

**OWNER PARTICIPATION AGREEMENT**

**by and between**

**EL CAJON REDEVELOPMENT AGENCY  
a public body, corporate and politic**

**and**

**JKC PALM SPRINGS AUTOMOTIVE, INC.,  
a California Corporation**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. RECITALS INCORPORATED .....	2
2. DEVELOPMENT OF THE SITE .....	2
2.1 Description of the Project .....	2
2.2 Project Entitlements.....	2
2.3 Entitlement Process; Processing .....	3
2.4 Schedule of Performance.....	3
2.5 Cost of Construction.....	3
2.6 Rights of Access .....	3
2.7 Miscellaneous Rules and Regulations Applicable to Development of the Project .....	4
2.8 Release of Construction Covenants.....	6
3. AGENCY LOAN .....	6
3.1 Agency Loan for Rehabilitation Improvements .....	6
3.2 Conditions Precedent to Agency Loan Obligation .....	7
3.3 Disbursement of Agency Loan.....	8
3.4 Repayment of Agency Loan; Security.....	8
3.5 Evidence of Financing.....	8
4. OPERATION OF THE PROJECT AND COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE SITE AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT.....	9
5. DEFAULTS AND REMEDIES .....	9
5.1 Default. ....	9
5.2 Institution of Legal Actions; Remedies .....	10
5.3 Acceptance of Service of Process.....	10
5.4 Rights and Remedies Are Cumulative.....	10
5.5 Inaction Not a Waiver of Default .....	10
5.6 No Waiver.....	10
5.7 Applicable Law.....	11
6. INSURANCE REQUIREMENTS; REPAIR AND RESTORATION OF PROJECT .....	11
6.1 Insurance Requirements .....	11
6.2 Remedies for Defaults Re: Insurance .....	13
6.3 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.....	13
7. TRANSFER RESTRICTIONS.....	13
7.1 Prohibition .....	13
7.2 Permitted Transfers.....	14

7.3 Agency Consideration of Proposed Transfer; Release of Transferor  
Upon Permitted or Approved Transfer ..... 14

7.4 Successors and Assigns ..... 15

7.5 Subordination..... 15

8. INDEMNIFICATION OF AGENCY ..... 15

9. GENERAL PROVISIONS ..... 16

9.1 Notices.....16

9.2 Enforced Delay; Extension of Times of Performance ..... 16

9.3 Non-Liability of Officials and Employees of Agency to the Developer ..... 17

9.4 Relationship Between Agency and Developer ..... 17

9.5 Agency Approvals and Actions ..... 17

9.6 Counterparts..... 17

9.7 Integration..... 17

9.8 Attorneys’ Fees..... 18

9.9 Titles and Captions ..... 18

9.10 Interpretation ..... 18

9.11 Modifications..... 18

9.12 Severability ..... 18

9.13 Computation of Time..... 18

9.14 Legal Advice..... 18

9.15 Time of Essence..... 19

9.16 Conflicts of Interest ..... 19

9.17 Third Party Beneficiaries..... 19

9.18 Corporate Authority..... 19

9.19 Covenant to Not Cause Violation of Statutes Relating to Direct  
Assistance by Agency..... 19

LIST OF ATTACHMENTS

ATTACHMENT "1"	Legal Description of Site
ATTACHMENT "2"	Scope of Development
ATTACHMENT "3"	Schedule of Performance
ATTACHMENT "4"	Release of Construction Covenants
ATTACHMENT "5"	List of Eligible Costs
ATTACHMENT "6"	Promissory Note
ATTACHMENT "7"	Deed of Trust With Assignment of Rents and Rider Attached Hereto
ATTACHMENT "8"	Operating Covenant

## OWNER PARTICIPATION AGREEMENT

This OWNER PARTICIPATION AGREEMENT (this "Agreement") dated as of MARCH 9, 2011 (the "Effective Date"), is made by and between the EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and JKC PALM SPRINGS AUTOMOTIVE, INC., a California Corporation (the "Developer").

### RECITALS

The following recitals are a substantive part of this Agreement:

A. On December 28, 1971, pursuant to Health & Safety Code sections 33330 *et seq.*, the City Council (the "City Council") of the City of El Cajon (the "City") adopted Ordinance No. 2437 establishing the Central Business District Redevelopment Project Area; said Ordinance was amended by Ordinance 4038 on July 14, 1987 which approved the Redevelopment Plan (the "Plan") for the El Cajon Redevelopment Project Area (the "Project Area").

B. The Agency is authorized and empowered by the Community Redevelopment Law (Health and Safety Code Sections 33000, *et seq.* (the "CRL")), to enter into agreements for the development of real property and otherwise to assist in the redevelopment of real property within Project Area in conformity with the Plan, to acquire real and personal property in redevelopment project areas, to receive consideration for the provision by Agency of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects.

C. In furtherance of the objectives of the CRL, Agency desires to encourage and promote the rehabilitation and redevelopment of a certain real property located in the Project Area at 541 North Johnson Avenue, El Cajon, California, which is improved with buildings and facilities operated as the Team Kia El Cajon motorcar dealership (the "Site"). The Site would benefit from improvements that would incorporate the current manufacturer standards for Kia dealerships.

D. Developer has recently acquired a leasehold interest in the Site and improvements thereon. The Site is more particularly described on Attachment 1, which is attached hereto and incorporated herein by this reference.

E. Subject to and as provided by this Agreement, the parties contemplate that (i) Developer will reconfigure, renovate and rehabilitate the Site so that it conforms to the current manufacturer's requirements for Kia motorcar dealerships (the "Project"), as further defined herein, and (ii) the Agency will provide financial assistance towards the costs incurred by Developer to construct the Project.

F. This project is categorically exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

G. This Agreement and the Developer's development of the Project are in the vital and best interest of the City and the Agency and the health, safety, morals and welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of Project Area has been undertaken.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions contained herein, the Agency and the Developer agree as follows:

1. RECITALS INCORPORATED.

The recitals are hereby incorporated by reference into this Agreement and are a material part of this Agreement.

2. DEVELOPMENT OF THE SITE

2.1 Description of Project. The Project shall consist of Developer's rehabilitation of the Site as further described in the Scope of Development attached hereto and incorporated herein as Attachment 2 (the "Scope of Development"). Developer shall construct the Project in compliance with (i) the terms and conditions of this Agreement, (ii) the "Project Entitlements" (as that term is defined in Section 2.2 below), (iii) current factory standards for Kia Motors America ("Kia Motors") motorcar dealerships, as determined by the Dealer Development Division of Kia Motors ("Kia Motors Standards"), (iv) all plans and permits approved by City and/or Agency with respect to the Project, and (v) the Schedule of Performance attached hereto and incorporated herein as Attachment 3. Developer shall thereafter operate the Project as provided in Section 4 below. Developer shall ensure that all designs prepared for the Project shall be (1) in compliance with Kia Motors Standards, (2) prepared by an architect and development team that is recognized by Kia Motors as having the expertise and ability to prepare and implement plans that meet Kia Motors Standards, and (3) approved by Kia Motors as being compliant with Kia Motors Standards.

2.2 Project Entitlements. As a condition precedent to Developer's obligations to construct the Project under this Agreement, Developer shall obtain from the City all entitlements necessary for the Project as required in this Agreement, by applicable State law, by City code, and all other applicable laws, including but not limited to any approvals or certifications as required by the California Environmental Quality Act (California Public Resources Code § 21000 et seq.), the approval of which is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). Agency staff shall use reasonable efforts to assist the Developer in coordinating the expeditious processing and consideration of all necessary permits, Project Entitlements, and approvals. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain any required permits, Project Entitlements, or approvals required by the City, nor does such execution obligate the City to incur any expense in assisting the Developer in the acquisition of permits and Project Entitlements. In the event of a conflict between Kia Motors Standards and Project Entitlements, the Project Entitlements shall control.

2.3 Entitlement Process. Developer acknowledges that the requirements set forth in this Article 2, including, without limitation the Developer's construction and completion of the Project, are material considerations for the participation by the Agency in this Agreement, and that but for such requirements, the Agency would not have entered into this Agreement. Developer acknowledges and agrees that in reviewing and approving documents under this Section 2.3, the Agency is not acting on behalf of the City. Further, Developer understands that the City shall conduct its typical governmental functions and exercise of its police powers in its capacity as the jurisdiction responsible for land use and building permit approvals.

2.3.1 Submittal of Developer's Applications. The Developer shall submit relevant development applications and supporting documentation, and all other applications necessary to obtain the Project Entitlements (collectively, the "Developer's Applications"). These submittals shall be provided in the time period designated in the Schedule of Performance.

