

OWNER PARTICIPATION AGREEMENT

by and between

CITY OF CLAREMONT

and

PREMIER AUTOMOTIVE OF CLAREMONT, LLC

TABLE OF CONTENTS

| | Page |
|---|------|
| 100. DEFINITIONS | 2 |
| 200. CITY'S PURCHASE OF OPERATING COVENANT..... | 6 |
| 201. Consideration for Operating Covenant | 6 |
| 201.1 Operating Covenant Purchase Price | 6 |
| 201.2 Payment of Operating Covenant Purchase Price | 6 |
| 201.3 Conditions Precedent to Each Quarterly Disbursement of the Operating Covenant Purchase Price | 7 |
| 201.4 Verification of Quarterly Sales and Use Tax Revenue..... | 9 |
| 202. Representations and Warranties..... | 10 |
| 202.1 City Representations..... | 10 |
| 202.2 Participant's Representations..... | 11 |
| 300. COVENANTS AND RESTRICTIONS | 11 |
| 301. Use in Accordance with Operating Covenant..... | 11 |
| 302. Operating Covenant | 12 |
| 302.1 Covenant to Operate Approved Dealership on Site..... | 12 |
| 302.2 No Competing Dealership; Operation to Maximize Sales and Use Tax Revenues..... | 12 |
| 302.3 Default and Excused Closure..... | 12 |
| 302.4 Covenants to Run with Land | 13 |
| 303. Condition of the Site | 13 |
| 303.1 Representation and Warranty | 13 |
| 303.2 Compliance with Environmental Laws | 13 |
| 303.3 Presence of Hazardous Materials..... | 13 |
| 303.4 Notice of Environmental Matters | 13 |
| 303.5 Participant Environmental Indemnity..... | 14 |
| 304. Compliance With Laws..... | 14 |
| 304.1 Indemnification..... | 14 |
| 305. Nondiscrimination Covenants..... | 15 |
| 305.1 Obligation to Refrain from Discrimination | 15 |
| 305.2 Nondiscrimination in Employment..... | 15 |
| 306. Maintenance..... | 15 |
| 307. Indemnification and Insurance Requirements..... | 15 |
| 307.1 Indemnity..... | 15 |
| 307.2 Insurance Requirements | 16 |
| 307.3 Additional Conditions to Insurance Requirements..... | 17 |
| 308. Third Party Litigation Concerning Agreement | 17 |
| 309. Sales and Use Tax Sharing Claims | 17 |
| 310. AB 562 Obligations..... | 18 |
| 311. Effect of Violation of the Terms and Provisions of this Agreement..... | 18 |
| 312. Recordation of Operating Covenant..... | 18 |
| 400. DEFAULTS AND REMEDIES | 18 |
| 401. Default..... | 18 |
| 402. Institution of Legal Actions | 18 |
| 403. Termination by Participant..... | 19 |
| 404. Termination by City | 19 |
| 405. Acceptance of Service of Process | 19 |
| 406. Rights and Remedies Are Cumulative | 19 |
| 407. Inaction Not a Waiver of Default..... | 20 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 408. Applicable Law | 20 |
| 500. GENERAL PROVISIONS | 20 |
| 501. Notices, Demands and Communications Between the Parties | 20 |
| 502. Enforced Delay; Extension of Times of Performance | 20 |
| 503. Transfers of Interest in Site or Agreement | 21 |
| 503.1 Prohibition | 21 |
| 503.2 Permitted Transfers | 21 |
| 503.3 City Consideration of Requested Transfer | 22 |
| 503.4 Successors and Assigns | 22 |
| 503.5 Transfer During Operating Covenant Period | 22 |
| 503.6 Operating Covenant Purchase Price Payments | 22 |
| 504. Non Liability of Officials and Employees of City | 22 |
| 505. Relationship Between City and Participant | 23 |
| 506. City Approvals and Actions | 23 |
| 507. Counterparts | 23 |
| 508. Integration | 23 |
| 509. Titles and Captions | 23 |
| 510. Interpretation | 23 |
| 511. No Waiver | 23 |
| 512. Modifications | 23 |
| 513. Severability | 24 |
| 514. Computation of Time | 24 |
| 515. Legal Advice | 24 |
| 516. Time of Essence | 24 |
| 517. Cooperation | 24 |
| 518. Conflicts of Interest | 24 |

ATTACHMENTS

| | |
|------------------|---------------------------|
| Attachment No. 1 | Legal Description |
| Attachment No. 2 | Operating Covenant |
| Attachment No. 3 | Certificate of Compliance |

OWNER PARTICIPATION AGREEMENT

This **OWNER PARTICIPATION AGREEMENT** (the "Agreement") is dated as of July 28, 2015 ("Date of Agreement"), for reference purposes only, by and between the **CITY OF CLAREMONT**, a California municipal corporation (the "City"), and **PREMIER AUTOMOTIVE OF CLAREMONT, LLC**, a California limited liability company (the "Participant").

