarding the environmental condition of the Site.

(k) **Financial Report.** Participant shall have submitted the necessary documentation and annual certification required by Section 202.4 below and this Agreement relating to the Sales and Use Tax Revenues and compliance with the Operating Covenant. To the extent Participant causes to be prepared an audited financial statement for the operations of the Dealership at the Site, then a copy of such audited financial statement shall be submitted to the Agency Director within 30 days of completion thereof.

202.4 Verification of Quarterly Sales and Use Tax Revenue. The Sales and Use Tax Revenue generated each Quarter for each of the up to forty (40) Quarters (10 years), and subject

to payment of a maximum cumulative amount of \$700,000 and subject further to the provisions of Sections 202.2 and 202.3 and all provisions of the Agreement referenced therein shall be determined as follows:

(a) for sales of automobiles, parts and accessories, Sales and Use Tax Revenue shall be based upon the State Board of Equalization sales and use tax report(s) applicable to the Dealership and the Site for the applicable Quarterly Sales and Use Tax Revenue Period; and

(b) for leases of new and used vehicles, eligible Sales and Use Tax Revenue shall be based upon the following requirements: (i) Participant shall report to the City the name and address of any leasing company or leasing agent who is leasing cars for or on behalf of Participant and/or the Dealership; (ii) the vehicle leasing documents shall clearly identify the name of the Dealership and the address for point of transaction as within the boundaries of the City of Garden Grove (whether or not the lease documents are processed at location(s) outside the boundaries of the City of Garden Grove); and (iii) any other reports or information the Agency (or City) deems reasonably necessary to calculate Sales and Use Tax Revenue generated from vehicle leasing activity, in order to provide to Agency and City adequate records to verify the appropriate collection and allocation of the Sales and Use Tax Revenue to the City for the applicable Quarterly Sales and Use Tax Revenue Period.

(i) The Sales and Use Tax Revenue for leased vehicles shall be deemed to have been received in the Quarter in which the vehicle is initially leased, so long as the Sales and Use Tax Revenue is allocated to and received by the City. However, all Quarterly Disbursement Payments hereunder are expressly conditioned upon the actual generation of Sales and Use Tax Revenue from the Site, the allocation to, and receipt by the City of such Sales and Use Tax Revenue in the applicable Quarterly Sales and Use Tax Revenue Period to be eligible to be included in the calculation of the amount of Sales and Use Tax Revenue generated and allocated for purposes of calculating the amount of the Quarterly Disbursement Payment due, subject to the provisions of Sections 202.2 and 202.3 and all provisions of the Agreement referenced therein and subject to payment of a maximum cumulative amount of \$700,000.

(c) Upon written request by Agency, Participant shall promptly furnish to Agency any and all said information and take any and all actions which are reasonably deemed necessary by Agency to assist Agency in verifying the information contained in said sales and use tax returns and reports of new, used, and leased vehicles. Agency shall be entitled to review and audit the Participant's books and records pertaining to the foregoing.

(i) If an audit of the Participant's books and records determines that Participant has overstated revenues in any applicable Quarter, Participant shall reimburse the Agency for any overpayment of the Quarterly Disbursement Payment, and if Participant has overstated revenues by more than ten percent (10%) in any Quarter, Participant shall reimburse the Agency for the cost of the audit, within thirty (30) days of notice thereof from the Agency.

(ii) Participant, at its sole cost and expense, may request an audit to verify and/or reconcile the calculation of the amount of any Quarterly Disbursement Payment. If such audit reveals an underpayment to Participant, then Agency shall pay the outstanding amount of any Quarterly Disbursement Payment hereunder to be paid to the Participant; and if such audit reveals an overpayment to Participant, then Participant immediately shall reimburse the Agency for such overpayment.

(iii) If Participant contests the amount of Sales and Use Tax Revenues for any Quarter for the sales of automobiles, parts, and accessories arising from the Dealership, as based upon the State Board of Equalization sales and use tax report applicable to the Dealership and the Site, then Agency shall, at the sole expense of the Participant, use good faith efforts to investigate and, if appropriate, to take steps to ensure that the correct amount of Sales and Use Tax Revenues arising from the Dealership is allocated to the City, and the correct amount of the Quarterly Disbursement Amount is calculated and paid to the Participant.

(iv) In the event an audit of Agency's payment records conducted by an independent auditor reveals a miscalculation of a Quarterly Disbursement Payment (assuming the SBE's and Participant's records with respect to the Sales And Use Tax Revenues generated from the Dealership correlate and no wrong information was submitted by Participant to the Agency or the SBE) and such Agency miscalculation evidences an underpayment to Participant of ten percent (10%) or more in any Quarter, then the cost of the audit shall be borne by the Agency, and the outstanding amount of underpayment of the applicable Quarterly Disbursement Payment shall be immediately remitted to the Participant.

203. Representations and Warranties.

203.1 Agency Representations. Agency represents and warrants to Participant as of the Date of Agreement as follows:

(a) Agency is a public body, corporate and politic, existing pursuant to the Redevelopment Law, which has been authorized to transact business pursuant to action of the City Council of the City.

(b) The execution, performance and delivery of this Agreement by Agency have been fully authorized by all requisite actions on the part of Agency.

(c) Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

Until the final disbursement of the Operating Covenant Purchase Price, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 203.1 not to be true as of such date, immediately give written notice of such fact or condition to Participant. Such exception(s) to a representation shall not be deemed a breach by Agency hereunder, but shall constitute an exception which Participant shall have a right to approve or disapprove.

203.2 Participant's Representations. Participant represents and warrants to Agency as of the Date of Agreement and until the expiration of the Operating Covenant Period as follows:

(a) **Ownership of Franchise.** Participant owns a new automobile franchise which permits Participant to operate the Authorized Dealership on the Site, and Participant is not in default of its Franchise Agreement(s). In addition, Participant owns other new automobile franchises and is not in default of any franchise agreements or other agreements with any automobile

franchisers or manufacturers (including the Franchise Agreements relative to the Site and franchise agreements relative to other automobile dealerships owned and/or operated by Participant).

(b) **Authority.** Participant has full right, power and lawful authority to undertake all obligations as provided herein. The execution, performance and delivery of this Agreement by Participant have been fully authorized by all requisite actions on the part of Participant. The Manufacturer has authorized the location and operation of the Approved Dealership in the City of Garden Grove and more specifically at the Site.

(c) **Experience.** Participant is an experienced operator of new automobile dealerships and is authorized by the State of California to engage in the business of automobile sales.

(d) **No Conflict.** To the best of Participant's knowledge, Participant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(e) **No Participant Bankruptcy.** Participant is not the subject of a current or threatened bankruptcy proceeding.

Until the expiration of the Operating Covenant Period, Participant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 203.2 not to be true as of such date, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Participant hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove.

300. COVENANTS AND RESTRICTIONS

301. Use in Accordance with Redevelopment Plan and Agreement. Participant covenants and agrees to devote, use, operate, and maintain the Site in accordance with the Redevelopment Plan, the Operating Covenant, all entitlements, permits, Regulatory Approvals, and Governmental Requirements applicable to the Site and the Approved Dealership and this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by Participant pursuant to this Agreement, shall conform to the Redevelopment Plan, all applicable provisions of the City Municipal Code, all entitlements, permits, Regulatory Approvals, and Governmental Requirements applicable to the Site and the Approved Dealership and the recorded documents pertaining to and running with the Site.

302. Operating Covenant. Participant hereby covenants and agrees to each of the following covenants:

302.1 Covenant to Operate Approved Dealership on Site. Throughout the Operating Covenant Period, Participant shall operate (or cause its successors or assigns to operate) the Approved Dealership on the Site on a continuous basis, in compliance with all Governmental Requirements and Regulatory Approvals, with such Site devoted to the sale and leasing of new automobiles, sports utility vehicles, and trucks of one or more Authorized Product Lines, with Manufacturer's approval as a factory authorized new automobile dealer as the principal activity

conducted on the Site. The servicing and repair of such automobiles, sports utility vehicles, and trucks may also be conducted on the Site as a secondary use incidental to the sale and leasing of new vehicles. Participant shall conduct all activities for the leasing of automobiles from the Approved Dealership either on the Site or at an office located within the City of Garden Grove. Agency hereby approves Volkswagen as an Authorized Product Line under this Agreement. Participant may request the written approval of Agency for the sale of one or more different Authorized Product Line(s) other than Volkswagen, pursuant to Section 503 hereof. After the opening of an Approved Dealership on the Site devoted to the sale and lease of new Volkswagen automobiles, sports utility vehicles, and trucks, Participant may add the sale and leasing of an additional new automobile, sports utility vehicle, and truck product line on the Site without necessity of obtaining further Agency consent; provided that Participant continues to operate an Approved Dealership for the sale and lease of new Volkswagen automobiles, sports utility vehicles, and trucks (or such other Authorized Product Line which has been approved by Agency). No other uses may be conducted on the Site during the Operating Covenant Period without the prior written approval of Agency, which approval may be granted, refused, or conditioned as provided in Section 503 hereof.