2.3.2 Defects in Plans. The City and Agency shall not be responsible to the Developer or to third parties in any way for any defects in the Developer's Applications nor for any structural or other defects in any work done according to the Developer's Applications, nor shall the City or Agency be responsible for any delays caused by the review and approval processes established by this Article 2 or the reviews conducted by the City in the Schedule of Performance.

2.4 Schedule of Performance. The Developer shall submit or cause to be submitted all Developer's Applications, shall commence and complete construction of the Project, and shall satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. The Agency's Executive Director is permitted to modify or extend the Schedule of Performance without further authorization by the Agency Board provided the following conditions are satisfied: (i) the modification does not prohibit the Developer from obtaining a certificate of occupancy for the Project no later than twelve (12) months from the Effective Date; (ii) the Executive Director and Developer agree to the modification or extension in a writing executed by both Developer and the Executive Director; (iii) Developer is not otherwise in default under this Agreement; and (iv) such modification or extension does not increase the Agency's obligations or costs under this Agreement.

2.5 Cost of Construction. Except as provided in Section 3.1 below, all of the cost of planning, designing, developing and constructing the Project, site preparation and grading shall be borne solely by the Developer.

2.6 Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Site at normal construction hours during the period of construction and upon reasonable prior notice to Developer, including but not limited to, the inspection of the work being performed in the construction of the Project. Agency shall indemnify, defend and hold Developer harmless from any loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, "Claims") arising from or related to the Agency's inspection of the Project as permitted by this Section 2.6. Notwithstanding the prior sentence, the Agency shall not be liable for such Claims to the extent

and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of Developer or its agents, representatives, employees, directors, officers or consultants. This section does not apply to, limit or otherwise restrict or impose conditions on any inspection or entry right the City has pursuant to State law or the City of El Cajon Municipal Code.

## 2.7 Miscellaneous Rules and Regulations Applicable to Development of the Project.

2.7.1 Compliance with Laws. Developer shall carry out the design and construction of the Project in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of El Cajon Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

2.7.2 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it (including all contractors and subcontractors used by Developer) in constructing the Project on the Site (collectively, the "Construction Personnel") are and will be treated equally without regard to, or because of, race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) 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 antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Subject to any privacy rights of the affected individuals, upon the reasonable request by Agency, Developer shall allow representatives of the Agency access to Construction Personnel records during regular business hours to verify compliance with these provisions in connection with the Project and construction thereof. Any contract or agreement entered by Developer with Construction Personnel shall specifically incorporate this section and shall include a provision providing Agency access to the Construction Personnel's records referenced in the prior sentence.

2.7.3 Levies and Attachments on Site and Building. As a condition precedent to the Agency's obligation to issue a Release of Construction Covenants pursuant to Section 2.8 of this Agreement, Developer shall remove or have removed any levy or attachment made on the Site and Building or any part thereof, or assures the satisfaction thereof within a reasonable time. Nothing herein shall be deemed to prohibit Developer from contesting the validity or amount of any levy or attachment or to limit the remedies available to Developer with respect thereto.



2.7.4 Mechanics Liens and Stop Notices. As a condition precedent to the Agency's obligation to issue a Release of Construction Covenants pursuant to Section 2.8 of this Agreement or to make any disbursements of the Agency Loan as to a particular Disbursement Milestone (defined in Section 3.1), Developer shall remove or have removed any mechanics lien or stop notice made on the Site and Building or any part thereof, or assure the satisfaction thereof as provided herein. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall, within thirty (30) days of such recording or service or within thirty (30) days of the Agency's demand, whichever last occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to the Agency a surety bond in sufficient form and amount; or

(c) provide the Agency with other assurance which the Agency deems, in its reasonable discretion (including, without limit, Conditional Waiver and Release Upon Progress Payment (Cal. Civ. Code Section 3262(d)(1)) or Unconditional Waiver and Release Upon Progress Payment (Cal. Civ. Code Section 3262(d)(2)) or Unconditional Waiver and Release Upon Final Payment (Cal. Civ. Code Section 3262(d)(4)), to be satisfactory for the payment of such lien or stop notice.

2.7.5 Prevailing Wages. The Developer acknowledges and agrees that the provision of the "Agency Loan" (as that term is defined in Section 3.1 below) constitutes financial assistance that will cause the Project to be a "public work" as defined in Labor Code Section 1720(a) or (b) and thus requires Developer to comply with California's prevailing wage laws because the Project may be "paid for in whole or in part out of public funds," within the meaning of Labor Code Section 1720(a) or (b). Nothing in this Agreement constitutes a representation or warranty by the Agency that the construction of the Project is not subject to Chapter 1 of Part 7 of the California Labor Code (commencing with section 1720), and all applicable statutory regulatory provisions related thereto, and the Developer expressly waives any right of reimbursement for any "increased costs," under California Labor Code Section 1781 or otherwise, with respect to the Project or Site. Further, the Developer agrees that the Agency has not previously affirmatively represented or guaranteed to Developer or its contractor(s) for the construction or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Agreement is not a "public work" as defined in Section 1720 of the Labor Code. Developer shall indemnify, protect, defend and hold harmless Agency, City, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to the Agency and 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) that, in connection with the development or construction (as defined by applicable law) of the Project, including, without limitation, any and all public works (as defined by applicable law), which results or arises in any way from any of the following: (1) the noncompliance by Developer with respect to any applicable local, state and/or federal law, 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 Senate Bill 966 of 2003; (3) 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 (4) failure by Developer 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 and construction (as defined by applicable law) of the Project, Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Senate Bill 966 and/or 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 2.7.5, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time.

2.7.6 Insurance. The Developer shall maintain insurance as provided by Section 6 of this Agreement.

## 2.8 Release of Construction Covenants.

2.8.1 Promptly after completion of construction of the Project in conformity with this Agreement, the Agency shall promptly deliver to the Developer a Release of Construction Covenants, executed and acknowledged by the Agency substantially in the form provided on Attachment 4, attached hereto and incorporated herein by this reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Project, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to development of the Site or construction of the Project; however, any such party shall be subject to those continuing covenants described in Section 4 of this Agreement.

2.8.2 If Agency refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the Agency shall, within thirty (30) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's opinion of the actions the Developer must take or cause to be taken to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

## 3. AGENCY LOAN

3.1 Agency Loan for Rehabilitation Improvements. The Agency shall, subject to the satisfaction of the conditions precedent identified in Section 3.2, loan to the Developer an amount up to, but not exceeding, SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000) (the "Agency Loan") for the sole and exclusive purpose of constructing the Project on the Site.

The Agency Loan shall only be used to reimburse Developer for costs Developer incurs in planning, designing, and constructing the Project ("Eligible Project Costs"). A list of the Eligible Project Costs is attached hereto and incorporated herein as Attachment 5. If total actual Eligible Project Costs for the Project are less than the estimates provided in Attachment 5, the Agency Loan obligation shall be reduced by such difference; however, if actual Eligible Project Costs exceed the estimates in Attachment 5, the Agency Loan obligation shall nevertheless not exceed \$650,000.

3.2 Conditions Precedent to Agency Loan Obligation. Prior to, and as a condition precedent to, the Agency's obligation to fund or disburse any portion of the Agency Loan, the following conditions precedent (each a "Disbursement Milestone"), which are for the sole and exclusive benefit of the Agency, and shall be completed to the satisfaction of, or valued by, the Agency.

3.2.1 Developer shall have executed, with signatures notarized, the "Operating Covenant" (as that term is defined in Section 4 below), and the Operating Covenant shall have been recorded against the Site, subject only to (a) easements, restrictions and reservations of record; and (b) that certain Ground Lease executed on November 22, 1989, between the Cajon Valley Union School District, as Landlord, and Johnson/I-8 Limited Partnership, as Tenant, the Tenant's interest having been assigned to the Developer by Instrument recorded January 7, 2011, as Document No. 2011-0013643, Official Records, San Diego County Recorder's Office.

3.2.2 The Developer shall have executed the "Note" (as that term is defined in Section 3.4 below), and shall have delivered the Note to Agency.

3.2.3 The Developer shall have executed and caused to be recorded the "Leasehold Deed of Trust," (as that term is defined in Section 3.4 below).

3.2.4 All Project Entitlements shall have been approved by all applicable government or regulatory entities and shall be final. Any applicable statute of limitations to challenge such Project Entitlements shall have passed without the commencement of a challenge (including a referendum), shall have been waived by the Agency or, if a timely challenge has been made, such challenge shall be resolved in a manner that is acceptable to the Agency.

3.2.5 The Developer shall have provided "Evidence of Financing" (as that term is defined in Section 3.4.1 below) to Agency and Agency shall have approved the same.