RECITALS

A. Participant has entered into a contract to purchase approximately 7 acres of improved real property, which is located at 620-645 Auto Center Drive in the City of Claremont, County of Los Angeles, State of California, as more particularly described in the Legal Description attached hereto as Attachment No. 1 and incorporated herein by this reference (the "Site").

B. The Site is located at the western terminus of Auto Center Drive, a street originally constructed in the early 1980's to service major retail and auto sales uses. The Site is improved with three buildings constructed in 1985 for use as automobile dealerships, which operated on the site until December 2004, after which time the Site has been vacant and unused for any economic purpose. The Site is bounded by the Interstate 10 freeway to the north, auto dealerships and retail uses to the east, and single-family residential uses to the south and west.

C. City and Participant desire for Participant to open and operate an Approved Dealership (defined below) at the Site.

D. Operation of the Approved Dealership at the Site will provide the following benefits to the City and the community:

1. The renovation of the Improvements at the Site is anticipated to increase the assessed value of the Site by approximately \$4,923,000, or 63%, increasing property tax revenues to the City and other local taxing agencies by approximately \$49,230 in 2016;

2. The operation of the Approved Dealership at the Site will result in between 96 and 125 new, permanent, full-time equivalent jobs in the City, at full capacity and implementation;

3. The operation of the Approved Dealership at the Site will generate Sales and Use Tax Revenue (defined below) to the City;

4. The renovation of the Improvements at the Site and the operation of the Approved Dealership at the Site are anticipated to increase the property values and revitalize the neighborhood surrounding the Site, by drawing consumers and employees to the area, thereby stimulating the local economy; and

5. The City anticipates that the operation of the Approved Dealership at the Site will help to foster a business and civic environment that will attract additional businesses and investment in the community due to the increased public and private services resulting from the generation of jobs, tax revenues, and consumers in the City and the area surrounding the Site.

E. The parties desire to enter into this Agreement in order to provide for the sale by Participant to City of the Operating Covenant, and the City's payment of the Operating Covenant Purchase Price to Participant, all as described in more detail herein.

F. 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 Claremont 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, City and Participant hereby agree as follows:

100. DEFINITIONS

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

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

"Affiliate" or **"Affiliates"** refers to any entity that operates an automotive dealership and is owned, at least in part, by one or more of Participant's members.

"Approved Dealership" means the Dodge, Jeep, Chrysler and Ram automobile dealership which the Participant proposes to develop and operate on the Site 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 Dodge, Jeep, Chrysler, Ram and such other and additional product lines, if any, as may be permitted in this Agreement or as may hereafter be designated by the mutual written agreement of City 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 Claremont, 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 Los Angeles, California.

"Date of Agreement" means the date set forth in the first paragraph hereof, which date is provided for reference purposes only.

"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.

"Effective Date" means the date on which all of the following conditions to effectiveness of this Agreement have occurred:

(i) This Agreement has been approved and executed by the authorized representative of Participant and delivered to the City; and

(ii) This Agreement has been approved by the City Council of the City of Claremont at a public meeting of the City after notice and public hearing as required by Government Code Section 53083; and such approval has been evidenced by a resolution adopted by the City Council; and

(iii) This Agreement has been executed by the appropriate officers of the City and delivered to Participant; and

(iv) Participant has demonstrated to the City's satisfaction that Participant has acquired fee simple title to the Site; and

(v) Participant has opened the Approved Dealership for business at the Site.

"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.

"Franchise Agreement" means one or more franchise agreement(s) entered into by Participant with FCA US, LLC 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 City, 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.

"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 Authorized Product Lines.

"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" commences on the Effective Date and ends at the end of the tenth Year of this Agreement.

“Operating Covenant Purchase Price” means the purchase price, not to exceed Four Million Three Hundred Seventy-Five Thousand Dollars (\$4,375,000), or as much thereof as is disbursed by the City as set forth in Section 201.2, to be paid by the City to Participant in consideration of Participant’s conveyance to the City and ongoing compliance with the Operating Covenant during the entire Operating Covenant Period, as set forth in Section 201, *et seq.*

“Outside Opening Date” shall mean March 31, 2016.

“Participant” means Premier Automotive of Claremont, LLC, a California limited liability company, 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.

“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 Operating Covenant Period. The first Quarter hereunder shall commence on the first January 1, or April 1, or July 1, or October 1 first following the Effective Date and shall end on the next following March 31, June 30, September 30 or December 31 thereafter, as applicable. During the entire Operating Covenant Period hereunder there are up to (but in no event to exceed) forty (40) Quarters; subject to the provisions of Section 201, *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 Approved Dealership at the Site and allocated to and received by the City shall be calculated by the City to determine an amount equal to such revenues eligible to be paid as the Quarterly Disbursement Payment, all subject to the provisions of Section 201, *et seq.* and all provisions of the Agreement referenced therein.

“Quarterly Disbursement” and ***“Quarterly Disbursement Payment”*** each mean the disbursement of the Operating Covenant Purchase Price to be made by the City each Quarter pursuant to Section 201, *et seq.*

“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 Operating Covenant Period for leases of automobiles which were originated at the Site during the Operating Covenant Period 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.

