

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Attn: City Manager

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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 13<sup>th</sup> day of August, 2019 (the "Effective Date"), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the "City"), and **JKC PALM SPRINGS AUTOMOTIVE, INC.**, a California corporation doing business as **TEAM KIA-MAZDA OF EL CAJON**, (the "Operator"), with reference to the following:

A. The Operator leases the land ("Land"), which leasehold interest shall hereafter be referred to as the "Property," more fully described in Exhibit "A," which is attached hereto.

B. The Operator is in the final stages of constructing a high-class Mazda automobile dealership on the Property (the "MAZDA Dealership"), said construction conducted at the sole cost and expense of Operator with no financial or other assistance from the City, and the City has agreed to provide the Operator with certain financial incentives in consideration of Operator agreeing to use and operate the Property and the MAZDA Dealership, all in accordance with this Operating Covenant.

C. This Operating Covenant shall be recorded against the Property to memorialize certain covenants, conditions, and restrictions regarding the use and operation of the Property by the Operator and the Operator's successors and assigns.

D. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City, more particularly described in Exhibit "B" (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.

NOW, THEREFORE, Operator 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 City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

**1. Covenant Regarding Specific Uses.**

(a) Operation of MAZDA Dealership. For a term (the "Term") commencing upon the City's issuance of a certificate of occupancy by the City (the "Occupancy Permit") allowing the commencement of operations of the MAZDA Dealership and continuing until the fifth (5<sup>th</sup>) anniversary of the date of the Occupancy Permit for the MAZDA Dealership (the "Operating Covenant Termination Date"), the Operator hereby covenants and agrees to devote the Property for the exclusive purpose, use and operation of the MAZDA Dealership, 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 City for each instance, which consent may be granted or withheld in the City's sole and absolute discretion, the failure of the Operator (or its tenant) to operate any portion of the MAZDA Dealership on the Property as required herein for thirty (30) or more consecutive days shall, at the City's option, constitute a default hereunder; provided, however, that the Operator shall for purposes of this Section 1 be deemed to be operating such portion of the MAZDA Dealership during any period that the Operator is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion of the MAZDA Dealership (provided that the period during which such portion of the MAZDA Dealership 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 other public or governmental entity. Notwithstanding anything to the contrary herein, (1) 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 Operator is sent to the other party within ten (10) days of the commencement of the cause, and (2) the Operator 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 MAZDA Dealership because of economic or market conditions.

(b) Subject to Section 1(a), in operating the MAZDA Dealership during the Term, Operator:

(1) Shall operate in accordance with all requirements of Mazda, which shall include operating the dealership as a first-class motor vehicle dealership in compliance with all facility and image requirements of Mazda;

(2) Shall use all chemicals, unhealthful substances, and pesticides in strict accordance with all governing regulations, and shall employ precautionary measures recognizing that areas are open to public access.

(3) Shall keep all sidewalks, paths and other paved areas of the MAZDA Dealership in clean and weed-free condition, free of excess dirt and mud, trash, debris or other

matter which is unsafe or unsightly; remove all trash, litter and other debris from improvements and landscaping of the MAZDA Dealership prior to mowing; ensure that all cuttings, weeds, leaves and other debris at the of the MAZDA Dealership are properly disposed of.

(4) Shall, in performing the forgoing, conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of same.

**2. [Intentionally deleted.]**

**3. Failure to Operate Property.** In the event the Operator does not operate the Property in the manner set forth herein and in accordance with Section 1(a), above (the "Operation Standards"), the City shall notify the Operator in writing if the operation of the Project or Property does not meet with the Operation Standards and to specify the deficiencies and the actions required to be taken by the Operator to cure the deficiencies. Upon notification of any operation deficiency, the Operator 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 the Operator shall have forty-eight (48) hours to rectify the problem.

In the event the Operator 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 operation deficiency and diligently pursue such correction, remedy, or cure to completion) after notification and after the period of correction has lapsed, then the parties agree that the City shall not be required to reimburse any portion of sales taxes generated from the Property (as set forth in Section 7, below, and in Exhibit "C" hereof) during the period of Operator's default in its covenant to comply with the Operation Standards and any subsequent calculation for reimbursement shall treat any such sales as having not occurred.

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

(a) **Nondiscrimination Covenants.** The Operator 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 the Operator 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.