3.2.6 Developer shall have provided evidence to Agency that Developer has procured insurance as required by Section 6.1 hereof.

3.2.7 Developer shall have provided evidence to Agency's Executive Director that Developer has obtained approval from Kia Motors for the Project, including the Developer's site plan and all construction plans and drawings.

3.2.7 Developer shall not be in breach of its obligations under this Agreement and the Operating Covenant.

3.2.8 Developer shall obtain building permits for Project work to be performed.

3.3 Disbursement of Agency Loan. Agency shall disburse the Agency Loan to the Developer in accordance with the provisions of this Section 3.3. All of Developer's requests for disbursements for Eligible Project Costs shall be made to the Agency in writing and shall be subject to Agency review and approval prior to disbursement. Each written request for disbursement of a portion of the Agency Loan shall include such evidence reasonably required by the Agency to demonstrate that such Eligible Project Costs have been actually paid (including, without limitation, invoices, purchase orders, canceled checks, and fully executed and notarized lien releases, if applicable) and that Developer has satisfied all conditions for disbursement. Agency shall have fifteen (15) days to review and verify the requested expenses and documentation, and upon verification that the requested reimbursement is an allowable Eligible Project Cost, Agency shall make disbursements to the Developer within fifteen (15) days after receipt of such verification.

3.4. Repayment of Agency Loan; Security. Developer shall repay the Agency Loan in accordance with the terms of a Promissory Note substantially in the form attached hereto and incorporated herein as Attachment 6 (the "Promissory Note"). In order to secure the repayment of the Agency Loan as described in the Promissory Note the Developer shall execute, in recordable form, a leasehold deed of trust for the benefit of the Agency substantially in the form set forth in Attachment 7 (the "Leasehold Deed of Trust"), with such changes as are approved by the Agency Executive Director.

3.5 Evidence of Financing. Within the time set forth in the Schedule of Performance, and as a condition precedent to the Agency's obligation to disburse any portion of the Agency Loan, Developer shall submit to the Agency evidence that Developer has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing, which (together with equity financing) is sufficient to pay for the construction of the Project in accordance with this Agreement. Such evidence of financing shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from one or more Institutional Lenders (defined below) for the mortgage loan or loans for construction financing for the construction of the Project, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) other documentation satisfactory to the Agency as evidence of other sources of capital sufficient to demonstrate to the Agency that Developer has adequate funds to cover the difference between the total cost of construction and completion of the Project, less financing authorized by those loans set forth in (a) above (collectively "Evidence of Financing"). The Agency shall approve or disapprove such Evidence of Financing within ten (10) days after receipt of a complete submission. If not approved in writing, then Developer's request shall be deemed to have been disapproved. If the Agency shall disapprove or be deemed to disapprove any such Evidence of Financing, then, upon request of the Developer, the Agency shall, within ten (10) days, state the reasons for such disapproval. If the Agency disapproves of the Evidence of Financing then the Developer shall endeavor to promptly obtain and submit to the Agency new Evidence of Financing.

As used herein, the term "Institutional Lender" shall mean any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million

Dollars (\$100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an "incorporated admitted insurer" (as that term is used in Section 1100.1 of the California Insurance Code); a "foreign (other state) bank" (as that term is defined in Section 1900(a)(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 5102); a commercial finance lender (within the meaning of Sections 22000 et seq. of the California Financial Code); a "foreign (other nation) bank," provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company, or a subsidiary of a bank holding company that is not a bank (Section 3700 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange or any entity succeeding to either stock exchange.

4. OPERATION OF THE PROJECT AND COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE SITE AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT

Concurrently with Developer's execution of this Agreement, Developer shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 8 (the "Operating Covenant"). The Operating Covenant shall be recorded within five (5) days after the Effective Date. The Developer's execution of the Operating Covenant shall be a material component of this Agreement and a condition precedent to all of the Agency's obligations in this Agreement. The Operating Covenant shall obligate the Developer to construct the Project and shall obligate the Developer to operate the Project for a minimum period of ten (10) years, commencing on the date the Agency issues a Release of Construction Covenants for the Project.

5. DEFAULTS AND REMEDIES

5.1 Default. Subject to the extensions of time set forth in Section 9.2 of this Agreement, failure by any party to perform any action or adhere to any covenant or representation or warranty required by this Agreement, including in any of the attachments hereto, within the time periods provided herein following notice and an opportunity to cure as described in this Section 5.1, constitutes a "Default" under this Agreement. The breach or falsity of any representation or warranty by a party as set forth in this Agreement also constitutes a "Default" under this Agreement following notice and an opportunity to cure as described hereinafter. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default as to non-monetary Defaults if such party, within thirty (30) days from receipt of such notice, promptly and with due diligence, commences to cure, correct or

remedy such failure or delay and thereafter completes such cure, correction or remedy with due diligence. In no event shall a party be allowed more than 180 days to cure a default. As to monetary Defaults, a cure period of ten (10) days upon written notice shall apply.

Notwithstanding anything to the contrary in this Agreement, no notice of Default shall be necessary, nor shall the Developer have a right to cure a Default resulting from a Transfer, as that term is defined below, that has not been approved by the Agency.

5.2 Institution of Legal Actions; Remedies. In addition to any other rights or remedies, 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, or to cure, correct or remedy any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Agency shall also have the right to pursue damages (but only actual damages) for Developer's Defaults, but in no event shall Developer be entitled to damages of any kind from Agency, except as a result of Agency's Default of its obligation to make the Agency Loan in which case Developer shall be entitled to specific performance of the Loan or, if such remedy is not available, then damages not in excess of the maximum amount of the Agency Loan, but such damages shall not include lost profits or other consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Central District of California. Developer hereby waives any right to remove any such action from San Diego County as is otherwise allowed by California Code of Civil Procedure section 394.

5.3 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency in addition to such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

5.4 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.

5.5 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.

5.6 No Waiver. A waiver by either party of a breach of any of the covenants, conditions 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.

5.7 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

## 6. INSURANCE REQUIREMENTS; REPAIR AND RESTORATION OF PROJECT

### 6.1 Insurance Requirements.

6.1.1 Commencing on the Effective Date, and continuing throughout the term of the Operating Covenant, the Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Agency's Executive Director, the following policies of insurance:

(a) Commercial General Liability Insurance covering bodily injury, property damage, personal injury and advertising injury written on a per-occurrence and not a claims-made basis containing the following minimum limits: (i) general aggregate limit of Three Million Dollars (\$3,000,000.00); (ii) products-completed operations aggregate limit of Three Million Dollars (\$3,000,000.00); (iii) personal and advertising injury limit of One Million Dollars (\$1,000,000.00); and (iv) each occurrence limit of One Million Dollars (\$1,000,000.00). Said policy shall include the following coverages: (i) blanket contractual liability (specifically covering the indemnification clause contained in Section 8 below); (ii) products and completed operations; (iii) independent contractors; (iv) Owner's broad form property damage; (v) severability of interest; (vi) cross liability; and (vii) property damage liability arising out of the so-called "XCU" hazards (explosion, collapse and underground hazards). The policy shall not have a deductible in excess of Ten Thousand Dollars (\$10,000.00). The policy shall be endorsed to have the general aggregate apply to this Project only.

(b) A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for the Agency and the Developer against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the work or services contemplated in this Agreement, and Employers Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for all damages arising from each accident or occupational disease.

(c) A policy of comprehensive automobile liability insurance written on a per-occurrence basis in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limit with a deductible not in excess of Ten Thousand Dollars (\$10,000.00) covering all owned, non-owned, leased and hired vehicles used in connection with the Work.

(d) With respect to the improvements and any fixtures and furnishings to be owned by Developer on the Site, insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be included in the standard "all risk" form in general use in San Diego County, California, with the

standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained in the counties of Los Angeles, Orange County, Riverside, and San Diego. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

6.1.2 Commencing on the Effective Date and continuing until the Agency issues a Release of Construction Covenants for the Project, the Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the Agency's Executive Director, Builder's Risk (course of construction) insurance coverage in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as the City issues a final certificate of occupancy for the Project, and storage and transportation risks. Such insurance shall protect/insure the interests of Developer/owner and all of Developer's contractor(s), and subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. Agency shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement

6.1.3 Developer shall cause any general contractor with whom it has contracted for the performance of work on the Site and Building to secure, prior to commencing any activities hereunder, and maintain insurance that satisfies all of the requirements of this Section 6.1.