"Site" is defined in Recital A.

"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.

"Verification Costs" is defined in Section 201.3(a).

"Year" means a twelve (12) month period, the first of which shall commence on the first day of the first Quarter following the Effective Date 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. CITY'S PURCHASE OF OPERATING COVENANT.

201. Consideration for Operating Covenant.

201.1 Operating Covenant Purchase Price. Pursuant to authority granted by Government Code Section 52200, *et seq.*, in consideration of the sale by Participant to City of the covenants set forth in Section 300, *et seq.* hereof and in the Operating Covenant, and subject to the Conditions Precedent set forth in Section 201.3, City hereby agrees to pay the Operating Covenant Purchase Price to Participant. In no event shall City's obligation hereunder to pay the Operating Covenant Purchase Price be considered or interpreted to be a pledge of tax revenues by City. The City covenants to make annual appropriations of amounts necessary to make the Operating Covenant Purchase Price payments required by this Agreement.

201.2 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) City shall pay to Participant an amount equal to fifty percent (50%) of the Sales and Use Tax Revenue generated by the Participant's operation of the Approved Dealership at the Site during each of the first ten (10) Years following the Effective Date, less the Verification Costs actually paid by the City pursuant to Section 201.3(a), up to the amount of the Operating Covenant Purchase Price. In no event shall the cumulative amount paid to Participant by City exceed the Operating Covenant Purchase Price.

(b) Operating Covenant Purchase Price Payments shall be disbursed to Participant in the form of Quarterly Disbursements as described in Section 201.2(d).

(c) In no event shall the City be required to make any Operating Covenant Purchase Price payment with respect to Sales and Use Tax Revenue generated by the

Participant's operation of the Approved Dealership at the Site after the tenth (10th) Year following the Effective Date.

(d) Upon the Participant's satisfaction of the Conditions Precedent to disbursement of Quarterly Disbursements as set forth in Section 201.3 hereof, each payment of a 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 Quarter during the Operating Covenant Period, (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 201.4, 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; however, in no event shall the City be required to make an Operating Covenant Purchase Price payment prior to City's actual receipt of the Sales and Use Tax Revenues for the Quarter in question. Participant is aware that as of the Effective Date, the City intends that the SBE report will be supplemented and summarized by an outside third party fiscal consultant as described in Section 201.3(a).

(e) In the event the SBE recalculates the Sales and Use Tax Revenue for a Quarter for which the City has previously made a Quarterly Disbursement to Participant, the City will adjust the next Quarterly Disbursement to the Participant by the amount of the over- or under-payment reflected in the SBE report describing the recalculation.

201.3 Conditions Precedent to 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 City, and shall be fulfilled by Participant (or waived by the City in its sole and reasonable discretion) within the time periods provided for herein. Participant may satisfy (and submit evidence of such satisfaction to the City Manager) 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 Verification Costs Incurred for Calculation of Sales and Use Tax Revenue for Applicable Quarterly Disbursement. Each Quarterly Disbursement shall be subject to deduction by City for all third party costs incurred by City for review and calculation of the applicable Operating Covenant Purchase Price payment by an independent, professional fiscal consultant, if any is retained and used by City therefor (such third party costs are referred to herein as "Verification Costs"). Participant acknowledges and agrees it is and shall be responsible for paying the Verification Costs, 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 City uses the services of an outside fiscal consultant, the charges, fees, and costs billed and paid by the City 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 City all documents required by this Agreement.

(c) Recordation of Operating Covenant. The Operating Covenant shall have been executed by Participant and recorded against the Site in second lien position, subordinate only to the Participant's first lien mortgage construction and/or permanent financing and such Operating Covenant shall be and remain an encumbrance against the Site in second lien priority until the end of the Operating Covenant Period.

(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 Approved Dealership. Participant shall be in full compliance with the Operating Covenant and the Franchise Agreement(s). Participant shall have continuously operated the Approved Dealership at the Site throughout the entire previous Year, except to the extent of an Excused Closure permitted by this Agreement, and Participant shall have executed and delivered the Certificate of Compliance to the City 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 City.

(j) Annual Appropriation. The City Council shall have made an appropriation for the applicable Quarterly Disbursement Payment pursuant to Section 201.1.

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

(l) Financial Report. Participant shall have submitted the necessary documentation and annual certification required by Section 201.4 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 City Manager within 30 days of completion thereof.

201.4 Verification of Quarterly Sales and Use Tax Revenue. The Sales and Use Tax Revenue generated each Quarter during the Operating Covenant Period, subject to payment of a maximum cumulative amount of the Operating Covenant Purchase Price and subject further to the provisions of Sections 201.2 and 201.3 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 Approved Dealership and the Site for the applicable Quarter; 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 Approved Dealership; (ii) the vehicle leasing documents shall clearly identify the name of the Approved Dealership and the address for point of transaction as within the boundaries of the City (whether or not the lease documents are processed at location(s) outside the boundaries of the City); and (iii) any other reports or information the City deems reasonably necessary to calculate Sales and Use Tax Revenue generated from vehicle leasing activity, in order to provide to City adequate records to verify the appropriate collection and allocation of the Sales and Use Tax Revenue to the City for the applicable Quarter.