302.2 No Competing Dealership; Operation to Maximize Sales and Use Tax Revenues. Participant further covenants and agrees that during the Operating Covenant Period, Participant will not own and/or operate through Participant, or any entity in which Participant has at least a twenty five percent (25%) interest in profits and losses and/or management control, any other new vehicle dealership selling any of the Authorized Product Line as then being sold by the Approved Dealership within a five (5) mile radius of the Site (except that Participant may own and/or operate other dealerships in the City of Garden Grove). Participant shall use commercially reasonable efforts to operate (or to cause its successors or assigns to operate) the Approved Dealership on the Site in such a manner as to produce the maximum amount of Sales and Use Tax Revenues to be received by the City.

302.3 Default and Excused Closure. Except with the prior written consent of Agency for each instance, which consent may be granted or withheld in Agency's reasonable discretion, a Closure shall, at Agency's option, constitute a Default hereunder (but Agency's Option to repurchase the Site pursuant to Section 406 as a result of a Permanent Closure of the Site shall not be exercisable until the failure of Participant to operate an Approved Dealership on the Site has continued for one (1) year); provided, however, that Participant shall for purposes of this Section 302.1 be deemed to be operating an Approved Dealership during any period that Participant is prevented from operating such a dealership due to an Excused Closure.

302.4 Covenants to Run with Land. The requirements of this Section 302 shall be included in the Operating Covenant and shall run with the land.

303. Condition of the Site.

303.1 Hazardous Materials. Participant shall not cause or permit the presence, use generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Site in violation of applicable Environmental Law. Further, Participant shall carry out the operation of the Approved Dealership in conformity with all Governmental Requirements. The operation of the Approved Dealership shall be in compliance with the requirements of all entitlements and/or permits issued by the City for the Approved Dealership, as such entitlements and/or permits may be modified from time to time, and any other Regulatory Approvals for the use of the Site in accordance with this Agreement.

303.2 Indemnity. Participant agrees to and hereby does indemnify, defend and hold Agency and the City and their respective officers, employees, contractors, agents, representatives, and volunteers harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees) (hereinafter collectively the "Claim"), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any such materials to or from, the Site in violation of applicable Environmental Law, whenever discovered or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Site whenever discovered. This indemnity shall include, without limitation, any Claim for personal injury including sickness, disease or death, tangible or intangible property damage, compensation or lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment. This indemnity shall not include any Claim directly resulting from, arising out of, or based upon the negligent activities of Agency, City, or any of their officers, employees, contractors, agents, representatives, and volunteers.

304. Compliance With Laws. Participant shall carry out the design, construction and operation of the Improvements in conformity with all Governmental Requirements and Regulatory Approvals.

304.1 Indemnification. Participant shall indemnify, protect, defend and hold harmless Agency and its officers, employees, contractors, agents, representatives, and volunteers, with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Participant with any Governmental Requirements or Regulatory Approvals, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Participant to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Participant shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 304.1 shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the development of the Improvements by Participant.

305. Nondiscrimination Covenants. Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in

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

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of any categories described above. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

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

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

306. Maintenance. Participant shall maintain the Site and the Improvements, including all landscaping thereon as well as within the public right of way adjacent to the Site in a clean and

attractive condition in accordance with the City Municipal Code, all Governmental Requirements, all Regulatory Approvals, and the Operating Covenant.

307. Indemnification and Insurance Requirements.

307.1 Indemnity. Participant shall defend, indemnify, and hold harmless Agency and the City, and their officers, employees, contractors, agents, representatives, and volunteers, from all claims, demands, damages, defense costs or liability of any kind or nature arising on or after the Date of Agreement until the expiration or termination of this Agreement, which may arise from the acts or omissions of Participant under this Agreement, and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of Participant under this Agreement, whether such activities or performance thereof be by Participant or by anyone directly or indirectly employed or contracted with by Participant in connection with this Agreement and whether such damage shall accrue or be discovered before or after termination of this Agreement. Participant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Participant determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Participant shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, Participant's obligation and right to defend shall include the right to hire (subject to written approval by Agency and City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Participant, Agency, or City. If Participant defends any such action, as set forth above, (i) Participant shall indemnify and hold harmless Agency and City and their officers, employees, contractors, agents, representatives, and volunteers from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of Participant, not to be unreasonably withheld, and any settlement without such reasonable consent shall release Participant's obligations under this Section 307 with respect to such settled claim. Notwithstanding anything to the contrary herein, Participant shall not be liable for any such claims which are caused by the sole negligence or willful acts of Agency or its officers, employees, contractors, agents, representatives, and volunteers.

307.2 Insurance Requirements. Participant, at Participant's expense, shall throughout the term of this Agreement maintain and comply with the following insurance and related requirements.

(a) **Commercial property insurance** covering the premises, fixtures, equipment, buildings, all property situated in, on, or constituting a part of the premises and any improvements. Participant also agrees to provide builder's all-risk insurance using an inland marine form during the period of any construction, major alteration or improvement. Coverage shall be for the full replacement value of the improvements.

(b) **Boiler & Machinery insurance** encompassing explosion and breakdown. Coverage shall be for full replacement value.

(c) **Commercial general liability insurance** on Insurance Services Office form CG 20 10 or equivalent that pays on behalf of the insured and provides defense in

addition to limits. Participant shall obtain an endorsement to the policy adding City and Agency, their officials, employees and agents as additional insureds. Coverage shall not exclude suits between insureds.

(i) As to the foregoing insurance requirements (a) to (c) inclusive of this Section 307.2, coverage and limits shall apply to the full extent of the policy with no limitation to vicarious liability for additional insureds and extending coverage to any location for operations or activities necessary or incidental to the operations of the premises. Coverage limits shall be no less than Five Million Dollars and No Cents (\$5,000,000.00) annually in the aggregate. Coverage provided by Participant is intended to apply first on a primary non-contributing basis in relation to any insurance or self-insurance of City or Agency. Deductibles shall be approved by City and Agency.

(d) **Garage keeper's legal liability insurance** and/or automobile liability insurance or equivalents providing protection for liability arising out of the use, ownership or maintenance of automobiles whether owned or not. Coverage shall include property damage to vehicles in the care, custody or control of the insured. Limits shall be no less than Five Million Dollars and No Cents (\$5,000,000.00) per accident.

(e) **Workers' compensation and employer's liability insurance** written on a policy form providing statutory benefits as required by law. Employer's liability limits shall be no less than \$1,000,000 dollars per accident or disease.

307.3 Additional Conditions to Insurance Requirements.

(a) Participant agrees to waive rights of subrogation as to City and Agency and to have all policies of insurance required here endorsed to permit such waiver, if necessary. All insurance is to be provided by insurers admitted and authorized to do business in the state of California with a minimum A.M. Best's rating of A:VII. All policies shall be endorsed to reflect that the policies shall not be canceled, non-renewed or reduced in scope or stated limits until City and Agency have been provided thirty (30) days advance written notice of such change. The insurance coverage and limits required here shall not be construed as a limit of Participant's liability. Participant agrees to respond for any losses with respect to this agreement incurred by City and not covered by Participant's insurance whether by reason of coverage being inapplicable or by Participant's failure to obtain coverage.

(b) Proof of insurance using certificates of insurance and required endorsements must be delivered to City and Agency prior to execution of this Agreement. If Participant fails to comply, City has the right but not the duty to purchase such coverage and charge the premium to Participant who must promptly pay said premium. Participant shall also provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with equivalent policies. Such proof shall be furnished at least two weeks prior to the expiration of the coverages.

(c) Participant agrees to provide immediate notice to City and Agency of any claim or loss against Participant that includes City or Agency as a defendant. City and Agency assume no obligation by such notice, but have the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City or Agency.

308. Third Party Litigation Concerning Agreement. Participant shall defend, at its expense, including attorney and expert witness fees, indemnify, and hold harmless City, Agency, and/or their officers, employees, contractors, agents, representatives, and volunteers from any claim, action or proceeding brought by a person or entity not a party to this Agreement against Agency, City, and/or their officers, employees, contractors, agents, representatives, and volunteers to attack, set aside, void, or annul the approval of this Agreement. Agency shall promptly notify Participant of any claim, action, proceeding or determination included within this Section 308. Agency and/or City, as applicable, may, in their discretion, participate in the defense of any such claim, action, proceeding or determination.

309. Sales and Use Tax Sharing Claims. Participant covenants and warrants that the Approved Dealership to be operated on the Site pursuant to this Agreement is not being relocated from another location within the market area of the Site, within the meaning of Health and Safety Code Section 33426.7 or Government Code Section 53084. Participant further understands and agrees that any successful claim by a government agency pursuant to those provisions shall entitle Agency to require Participant to pay any sums required pursuant to the resolution of such claim. Prior to and as a Condition Precedent to the disbursement of any Quarterly Disbursement of the Operating Covenant Purchase Price, Participant shall execute and provide to Agency a certification in a form acceptable to the Agency Director, certifying that no other automobile dealership owned in whole or in part by Participant located within forty (40) miles of the Site is being or has been closed within three hundred sixty-five (365) days of the date of this Agreement or the date the Approved Dealership opened for business.

