

OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

by and between

CITY OF EL CAJON
a charter city and municipal corporation

and

TIPTON ENTERPRISES, INC.,
a California corporation, dba Tipton Honda

TABLE OF CONTENTS

	<u>Page</u>
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.....	3
2.4 Schedule of Performance	3
2.5 Cost of Construction	3
2.6 Rights of Access	4
2.7 Miscellaneous Rules and Regulations Applicable to Development of the Project	4
2.8 Release of Construction Covenants	5
3. CITY REIMBURSEMENT FOR IMPROVEMENTS.....	5
3.1 Eligible Rehabilitation Improvements	5
3.2 Conditions Precedent to City Reimbursement Obligation.....	6
3.3 Disbursement of City Reimbursement.....	6
3.4 City Development Responsibilities.....	7
4. OPERATION OF THE PROJECT AND COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE SITE AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT	7
5. DEFAULTS AND REMEDIES	7
5.1 Default.	7
5.2 Institution of Legal Actions; Remedies	8
5.3 Acceptance of Service of Process	8
5.4 Rights and Remedies Are Cumulative.....	8
5.5 Inaction Not a Waiver of Default.....	8
5.6 No Waiver.....	8
5.7 Applicable Law	8
6. INSURANCE REQUIREMENTS; REPAIR AND RESTORATION OF PROJECT.....	9
6.1 Insurance Requirements.....	9
6.2 Remedies for Defaults Re: Insurance	9
6.3 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance	9
7. TRANSFER RESTRICTIONS	9
7.1 Prohibition.....	9
7.2 Permitted Transfers.....	10
7.3 City Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer	10

	<u>Page</u>
7.4 Successors and Assigns.....	11
8. INDEMNIFICATION OF CITY	11
9. GENERAL PROVISIONS	11
9.1 Notices.....	11
9.2 Enforced Delay; Extension of Times of Performance	12
9.3 Non-Liability of Officials and Employees of City to the Developer.....	12
9.4 Relationship Between City and Developer	12
9.5 City Approvals and Actions.....	13
9.6 Counterparts	13
9.7 Integration.....	13
9.8 Attorneys' Fees	13
9.9 Titles and Captions	13
9.10 Interpretation.....	13
9.11 Modifications	13
9.12 Severability	13
9.13 Computation of Time.....	14
9.14 Legal Advice.....	14
9.15 Time of Essence.....	14
9.16 Conflicts of Interest.....	14
9.17 Third Party Beneficiaries	14
9.18 Corporate Authority.....	14

LIST OF ATTACHMENTS

ATTACHMENT "1"	Legal Description of Site	16
ATTACHMENT "2"	Scope of Development	18
ATTACHMENT "3"	Schedule of Performance	26
ATTACHMENT "4"	Release of Construction Covenants	28
ATTACHMENT "5"	City Reimbursement Schedule	35
ATTACHMENT "6"	Operating Covenant	37

OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

This **OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT** (this "Agreement") is made by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the "City"), and **TIPTON ENTERPRISES, INC.**, a California corporation, dba Tipton Honda (the "Developer") and shall be effective upon the date of full execution by the parties and approval by the City Council (the "Effective Date").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is interested in the redevelopment of Tipton Honda (the "Dealership") consistent with design criteria established by American Honda Motor Company, Inc. ("Honda") that will serve Honda customers, and the Developer has expressed an interest in redeveloping the Dealership on property located at 889 Arnele Avenue in the City, including the acquisition of adjacent property for expansion of the Dealership (the "Site").

B. The continued operation of the Dealership is an important component in the City's efforts to maintain a vibrant and expanding group of existing and new auto dealerships in the City to promote economic development and employment opportunities for its citizens.

C. Recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California require the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increase revenues and employment opportunities.

D. 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) the Developer will reconfigure, renovate and rehabilitate the Site so that it conforms to Honda's design criteria Gen 4 (the "Project"), as further defined herein, and (ii) the City will provide financial assistance towards the costs incurred by the Developer to construct the Project.

F. The City has determined that the imposition of certain operating covenants and restrictive covenants with respect to the Project constitutes a valid public purpose, and therefore the City desires to obtain such operating covenants and restrictive covenants with respect to the Project in consideration of the transfer of sums in accordance with the terms hereof.

G. In consideration for the Developer's agreement to be bound by such operating covenants and restrictive covenants, the City has agreed to make certain payments to the Developer. The City and the Developer agree the amount of each payment required to be made by the City hereunder is a fair exchange for the consideration actually furnished pursuant to this Agreement by the Developer during each fiscal year of the City in which payment is made, that each payment to be made by the City hereunder has been calculated so that it will not exceed the

resources available to make such payment, and further that in no event shall the City be immediately indebted to the Developer for the aggregate payments herein provided.

H. The purpose and intention of the City in making the transfers to the Developer is solely to induce the Developer to construct the public improvements described in this Agreement and to develop and operate, or cause to be developed and operated, the Project on the Site so as to further the enhancement, the well-being of the citizens at large, the enhanced local employment, and expand the City's tax revenue base.