(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 Quarter 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 201.2 and 201.3 and all provisions of the Agreement referenced therein and subject to payment of a maximum cumulative amount of the Operating Covenant Purchase Price.

(c) Upon written request by City, Participant shall promptly furnish to City any and all said information and take any and all actions which are reasonably deemed necessary by City to assist City in verifying the information contained in said sales and use tax returns and reports of new, used, and leased vehicles. City 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 by the City determines that Participant has overstated revenues in any applicable Quarter, Participant shall reimburse the City 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 City for the cost of the audit, within thirty (30) days of notice thereof from the City.

(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 City 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 City 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 operation of the Approved Dealership, as based upon the State Board of Equalization sales and use tax report applicable to the Approved Dealership and the Site, then City 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 Approved 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 City'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 Approved Dealership correlate and no wrong information was submitted by Participant to the City or the SBE) and such City 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 City, and the outstanding amount of underpayment of the applicable Quarterly Disbursement Payment shall be immediately remitted to the Participant.

202. Representations and Warranties.

202.1 City Representations. City represents and warrants to Participant that, to the City's actual current knowledge and as of the Date of Agreement:

(a) City is a California municipal corporation, exercising governmental functions and powers and organized and existing under the laws of the State of California.

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

(c) City'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 City is a party or by which it is bound.

(d) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Agreement.

Until the final disbursement of the Operating Covenant Purchase Price, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 202.1 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 City hereunder, but shall constitute an exception which Participant shall have a right to approve or disapprove.

As used in this Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Date of Agreement, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation, except such reasonable inquiry as might be expected of the position of City Manager with respect to the matters represented.

202.2 Participant's Representations. Participant represents and warrants to City that, as of the Date of Agreement:

(a) 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, one or more of Participant's Affiliates own other new automobile franchises in California and they are 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) 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 and more specifically at the Site.

(c) Participant's Manager and executive staff are experienced operators of new automobile dealerships and Participant is authorized by the State of California to engage in the business of automobile sales. Participant and its managerial personnel possess sufficient experience and qualifications necessary to operate the Approved Dealership at the Site as required by this Agreement

(d) 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) 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 202.2 not to be true as of such date, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Participant hereunder, but shall constitute an exception which City shall have a right to approve or disapprove.

300. COVENANTS AND RESTRICTIONS

301. Use in Accordance with Operating Covenant. Participant covenants and agrees to devote, use, operate, and maintain the Approved Dealership at the Site in accordance with the Operating Covenant, the Franchise Agreement, 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 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 and the Franchise Agreement, 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 the 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 Claremont. City hereby approves Dodge, Jeep, Chrysler and Ram as an Authorized Product Line under this Agreement. Participant may request the written approval of City for the sale of one or more different Authorized Product Line(s), pursuant to Section 503 hereof. After the opening of an Approved Dealership on the Site devoted to the sale and lease of new Dodge, Jeep, Chrysler and Ram 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 City consent; provided that Participant continues to operate an Approved Dealership for the sale and lease of new Dodge, Jeep, Chrysler and Ram automobiles, sports utility vehicles, and trucks (or such other Authorized Product Line which has been approved by City). No other uses may be conducted on the Site during the Operating Covenant Period without the prior written approval of City, which approval may be granted, refused, or conditioned as provided in Section 503 hereof. Minimum hours of operation required by this Agreement are as follows: The Approved Dealership shall be open to the public for auto sales from 8 a.m. to 7 p.m., seven days per week. The Approved Dealership shall be open to the public for auto service activities from 8 a.m. to 5 p.m. from Monday to Friday and from 9 a.m. to 2 p.m. on Saturdays.

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, any entity in which Participant has at least a twenty five percent (25%) interest in profits and losses and/or management control, or any entity under common ownership and/or control of Participant, any other new vehicle dealership selling any of the Authorized Product Line as then being sold by the Approved Dealership within a ten (10) mile radius of the Site (except that Participant may own and/or operate other dealerships in the City of Claremont). 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 City for each instance, which consent may be granted or withheld in City's reasonable discretion, a Closure shall, at City's option, constitute a Default hereunder; provided, however, that Participant

shall for purposes of this Section 302 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 Representation and Warranty. Except as previously disclosed to City and as permitted by Section 303.3, Participant hereby represents and warrants to City that Participant has no knowledge (a) of the presence on, under or about the Site, now or in the past, of any Hazardous Materials, or of the transportation to or from the Site of any Hazardous Materials, (b) that asbestos or polychlorinated biphenyls (PCBs) are contained in or stored on the Site, or (c) that there are any underground storage tanks located in, on or under the Site, and (d) Participant has not received any notice or other communication from any Governmental Authority having jurisdiction over the Site notifying Participant of the presence of Hazardous Materials in, on, or under the Site, or any portion thereof.