6.1.4 The following additional requirements shall apply to all of the above policies of insurance:

(a) All of the above policies of insurance shall be primary insurance and, except the Worker's Compensation and Employer Liability insurance, shall name the Agency, City and their respective officers, officials, members, employees, agents, and representatives (collectively, "Agency and City and Agency and City Personnel") as additional insureds on an ISO Form CG 20:10 (current version) or substantially similar form and not an ISO Form CG 20:09. The insurer shall waive all rights of subrogation and contribution it may have against Agency and City and Agency and City Personnel and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days' prior written notice to the Agency. In the event any of said policies of insurance are canceled, the Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. Not later than the Effective Date, the Developer shall provide the Executive Director with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders shall be subject to the reasonable approval of the Executive Director.

(b) The policies of insurance required by this Agreement shall be satisfactory only if issued by companies of recognized good standing authorized to do business



in California, rated "A+" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances.

(c) The Executive Director, with the consent of the City's Risk Manager, is hereby authorized to reduce or otherwise modify Developer's insurance requirements set forth herein in the event they collectively determine, in their sole and absolute discretion, that such reduction or modification is consistent with reasonable commercial practices.

6.1.5 The Developer agrees that the provisions of this Section shall not be construed as limiting in any way the Agency's right to indemnification or the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

6.2 Remedies for Defaults Re: Insurance. In addition to any other remedies the Agency may have if Developer commits a Default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent, and within the time herein required, the Agency may at its sole option obtain such insurance and deduct the amount of the premium for such insurance from any sums due to Developer by the Agency from the Agency Loan. Exercise of such remedy, however, is an alternative to other remedies the Agency may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

6.3 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain all available insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as they existed prior to the casualty, and Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Agreement. The Agency shall cooperate with Developer, at no expense to the Agency, in obtaining any governmental permits required for the repair, replacement, or restoration.

## 7. TRANSFER RESTRICTIONS

7.1 Prohibition. The qualifications and identity of Developer are of particular concern to the Agency. It is because of these qualifications and identity that the Agency has entered into this Agreement with the Developer. Accordingly, commencing upon the Effective Date and continuing throughout the term of the Operating Covenant: (i) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement; (ii) the Developer shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing, or lease of the whole or any part of

the Site or the Project thereon; and (iii) no changes shall occur with respect to the ownership and/or control of Developer, including, without limitation, stock transfers, sales of issuances, or transfers, sales or issuances of membership or ownership interests, or statutory conversions (with each of the actions in clauses in clauses (i), (ii), and (iii) above, referred to herein as a "Transfer"), without the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written consent of the Agency, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

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

(a) Any Transfer by the Developer to a "Related Person or Entity" (as defined below).

(b) A Transfer consisting of the conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, including public utilities, where the granting of such easements permits or facilitates the development of the Site and the Project.

(c) Any Transfer for: (i) financing purposes to the holder of a mortgage; (ii) any refinancing or permanent financing of the mortgage; or (iii) any Transfer to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (i) or (ii).

In the event of a Transfer by Developer not requiring the Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer, Developer shall give written notice to the Agency of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, Developer agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed, or upon the effective date of transfer will assume, in writing through an assignment and assumption agreement, in form reasonably acceptable to the Agency, all of the obligations of the Developer under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

As used in this Agreement, a "Related Person or Entity" shall mean an entity in which Developer, or an entity in which JKC Palm Springs Automotive, Inc. or a majority of JKC Palm Springs Automotive, Inc.'s shareholders, own a greater than fifty percent (50%) ownership and management interest, has a greater than fifty percent (50%) ownership and management interest; provided, however, that such Related Person or Entity shall demonstrate that such person or entity as been approved in writing by Kia Motors to operate the Project thereon.

7.3 Agency Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer. If the Developer desires to cause a Transfer of any of its interests in this Agreement or the Site, and such Transfer requires the Agency's approval under

Section 7.1, Developer shall request in writing to the Agency that it consent to such Transfer, which consent shall not be unreasonably delayed or withheld. A Transfer shall be conditioned upon: (i) the proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment; and (ii) the proposed assignee demonstrating to the reasonable satisfaction of the Agency that such person or entity has adequate financial capacity to complete the development and/or operation of the Project on the Site and that such person or entity has been approved in writing by Kia Motors to operate the Project thereon.

Notwithstanding any other provision set forth in this Agreement to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall have delivered to the Agency an executed assignment and assumption agreement in form reasonably acceptable to Agency legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

7.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall run with the Site and be binding upon the Developer and the Agency and their permitted successors and assigns. Whenever the term "Developer" or "Agency" is used in this Agreement, such term shall include any other permitted successors and assigns.

7.5 Subordination. The Agency acknowledges and agrees that the Agency's Leasehold Deed of Trust shall be subordinate to any leasehold deed of trust granted by Developer for the purposes of obtaining construction financing, and to all renewals, modifications, consolidations, replacements and extensions thereof, provided that the maximum cumulative principal amount of the loan secured by any such renewal, modification, consolidation, replacement, or extension shall not exceed ninety percent (90%) of the lender's appraised value of the Site upon completion of the Project, which amount shall be verified in writing to the Agency Executive Director's reasonable satisfaction, and said loan shall obligate Developer to expend loan proceeds for no other purpose that construction of the Project or refinance of the existing loan. In addition, notwithstanding anything in this Agreement to the contrary, Agency agrees to subordinate the Agency's Leasehold Deed of Trust to any subsequent leasehold deed of trust recorded against the Site relating to any take-out or permanent financing or refinancing thereof obtained by the Developer, provided the amount secured thereby shall not exceed the outstanding indebtedness under the immediately prior loan.

## 8. INDEMNIFICATION OF AGENCY

The Developer shall indemnify, defend, and hold harmless the Agency and City and Agency and City Personnel from and against any and all claims, liabilities, damages, and losses, including without limitation, reasonable attorneys' fees and litigation expenses, including court costs and expert witness fees (collectively "Claims"), due to the death or personal injury of any person, or physical damage to any person's real or personal property, caused by the construction of improvements by, or construction-related activities of, the Developer on the Site and the Building, or for any construction defects in any improvements constructed by the Developer on the Site and the Building, or the approval or operation of the Project on the Site and the Building;

provided, however, that the foregoing indemnification shall not apply to the extent such Claims are caused by the negligence or willful misconduct of the Agency or City, subject to any immunities which may apply to the Agency or City with respect to such Claims. The foregoing indemnification provision shall survive the termination of this Agreement.

## 9. GENERAL PROVISIONS

9.1 Notices. All notices under this Agreement shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid, and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To Agency: El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Executive Director

With a copy to: El Cajon City Attorney  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1798  
Attention: Morgan Foley, Esq.

To Developer: JKC Palm Springs Automotive, Inc.  
PO Box 25822  
Eugene, OR 97402  
Phone No.: 541-686-8291  
Attention: John P. Kiefer

With a copy to: Gardner, Potter, Budge, Spickard & Cascagnette, LLC  
725 Country Club Rd.  
Eugene, OR 97401  
Phone No.: 541-687-9001  
Attention: Hamilton W. Budge Jr., Esq.

9.2 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any 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: 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; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or Agency or any other public or governmental agency or entity. 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 ten (10) days of the commencement of the cause. Subject to the second sentence of Section 2.4, times of performance under this Agreement may also be extended in writing by the mutual agreement of the Agency and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding or difficulty obtaining financing to complete the Project shall not constitute grounds for enforced delay pursuant to this Section 9.2.

9.3 Non-Liability of Officials and Employees of Agency to the Developer. No member, official, director, officer, agent, or employee of Agency shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any Default or breach by Agency or for any amount which may become due to the Developer or Developer's successors, or on any obligations under the terms of this Agreement.

9.4 Relationship Between Agency and Developer. It is hereby acknowledged that the relationship between the Agency and Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

9.5 Agency Approvals and Actions. The Agency shall maintain the authority to implement this Agreement on behalf of the Agency through the Agency Executive Director (or his or her duly authorized representative). The Agency Executive Director shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Site and in the Building, or add to the costs incurred or to be incurred by the Agency. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

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

9.7 Integration. This Agreement, including the Attachments hereto, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, 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. 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.

9.8 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled to its reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

9.9 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. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

9.10 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.

9.11 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.

9.12 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 and consistent with the mutual intent of the parties as expressed herein.

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

9.14 Legal Advice. Each party represents and warrants to the other the following: it has carefully read this Agreement, and in signing this Agreement, it does so with full knowledge of any right which it may have; it has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, it has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or its agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

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

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

9.17 Third Party Beneficiaries. With the exception of the provisions in Sections 2.7.5, 6.1, 8, and 9.19 that benefit, and are enforceable by, the City, there are no intended third party beneficiaries to this Agreement.