310. Effect of Violation of the Terms and Provisions of this Agreement. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of Agency, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity. Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of Agency, without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Site or in the Redevelopment Project Area. Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

311. Recordation of Operating Covenant. Participant agrees to execute, acknowledge and record in the official records of Orange County, as an encumbrance to the Site, the Operating Covenant substantially in the form attached hereto as Attachment No. 2 which is incorporated herein. Participant shall comply with this Section 311 within fifteen (15) calendar days following the Date of Agreement.

400. DEFAULTS AND REMEDIES

401. Default. Subject to the extensions of time set forth in Section 502 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time

periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within thirty (30) days from receipt of such notice, or if the nature of such default is that it cannot reasonably be expected to be cured within such thirty (30) day period, if such party, with due diligence, commences to cure, correct or remedy such failure or delay within thirty (30) days from receipt of such notice, and shall complete such cure, correction or remedy with diligence.

402. Institution of Legal Actions. In addition to any other rights or remedies set forth herein and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement and the Operating Covenant, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy set forth herein or otherwise consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California.

403. Termination by Participant. In the event that Participant is not in Default under this Agreement and Agency is in Default of this Agreement and such Default is not cured within the time set forth in Section 401 hereof, then this Agreement and the Operating Covenant may, at the option of Participant, be terminated by written notice thereof to Agency. From the date of the written notice of termination of this Agreement by Participant to Agency and thereafter this Agreement and the Operating Covenant shall be deemed terminated and there shall be no further rights or obligations between the parties, except that if Agency is in Default hereunder, Participant may pursue any remedies it has at law or equity.

404. Termination by Agency. In the event that Agency is not in Default under this Agreement and:

(a) Participant is in Default of this Agreement and fails to cure such default within the time set forth in Section 401 hereof; or

(b) Agency or City is subjected to economic or operational issues that render continued compliance with this Agreement legally impossible, and the parties are unable to negotiate an alternative payment structure pursuant to Section 202.2 hereof,

then this Agreement, the Operating Covenant, and any rights of Participant or any assignee or transferee with respect to or arising out of this Agreement, the Operating Covenant or the Site, shall, at the option of Agency, be terminated by Agency by written notice thereof to Participant. From the date of the written notice of termination of this Agreement by Agency to Participant and thereafter this Agreement shall be deemed terminated, Agency shall not be obligated to make any further payments of the Operating Covenant Purchase Price, and there shall be no further rights or obligations between the parties, except that if Participant is in Default hereunder Agency may pursue any remedies available to Agency at law or equity.

405. Reentry and Revesting of Title in Agency After the Date of Agreement. Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon,

and terminate and revest in Agency the estate conveyed to Participant under the Original Agreement and this Agreement if, after the Date of Agreement, Participant (or its successors in interest) shall:

(a) be in violation of the terms of the Franchise Agreement(s) for a period of thirty (30) days or longer; or

(b) contrary to the provisions of Section 503, Transfer or suffer any involuntary Transfer in violation of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or
2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Operating Covenant shall contain appropriate reference and provision to give effect to Agency's right as set forth in this Section 405 prior to recordation of the certificate of occupancy for the Improvements by the City, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in Agency the estate conveyed to Participant. Upon the revesting in Agency of title to the Site as provided in this Section 405, Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to Agency and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by Agency or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by Agency from the Site or part thereof in connection with such management) and any portion of the Operating Covenant Purchase Price that has been disbursed to Participant; all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Participant has not paid (or, in the event the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Participant, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Agency, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Participant, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Participant from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Agency as its property. The rights established in this Section 405 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Agency has conveyed the Site to Participant for redevelopment purposes, particularly for operation of a new automobile dealership, and not for speculation in land.

406. Grant of Option by Participant to Agency. The parties acknowledge that the primary objectives of Agency in entering into this transaction are to eliminate blight within the Project, encourage new investment in the City, ensure the optimum generation of sales tax revenues, maximize the use of real property within the Project, and stimulate the economic development of the City. Accordingly, Agency is and will continue to be interested in the long term use of the Site and operation of the Approved Dealership thereon. At all times during the First Covenant Period, Participant hereby grants to Agency, and Agency shall have, subject to any deeds of trust which have been approved pursuant to Section 311 of the Original DDA, an option ("Option") to purchase the Site and Improvements for a cost ("Option Purchase Price") not to exceed the Purchase Price set forth in Section 201 of the Original DDA plus the total Developer's Cost actually incurred to develop and complete the Improvements, less depreciation in accordance with generally accepted accounting principles, which Option is exercisable by the Agency in the event any of the hereinafter described conditions of this Section 406 occur. The parties hereby acknowledge and agree that the Purchase Price equals \$647,955.00. The Option Purchase Price shall be further reduced by the amount Participant is required to pay to Agency pursuant to Section 407 and such reduction in the amount of the Option Purchase Price shall satisfy Participant's obligations under Section 407. In the event that the Developer has refinanced the Site as provided in Section 503.3 hereof, the Option Purchase Price shall be revised as provided therein. Agency shall have the right but not the obligation to exercise the Option at any time during the First Covenant Period only upon the occurrence of any of the following events: (i) the proposed Transfer of all or any part of the Site and/or the improvements thereon which has not been duly approved in writing by Agency pursuant to this Agreement (a Transfer duly approved in writing by Agency pursuant to this Agreement does not give Agency the right to exercise the Option) or (ii) the Permanent Closure of the operation of the Approved Dealership or an Agency approved successor automobile dealership on the Site. The Option rights shall be referenced in the Operating Covenant. If the Option has not been exercised during the First Covenant Period, it shall automatically expire at the end of said term. Upon such expiration, Agency will, upon receipt of request therefor by Participant, provide written confirmation in recordable form that such Option no longer remains in effect.

407. Repayment of Operating Covenant Purchase Price in Event of Default.

407.1 Repayment Schedule. In addition to all other remedies which may be available to Agency as set forth herein, in the event of a Default under the Operating Covenant (including a Closure or a Permanent Closure), Participant shall repay all or a portion of the Operating Covenant Purchase Price to Agency according to the following schedule:

(a) If a Default occurs during the first Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(b) If a Default occurs during the second Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(c) If a Default occurs during the third Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(d) If a Default occurs during the fourth Year following the Date of Agreement, Participant shall repay ninety percent (90%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(e) If a Default occurs during the fifth Year following the Date of Agreement, Participant shall repay eighty percent (80%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(f) If a Default occurs during the sixth Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(g) If a Default occurs during the seventh Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(h) If a Default occurs during the eighth Year following the Date of Agreement, Participant shall repay sixty percent (60%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(i) If a Default occurs during the ninth Year following the Date of Agreement, Participant shall repay fifty percent (50%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(j) If a Default occurs during the tenth Year following the Date of Agreement, Participant shall repay forty percent (40%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(k) If a Default occurs during the eleventh Year following the Date of Agreement, Participant shall repay thirty percent (30%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(l) If a Default occurs during the twelfth Year following the Date of Agreement, Participant shall repay twenty percent (20%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(m) If a Default occurs during the thirteenth Year following the Date of Agreement (through the end of the Operating Covenant Period), Participant shall repay ten percent (10%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

407.2 Security for Repayment of Operating Covenant Purchase Price upon Default. The obligations of Participant to repay a portion of the Operating Covenant Purchase Price upon Default pursuant to this Section 407 shall be secured by the Agency Second Deed of Trust in substantially the form set forth as Attachment No. 4 and incorporated herein, to be recorded against the Site in a second and/or subordinate position concurrently with the Operating Covenant. The Agency Second Deed of Trust shall name Agency as beneficiary thereunder and shall be subordinate only to the lien or encumbrance, or the refinancing thereof, securing the funding for acquisition/construction and/or permanent financing of the Participant (and its permitted transferee(s)) in first position as approved by Agency pursuant to the Original DDA. Agency further agrees to confirm subordination of the Agency Second Deed of Trust to a new first lien or encumbrance, or the refinancing thereof, for a permitted Transfer or to a permitted transferee which may encumber the Site after the delivery of the Agency Second Deed of Trust provided such first lien secures acquisition/construction and/or permanent financing of Participant (or such permitted transferee(s)). Agency further agrees from time to time to permit Participant (or such permitted transferee(s)) to consider and consent to substitution of the Agency Second Deed of Trust for an alternate security reasonably acceptable to Agency's Director and Agency legal counsel, including without limitation the substitution of alternative interests in real estate for the Site which real estate is located within the territorial jurisdiction of the Agency for encumbrance by the Agency Second Deed of Trust, or the posting of alternative financial instruments, such as an unconditional, irrevocable standby letter of credit in an amount not less than the outstanding potential repayment obligation of Participant pursuant to Section 407.1 above, in form reasonably acceptable to Agency Director and Agency legal counsel. Agency's Director shall not unreasonably withhold approval of alternate real estate security located within the territorial jurisdiction of the Agency for encumbrance by the Agency Second Deed of Trust if at the time of such proposed substitution the equity in such alternate real estate is of no less value (as determined by independent MAI appraisal) than the value of the Site less the amount of the first lien indebtedness for such alternative parcel(s). Agency and Participant agree to take all steps and sign all documents as necessary to effectuate the provisions of this paragraph.

408. Acceptance of Service of Process. In the event that any legal action is commenced by Participant against Agency, service of process on Agency shall be made by personal service upon the Secretary or Director of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Participant, service of process on Participant shall be made by personal service upon the President of Participant, whether made within or outside the State of California, or in such other manner as may be provided by law.

409. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either 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 the other party.

410. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain

any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

412. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

500. GENERAL PROVISIONS

501. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: Garden Grove Agency for Community Development
 11222 Acacia Parkway
 Garden Grove, California 92842
 Attention: Agency Director

To Participant: County-Wide Rambler, Inc.
 10800 Trask Avenue
 Garden Grove, California 92843
 Attention: _____

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

502. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to events beyond the reasonable control of the parties, which may include the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of a public or governmental agency or entity (other than the acts or failures to act of Agency or City which shall not excuse performance by Agency). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Participant.

Notwithstanding any provision of this Agreement to the contrary, the lack of funding to operate the Approved Dealership shall not constitute grounds of enforced delay pursuant to this Section 502.

503. Transfers of Interest in Site or Agreement.

503.1 Prohibition. The qualifications and identity of Participant as the operator of an Approved Dealership devoted to the sale of new automobiles of the Approved Product Line are of particular concern to Agency. Furthermore, the parties acknowledge that Agency has negotiated the terms of this Agreement in contemplation of the operation of the Approved Dealership and the property tax increment and Sales and Use Tax Revenues to be generated by the Approved Dealership and the operation of the Approved Dealership on the Site, in a manner that will constitute a significant draw to customers. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this Agreement, nor shall Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the whole or any part of the Site or the Approved Dealership thereon, nor shall any other automobile dealership other than a dealership devoted to the sale of automobiles of the Authorized Product Line be operated thereon, either in addition to or in replacement of the dealership on the Site, nor shall Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the automobile dealership being operated upon the Site (collectively referred to herein as a "Transfer"), without the prior written approval of Agency, which approval shall not be unreasonably withheld. The transfer, sale, or other conveyance of a majority of shares in Participant shall constitute a Transfer subject to the prohibition set forth in this Section 503.1. This Section 503.1 shall be of no further force and effect following the expiration of the Operating Covenant Period.

503.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer to a family trust for estate planning purposes, and/or a Transfer from the family trust to the immediate heirs of the trustors upon the death or incapacity of the trustors, provided that Volkswagen of Garden Grove (or another Agency authorized automobile dealership) continues to operate on the Site.

(b) Any Transfer to an entity or entities in which Participant or Participant's shareholders retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities, and Volkswagen of Garden Grove (or another Agency authorized automobile dealership) is operating on the Site.

(c) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements (as defined herein).

(d) Any requested assignment for financing purposes (subject to such financing being considered and approved by Agency), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Improvements or a refinancing of a mortgage secured by the Site and/or the Improvements.

In the event of a Transfer by Participant under subparagraphs (a) through (d), inclusive, above not requiring Agency's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to Agency of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of this Agreement.

503.3 Participant's Option to Refinance for Amount Greater than Option Purchase Price. In the event Participant proposes to refinance the loan currently encumbering the Site for a loan amount greater than the Option Purchase Price, the Agency shall not unreasonably withhold its consent to such refinancing, provided that the parties enter into a mutually acceptable amendment to this Agreement which makes the following changes:

(a) The Option Purchase Price shall be revised to be the fair market value of the Site, as determined by the parties' mutual agreement, or if the parties cannot mutually agree within thirty days of the Agency's exercise of the Option, by an appraisal performed by a qualified appraiser mutually acceptable to the parties.

(b) Participant shall execute a promissory note in favor of the Agency in the amount of One Million Dollars (\$1,000,000), which shall be payable as liquidated damages to the Agency in the event of the Permanent Closure of the operation of Volkswagen of Garden Grove or an Agency-approved successor automobile dealership on the Site. Such note shall be secured by a deed of trust which encumbers the Site. Such deed of trust shall be made subordinate to the approved financing. Such note shall be cancelled and the deed of trust reconveyed at the end of the Operating Covenant Period. The amount of the liquidated damages has been determined by the Agency to be the land price writedown provided by the Agency to the Participant under the Original DDA, which has been calculated by subtracting the Purchase Price from the fair market value of the Site as of the date of the Original DDA, as determined by the Agency. The existence of this liquidated damages remedy shall not be construed to prevent the Agency from specifically enforcing the Operating Covenant set forth in Section 302 hereof, in the Grant Deed, and in the Operating Covenant.

(c) The new financing which encumbers the Site, exclusive of the note and deed of trust in favor of the Agency described in subparagraph (b) above, shall not exceed eighty percent (80%) of the fair market value of the Site, and the sum of such new financing and the promissory note described in subparagraph (b) above shall not exceed one hundred percent (100%) of the fair market value of the Site, as determined by an independent appraisal mutually acceptable to the parties.

503.4 Agency Consideration of Requested Transfer. Agency agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 503, provided Participant delivers written notice to Agency requesting such approval. Such notice shall be accompanied by sufficient evidence demonstrating that the proposed assignee, purchaser or new dealer has received all necessary approvals for such transfer from the California New Motor Vehicle Board, and has received all necessary approvals from the applicable automobile manufacturer, and evidence regarding the proposed transferee's operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 503 and as reasonably determined by Agency. No transfer shall be approved unless all necessary approvals for such transfer have been received from the California New Motor Vehicle Board, and the applicable automobile manufacturer. Agency may, in considering any such request, take into

consideration such factors as (i) the quality of any new and/or replacement product line(s), (ii) the compatibility of any new or replacement product line(s) with other product lines then currently marketed in Garden Grove, (iii) the sales tax revenues projected to be received from the Site, (iv) the transferee's past performance as an operator of a new automobile franchise, (v) the current financial condition of the transferee, and similar factors. Agency may also, in considering a request for a transfer of the dealership which does not also include a transfer of ownership of the Site, take into consideration the level of rent which would be payable by the transferee dealer for occupancy of the Site, which rent shall in no event exceed the maximum rent allowable by the applicable automobile Manufacturer. Agency agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of Participant's written notice requesting Agency approval of a Transfer pursuant to this Section 503, Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Participant shall promptly furnish to Agency such further information as may be reasonably requested.

503.5 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Participant and its permitted successors and assigns. Whenever the term "Participant" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

503.6 Grant of Right of First Refusal by Participant to Agency. At all times during the First Covenant Period, Participant hereby grants to Agency and Agency shall have, subject to any deeds of trust which have been approved by Agency pursuant to Section 311 of the Original DDA, a right of first refusal ("Right of First Refusal") to acquire Participant's interest in the Site and the improvements thereon (including real property, personal property and intangibles) consistent with the terms under which such interest(s) are offered for sale. Agency shall have the right, but not the obligation, to exercise the Right of First Refusal during the First Covenant Period. Such right shall be referenced in the Operating Covenant. The Right of First Refusal shall be exercisable as follows: (i) Participant shall not, at any time prior to the expiration of this Agreement, make any Transfer (as defined in Section 503.1, but specifically excluding any Transfers for which no Agency approval is necessary pursuant to Section 503.2 hereof) which is subject to this Agreement, without first giving written notice thereof to Agency, which notice is hereinafter referred to as "Notice of Transfer"; (ii) the Notice of Transfer shall include the exact and complete terms of the proposed Transfer including terms for transfer of assets or stock of the business operated thereon, if applicable, and shall have attached thereto a photocopy of bona fide offer and counteroffer, if any, duly executed by both Participant and the prospective transferee; (iii) for a period of forty-five (45) days after receipt by Agency of the Notice of Transfer, Agency shall have the right to give written notice to Participant of Agency's exercise of Agency's right to purchase the interest proposed to be sold or otherwise transferred on the same terms, price and conditions as set forth in the Notice of Transfer; except that approval of the Manufacturer shall not be a condition of Agency's purchase. In the event that Participant does not receive written notice of Agency's exercise of the Right of First Refusal herein granted within said forty-five (45) day period, there shall be a conclusive presumption that Agency has elected not to exercise the Right of First Refusal hereunder, and Participant may transfer the interest proposed to be transferred on the same terms set forth in the Notice of Transfer; (iv) in the

event that Agency declines to exercise its Right of First Refusal after receipt of the Notice of Transfer, and, thereafter, (A) Participant and the prospective transferee purchaser modify by more than five percent (5%), (1) the sales price, (2) the amount of down payment, or (3) the interest charged, or (B) in the event that the sale is not consummated within ninety (90) days of the date of the Notice of Transfer, or (C) in the event a protest is filed by any dealer under California law and the sale is not consummated within sixty (60) days after resolution of such protest by final judgment or written stipulation, then Agency's Right of First Refusal shall reapply to said transaction as of the occurrence of any of the aforementioned events; and (v) the failure by Agency to exercise its Right of First Refusal as to one Transfer shall not eliminate, modify, or reduce Agency's Right of First Refusal in the event of future Transfers that may be proposed during the First Covenant Period. If the Right of First Refusal has not been exercised during the First Covenant Period, it shall automatically expire at the end of said term. Upon such expiration, Agency will, upon receipt of request therefor by Participant, provide written confirmation in recordable form that such Right of First Refusal no longer remains in effect.