303.2 Compliance with Environmental Laws. Participant shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Participant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. In addition, Participant shall (a) comply with all Environmental Laws and environmental permits applicable to the construction and operation of the Site, (b) immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, (c) keep the Site free and clear of any environmental claims or liens imposed pursuant to any Environmental Law, and (d) obtain and renew all environmental permits required for ownership or use of the Site.

303.3 Presence of Hazardous Materials. Participant shall not, and shall not permit anyone else to, generate, use, treat, store, handle, release, or dispose of Hazardous Materials on the Site, or transport or permit the transportation of Hazardous Materials to or from the Site except for quantities used at the Site in compliance with all applicable Environmental Laws and required in connection with the routine operation of the Approved Dealership and maintenance of the Site.

303.4 Notice of Environmental Matters. Participant shall notify the City, and provide to the City a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site which have been conveyed to Participant, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist order, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirements relating to Hazardous Materials and underground tanks. The Participant shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site.

In the event of a release of any Hazardous Materials into the environment, Participant shall, as soon as possible after the release, furnish to City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon

request, Participant shall furnish to City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential. Participant shall immediately advise City in writing of any of the following: (a) any pending or threatened environmental claim against Participant or the Site, (b) any condition or occurrence that (i) results in noncompliance with any applicable Environmental Law, (ii) could reasonably be anticipated to cause the Site to be subject to any restrictions on the ownership, occupancy, use or transferability of the Site under any Environmental Law, or (iii) could reasonably be anticipated to form the basis of an environmental claim against the Site or Participant.

303.5 Participant Environmental Indemnity. Participant acknowledges that Participant located the Site and performed due diligence regarding the condition of the Site prior to acquiring the Site, to Participant's satisfaction and without assistance from the City. Participant hereby agrees to, at Participant's expense, defend (using counsel satisfactory to City), indemnify, assume all responsibility for, and save and hold the City and its 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, attorney's fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site in violation of Environmental Laws, whenever discovered, or (ii) the violation, or alleged violation of any Environmental Laws 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 damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit, or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for 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.

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 City and its officers, employees, contractors, agents, representatives, and volunteers, with counsel reasonably acceptable to City, 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.

305.1 Obligation to Refrain from Discrimination. Participant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall Participant itself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

305.2 Nondiscrimination in Employment. Participant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

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 (using counsel satisfactory to City), indemnify, and hold harmless City, and its 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 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 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 or City. If Participant defends any such action, as set forth above, (i) Participant shall indemnify and hold harmless City and its 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) City 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 307.1 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 City 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 Site 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 its 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. Deductibles shall be approved by City.

(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 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 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 be responsible 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 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 of any claim or loss against Participant that includes City as a defendant. City 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.

308. Third Party Litigation Concerning Agreement. Participant shall defend, at its expense, including attorney and expert witness fees, indemnify, and hold harmless City and/or its 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 City and/or its officers, employees, contractors, agents, representatives, and volunteers to attack, set aside, void, or annul the approval of this Agreement. City shall promptly notify Participant of any claim, action, proceeding or determination included within this Section 308. City may, in its 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, and has not been, relocated from another location within the market area of the Site, within the meaning of Government Code Section 53084. Participant further understands and agrees that any successful claim by a government agency pursuant to those provisions shall entitle City 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 City a certification in a form acceptable to the City Manager, certifying that no other automobile dealership owned in whole or in part by Participant, or under common ownership or control of 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 Agreement, the Effective Date, or the date the Approved Dealership opened for business.

310. AB 562 Obligations. Participant acknowledges that, as a result of this Agreement, the City has reporting obligations pursuant to Government Code Section 53083. Participant hereby covenants and agrees to cooperate with City and provide information requested by City to enable City to comply with its obligations pursuant to Government Code Section 53083.

311. 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 City, 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. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own 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 City, without regard to whether City has been, remains or is an owner of any land or interest in the Site or adjacent to the Site. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

312. Recordation of Operating Covenant. Participant agrees to execute, acknowledge and record in the official records of Los Angeles 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 312 concurrently with Participant's acquisition of the Site or within fifteen (15) calendar days following the Effective Date, whichever occurs sooner.

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 breach to the other party specifying the breach 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 breach within thirty (30) days from receipt of such notice, or if the nature of such breach 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 Los Angeles, State of California.

403. Termination by Participant. In the event that Participant is not in Default under this Agreement and City 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 City. From the date of the written notice of termination of this Agreement by Participant to City 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 City is in Default hereunder, Participant may pursue any remedies it has at law or equity.

404. Termination by City. In the event that City 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) 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 201.2 hereof; or

(c) Subject to Section 502, Participant does not open the Approved Dealership for business on or before the Outside Opening Date;

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 City, be terminated by City by written notice thereof to Participant. From the date of the written notice of termination of this Agreement by City to Participant and thereafter this Agreement shall be deemed terminated, City 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 City may pursue any remedies available to City at law or equity.

405. Acceptance of Service of Process. In the event that any legal action is commenced by Participant against City, service of process on City shall be made by personal service upon the City Clerk or City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Participant, service of process on Participant shall be made by personal service upon the Manager of Participant, Troy J. Duhon, whether made within or outside the State of California, or in such other manner as may be provided by law.