9.18 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party; (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.19 Covenant to Not Cause Violation of Statutes Relating to Direct Assistance by Agency. Developer represents and warrants that it is using the Agency Loan for the sole and exclusive purpose of causing the construction of the Project and for no other purpose and that the Agency Loan shall not be used in a manner that would constitute a violation of Health & Safety Code Section 33426.5. Developer further agrees to indemnify, defend, and hold harmless the Agency and City from and against any claims, proceedings, losses, costs, or expenses incurred as a result of any such violation arising out of actions by Developer.

[Remainder of Page Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, Developer and Agency each hereby represents that it has read this Agreement, understands it, and hereby executes this Agreement to be effective as of the day and year first written above.

“Developer”

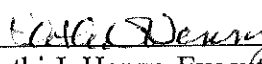
**JKC Palm Springs Automotive, Inc. a California corporation**

By:   
Its: PRESIDENT

Date: MARCH 9, 2011

“Agency”

**EL CAJON REDEVELOPMENT AGENCY**, a public body, corporate and politic

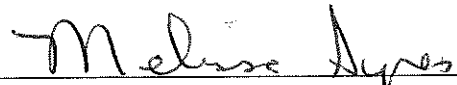
By:   
Kathi J. Henry, Executive Director

Date: March 9, 2011


ATTEST:

  
Kathie Rutledge, Agency Secretary

APPROVED AS TO CONTENT:

  
Melissa Ayres  
Director, Community Development

APPROVED AS TO FORM:

  
Morgan L. Foley  
City Attorney/Agency Counsel



ATTACHMENT "1"

LEGAL DESCRIPTION OF SITE

PARCEL 1 OF PARCEL MAP NO. 15479, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 1, 1988, AS FILE NO. 88-615273 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER: 482-260-17-00.

## ATTACHMENT "2"

### **SCOPE OF DEVELOPMENT**

#### **Scope of Work for the Project includes:**

##### **Site:**

Remove existing Saturn Display and Entry canopies, security wall, trash enclosure and gate from north site area. Provide new wall, trash and recyclables enclosure and gate as shown, and reconfigure parking in this area.

Remove existing paving and curbs in northwest quadrant of the site, re-grade and install new curbs and paving.

Remove existing car wash enclosure and provide new enclosure.

##### **Kia Dealership Building – Interior:**

Reconfigure interior walls and millwork.

In-fill recessed showroom floor.

Provide new wall, floor and ceiling finishes throughout to KiaUSA standards, which includes dividing existing F&I office into one office, combining two sales offices into one Sales Manager Office with additional windows, reconfiguring the entire showroom with new Kia furniture and millwork, and reconfiguring the Retail Parts area with new displays, millwork and cabinets.

Provide new light fixtures and HVAC diffusers in the customer contact areas.

Provide new plumbing fixtures, lights and finishes in the public restrooms.

Re-roof the entire dealership.

In-fill the open roof in the service bay area, providing skylights and new HVAC per Code.

##### **Kia Dealership Building – Exterior:**

As required, remove existing stucco on west façade of building.

Remove a concrete masonry wall segment and provide additional window in west façade.

Provide new exterior finishes on west façade, returning along north and south façades a limited distance, to include aluminum composite metal panels, clear anodized curtainwall with clear and spandrel glass.

Paint all existing walls per KiaUSA standards.

Install new signage as approved.

ATTACHMENT "3"

SCHEDULE OF PERFORMANCE

	<b>Item of Performance</b>	<b>Time for Completion</b>
1.	Developer's execution and acknowledgement of the Operating Covenant; execution and recording of the Leasehold Deed of Trust.	Concurrently with Developer's execution of Agreement.
2.	Agency recordation of the Operating Covenant.	Within five (5) days after Effective Date.
3.	Developer's preparation and submission of Developer Applications, including a complete application for a Site Development Permit (SDPA) or amended CUP, as applicable, which shall include: <ul style="list-style-type: none"> <li>• Detailed Site Plans</li> <li>• Revised Site Plans</li> <li>• Lighting Plans (photometric)</li> <li>• "Conceptual" Landscaping Plans</li> <li>• Preliminary Grading Plans</li> <li>• "Conceptual" Floor Plans</li> <li>• "Conceptual" Elevations</li> </ul>	Within three (3) months of effective date of OPA.
4.	Review of Developer Applications by applicable City departments and provision of any comments to Developer.	Agency will use reasonable efforts to cause such review, and to obtain and provide to Developer any comments, within in one (1) month of Developer's submittal of items listed in No. 3 above.
5.	Developer to revise and resubmit (as necessary to address City comments) Developer Applications.	Within three (3) weeks of receipt of status letter in No. 4 above.
6.	Re-review of Developer Applications by applicable City departments and preparation of conditions of approval.	Within three (3) weeks of Developer's submittal of items listed in No. 5 above.
7.	Planning Commission hearing and consideration of Developer Applications, if applicable.	Within four (4) weeks of a completed application.
8.	Developer's submission of application for building permits.	Within one (1) year of receipt of Planning approval.
9.	Plan check review by applicable City departments and preparation of any corrections to Developer.	Agency will use reasonable efforts to cause such review, and to obtain and provide to Developer any corrections, within three (3) weeks of Developer's submittal of items listed in No. 8 above.

	<b>Item of Performance</b>	<b>Time for Completion</b>
10.	Developer to correct and resubmit (as necessary to address City comments) plans.	Within thirty (30) days of receipt of comments received in No. 9 above.
11.	Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer is entitled to issuance).	Agency will use reasonable efforts to cause such re-review and the issuance of building permits (if Developer is entitled to issuance) within three (3) weeks of Developer's submittal of items listed in No. 10 above.
12.	Developer performs demolition portion of Project.	Within three (3) weeks of approval of building permits.
13.	Developer constructs Project.	Within six (6) months of issuance of building permits.
14.	Developer obtains certificate of occupancy for Project.	Upon completion of the Project.

This Schedule of Performance represents the parties' target dates. However, subject to Section 2.4 of the Agreement, this Schedule of Performance may be adjusted by the Agency Executive Director so long as Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than twelve (12) months from the Effective Date. This Schedule of Performance does not include the time of performance for all obligations arising under the Agreement; rather this schedule focuses only on the development schedule of the Project. The parties are referred to the Agreement for the total description of the parties' obligations and times for performance of matters not identified in this Schedule. The Developer understands that obligations contained in the Agreement may be conditions precedent to the Agency's obligations under this schedule.

Nothing herein shall be construed to limit the City's legislative authority, which City may exercise in City's sole and absolute discretion. In all cases where City action is required, Agency shall use reasonable efforts to cause City to take such action in the time prescribed herein.

ATTACHMENT "4"

RELEASE OF CONSTRUCTION COVENANTS

[See Following Document]

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

JKC Palm Springs Automotive, Inc.

Mailing address.

Attention:

---

[Space above for Recorder.] This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

### RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), in favor of JKC Palm Springs Automotive, Inc., a California corporation (the "Developer"), as of the date set forth below.

#### RECITALS

A. The Agency and Developer have entered into that certain Owner Participation Agreement (the "OPA") dated March 9, 2011 concerning the redevelopment of certain real property situated in the City of El Cajon, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 2.8 of the OPA, the Agency is authorized and required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the "Project" (as defined in the OPA), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development of the Project.

C. The Agency has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The Project to be constructed by the Developer has been satisfactorily completed in accordance with the provisions of said OPA.

2. This Release of Construction Covenants shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Project or any part thereof.

3. This Release of Construction Covenants is the release of construction covenants referred to in, and satisfies the requirements of, Section 2.8 of the OPA for construction of the Project.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the OPA or any other provisions of any other documents executed pursuant to the OPA, all of which shall remain enforceable according to their terms of the documents incorporated therein.

BY WITNESS WHEREOF, the Agency and the Developer have signed this Release of Construction Covenants as of the respective dates set forth below.