503.7 Transfer During Second Covenant Period. Any Transfer by Participant in violation of this Section 503 which occurs during the Second Covenant Period shall constitute a Default hereunder and shall result in Participant's obligation to repay a specified portion of the Operating Covenant Purchase Price pursuant to Section 407 hereof.

503.8 Assignment by Agency. Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Participant, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of Participant; provided further that any such assignee of Agency shall assume all of the obligations of Agency hereunder.

504. Non Liability of Officials and Employees of Agency. No member, official or employee of Agency or the City shall be personally liable to Participant or any successor in interest, in the event of any Default or breach by Agency or for any amount which may become due to Participant or its successors, or on any obligations under the terms of this Agreement.

505. Relationship Between Agency and Participant. It is hereby acknowledged that the relationship between Agency and Participant is not that of a partnership or joint venture and that Agency and Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Approved Dealership or the Site.

506. Agency Approvals and Actions. Agency shall maintain authority of this Agreement and the authority to implement this Agreement through Agency's Director (or his duly authorized representative). The Agency Director shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of Agency so long as such actions do not materially or substantially change the uses permitted on the Site, or materially or substantially add to the costs incurred or to be incurred by Agency as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform hereunder. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of Agency.

507. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

508. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 3, which together with the Agreement constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

509. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

510. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

511. No Waiver. A waiver by either party of a breach of any of the covenants, conditions, restrictions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

512. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

513. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

514. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

515. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on

behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

516. Time of Essence. Time is expressly made of the essence with respect to the performance by Agency and Participant of each and every obligation and condition of this Agreement.

517. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

518. Conflicts of Interest. No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have signed this Owner Participation Agreement as of the date first set forth above.

AGENCY:


**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT**, a public body,
corporate and politic

By: _____
Chairperson

ATTEST:

Agency Secretary

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth
Agency Counsel

PARTICIPANT:

COUNTY-WIDE RAMBLER, INC., a California
corporation

By: _____
Its: _____
Printed Name: _____

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:

Counsel to Participant

IN WITNESS WHEREOF, the parties hereto have signed this Owner Participation Agreement as of the date first set forth above.

AGENCY:

**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT**, a public body,
corporate and politic

By: _____
Chairperson

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Agency Counsel

PARTICIPANT:

COUNTY-WIDE RAMBLER, INC., a California
corporation

By: _____
Its: _____
Printed Name: _____

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:

Counsel to Participant

ATTACHMENT NO. 1

LEGAL DESCRIPTION

THAT REAL PROPERTY LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 97-115, RECORDED IN BOOK 313, PAGES 31-32 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THAT PARCEL OF LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE THEREOF, AS SET FORTH IN DEED FROM THE STATE OF CALIFORNIA RECORDED OCTOBER 2, 1969 IN BOOK 9097, PAGE 448 OF OFFICIAL RECORDS.

ATTACHMENT NO. 2

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Garden Grove Agency for
Community Development
11222 Acacia Parkway
Garden Grove, California 92842
Attn: Agency Director

This document is exempt from the payment of a
recording fee pursuant to Government Code
Sections 6103 and 27383.

OPERATING COVENANT

This **OPERATING COVENANT** ("Operating Covenant") is made as of _____, 20__, by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Agency"), and **COUNTY-WIDE RAMBLER, INC.**, a California corporation ("Participant"), with reference to the following:

A. Agency and Participant have executed an Owner Participation Agreement, dated as of _____, 2011 ("Agreement"), which provides for the sale of this Operating Covenant with respect to the real property located in the City of Garden Grove ("City"), County of Orange, State of California, more fully described in Exhibit "A" attached hereto and incorporated herein by this reference ("Site"). The Agreement is available for public inspection and copying at the office of Agency, 11222 Acacia Parkway, Garden Grove, California. All of the terms, conditions, provisions and covenants of the Agreement are incorporated in this Operating Covenant by reference as though written out at length herein and the Agreement and this Operating Covenant shall be deemed to constitute a single instrument or document. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Agreement.

B. The Agreement provides for, among other things, Participant's conveyance to Agency of this Operating Covenant and recordation of this Operating Covenant against the Site in the Official Records of Orange County, California. This Operating Covenant is intended to encumber the Site and run with the land.

C. The foregoing recitals constitute a substantive part of this Operating Covenant.

NOW, THEREFORE, Participant hereby conveys to Agency the following Operating Covenant:

1. **Use in Accordance with Redevelopment Plan and Agreement.** Participant covenants and agrees to devote, use, operate, and maintain the Site in accordance with the Redevelopment Plan, this Operating Covenant, all entitlements, permits, Regulatory Approvals, and Governmental Requirements applicable to the Site and the Approved Dealership. All uses conducted on the Site, including, without limitation, all activities undertaken by Participant pursuant hereto, shall conform to the Redevelopment Plan, all applicable provisions of the City Municipal Code, all

entitlements, permits, Regulatory Approvals, and Governmental Requirements applicable to the Site and the Approved Dealership and the recorded documents pertaining to and running with the Site.

2. Termination of Covenants, Conditions, and Restrictions in Grant Deed. The covenants set forth in Sections 3, 4, 6, 7, and 8 of the Grant Deed conveying title to the Site from Agency to Participant, which was recorded in the Official Records of Orange County, California as Instrument No. 2000-0346823 on June 30, 2000 are hereby terminated and of no further force and effect. The Maintenance Agreement recorded against the Site as Instrument No. 2000-0346824 on June 30, 2000 shall remain in full force and effect according to its terms.

3. Operation of Automobile Dealership. Participant hereby covenants and agrees that, for a term commencing upon the Date of Agreement and ending on December 13, 2023 (which period constitutes the "Operating Covenant Period"), it shall operate (or cause its successors or assigns to operate) an Approved Dealership on the Site on a continuous basis, in compliance with all Governmental Requirements and Regulatory Approvals, with such Site devoted to the sale and leasing of new automobiles, sports utility vehicles, and trucks of one or more Authorized Product Lines, with Manufacturer's approval as a factory authorized new automobile dealer as the principal activity conducted on the Site. The servicing and repair of such automobiles, sports utility vehicles, and trucks may also be conducted on the Site as a secondary use incidental to the sale and leasing of new vehicles. Participant shall conduct all activities for the leasing of automobiles from the Approved Dealership either on the Site or at an office located within the City of Garden Grove. Agency hereby approves Volkswagen as an Authorized Product Line. Participant may request the written approval of Agency for the sale of a different Authorized Product Line other than Volkswagen, pursuant to Section 503 of the Agreement. After the opening of an Approved Dealership on the Site devoted to the sale and lease of new Volkswagen automobiles, sports utility vehicles, and trucks, Participant may add the sale and leasing of an additional new automobile and truck product line on the Site without necessity of obtaining further Agency consent; provided that Participant continues to operate an Approved Dealership on the Site for the sale and lease of new Volkswagen automobiles, sports utility vehicles, and trucks (or such other Authorized Product Line which has been approved by Agency). No other uses may be conducted on the Site during the Operating Covenant Period without the prior written approval of Agency, which approval may be granted, refused, or conditioned as provided in Section 503 of the Agreement.

Participant further covenants and agrees that during the Operating Covenant Period, Participant will not own and/or operate through Participant, or any entity in which Participant has at least a twenty five percent (25%) interest in profits and losses and/or management control, any other new vehicle dealership selling any of the Authorized Product Line as then being sold by the Approved Dealership within a five (5) mile radius of the Site (except that Participant may own and/or operate other dealerships in the City of Garden Grove). Participant shall use commercially reasonable efforts to operate (or to cause its successors or assigns to operate) the Approved Dealership on the Site in such a manner as to produce the maximum amount of Sales and Use Tax Revenues to be received by the City.

Except with the prior written consent of Agency for each instance, which consent may be granted or withheld in Agency's reasonable discretion, the failure of Participant to operate an Approved Dealership on the Site for ninety (90) or more consecutive days (a "Closure") shall, at Agency's option, constitute a Default hereunder (but Agency's Option to repurchase the Site pursuant to Section 5 as a result of a Permanent Closure (defined in the Agreement) of the Site shall not be exercisable until the failure of Participant to operate an Approved Dealership on the Site has

continued for one (1) year); provided, however, that Participant shall for purposes of this Section 3 be deemed to be operating an Approved Dealership during any period that Participant is prevented from operating such a dealership due to (i) required or necessary rehabilitation of the Improvements on the Site (provided that the period during which an Approved Dealership is not operated as a result of the rehabilitation shall in no event exceed ninety (90) days), or (ii) floods, earthquakes, fires, or other acts of God which are not in any way due to the acts or omissions of Participant (an "Excused Closure").

4. Reentry and Revesting of Title in Agency After the Date of Agreement. Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in Agency the estate conveyed to Participant under the Original Agreement and this Agreement if, after the Date of Agreement, Participant (or its successors in interest) shall:

(a) be in violation of the terms of the Franchise Agreement(s) for a period of thirty (30) days or longer; or

(b) contrary to the provisions of Section 6, Transfer or suffer any involuntary Transfer in violation of the Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by the Agreement; or

2. Any rights or interests provided in the Agreement for the protection of the holders of such mortgages or deeds of trust.