406. 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.

407. 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.

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

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 City: City of Claremont
 207 Harvard Avenue
 Claremont, California 91711
 Attention: Tony Ramos, City Manager

To Participant: Premier Automotive of Claremont, LLC
 11081 East Interstate 10 Service Road
 New Orleans, LA 70128
 Attention: Premier Automotive Groups

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 City which shall not excuse performance by City). 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 City 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 City. Furthermore, the parties acknowledge that City has negotiated the terms of this Agreement in contemplation of the operation of the Approved Dealership and the property tax revenues and Sales and Use Tax Revenues to be generated by 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 new automobiles of the Authorized Product Line be operated thereon, either in addition to or in replacement of the Approved 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 City, which approval shall not be unreasonably withheld. The transfer, sale, or other conveyance of a majority of Membership Interest in or Troy J. Duhon's removal or resignation as Manager of 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, City 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 the Approved Dealership (or another City-authorized automobile dealership) continues to operate on the Site.

(b) Any Transfer to an entity or entities in which Participant or Participant's Members 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 the Approved Dealership (or another City-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.

(d) Any requested assignment for financing purposes (subject to such financing being considered and approved by City), 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 this Section 503.2 not requiring City's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City 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 City Consideration of Requested Transfer. City 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 City 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 City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 503 and as reasonably determined by City. 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. City 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 Claremont, (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. City 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. City 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 City's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of Participant's written notice requesting City approval of a Transfer pursuant to this Section 503, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City 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 City such further information as may be reasonably requested.

503.4 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.

503.5 Transfer During Operating Covenant Period. Any Transfer by Participant in violation of this Section 503 which occurs during the Operating Covenant Period shall constitute a Default hereunder and under the Operating Covenant.

503.6 Operating Covenant Purchase Price Payments. The person or entity owning and operating the Approved Dealership at the Site shall at all times retain the right to receive Operating Covenant Purchase Price payments pursuant to this Agreement.

504. Non Liability of Officials and Employees of City. No member, official or employee of the City shall be personally liable to Participant or any successor in interest, in the event of any Default or breach by City 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 City and Participant. It is hereby acknowledged that the relationship between City and Participant is not that of a partnership or joint venture and that City 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, City 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. City Approvals and Actions. City shall maintain authority of this Agreement and the authority to implement this Agreement through City Manager (or his duly authorized representative). The City Manager 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 City 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 City 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 City Council.

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 Friday, 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 City 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 City 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 of Agreement.

CITY:

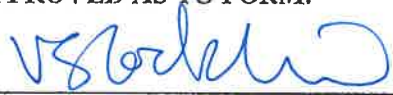
CITY OF CLAREMONT,
a California municipal corporation

By: _____
Corey Calaycay, Mayor

ATTEST:

Shelley Desautels, City Clerk

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth
Special Counsel to City


PARTICIPANT:

PREMIER AUTOMOTIVE OF CLAREMONT,
LLC, a California limited liability company

By:  _____
Its: Met Mamba _____
Printed Name: Troy Duhon _____

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:



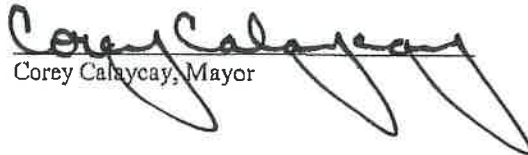
Counsel to Participant

IN WITNESS WHEREOF, the parties hereto have signed this Owner Participation Agreement as of the Date of Agreement.

CITY:

CITY OF CLAREMONT,
a California municipal corporation

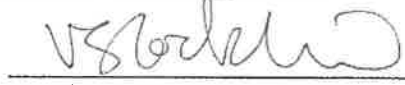
By:


Corey Calaycay, Mayor

ATTEST:


Shelley Desautels, City Clerk

APPROVED AS TO FORM:


Stradling Yocca Carlson & Rauth
Special Counsel to City

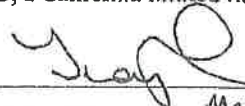
PARTICIPANT:

PREMIER AUTOMOTIVE OF CLAREMONT,
LLC, a California limited liability company

By:

Its:

Printed Name:

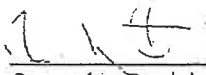

Mgt. Member
Troy Duhon

By:

Its:

Printed Name:

APPROVED AS TO FORM:


Counsel to Participant

ATTACHMENT NO. 1

LEGAL DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

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

PARCELS 3 AND 4, IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 16028, FILED IN BOOK 177, PAGES 23, 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM THAT PORTION OF SAID PARCELS LYING WITHIN THE LAND DESCRIBED IN THE DEED RECORDED SEPTEMBER 22, 1971, AS INSTRUMENT NO. 3243, OFFICIAL RECORDS, ALL MINERALS, OILS, GASES AND OTHER HYDROCARBONS AND WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE OR THE UPPER 100 FEET THEREOF, AS RESERVED BY THE STATE OF CALIFORNIA, IN THE ABOVE MENTIONED DEED.