I. This Agreement is categorically exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (California Public Resources Code § 21000 *et seq.*) ("CEQA").

J. This Agreement and the Developer's development of the Project is a new and innovative structure of public and private participation in an effort to promote and assist economic development in the City, which will realize significant public benefits in the form of increased revenues to the City and increased employment opportunities of quality trades, and are in the vital and best interest of the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, the City 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 the Developer's acquisition of additional properties and rehabilitation of the Site as further described in the Scope of Development attached hereto and incorporated herein as Attachment 2 (the "Scope of Development"). The 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) Honda's design criteria Gen 4 (the "Honda Standards"), (iv) all plans and permits approved by City with respect to the Project, and (v) the Schedule of Performance attached hereto and incorporated herein as Attachment 3. The Developer shall thereafter operate the Project as provided in Section 4 below. The Developer shall ensure that all designs prepared for the Project shall be (1) prepared by an architect and development team that is recognized by Honda as having the expertise and ability to prepare and implement plans that meet Honda Standards, and (2) approved by Honda as being compliant with Honda Standards. Developer represents to the City that it will invest approximately \$2,300,000 in the Project.

2.2 Project Entitlements. As a condition precedent to the Developer's right to construct the Project under this Agreement, the Developer shall obtain from the City all permits, approvals, and 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 CEQA, the approval of which is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). City staff shall use reasonable efforts to assist the Developer in coordinating the expeditious processing and consideration of the Project Entitlements. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain the Project Entitlements required by the City, nor does such execution obligate the City to incur any expense in assisting the Developer in the acquisition of the Project Entitlements. In the event of a conflict between Honda Standards and the Project Entitlements, the Project Entitlements shall control.

2.3 Entitlement Process. The 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 City in this Agreement, and that but for such requirements, the City would not have entered into this Agreement. The Developer acknowledges and agrees that in reviewing and approving documents under this Section 2.3, the City is not acting on behalf of the Developer. Further, the 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 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 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 has submitted or shall submit all of the Developer's Applications, and if approved by the City 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 City's City Manager is permitted to modify or extend the Schedule of Performance without further authorization by the City of El Cajon City Council (the "City Council") provided that each of 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 eighteen (18) months from the Effective Date; (ii) the City Manager and the Developer agree to the modification or extension in a writing executed by both the Developer and the City Manager; (iii) the Developer is not otherwise in default under this Agreement; and (iv) such modification or extension does not increase the City's obligations or costs under this Agreement.

2.5 Costs of Construction. Except as provided in Section 3 below, all of the costs 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 City shall have the right of access to the Site at normal construction hours during the period of construction and upon reasonable prior notice to the Developer, including but not limited to, the inspection of the work being performed in the construction of the Project. The City shall indemnify, defend and hold the 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 City's inspection of the Project as permitted by this Section 2.6. Notwithstanding the prior sentence, the City 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 the 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. The 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 (except as otherwise provided herein), 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. The Developer certifies and agrees that all persons employed or applying for employment by it (including all contractors and subcontractors used by the 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 the City, the Developer shall allow representatives of the City 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 the Developer with Construction Personnel shall specifically incorporate

this section and shall include a provision providing the City 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 City's obligation to issue a Release of Construction Covenants pursuant to Section 2.8 of this Agreement, the 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 the Developer from contesting the validity or amount of any levy or attachment or to limit the remedies available to the Developer with respect thereto.

2.7.4 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 City shall promptly deliver to the Developer a Release of Construction Covenants, executed and acknowledged by the City 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 City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within thirty (30) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City'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. CITY REIMBURSEMENT FOR IMPROVEMENTS.

3.1 Eligible Rehabilitation Improvements. In consideration for the Developer's investment of approximately \$2,300,000 in the City through the acquisition and construction of the Project on the Site (the "Eligible Rehabilitation Costs"), the City shall, subject to the satisfaction of the conditions precedent identified in Section 3.2, return to the Developer a percentage of the Net Sales Taxes From the Site consistent with the formula and term described

in the City Reimbursement Schedule set forth in Attachment 5 hereto (the “City Reimbursement”).

3.2 Conditions Precedent to City Reimbursement Obligation. Prior to, and as a condition precedent to, the City’s obligation to fund or disburse any portion of the City Reimbursement, the following conditions precedent (each a “Disbursement Milestone”), which are for the sole and exclusive benefit of the City, and shall be completed to the satisfaction of, or valued by, the City, but shall not be unreasonably withheld by the City.

3.2.1 The 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, financing, and reservations of record in existence prior to the Effective Date; and (b) Developer as Tenant and Tipton Motors, Inc. as landlord. The City acknowledges that the Developer is pursuing financing to fund construction of the Project and agrees, if requested by the mortgagor, to subordinate the Operating Covenant to any documents recorded in favor of the mortgagor in connection with such financing.

3.2.2 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 City or, if a timely challenge has been made, such challenge shall be resolved in a manner that is acceptable to the City.

3.2.3 The Developer shall have provided evidence of financing to the City and the City shall have approved the same.

3.2.4 The Developer shall have provided evidence to the City that the Developer has procured insurance as required by Section 6.1 hereof.