In the event Agency Director determines in his sole but reasonable discretion that one or more of the conditions set forth in clauses (a) or (b) above have occurred, triggering Agency's right to reenter and take possession of and title to the Site pursuant to this Section 4, Agency shall send written notice to Participant of such determination and Participant shall, within fifteen (15) calendar days of the date of such notice, execute a document in recordable form acceptable to Agency which document shall reconvey all right, title and interest in the Site held by Participant to Agency and Participant shall cause such document to be recorded against the Site in the Official Records of Orange County, California.

Upon the revesting in Agency of title to the Site as provided in this Section 4, Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to Agency and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by the Agreement, shall be applied:

(i) First, to reimburse Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by Agency or the City in connection with

the recapture, management and resale of the Site or part thereof (but less any income derived by Agency from the Site or part thereof in connection with such management) and any portion of the Operating Covenant Purchase Price that has been disbursed to Participant; all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Participant has not paid (or, in the event the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Participant, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Agency, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Participant, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Participant from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Agency as its property. The rights established in this Section 4 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Agency has conveyed the Site to Participant for redevelopment purposes, particularly for operation of a new automobile dealership, and not for speculation in land.

5. Grant of Option by Participant to Agency. The parties acknowledge that the primary objectives of Agency in entering into this transaction are to eliminate blight within the Project, encourage new investment in the City, ensure the optimum generation of sales tax revenues, maximize the use of real property within the Project, and stimulate the economic development of the City. Accordingly, Agency is and will continue to be interested in the long term use of the Site and operation of the Approved Dealership thereon. At all times during the First Covenant Period, Participant hereby grants to Agency, and Agency shall have, subject to any deeds of trust which have been approved pursuant to Section 311 of the Original DDA, an option ("Option") to purchase the Site and Improvements for a cost ("Option Purchase Price") not to exceed the Purchase Price set forth in Section 201 of the Original DDA plus the total Developer's Cost actually incurred to develop and complete the Improvements, less depreciation in accordance with generally accepted accounting principles, which Option is exercisable by the Agency in the event any of the hereinafter described conditions of this Section 5 occur. The parties hereby acknowledge and agree that the Purchase Price equals \$647,955.00. The Option Purchase Price shall be further reduced by the amount Participant is required to pay to Agency pursuant to Section 7 and such reduction in the amount of the Option Purchase Price shall satisfy Participant's obligations under Section 7. In the event that the Developer has refinanced the Site as provided in Section 6(c) hereof, the Option Purchase Price shall be revised as provided therein. Agency shall have the right but not the obligation to exercise the Option at any time during the First Covenant Period only upon the occurrence of any of the following events: (i) the proposed Transfer of all or any part of the Site and/or the improvements thereon which has not been duly approved in writing by Agency pursuant to this Agreement (a Transfer duly approved in

writing by Agency pursuant to this Operating Covenant does not give Agency the right to exercise the Option) or (ii) the Permanent Closure of the operation of the Approved Dealership or an Agency approved successor automobile dealership on the Site. If the Option has not been exercised during the First Covenant Period, it shall automatically expire at the end of said term. Upon such expiration, Agency will, upon receipt of request therefor by Participant, provide written confirmation in recordable form that such Option no longer remains in effect.

6. Transfers of Interest in Site or Agreement.

(a) **Prohibition.** The qualifications and identity of Participant as the operator of an Approved Dealership devoted to the sale of new automobiles of the Approved Product Line are of particular concern to Agency. Furthermore, the parties acknowledge that Agency has negotiated the terms of the Agreement in contemplation of the operation of the Approved Dealership and the property tax increment and Sales and Use Tax Revenues to be generated by the Approved Dealership and the operation of the Approved Dealership on the Site, in a manner that will constitute a significant draw to customers. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under the Agreement, nor shall Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the whole or any part of the Site or the Approved Dealership thereon, nor shall any other automobile dealership other than a dealership devoted to the sale of automobiles of the Authorized Product Line be operated thereon, either in addition to or in replacement of the dealership on the Site, nor shall Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the automobile dealership being operated upon the Site (collectively referred to herein as a "Transfer"), without the prior written approval of Agency, which approval shall not be unreasonably withheld. The transfer, sale, or other conveyance of a majority of shares in Participant shall constitute a Transfer subject to the prohibition set forth in this Section 6(a). This Section 6(a) shall be of no further force and effect following the expiration of the Operating Covenant Period.

(b) **Permitted Transfers.** Notwithstanding any other provision of the Agreement or this Operating Covenant to the contrary, Agency approval of a Transfer shall not be required in connection with any of the following:

(i) Any Transfer to a family trust for estate planning purposes, and/or a Transfer from the family trust to the immediate heirs of the trustors upon the death or incapacity of the trustors, provided that Volkswagen of Garden Grove (or another Agency authorized automobile dealership) continues to operate on the Site.

(ii) Any Transfer to an entity or entities in which Participant or Participant's shareholders retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities, and Volkswagen of Garden Grove (or another Agency authorized automobile dealership) is operating on the Site.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements (as defined herein).

(iv) Any requested assignment for financing purposes (subject to such financing being considered and approved by Agency), including the grant of a deed of trust to secure

the funds necessary for land acquisition, construction and permanent financing of the Improvements or a refinancing of a mortgage secured by the Site and/or the Improvements.

In the event of a Transfer by Participant under subparagraphs (a) through (d), inclusive, above not requiring Agency's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to Agency of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of the Agreement and this Operating Covenant.

(c) Participant's Option to Refinance for Amount Greater than Option Purchase Price. In the event Participant proposes to refinance the loan currently encumbering the Site for a loan amount greater than the Option Purchase Price, the Agency shall not unreasonably withhold its consent to such refinancing, provided that the parties enter into a mutually acceptable amendment to this Agreement which makes the following changes:

(i) The Option Purchase Price shall be revised to be the fair market value of the Site, as determined by the parties' mutual agreement, or if the parties cannot mutually agree within thirty days of the Agency's exercise of the Option, by an appraisal performed by a qualified appraiser mutually acceptable to the parties.

(ii) Participant shall execute a promissory note in favor of the Agency in the amount of One Million Dollars (\$1,000,000), which shall be payable as liquidated damages to the Agency in the event of the Permanent Closure of the operation of Volkswagen of Garden Grove or an Agency-approved successor automobile dealership on the Site. Such note shall be secured by a deed of trust which encumbers the Site. Such deed of trust shall be made subordinate to the approved financing. Such note shall be cancelled and the deed of trust reconveyed at the end of the Operating Covenant Period. The amount of the liquidated damages has been determined by the Agency to be the land price writedown provided by the Agency to the Participant under the Original DDA, which has been calculated by subtracting the Purchase Price from the fair market value of the Site as of the date of the Original DDA, as determined by the Agency. The existence of this liquidated damages remedy shall not be construed to prevent the Agency from specifically enforcing the Operating Covenant set forth herein and in Section 302 of the Agreement and the Grant Deed.

(iii) The new financing which encumbers the Site, exclusive of the note and deed of trust in favor of the Agency described in subparagraph (ii) above, shall not exceed eighty percent (80%) of the fair market value of the Site, and the sum of such new financing and the promissory note described in subparagraph (ii) above shall not exceed one hundred percent (100%) of the fair market value of the Site, as determined by an independent appraisal mutually acceptable to the parties.

(d) Agency Consideration of Requested Transfer. Agency agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 6, provided Participant delivers written notice to Agency requesting such approval. Such notice shall be accompanied by sufficient evidence demonstrating that the proposed assignee, purchaser or new dealer has received all necessary approvals for such transfer from the California New Motor Vehicle Board, and has received all necessary approvals from the applicable automobile manufacturer, and evidence regarding the proposed transferee's operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 6 and as

reasonably determined by Agency. No transfer shall be approved unless all necessary approvals for such transfer have been received from the California New Motor Vehicle Board, and the applicable automobile manufacturer. Agency may, in considering any such request, take into consideration such factors as (i) the quality of any new and/or replacement product line(s), (ii) the compatibility of any new or replacement product line(s) with other product lines then currently marketed in Garden Grove, (iii) the sales tax revenues projected to be received from the Site, (iv) the transferee's past performance as an operator of a new automobile franchise, (v) the current financial condition of the transferee, and similar factors. Agency may also, in considering a request for a transfer of the dealership which does not also include a transfer of ownership of the Site, take into consideration the level of rent which would be payable by the transferee dealer for occupancy of the Site, which rent shall in no event exceed the maximum rent allowable by the applicable automobile Manufacturer. Agency agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of Participant's written notice requesting Agency approval of a Transfer pursuant to this Section 6, Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Participant shall promptly furnish to Agency such further information as may be reasonably requested.