APN: 8318-020-029 AND 030

ATTACHMENT NO. 2

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

City of Claremont
207 Harvard Avenue
Claremont, California 91711
Attn: City Manager

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 **CITY OF CLAREMONT**, a California municipal corporation ("City"), and **PREMIER AUTOMOTIVE OF CLAREMONT, LLC**, a California limited liability company ("Participant"), with reference to the following:

A. City and Participant have executed an Owner Participation Agreement, dated as of July 28, 2015 ("Agreement"), which provides for the sale of this Operating Covenant with respect to the real property located in the City of Claremont ("City"), County of Los Angeles, 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 City, 207 Harvard Avenue, Claremont, 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 City of this Operating Covenant and recordation of this Operating Covenant against the Site in the Official Records of Los Angeles 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 City the following Operating Covenant:

1. **Use in Accordance with Operating Covenant and Agreement.** Participant covenants and agrees to devote, use, operate, and maintain the Approved Dealership at the Site in accordance with the Agreement, this Operating Covenant, the Franchise Agreement, 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 to this Operating Covenant or the Agreement, shall conform to 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. Operation of Automobile Dealership. Participant hereby covenants and agrees that, for a term commencing upon the Effective Date and ending ten (10) Years thereafter (which period constitutes 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 and the Franchise Agreement, 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 the 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 Claremont. City hereby approves Dodge, Jeep, Chrysler and Ram as an Authorized Product Line under this Operating Covenant and the Agreement. Participant may request the written approval of City for the sale of one or more different Authorized Product Line(s), pursuant to Section 3 hereof. After the opening of an Approved Dealership on the Site devoted to the sale and lease of new Dodge, Jeep, Chrysler and Ram 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 City consent; provided that Participant continues to operate an Approved Dealership for the sale and lease of new Dodge, Jeep, Chrysler and Ram automobiles, sports utility vehicles, and trucks (or such other Authorized Product Line which has been approved by City). No other uses may be conducted on the Site during the Operating Covenant Period without the prior written approval of City, which approval may be granted, refused, or conditioned as provided in Section 3 below. Minimum hours of operation required by this Operating Covenant and the Agreement are as follows: The Approved Dealership shall be open to the public for auto sales from 8 a.m. to 7 p.m., seven days per week. The Approved Dealership shall be open to the public for auto service activities from 8 a.m. to 5 p.m. from Monday to Friday and from 9 a.m. to 2 p.m. on Saturdays.

Participant further covenants and agrees that during the Operating Covenant Period, Participant will not own and/or operate through Participant, any entity in which Participant has at least a twenty five percent (25%) interest in profits and losses and/or management control, or any entity under common ownership and/or control of Participant, any other new vehicle dealership selling any of the Authorized Product Line as then being sold by the Approved Dealership within a ten (10) mile radius of the Site (except that Participant may own and/or operate other dealerships in the City of Claremont). 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 City for each instance, which consent may be granted or withheld in City'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 City's option, constitute a Default hereunder; provided, however, that Participant shall for purposes of this Section 2 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").

3. 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 City. Furthermore, the parties acknowledge that City has negotiated the terms of this Operating Covenant and the Agreement in contemplation of the operation of the Approved Dealership and the property tax revenues and Sales and Use Tax Revenues to be generated by 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 Operating Covenant and 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 new automobiles of the Authorized Product Line be operated thereon, either in addition to or in replacement of the Approved 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 City, which approval shall not be unreasonably withheld. The transfer, sale, or other conveyance of a majority of Membership Interest or profits in or Troy J. Duhon's removal or resignation as Manager of Participant shall constitute a Transfer subject to the prohibition set forth in this Section 3(a). This Section 3(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 this Operating Covenant and the Agreement to the contrary, City 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 the Approved Dealership (or another City-authorized automobile dealership) continues to operate on the Site.

(ii) Any Transfer to an entity or entities in which Participant or Participant's Members 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 the Approved Dealership (or another City-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.

(iv) Any requested assignment for financing purposes (subject to such financing being considered and approved by City), 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 this Section 3(b) not requiring City's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City 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 Operating Covenant and the Agreement.

(c) **City Consideration of Requested Transfer.** City agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 3, provided Participant delivers written notice to City 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 City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 3 and as reasonably determined by City. 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. City 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 Claremont, (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. City 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. City 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 City's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of Participant's written notice requesting City approval of a Transfer pursuant to this Section 3, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City 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 City such further information as may be reasonably requested.

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

(e) **Transfer During Operating Covenant Period.** Any Transfer by Participant in violation of this Section 3 which occurs during the Operating Covenant Period shall constitute a Default hereunder and under the Operating Covenant.

(f) **Operating Covenant Purchase Price Payments.** The person or entity owning and operating the Approved Dealership at the Site shall at all times retain the right to receive

Operating Covenant Purchase Price payments pursuant to this Operating Covenant and the Agreement.

4. Nondiscrimination.

(a) **Obligation to Refrain from Discrimination.** Participant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall Participant itself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

(b) **Nondiscrimination in Employment.** Participant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

5. Performance of Maintenance.

(a) Participant shall maintain the Site, the Improvements 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 curblane.