The Operator shall refrain from restricting the rental, sale or lease of the Property, or 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 entered into after the Effective Date shall contain or be subject to substantially the following nondiscrimination or non-segregation 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, sub-lessees 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, sub-lessees, 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, sub-lessees or vendees of the premises."

(b) No Violation of Statutes Relating to Direct Assistance by City. The Operator represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of operation costs and the stabilization of operational costs of the MAZDA Dealership, and for no other purpose. The Operator further agrees to indemnify, defend, and hold harmless the City from and against any claims, proceedings, losses, costs, or expenses incurred as a result of any third-party claims or proceedings resulting from such violation arising out of actions by the Operator related to the provision of the financial assistance.

**5. Sales and Use Tax Covenant.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Operator 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, the Operator 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 the Operator's right to contest any such tax or assessment in good faith. During such period, the Operator 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. City Reimbursement of Portion of Sales Taxes Generated.**

In consideration of the use and operation of the MAZDA Dealership as set forth in this Operating Covenant, and in recognition of the significant commitment of capital and other resources by the Operator for the MAZDA Dealership, City hereby agrees to provide, as an incentive, the reimbursement of a portion of sales taxes generated from the Property for a limited period of time. The precise calculation of reimbursement by City, to Operator, is set forth in the City Reimbursement Schedule, attached to this Operating Covenant as Exhibit "C" and incorporated herein by this reference.

**8. Defaults.**

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant, subject to applicable cure periods, 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 this Operating Covenant, 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 one hundred eighty (180) days after notice.

**9. Legal Actions.**

(a) In addition to any other rights or remedies, and subject to the notice and cure provisions in Sections 1(a) and 8 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 parties shall also have the right to pursue damages for the other party's defaults, but in no event shall the City or Operator be entitled to special damages of any kind from the other party, 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 Southern 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 reasonable 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 Operator against the City in connection with this Operating Covenant, service of process on the City shall be made by personal service upon the City Clerk of the City in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the City against the Operator, service of process on the Operator shall be made by personal service upon any officer or director of the Operator, 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.

#### **10. 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 City, and its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is 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 City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. The 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, sections 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Operating Covenant 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.

#### **11. Transfer Restrictions.**

(a) The qualifications and identity of the Operator are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Operating Covenant with the Operator. Accordingly, commencing on the effective date of this Operating Covenant and continuing throughout its term: (i) no voluntary or involuntary successor in interest of the Operator shall acquire any rights or powers under this Agreement; (ii) the Operator 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 Property or the MAZDA Dealership thereon; and (iii) no changes shall occur with respect to the majority ownership and/or control of the Operator, including, without limitation, stock transfers, sales of issuances, or transfers, sales of issuances of membership or ownership interests, or statutory conversions (with each of the actions in clauses (i), (ii), and (iii) above, referred to herein as a "Transfer"), without

the prior written approval of the City, 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 City, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

(b) Notwithstanding any other provision of this Operating Covenant to the contrary, the City's approval of a Transfer shall not be required in connection with any of the following:

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

(ii) A Transfer consisting of the conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, including public utilities, where the granting of such easements permits or facilitates the development of the Land and the MAZDA Dealership.

(iii) Any Transfer (1) for financing purposes to the holder of a mortgage; (2) for any refinancing or permanent financing of the mortgage; (3) or to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (1) or (2).

In the event of a Transfer by Operator not requiring the City's prior approval, Operator nevertheless agrees that at least thirty (30) days prior to such Transfer, Operator shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to subparagraph (i) above, Operator 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 Operator 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 Operator, or an entity in which Operator or any of Operator's members, 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 has been approved in writing by Mazda to operate the MAZDA Dealership thereon.

(c) If the Operator desires to cause a Transfer of any of its interests in this Operating Covenant or the Property, and such Transfer requires the City's approval under Section 11(a), Operator shall request in writing to the City that it consent to such Transfer, which consent shall not be unreasonably delayed or withheld. Notwithstanding any other provision set forth in this Operating Covenant, a Transfer which satisfies the following conditions shall automatically be deemed approved by the City: (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 operate the MAZDA Dealership on the Land and that such person or entity has been approved in writing by Mazda to operate the MAZDA Dealership thereon.

Notwithstanding any other provision set forth in this Operating Covenant to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall have delivered to the City an executed assignment and assumption agreement in form reasonably acceptable to City 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.