(e) Grant of Right of First Refusal by Participant to Agency. At all times during the First Covenant Period, Participant hereby grants to Agency and Agency shall have, subject to any deeds of trust which have been approved by Agency pursuant to Section 311 of the Original DDA, a right of first refusal ("Right of First Refusal") to acquire Participant's interest in the Site and the improvements thereon (including real property, personal property and intangibles) consistent with the terms under which such interest(s) are offered for sale. Agency shall have the right, but not the obligation, to exercise the Right of First Refusal during the First Covenant Period. The Right of First Refusal shall be exercisable as follows: (i) Participant shall not, at any time prior to the expiration of this Agreement, make any Transfer (as defined in Section 6, but specifically excluding any Transfers for which no Agency approval is necessary pursuant to Section 6 hereof) which is subject to the Agreement and this Operating Covenant, without first giving written notice thereof to Agency, which notice is hereinafter referred to as "Notice of Transfer"; (ii) the Notice of Transfer shall include the exact and complete terms of the proposed Transfer including terms for transfer of assets or stock of the business operated thereon, if applicable, and shall have attached thereto a photocopy of bona fide offer and counteroffer, if any, duly executed by both Participant and the prospective transferee; (iii) for a period of forty-five (45) days after receipt by Agency of the Notice of Transfer, Agency shall have the right to give written notice to Participant of Agency's exercise of Agency's right to purchase the interest proposed to be sold or otherwise transferred on the same terms, price and conditions as set forth in the Notice of Transfer; except that approval of the Manufacturer shall not be a condition of Agency's purchase. In the event that Participant does not receive written notice of Agency's exercise of the Right of First Refusal herein granted within said forty-five (45) day period, there shall be a conclusive presumption that Agency has elected not to exercise the Right of First Refusal hereunder, and Participant may transfer the interest proposed to be transferred on the same terms set forth in the Notice of Transfer; (iv) in the event that Agency declines to exercise its Right of First Refusal after receipt of the Notice of Transfer, and, thereafter, (A) Participant and the prospective transferee purchaser modify by more than five percent (5%), (1) the sales price, (2) the

amount of down payment, or (3) interest charged, or (B) in the event that the sale is not consummated within ninety (90) days of the date of the Notice of Transfer, or, (C) in the event a protest is filed by any dealer under California law and the sale is not consummated within sixty (60) days after resolution of such protest by final judgment or written stipulation, then Agency's Right of First Refusal shall reapply to said transaction as of the occurrence of any of the aforementioned events; and (v) the failure by Agency to exercise its Right of First Refusal as to one Transfer shall not eliminate, modify, or reduce Agency's Right of First Refusal in the event of future Transfers that may be proposed during the First Covenant Period. If the Right of First Refusal has not been exercised during the First Covenant Period, it shall automatically expire at the end of said term. Upon such expiration, Agency will, upon receipt of request therefor by Participant, provide written confirmation in recordable form that such Right of First Refusal no longer remains in effect.

(f) Transfer During Second Covenant Period. Any Transfer by Participant in violation of this Section 6 which occurs during the Second Covenant Period shall constitute a Default hereunder and shall result in Participant's obligation to repay a specified portion of the Operating Covenant Purchase Price pursuant to Section 7 hereof.

7. Repayment of Operating Covenant Purchase Price in Event of Default.

(a) Repayment Schedule. In addition to all other remedies which may be available to Agency as set forth herein and in the Agreement, in the event of a Default under the Operating Covenant (including a Closure or a Permanent Closure), Participant shall repay all or a portion of the Operating Covenant Purchase Price to Agency according to the following schedule:

(i) If a Default occurs during the first Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(ii) If a Default occurs during the second Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(iii) If a Default occurs during the third Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(iv) If a Default occurs during the fourth Year following the Date of Agreement, Participant shall repay ninety percent (90%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(v) If a Default occurs during the fifth Year following the Date of Agreement, Participant shall repay eighty percent (80%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(vi) If a Default occurs during the sixth Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(vii) If a Default occurs during the seventh Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(viii) If a Default occurs during the eighth Year following the Date of Agreement, Participant shall repay sixty percent (60%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(ix) If a Default occurs during the ninth Year following the Date of Agreement, Participant shall repay fifty percent (50%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(x) If a Default occurs during the tenth Year following the Date of Agreement, Participant shall repay forty percent (40%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(xi) If a Default occurs during the eleventh Year following the Date of Agreement, Participant shall repay thirty percent (30%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(xii) If a Default occurs during the twelfth Year following the Date of Agreement, Participant shall repay twenty percent (20%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(xiii) If a Default occurs during the thirteenth Year following the Date of Agreement (through the end of the Operating Covenant Period), Participant shall repay ten percent (10%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

(b) Security for Repayment of Operating Covenant Purchase Price upon Default. The obligations of Participant to repay a portion of the Operating Covenant Purchase Price upon Default pursuant to this Section 7 shall be secured by a deed of trust in substantially the form set forth as Attachment No. 4 to the Agreement ("Agency Second Deed of Trust"), to be recorded against the Site in the official records of Orange County, California, in a second and/or subordinate position concurrently with this Operating Covenant. The Agency Second Deed of Trust shall name Agency as beneficiary thereunder and shall be subordinate only to the lien or encumbrance, or the refinancing thereof, securing the funding for acquisition/construction and/or permanent financing of the Participant (and its permitted transferee(s)) in first position as approved by Agency pursuant to the Original DDA.

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

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

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

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

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

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

This covenant regarding non-discrimination shall remain in effect in perpetuity.

9. Performance of Maintenance.

(a) Participant shall maintain the Site and the Approved Dealership in accordance with the Maintenance Standards, as hereinafter defined. Said improvements shall include, but not be

limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site.

(b) To accomplish the maintenance, Participant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Operating Covenant.

(c) The following standards ("Maintenance Standards") shall be complied with by Participant and its maintenance staff, contractors or subcontractors:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Site and Approved Dealership shall be maintained in conformance and in compliance with the approved Site construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

6. The Site and Approved Dealership shall be maintained as required by this Section in good condition and in accordance with the custom and practice generally applicable to comparable automobile dealership facilities located in Southern California.

10. Failure to Maintain Site and Approved Dealership. In the event Participant does not maintain the Site or the Approved Dealership in the manner set forth herein and in accordance with the Maintenance Standards, Agency and/or City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Participant. However, prior to taking any such action, Agency agrees to notify Participant in

writing if the condition of said improvements does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Participant to cure the deficiencies. Upon notification of any maintenance deficiency, Participant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City or Agency, then Participant shall have forty eight (48) hours to rectify the problem.

In the event Participant fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City and/or Agency shall have the right to maintain such improvements. Participant agrees to pay Agency such charges and costs. Until so paid, Agency shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Upon recordation of a Notice of a Claim of Lien against the Site, such lien shall constitute a lien on the fee estate in and to the Site prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Participant in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice. Any lien in favor of Agency created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of Agency created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure purchaser shall take title to the Site free of any lien imposed by Agency that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure purchaser shall only be obligated to pay costs associated with this Agreement accruing after the foreclosure purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of Agency and fee title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in this Agreement and the charges levied by Agency to reimburse Agency for the cost of undertaking such maintenance obligations of Participant and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the Site under different ownerships according to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned in fee by the owner who is liable for the apportioned charges levied by Agency and secured by the apportioned lien and against no other portion of the Site. Participant acknowledges and agrees City and Agency may also pursue any and all other remedies available in law or equity. Participant shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

11. Compliance with Law. Participant shall comply with all local, state and federal laws including all Governmental Requirements, Environmental Laws, and Regulatory Approvals relating to the uses of or condition of the Site and the Approved Dealership.

12. Indemnification. Participant shall defend, indemnify, and hold harmless Agency and the City, and their officers, employees, contractors, agents, representatives, and volunteers, from all claims, demands, damages, defense costs or liability of any kind or nature arising on or after the Date of Agreement until the expiration or termination of this Agreement, which may arise from the acts or omissions of Participant under the Agreement or this Operating Covenant, and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of Participant under the Agreement or this Operating Covenant, whether such activities or performance thereof be by Participant or by anyone directly or indirectly employed or contracted with by Participant in connection with the Agreement or this Operating Covenant and whether such damage shall accrue or be discovered before or after termination of the Agreement or this Operating Covenant. Participant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Participant determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Participant shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, Participant's obligation and right to defend shall include the right to hire (subject to written approval by Agency and City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Participant, Agency, or City. If Participant defends any such action, as set forth above, (i) Participant shall indemnify and hold harmless Agency and City and their officers, employees, contractors, agents, representatives, and volunteers from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of Participant, not to be unreasonably withheld, and any settlement without such reasonable consent shall release Participant's obligations under this Section 12 with respect to such settled claim. Notwithstanding anything to the contrary herein, Participant shall not be liable for any such claims which are caused by the sole negligence or willful acts of Agency or its officers, employees, contractors, agents, representatives, and volunteers.

13. Third Party Litigation Concerning Agreement. Participant shall defend, at its expense, including attorney and expert witness fees, indemnify, and hold harmless City, Agency, and/or their officers, employees, contractors, agents, representatives, and volunteers from any claim, action or proceeding brought by a person or entity not a party to the Agreement or this Operating Covenant against Agency, City, and/or their officers, employees, contractors, agents, representatives, and volunteers to attack, set aside, void, or annul the approval of the Agreement or this Operating Covenant. Agency shall promptly notify Participant of any claim, action, proceeding or determination included within this Section 13. Agency, and/or City, as applicable, may, in their discretion, participate in the defense of any such claim, action, proceeding or determination.