“Developer”

**JKC Palm Springs Automotive, Inc., a  
California corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Its: \_\_\_\_\_

“Agency”

**EL CAJON REDEVELOPMENT  
AGENCY, a public body, corporate and  
politic**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Kathi J. Henry, Executive Director

ATTEST:

\_\_\_\_\_  
Kathie Rutledge, Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Morgan L. Foley  
City Attorney/Agency Counsel

**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary



EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

All that property located in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 15479, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 1, 1988, AS FILE NO. 88-615273 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBERS: 482-260-17-00

ATTACHMENT "5"

LIST OF ELIGIBLE COSTS

<u>Exterior Renovations</u>	<u>\$540,000.00</u>
<u>Signage</u>	<u>\$110,000.00</u>

ATTACHMENT "6"

PROMISSORY NOTE

[See Following Document]

**PROMISSORY NOTE SECURED BY DEED OF TRUST WITH  
ASSIGNMENT OF RENTS AND RIDER ATTACHED HERETO**

\_\_\_\_\_, 2011 (“Note Date”)

FOR VALUE RECEIVED, the undersigned, JKC Palm Springs Automotive, Inc., hereinafter referred to as “Borrower,” promises to pay to the EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as “Agency,” so much principal as may be outstanding in accordance with the terms of this Promissory Note (the “Note”) and that certain Leasehold Deed of Trust of even date hereof, by and between Borrower and Agency (as these documents may be amended, supplemented, replaced, or otherwise modified from time to time), not exceeding SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000), plus accrued interest on the unpaid principal, plus such other costs, charges, and fees which may be owing from time to time, all subject to the terms, conditions, and provisions hereinafter set forth.

Reference is made to:

(i) The Redevelopment Plan for the El Cajon Redevelopment Project Area, which is incorporated herein by reference as though fully set forth.

(ii) That certain Owner Participation Agreement by and between Borrower and Agency, dated on or about March 9, 2011 (“OPA”) which sets forth terms and conditions for Borrower’s redevelopment of a site within the Project Area and the City of El Cajon addressed as 541 North Johnson Avenue, El Cajon, California, as more particularly described in the legal description attached as Attachment 1 to the OPA (the “Site”). The OPA is incorporated herein by reference as though fully set forth herein.

(iii) That certain Operating Covenant in the form attached to the OPA as Attachment 8 to be executed by and between Agency and Borrower concurrently with the execution hereof and recorded against the Site (the “Operating Covenant”). The Operating Covenant is incorporated herein by this reference as though fully set forth herein.

1. Principal Amount; Interest Amount. The principal amount of the Agency’s loan to Borrower (the “Agency Loan”) is up to SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000) (“Loan Amount”), which Agency shall disburse to Borrower in accordance with the provisions of Section 3 of the OPA. Interest shall accrue on the outstanding principal balance at three percent (3%) per annum during the term hereof, starting on the first day of the fourth (4<sup>th</sup>) Operating Year following the recordation of the Release of Construction Covenants, as defined in the Owner Participation Agreement. Interest shall accrue as set forth in Paragraph 4 in the event of a Borrower default.

2. Term of Promissory Note. Subject to the provisions of Paragraph 4 herein, which provide for acceleration of the then outstanding principal and accrued interest and

immediate payment thereof in the event of a default by Borrower, the term of this Note shall commence on the date hereof and continue until the date the Operating Covenant terminates.

3. Repayment. Repayment shall not commence until after the fourth (4<sup>th</sup>) Operating Year. Annual installments of principal and interest, if any, shall be made by Borrower to Agency not later than the sixtieth (60<sup>th</sup>) day of the Operating Year. Borrower's obligation to pay principal and interest shall be subject to the following: Starting in the fifth (5<sup>th</sup>) Operating Year following recordation of the Release of Construction Covenants as the term is defined in the OPA, and each year thereafter for the Term of this Note, the Agency shall forgive first accrued interest, then principal, on the Agency Loan in an amount equal to one hundred percent (100%) of the "Net Sales Taxes From the Site" generated on the Site during the previous Operating Year. As used herein, the term "Net Sales Taxes from the Site" shall mean the "Sales Taxes From the Site" as defined below. Operating Year shall mean the first twelve full months following the recordation of the Release of Construction Covenants and each subsequent twelve full months the Operating Covenant is in place.

a. As used herein, the term "Sales Taxes From the Site" means the amount equal to the sales and use taxes that are generated from sales occurring on the Site on which sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the State Board of Equalization. In connection therewith:

(i) Borrower shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Site to the State Board of Equalization in accordance with the laws, rules, and regulations applicable to such reporting.

(ii) Sales Taxes from the Site shall be deemed to have been paid by the State Board of Equalization to the City if and to the extent the State Board of Equalization elects to offset the payment of any such Sales Taxes From the Site against any other obligation of the City.

(iii) Borrower acknowledges that the State Board of Equalization makes payments to the City based on both actual and anticipated sales and use tax revenues and that the State Board of Equalization makes periodic reconciliations. The determination of Sales Taxes from the Site for any annual, quarterly, or other period shall be subject to the timing and reconciliation process related to the processing by the State Board of Equalization of payments of such Sales Taxes From the Site to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes From the Site for any annual, quarterly, or other period shall be reconciled by the parties as soon as practicable without inclusion of, or any obligation to pay, interest.

(iv) Sales Taxes From the Site shall be determined based on actual amounts received by the City based only on the City's share of the State sales and use tax applicable to the Site (which, as of the Effective Date, is 1.0% of the taxable amount). Sales Taxes From the Site shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amounts received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that reduce the actual amounts of sales and use taxes received by the City.

(v) Borrower shall, and shall cause its tenants (if any) to, keep full and accurate books of account, records, and other pertinent data showing all gross income earned upon the Site that is reportable for California sales and use tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

(vi) Borrower shall furnish, and shall cause its tenants (if any) to furnish, to Agency true and correct photocopies of its quarterly California sales and use tax returns at the time each is filed with the State of California, together with a copy of all checks or wire transfers or other forms of transfer of funds sent for such payment of sales and use taxes.

b. Borrower shall have the right to prepay all or any portion of this Note at any time without penalty.

c. If, after ten (10) years after the recordation of the Release of Construction Covenants, the cumulative applicable Net Sales Taxes From the Site has not retired outstanding principal and accrued interest, then Borrower shall promptly pay the balance of outstanding principal and accrued interest to Agency.

4. Default; Acceleration; Cross-Default. In the event Borrower is in default of any of the covenants, terms, or provisions of this Note, the OPA, or the Operating Covenant, and Borrower fails to timely cure such default under the terms of the applicable agreement, it being understood and agreed by Borrower that a default of this Note, or of the OPA, or of the Operating Covenant, shall be a default of all of the foregoing listed documents, then Borrower shall be in default of this Note and the Loan Amount and all accrued interest thereon (less the amount of Sales Taxes generated prior to such time) shall become immediately due and payable. The rate of interest applicable to periods of default for the defaults set forth in this Paragraph 4 shall be calculated at the lesser of ten percent (10%) per annum or the maximum legal rate, and shall accrue as of the date such payment was originally due.

5. Additional Terms.

a. All payments shall be first credited to accrued interest, next to costs, charges, and fees, which may be owing from time to time, and then to principal. All payments shall be made in lawful money of the United States. Payments shall be made to Agency at the address set forth in Paragraph 8 herein or at such other address as Agency or the holder of this Note may direct pursuant to notice delivered to Borrower in accordance with Paragraph 8.

b. Borrower agrees to pay the following costs, expenses, and reasonable attorney's fees paid or incurred by Agency, or adjudged by the court, in the collection of amounts in default or other costs incurred as a result of a default by Borrower: (i) reasonable costs of collections, costs and expenses and attorney's fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (ii) costs of suit and such sums as the court may adjudge as attorney's fees in any action to enforce payment of this Note or any part of it if Agency prevails in such suit.

6. Nonassumability. This Note shall not be assumable without the prior, express, written consent of Agency's Executive Director, which shall not be unreasonably withheld or delayed.

7. Presentment, Etc. Notwithstanding any other provision herein to the contrary, to the extent permitted by law Borrower hereby waives the following: (a) notice of default or delinquency; (b) notice of acceleration; (c) notice of nonpayment; (d) notice of costs, expenses and losses and interest thereon; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and presentment for payment, demand, protest, and notices of dishonor and/or protest; (g) the benefits of all waivable exemptions; and (h) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

8. Notices. Any notices required by law or this Note shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery; or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested.

To Agency: El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Executive Director

With a copy to: El Cajon City Attorney  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1798  
Attention: Morgan Foley, Esq.

To Developer: JKC Palm Springs Automotive, Inc.  
PO Box 25822  
Eugene, OR 97402  
Phone No.: 541-686-8291  
Attention: John P. Kiefer

With a copy to: Gardner, Potter, Budge, Spickard & Cascagnette, LLC  
725 Country Club Rd.  
Eugene, OR 97401  
Phone No.: 541-687-9001  
Attention: Hamilton W. Budge Jr., Esq.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Either party may designate that notices be sent to other or additional addresses by complying with the requirements of this section.