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.

6. 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, 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, City 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 or graffiti at the Site, 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 shall have the right to maintain such improvements. Participant agrees to pay City such charges and costs. Until so paid, City 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 Operating Covenant and the 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 City 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 City 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 City 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 Operating Covenant and the Agreement accruing after the foreclosure purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of City 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 Operating Covenant and the Agreement and the charges levied by City to reimburse City 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 City and secured by the apportioned lien and against no other portion of the Site. Participant acknowledges and agrees City 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.

7. 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.

8. Indemnification. Participant shall defend (using counsel satisfactory to City), indemnify, and hold harmless City, and its 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 Operating Covenant and the Agreement, which may arise from the acts or omissions of Participant under this Operating Covenant and the 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 Operating Covenant and the 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 Operating Covenant and the Agreement and whether such damage shall accrue or be discovered before or after termination of this Operating Covenant and the

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 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 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 or City. If Participant defends any such action, as set forth above, (i) Participant shall indemnify and hold harmless City and its 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) City 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 8 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 City or its officers, employees, contractors, agents, representatives, and volunteers.

9. Third Party Litigation Concerning Agreement. Participant shall defend, at its expense, including attorney and expert witness fees, indemnify, and hold harmless City and/or its officers, employees, contractors, agents, representatives, and volunteers from any claim, action or proceeding brought by a person or entity not a party to this Operating Covenant against City and/or its officers, employees, contractors, agents, representatives, and volunteers to attack, set aside, void, or annul the approval of this Operating Covenant and the Agreement. City shall promptly notify Participant of any claim, action, proceeding or determination included within this Section 9. City may, in its discretion, participate in the defense of any such claim, action, proceeding or determination.

10. 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 Government Code Section 53084. Participant further understands and agrees that any successful claim by a government agency pursuant to those provisions shall entitle City to require Participant to pay any sums required pursuant to the resolution of such claim.

11. 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.

12. 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 City, its successor and assigns. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. City is deemed the beneficiary of the terms and provisions of this Operating Covenant 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 Operating Covenant and the covenants running with the land have been provided. This Operating Covenant shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest in the Site or adjacent to the Site. City shall have the right, if any provision of this 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.

CITY:


CITY OF CLAREMONT,
a California municipal corporation

By: _____
Corey Calaycay, Mayor

ATTEST:

Shelley Desautels, City Clerk


APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth
Special Counsel to City

PARTICIPANT:

PREMIER AUTOMOTIVE OF CLAREMONT,
LLC, a California limited liability company


By: _____
Its: Mgt Member
Printed Name: Troy Ouhon

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:



Counsel to Participant

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

CITY:

CITY OF CLAREMONT,
a California municipal corporation

By: Corey Calaycay
Corey Calaycay, Mayor

ATTEST:

Shelley Desautels
Shelley Desautels, City Clerk

APPROVED AS TO FORM:

VS [Signature]
Stradling Yocca Carlson & Rauth
Special Counsel to City

PARTICIPANT:

PREMIER AUTOMOTIVE OF CLAREMONT,
LLC, a California limited liability company

By: [Signature]
Its: Mgt Member
Printed Name: Troy Duhon

By: _____
Its: _____
Printed Name: _____

APPROVED AS TO FORM:

[Signature]
Counsel to Participant

EXHIBIT "A" TO ATTACHMENT NO. 2

LEGAL DESCRIPTION OF SITE

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

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

PARCELS 3 AND 4, IN THE CITY OF CLAREMONT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 16028, FILED IN BOOK 177, PAGES 23, 24 AND 25 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM THAT PORTION OF SAID PARCELS LYING WITHIN THE LAND DESCRIBED IN THE DEED RECORDED SEPTEMBER 22, 1971, AS INSTRUMENT NO. 3243, OFFICIAL RECORDS, ALL MINERALS, OILS, GASES AND OTHER HYDROCARBONS AND WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE OR THE UPPER 100 FEET THEREOF, AS RESERVED BY THE STATE OF CALIFORNIA, IN THE ABOVE MENTIONED DEED.

APN: 8318-020-029 AND 030

ATTACHMENT NO. 3

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

TO: City of Claremont
207 Harvard Avenue
Claremont, California 91711
Attention: City Manager

The undersigned, _____, being duly authorized to execute this Certificate of Continuing Compliance with Operating Covenant and Owner Participation Agreement (this "Certificate") on behalf of Premier Automotive of Claremont, LLC, a California limited liability company ("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 City and Participant dated as of July 28, 2015 and the "Operating Covenant" dated as of _____, 20____, executed by Participant and recorded against the Site in the Official Records of Los Angeles 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 Effective Date 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 breach or Default under the terms of the OPA or the Operating Covenant.

PARTICIPANT:

**PREMIER AUTOMOTIVE OF CLAREMONT,
LLC**, a California limited liability company

By: 
Its: Mgt Member
Printed Name: Troy Wilson

By: _____
Its: _____
Printed Name: _____