14. Sales and Use Tax Sharing Claims. Participant covenants and warrants that the Approved Dealership to be operated on the Site pursuant to this Operating Covenant is not being relocated from another location within the market area of the Site, within the meaning of Health and Safety Code Section 33426.7 or Government Code Section 53084. Participant further understands and agrees that any successful claim by a government agency pursuant to those provisions shall

entitle Agency to require Participant to pay any sums required pursuant to the resolution of such claim.

15. Miscellaneous Provisions.

a. If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

b. This Operating Covenant shall be construed in accordance with the laws of the State of California.

c. This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of Participant.

d. In the event action is instituted to enforce any of the provisions of this Operating Covenant, the prevailing party in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees and costs.

16. Effect of Operating Covenant. The covenants and agreements established in this Operating Covenant shall, without regard to technical classification and designation, run with the land and be binding on each owner of the Site and any successor in interest to the Site, for the benefit of and in favor of Agency, its successor and assigns, and the City of Garden Grove. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. Agency and City are deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the land, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. The Operating Covenant shall run in favor of Agency and City, without regard to whether Agency or City have been, remain or are owners of any land or interest in the Site or in the Project Area. Agency and/or City shall have the right, if any provision of the Operating Covenant is breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Operating Covenant may be entitled.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Operating Covenant as of the day and year first hereinabove written.

AGENCY:

**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT**, a public body,
corporate and politic

By: _____
Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Agency Counsel

PARTICIPANT:

COUNTY-WIDE RAMBLER, INC., a California
corporation

By: _____
Its: _____
Printed Name: _____

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:

Counsel to Participant

EXHIBIT "A" TO ATTACHMENT NO. 2

LEGAL DESCRIPTION OF SITE

THAT REAL PROPERTY LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP 97-115, RECORDED IN BOOK 313, PAGES 31-32 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THAT PARCEL OF LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE THEREOF, AS SET FORTH IN DEED FROM THE STATE OF CALIFORNIA RECORDED OCTOBER 2, 1969 IN BOOK 9097, PAGE 448 OF OFFICIAL RECORDS.

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

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.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title Or Type Of Document

- ☐ Partner(s) ☐ Limited
 ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

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

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA

COUNTY OF _____

)
) ss.
)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

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.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

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 Documents

Signer(s) Other Than Named Above

ATTACHMENT NO. 3

**CERTIFICATE OF CONTINUING COMPLIANCE WITH OPERATING
COVENANT AND OWNER PARTICIPATION AGREEMENT**

TO: Garden Grove Agency for Community Development
11222 Acacia Parkway
Garden Grove, California 92842
Attention: Agency Director

The undersigned, _____, being duly authorized to execute this Certificate of Continuing Compliance with Operating Covenant and Owner Participation Agreement (this "Certificate") on behalf of County-Wide Rambler, Inc., a California corporation ("Participant"), hereby represents and warrants that:

1. He has read and is thoroughly familiar with the provisions of the Owner Participation Agreement ("OPA") by and between Agency and Participant dated as of _____, 2011 and the "Operating Covenant" dated as of _____, 20____, executed by Participant and recorded against the Site in the Official Records of Orange County, California. Capitalized terms used herein shall have the same meaning as set forth in the OPA; and

2. As of the date of this Certificate, continuously and throughout the prior year, Participant has operated an Approved Dealership at the Site in accordance with all terms, covenants, conditions, restrictions, and agreements set forth in the OPA and the Operating Covenant.

3. At no time since the date of filing of the last Certification of Continuing Compliance with Operating Covenant and Owner Participation Agreement (or the Date of Agreement if this is the first such Certificate) has Participant failed to operate an Approved Dealership at the Site for ninety (90) or more consecutive days unless such Closure constituted an Excused Closure.

4. Participant is not in default under the terms of the OPA or the Operating Covenant.

PARTICIPANT:

COUNTY-WIDE RAMBLER, INC., a California corporation

By: _____
Its: _____
Printed Name: _____

By: _____
Its: _____
Printed Name: _____

ATTACHMENT NO. 4

AGENCY SECOND DEED OF TRUST

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Garden Grove Agency for Community Development
11222 Acacia Parkway
Garden Grove, California 92842
Attn: Agency Director

APN: _____

[Space above for recorder.]

This document is exempt from the payment of a recording
fee pursuant to Government Code Sections 6103 and 27383.

**DEED OF TRUST WITH ASSIGNMENT OF RENTS
(SHORT FORM)**

This **DEED OF TRUST WITH ASSIGNMENT OF RENTS**, dated as of _____, 20____, is made by
COUNTY-WIDE RAMBLER, INC., a California corporation, herein collectively called TRUSTOR, whose
address is _____, to **FIRST AMERICAN TITLE INSURANCE COMPANY**,
a California corporation, herein called TRUSTEE, for the benefit of the **GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT**, a public body, corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Garden
Grove, County of Orange, State of California, described as:

PARCEL 1 OF PARCEL MAP 97-115, RECORDED IN BOOK 313, PAGES 31-32 INCLUSIVE
OF PARCEL MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS
BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THAT PARCEL OF
LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG
OR MINE THROUGH THE SURFACE THEREOF, AS SET FORTH IN DEED FROM THE
STATE OF CALIFORNIA RECORDED OCTOBER 2, 1969 IN BOOK 9097, PAGE 448 OF
OFFICIAL RECORDS.

herein referred to as the "Site," together with the rents, issues and profits thereof, subject, however, to the right,
power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and
profits for the purpose of securing (1) payment of the sum of \$700,000.00 according to the terms of that certain
Owner Participation Agreement ("OPA") dated as of _____, 2011 and that certain Operating Covenant dated
as of _____, 20____, and recorded against the Site in the Official Records of Orange County, California as
Instrument No. _____ on _____, 20____, entered into by and between Trustor and Beneficiary,
and extensions or renewals thereof, as described in the Addendum attached hereto and incorporated herein and
(2) all other and additional sums provided for and intended to be secured hereby pursuant to such OPA,
(3) the performance of each agreement of Trustor incorporated by reference or contained herein, and (4) payment of
additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when
evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the Site, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Venture	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

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

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

Signature of Trustor

ACKNOWLEDGMENT

State of California
County of _____

On _____ before me, _____

(here insert name and title of the officer)

personally appeared _____

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.

WITNESS my hand and official seal.

Signature _____

(Seal) (This area for official notarial seal)

COUNTY-WIDE RAMBLER, INC., a
California corporation

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

DO NOT RECORD

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

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

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

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

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

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

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

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

B. It is mutually agreed:

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

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

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

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

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

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

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

ATTACHMENT NO. 4-3

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

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

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

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

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO FIRST AMERICAN TITLE INSURANCE COMPANY, TRUSTEE:

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

Dated _____

Please mail Deed of Trust,
Note and Reconveyance to _____

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

ADDENDUM TO DEED OF TRUST WITH ASSIGNMENT OF RENTS

This Addendum to that certain Deed of Trust with Assignment of Rents dated as of _____, 20__ ("Deed of Trust") by and between COUNTY-WIDE RAMBLER, INC., a California corporation ("Participant"), as Trustor, and GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic ("Agency"), as Beneficiary, is dated as of the same date as the Deed of Trust. In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of the Deed of Trust, the terms of this Addendum shall control.

That certain Owner Participation Agreement of even date herewith ("OPA") by and between Participant and Agency and that certain Operating Covenant dated as of _____, 20__, and recorded against the Site in the Official Records of Orange County, California concurrently herewith, entered into by and between Participant and Agency ("Operating Covenant"), each provide as follows:

1. Upon a Default under the Operating Covenant (including a Closure or a Permanent Closure), Participant shall repay all or a portion of the Operating Covenant Purchase Price to Agency according to the following schedule:
 - (i) If a Default occurs during the first Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (ii) If a Default occurs during the second Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (iii) If a Default occurs during the third Year following the Date of Agreement, Participant shall repay one hundred percent (100%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (iv) If a Default occurs during the fourth Year following the Date of Agreement, Participant shall repay ninety percent (90%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (v) If a Default occurs during the fifth Year following the Date of Agreement, Participant shall repay eighty percent (80%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (vi) If a Default occurs during the sixth Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
 - (vii) If a Default occurs during the seventh Year following the Date of Agreement, Participant shall repay seventy percent (70%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

- (viii) If a Default occurs during the eighth Year following the Date of Agreement, Participant shall repay sixty percent (60%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
- (ix) If a Default occurs during the ninth Year following the Date of Agreement, Participant shall repay fifty percent (50%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
- (x) If a Default occurs during the tenth Year following the Date of Agreement, Participant shall repay forty percent (40%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
- (xi) If a Default occurs during the eleventh Year following the Date of Agreement, Participant shall repay thirty percent (30%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
- (xii) If a Default occurs during the twelfth Year following the Date of Agreement, Participant shall repay twenty percent (20%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.
- (xiii) If a Default occurs during the thirteenth Year following the Date of Agreement (through the end of the Operating Covenant Period), Participant shall repay ten percent (10%) of the Operating Covenant Purchase Price actually paid by Agency to Participant.

All terms used herein have the meanings set forth in the OPA.

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ATTACHMENTS

Attachment No. 1	Legal Description
Attachment No. 2	Operating Covenant
Attachment No. 3	Certificate of Compliance
Attachment No. 4	Agency Second Deed of Trust