9. Litigation. This Note shall be governed by and construed under the internal laws of the State of California without regard to conflicts of law. The parties agree that in any litigation between the parties arising out of this Note, the Superior Court of the State of California in and for the County of San Diego shall have exclusive jurisdiction. Borrower hereby waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. The prevailing party in any litigation between the parties arising out of or connected to this Note, in addition to whatever other relief to which the prevailing party is entitled, shall also be entitled to reasonable attorney's fees, including fees and costs for discovery, and any fees and costs for appeal. In the event of such legal action, service of process on Agency shall be made in such manner as provided by law for service on a California public entity; service of process on Borrower shall be made in such manner as may be provided for by law, and shall be valid whether made within or without the State of California.

10. Waiver. No waiver of any breach, default, or failure of condition under the terms of this Note, or the obligations secured hereby, shall be implied from any failure of Agency to take, or any delay by the Agency in taking, action with respect to such breach, default, or failure from any previous waiver or any similar or unrelated breach, default, or failure; and a waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

11. Time of Essence. Time is of the essence in this Note.

12. Severability. In the event that any term or provision of this Note is held to be unenforceable, the remainder of this Note shall remain in full force and effect to the fullest extent without inclusion of the unenforceable term or provision.

13. Interpretation. In the event of any conflict between this Note and the OPA, this Note shall apply. The terms of this Note shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Note or any other rule of construction which might otherwise apply. The paragraph headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Note.

14. Assignment. Agency, at its option, may assign its right to receive payment under this Note without obtaining the consent of the Borrower or the holder or beneficiary of the lien of any deed of trust or other security instrument, whether recorded or unrecorded. Borrower shall not be permitted to assign or transfer this Note or any portion thereof without the prior express written consent of the Agency Executive Director, which shall not be unreasonably withheld or delayed.

[Signatures on next page]



IN WITNESS WHEREOF, Borrower has executed this Note as of the Note Date.

“Borrower”

**JKC Palm Springs, Inc., a California  
Corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT "7"

DEED OF TRUST WITH ASSIGNMENT OF RENTS  
AND RIDER ATTACHED HERETO

[See Following Document]

Recording Requested by and  
When recorded mail to:  
El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Attn: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
EXEMPT FROM RECORDING FEE PER GOV. CODE SECTION 27383

**DEED OF TRUST WITH ASSIGNMENT OF RENTS AND  
RIDER ATTACHED HERETO  
NOTE: RIDER ATTACHED TO THIS DEED OF TRUST  
(Leasehold Deed of Trust)**

This DEED OF TRUST WITH ASSIGNMENT OF RENTS AND RIDER ATTACHED HERETO ("Deed of Trust"), is made \_\_\_\_\_, 2011, between JKC Palm Springs Automotive, Inc., a California corporation, herein called TRUSTOR, whose address is PO Box 25822, Eugene, OR 97402; \_\_\_\_\_, a \_\_\_\_\_ corporation, herein called TRUSTEE, whose address is \_\_\_\_\_, and EL CAJON REDEVELOPMENT AGENCY, 200 Civic Center Way, El Cajon, California 92020, a public body, corporate and politic, herein called BENEFICIARY.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's leasehold interest in that property in the City of El Cajon, County of San Diego, State of California, described as:

PARCEL 1 OF PARCEL MAP NO. 15479, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 1, 1988, AS FILE NO. 88-615273 OF OFFICIAL RECORDS.

.ASSESSOR'S PARCEL NUMBER 482-260-17-00.

which Leasehold Interest shall hereafter be referred to as "the Property".

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of up to SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000) with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein; and (3) payment of additional sums and interest

thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

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

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

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

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

DO NOT RECORD

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

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

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

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

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

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

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

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

B. It is mutually agreed:

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

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

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

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

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take

possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

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

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

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

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

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

SEE RIDER ATTACHED TO THIS DEED OF TRUST

“Trustor”

**JKC Palm Springs Automotive, Inc., a  
California Corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_

Its: \_\_\_\_\_

## ACKNOWLEDGMENT

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

## ACKNOWLEDGMENT

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary



DO NOT RECORD  
REQUEST FOR FULL RECONVEYANCE

TO \_\_\_\_\_, TRUSTEE:

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

Dated \_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,

Note and Reconveyance to \_\_\_\_\_

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

## RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS

This RIDER TO DEED OF TRUST WITH ASSIGNMENT OF RENTS ("Rider") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between JKC PALM SPRINGS AUTOMOTIVE, a California corporation, herein "Trustor," herein "Trustee," and EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic, herein "Beneficiary," the same parties to that certain form Deed of Trust With Assignment of Rents, of even date hereto, to which this Rider is attached. This Rider is made a part of and is incorporated into the form Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

Reference is made to:

a. The Owner Participation Agreement by and between Trustor as "Developer" and Beneficiary as "Agency" dated on or about March 9, 2011 (the "OPA") which sets forth terms and conditions for Borrower's redevelopment of the real property legally described in Exhibit "A" to this Deed of Trust ("Property");

b. The Promissory Note of even date herewith, in the Principal amount of up to SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000), with Trustor as "Borrower" and Beneficiary as "Agency" or "Lender" ("Note"), which Note is secured by this Deed of Trust.

c. The Operating Covenant of even date herewith with Trustor as "Developer" and Beneficiary as "Agency" (the "Operating Covenant") which sets forth Trustor's obligations to ensure continuous operation of a Kia automobile dealership on the Property for a period of ten (10) years after completion of Trustor's redevelopment of the Property.

1. Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

a. Payment to Beneficiary of all indebtedness at any time owing under the terms of the Note;

b. Payment and performance of all obligations of Trustor under this Deed of Trust;

c. Payment and performance of all obligations of Trustor under the OPA;

d. Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

e. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

2. Obligations. The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations.

3. Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that, if provided therein, the Note or the OPA may permit borrowing, repayment and re-borrowing.

4. Mortgagee-in-Possession. Neither the assignment of rents set forth in the Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property.

5. No Cure. In the event Beneficiary collects and receives any rents under the Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a curing of the default.

6. Possession Upon Default. Upon the occurrence of a default, Beneficiary may, at its option, without any action on its part being required and without in any way waiving such default, take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney’s fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Beneficiary or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.

7. Receiver. In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application and without notice, notice of hearing being hereby expressly waived. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

8. Subordination. The Beneficiary acknowledges and agrees that this Deed of Trust is and shall be subordinate to (as defined in the OPA) and to all renewals, modifications, consolidations, replacements and extensions thereof, provided that the maximum cumulative principal amount of the loan secured by any such renewal, modification, consolidation, replacement, or extension shall not exceed ninety percent (90%) of the lender's appraised value of the Property upon completion of the rehabilitation project required under the OPA, which amount shall be verified in writing to the Beneficiary's reasonable satisfaction, and said loan shall obligate Trustor to expend loan proceeds for no other purpose than construction of the rehabilitation project or refinance of the existing loan. In addition, notwithstanding anything to the contrary, Beneficiary agrees to subordinate this Deed of Trust to any subsequent deed of trust recorded against the Property relating to any take-out or permanent financing or refinancing thereof obtained by the Trustor, provided the amount secured thereby shall not exceed the outstanding indebtedness under the immediately prior loan.

9. Notice to Beneficiary. Notices to Beneficiary shall be sent to Beneficiary addressed to:

To Agency:

Notices Delivered by U.S. Mail:  
El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Executive Director

Notices Delivered Personally or by Courier:  
El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Executive Director

[signatures on next page]

IN WITNESS WHEREOF, Trustor has executed this Rider on the date of Trustor's acknowledgment hereinbelow, to be effective for all purposes as of the day and year first set forth above.

"Trustor"

**JKC Palm Springs Automotive, Inc., a  
California corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

ATTACHMENT "8"

OPERATING COVENANT

[See Following Document]

RECORDING REQUESTED BY AND  
When Recorded Mail to:

El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Attn: Executive Director

---

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

### OPERATING COVENANT

**THIS OPERATING COVENANT** (“Operating Covenant”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the “Effective Date”), by and between the **EL CAJON REDEVELOPMENT AGENCY**, a public body, corporate and politic (the “Agency”), and **JKC PALM SPRINGS AUTOMOTIVE, INC. , a California corporation**, (the “Developer”), with reference to the following:

A. The Agency and the Developer have executed an Owner Participation Agreement (“OPA”), dated as of March 9, 2011, which provides, inter alia, for the redevelopment of that certain real property located in the City of El Cajon, County of San Diego, State of California, more fully described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Land”), and Developer’s construction and operation thereon of a Kia motorcar dealership (the “Project”). The OPA is available for public inspection and copying at the office of the City Clerk, El Cajon City Hall, 200 Civic Center Way, El Cajon, CA 92020.

B. Developer has a leasehold interest in the Land, which leasehold interest shall hereafter be referred to as the “Property”.