(d) All of the terms, covenants and conditions of this Operating Covenant shall run with the Property and be binding upon the Operator and the City and their permitted successors and assigns. Whenever the term "Operator" or "City" is used in this Operating Covenant, such term shall include any other permitted successors and assigns.

**12. 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 binding upon and inure to the benefit of the successors and assigns of the Operator but any Transfer shall be subject to the requirements and provisions of Section 11 of this Operating Covenant.

**12. 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; or (iii) via facsimile or electronic mail, so long as the sender receives confirmation of successful transmission from the sending machine or computer; provided that a copy of the notice is also concurrently sent by first class mail, 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 City: City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Graham Mitchell, City Manager

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

To Operator: JKC Palm Springs Automotive, Inc.  
PO Box 25309  
Eugene, OR 97402  
Phone No.: 541-915-6091  
Attention: John P. Kiefer, President

With a copy to:

Gardner Potter Budge Meadows, LLC  
696 Country Club Rd.  
Eugene, OR 97401  
Phone No.: 541-687-9001  
Attn: Hamilton W. Budge Jr.


*[Remainder of page intentionally left blank]*

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

"Operator"

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

Date: 4-8-24, 2019

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

"City"

**CITY OF EL CAJON,**  
a charter city and municipal corporation

Date: 4-8-24, ~~2019~~

By:   
Graham Mitchell, City Manager

ATTEST:

  
\_\_\_\_\_  
Angela Cortez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Morgan L. Foley, City Attorney

**ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) SS:  
COUNTY OF SAN DIEGO )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(SEAL)

**ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF OREGON )  
 ) SS:  
COUNTY OF LANE )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(SEAL)

**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:

**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

## EXHIBIT "C"

### CITY REIMBURSEMENT SCHEDULE

1. **Reimbursement Payments.** Starting in the first Operating Year, as defined below, following issuance of the Occupancy Permit as the item is defined in the Operating Covenant, and each Operating Year thereafter for the Term of the Operating Covenant, the City shall reimburse the Operator each year of the Operating Year in an amount equal to:

Fifty percent (50%) of the "Net Regular Sales Taxes from the Site" generated on the Land during Operating Years 1 through 5, inclusive if Regular Sales Tax from the site is in excess of \$325,000 (as defined in paragraph (a) of this section; and

Seventy-five percent (75%) of the "Net Regular Sales Taxes from the Site" generated on the Land during Operating Years 1 through 5, inclusive if Regular Sales Tax from the site is in excess of \$450,000 (as defined in paragraph (a) of this section.

(a) As used herein, the term "Net Regular Sales Taxes from the Site" shall mean the "Regular Sales Taxes from the Site" in excess of the amounts defined above in each Operating Year. Operating Year shall mean the first four full quarters (as defined by the California Department of Tax and Fee Administration) following the issuance of the Occupancy Permit and each subsequent twelve (12) full months the Operating Covenant is in place.

(b) As used herein, the term "Regular Sales Taxes from the Site" means the amount equal to the regular sales and use taxes that are generated from sales occurring on the Land on which regular sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the California Department of Tax and Fee Administration. In connection therewith:

(i) The Operator shall timely report, and shall cause its tenants (if any) to report all regular sales and use taxes from the Land to the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration to the City if and to the extent the California Department of Tax and Fee Administration elects to offset the payment of any such Regular Sales Taxes from the Site against any other obligation of the City.

(iii) The Operator acknowledges that the California Department of Tax and Fee Administration makes payments to the City based on both actual and anticipated sales and use tax revenues and that the California Department of Tax and Fee Administration makes periodic reconciliations. The determination of Regular 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 California Department of Tax and Fee Administration of payments of such Regular Sales Taxes from the Site to the City. Any adjustments resulting from any interim or estimated

determination of Regular 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) Regular 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 Land (which, as of the Effective Date, is 1.0% of the taxable amount) within each Operating Year. Regular Sales Taxes from the Site shall not include amounts paid to the City by the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration that reduce the actual amounts of sales and use taxes received by the City.

(v) The Operator 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 Land 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) The Operator shall furnish, and shall cause its tenants (if any) to furnish, to City 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.

2. **Reimbursement Prepayment.** The City shall have the right to prepay all or any portion of its obligations for reimbursement at any time without penalty.