C. Pursuant to the OPA, Developer has agreed to construct the Project on the Property, and Agency has agreed to provide the Developer with certain financial assistance to reimburse Developer for costs associated therewith.

D. The OPA also provides for the recordation of this Operating Covenant against the Property to memorialize certain covenants, conditions, and restrictions regarding the use, maintenance, and operation of the Property by Developer and Developer’s successors and assigns.

E. The City of El Cajon has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City (collectively, the “Benefited Public Property”), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefited Public Property is legally described in Exhibit “B” attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Developer hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Property shall be held, sold, conveyed, hypothecated,



encumbered, used, occupied, and improved subject to the following covenants, conditions, and restrictions (sometimes collectively referred to hereinafter as the "Covenants"). These Covenants shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of the Agency and its successors and assigns regardless of whether the Agency holds any interest in any real property benefited thereby.

**1. Covenant Regarding Specific Uses.**

(a) Construction of Project. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that within the times set forth in the Schedule of Performance attached to the OPA as Attachment 3 (the "Schedule of Performance"), Developer shall commence, diligently proceed with, and satisfactorily complete construction of the Project so as to entitle Developer to the Agency's issuance of a Release of Construction Covenants for the Project as provided for in Section 2.8 of the OPA. The foregoing covenant shall be deemed satisfied and shall terminate upon the Agency's issuance of a Release of Construction Covenants.

(b) Operation of Project. For a term (the "Term") commencing upon the recordation of the Release of Construction Covenants and continuing until the tenth (10<sup>th</sup>) anniversary of the date of recording of the Release of Construction Covenants for the Project (the "Operating Covenant Termination Date"), the Developer hereby covenants and agrees to devote the Property for the exclusive purpose and use of development and operation of the Project and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the Property in perpetuity and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the Agency for each instance, which consent may be granted or withheld in the Agency's sole and absolute discretion, the failure of the Developer (or its tenant) to operate any portion of the Project on the Property as required herein for thirty (30) or more consecutive days shall, at the Agency's option, constitute a default hereunder; provided, however, that the Developer shall for purposes of this Section 1 be deemed to be operating such portion of the Project during any period that the Developer is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion of the Project (provided that the period during which such portion of the Project is not operated as a result of the rehabilitation shall in no event exceed thirty (30) days), unless the rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the thirty (30) day period and is diligently pursued to completion, but in no event shall rehabilitation efforts exceed 180 days; or (ii) 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; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or Agency other public or governmental agency or entity. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above 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 Developer is sent to the other party within ten (10) days of the commencement of the cause, and (b) Developer is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the Project because of economic or market conditions.

## **2. Performance of Maintenance.**

(a) Developer shall maintain the Project, the Property and all “improvements” (as defined hereinafter) thereon in accordance with the Maintenance Standards, as hereinafter defined. As used herein, the term “Improvements” shall mean and include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property.

(b) To accomplish said maintenance, Developer shall either use 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 Developer and Developer’s 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 Project and Property shall be maintained in conformance and in compliance with the approved Property 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 curblin and the repair and maintenance of all sidewalks, driveways, parking areas and all hard scape surfaces to keep these areas free from cracked and damaged surfaces.

**3. Failure to Maintain Property.**

In the event Developer does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, Agency 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 Developer. However, prior to taking any such action, Agency agrees to notify Developer in writing if the condition of the Project or Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then Developer shall have forty-eight (48) hours to rectify the problem.

In the event Developer fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such maintenance deficiency and diligently pursue such correction, remedy, or cure to completion) after notification and after the period of correction has lapsed, then Agency shall have the right to maintain such improvements. Developer agrees to pay Agency such charges and costs. Until so paid, the Agency shall have a lien on the Property 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 Property. Upon recordation of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the leasehold interest in the Property 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 shall date from the date of the recordation of the Notice of Claim of Lien. Developer shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

**4. Compliance with Law.** Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the Project. The operation of the Project shall be in compliance with the requirements of any entitlements issued by the City for the Project, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) Nondiscrimination Covenants. Developer covenants, by and for itself and any successors in interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it 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, subleases or vendees of the Property. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants, by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

"That there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

(b) No Violation of Statutes Relating to Direct Assistance by Agency. Developer represents and warrants that it is using the Agency financial assistance for the sole and exclusive purpose of causing the construction of the Project on the Property and for no other purpose. Developer further agrees to indemnify, defend, and hold harmless the Agency or City from and against any claims, proceedings, losses, costs, or expenses incurred as a result of any such violation arising out of actions by Developer.

5. **Sales and Use Tax Covenant.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, Developer shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

6. **Covenant to Pay Taxes and Assessments.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, Developer shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes (including possessory interest taxes), special taxes, and assessments levied against the Property and any improvements thereon, subject to Developer's right to contest any such tax or assessment in good faith. During such period, Developer shall remove or have removed any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to a sale of the Property.

7. **Defaults.**

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

(b) Unless otherwise provided by the OPA, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from receipt of such notice, immediately and with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice, but in no event shall the cure, correction or remedy occur more than 180 days after notice.

8. **Legal Actions.**

(a) In addition to any other rights or remedies, and subject to the notice and cure provisions in Section 7 above, any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal or equitable remedy consistent with the purpose of this Operating Covenant. The Agency shall also have the right to pursue damages for Developer's defaults, but in no event shall Developer be entitled to damages of any kind from Agency, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Central District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

(b) The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

(c) In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

(e) Except as otherwise expressly stated in this Operating Covenant, 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.

(f) 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.

**9. Effect of Violation of the Terms and Provisions of this Operating Covenant.**

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency and the City of El Cajon ("City"), and each of their successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The Agency and City are deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the Property, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. This Operating Covenant and the covenants shall run in favor of the Agency and the City, without regard to whether the Agency or City have been, remain or are an owner of any land or interest therein in the Property. The Agency and City shall have the right, if the Operating Covenant 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 they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, Section 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Covenant Agreement shall run with the Property and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Property or any portion thereof, and their successors and assigns.

**10. 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 internal laws of the State of California without regard to conflict of law principles.

(c) This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Developer but any Transfer shall be subject to the requirements and provisions of Section 7 of the OPA.

(d) The City of El Cajon is a third party beneficiary of the terms of this Operating Covenant, and shall have the right, but not the obligation, to enforce the terms hereof.

**11. Notices.** All notices under this Operating Covenant shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To Agency: El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Executive Director

With a copy to: El Cajon City Attorney  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1798  
Attention: Morgan Foley, Esq.

To Developer: JKC Palm Springs Automotive, Inc.  
PO Box 25822  
Eugene, OR 97402  
Phone No.: 541-686-8291  
Attention: John P. Kiefer

With a copy to:

Gardner, Potter, Budge, Spickard & Cascagnette, LLC  
725 Country Club Rd.  
Eugene, OR 97401  
Phone No.: 541-687-9001  
Attention: Hamilton W. Budge Jr., Esq.

**IN WITNESS WHEREOF**, the parties hereto has executed this instrument the day and year first hereinabove written.

“Developer”

**JKC Palm Springs Automotive, Inc., a  
California Corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Its: \_\_\_\_\_

“Agency”

**EL CAJON REDEVELOPMENT  
AGENCY**, a public body, corporate and  
politic

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Kathi J. Henry, Executive Director

ATTEST:

\_\_\_\_\_  
Kathie Rutledge, Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Morgan L. Foley  
City Attorney/Agency Counsel



**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
**Signature of Notary**

**ACKNOWLEDGMENT**

State of California,

County of San Diego

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
**Signature of Notary**

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

All that property located in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 15479, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 1, 1988, AS FILE NO. 88-615273 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER 482-260-17-00

**EXHIBIT "B"**

**DESCRIPTION OF BENEFITED PUBLIC PROPERTIES IN EL CAJON**

City Hall, 200 Civic Center Way

APN: 488-111-30

El Cajon Public Safety Building, 100 Civic Center Way

APN: 488-072-42

Fire Station No. 6, 100 East Lexington Ave.

APN: 488-192-09

Heartland Fire Training Facility, 1301 North Marshall Ave.

APN: 482-131-16

Fletcher Hills Center and Pool, 2345 Center Place

APN: 481-430-47 & 481-430-44

Hillside Center and Park, 840 Buena Terrace

APN: 481-521-01 & 481-520-12

Judson Park, NW corner of Magnolia and Park Avenues

APN: 487-172-67

Kennedy Center and Park, 1675 East Madison Avenue

APN: 511-210-13

Renette Center and Park, 935 South Emerald Avenue

APN: 492-320-01 & 492-320-02

Wells Center and Park, 1153 East Madison Avenue

APN: 489-140-63