3.2.5 The Developer shall have provided evidence to the City’s City Manager that the Developer has obtained approval from Honda for the Project, including the Developer’s site plan and all construction plans and drawings.

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

3.2.7 The Developer shall obtain building permits for the Project work to be performed.

3.3 Disbursement of City Reimbursement. The City shall disburse the City Reimbursement to the Developer in accordance with the provisions of this Agreement. Each disbursement of a portion of the City Reimbursement shall be conditioned upon the Developer’s compliance with this Agreement, and shall include a calculation of the Net Sales Taxes From the Site as defined in City Reimbursement Schedule set forth in Attachment 5, hereto.

3.4 City Development Responsibilities. In order to assist the Developer in the successful construction of the Dealership, and in addition to the consideration otherwise contained herein, the City hereby agrees to use its best efforts to initiate and process, for City Council consideration, the adoption of an updated land use plan (e.g., a specific plan, or a general plan amendment, including implementing ordinances to amend its zoning code, as necessary) applicable to the Site and adjacent areas. Accordingly, City agrees to assign a mid-management level employee to expedite the processing of all required approvals, permits, and inspections, including the review of all required plans, studies or reports for the Project.

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

Concurrently with the Developer's execution of this Agreement, the Developer shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 6 (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 City's obligations in this Agreement. The Operating Covenant shall obligate the Developer or assignee to construct the Project and shall obligate the Developer or assignee to operate the Project for a minimum period of fifteen (15) years, commencing on the date the City 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, (1) 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, or (2) the filing of a petition in bankruptcy by or against the Developer or appointment of the receiver or trustee of any property 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 City.

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. The City shall also have the right to pursue damages (but only actual damages) for the Developer's Defaults, but in no event shall the Developer be entitled to damages of any kind from City, except as a result of the City's Default of its obligation to make the City Reimbursement in which case the Developer shall be entitled to specific performance of this Agreement or, if such remedy is not available, then damages not in excess of the maximum amount of the City Reimbursement, 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. 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 City, service of process on the City shall be made by personal service upon the City Manager of the City or the City Clerk of the City if there is no City Manager in addition to such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the 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. The Developer shall maintain, at all times during the term of this Agreement, insurance in such amounts and providing such coverage commonly required for an automobile dealership in the State of California, including, but not limited to, commercial general liability, workers' compensation, automobile, and fire and casualty (including "all risk") insurance, and business interruption insurance, all to protect the Dealership from interruption from operations.

6.2 Remedies for Defaults Re: Insurance. In addition to any other remedies the City may have if the 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 City may at its reasonable discretion obtain such insurance and deduct the amount of the premium for such insurance from any sums due to the Developer by the City from the City Reimbursement. Exercise of such remedy, however, is an alternative to other remedies the City may have and is not the exclusive remedy for the 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 the Developer, the 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 the 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 City shall cooperate with the Developer, at no expense to the City, in obtaining any governmental permits required for the repair, replacement, or restoration.

7. TRANSFER RESTRICTIONS.

7.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City. It is because of these qualifications and identity that the City 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 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 major changes shall occur with respect to the ownership and/or control of the 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 City, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written approval of the City, shall be voidable upon any purported assignee or transferee upon written notification by the City within a reasonable period after the City learns of the Transfer.

7.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the City'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 City, 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 the Developer not requiring the City's prior approval, the Developer nevertheless agrees that at least thirty (30) days prior to such Transfer, the Developer shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, the 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 City, 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 the Developer, or an entity in which Tipton Enterprises, Inc., or a majority of Developer'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 has been approved in writing by Honda to operate the Project thereon.

7.3 City 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 City's approval under Section 7.1, the Developer shall request in writing to the City 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 City 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 Honda 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 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.

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 City and their permitted successors and assigns. Whenever the term “Developer” or “City” is used in this Agreement, such term shall include any other permitted successors and assigns.

8. INDEMNIFICATION OF CITY.

The Developer shall indemnify, defend, and hold harmless the City 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 sole negligence or willful misconduct of the City or City, subject to any immunities which may apply to the City 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 City:	City of El Cajon 200 Civic Center Way El Cajon, CA 92020 Phone No.: 619-441-1716 Attention: City Manager
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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 Developer: Tipton Enterprises, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No.: 619-440-1000
Attention: Kathie Stedham

With a copy to: Jason P. Saccuzzo, Esq.
Vivoli Saccuzzo, LLP
2550 5th Avenue, Suite 709
San Diego, CA 92103
Phone No.: 619-744-9992

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; inability to obtain reasonably acceptable financing; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or City or any other public or governmental City 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 City and Developer.

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

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

9.5 City Approvals and Actions. The City shall maintain the authority to implement this Agreement on behalf of the City through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City 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 City. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

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 City and the Developer of each and every obligation and condition of this Agreement.

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

9.17 Third Party Beneficiaries. With the exception of the provisions in Section, 8, which benefits, and is enforceable by, the City and the indemnitees described therein, there are no intended third party beneficiaries to this Agreement. Members of the public are not 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.


[Signatures on Following Page]

IN WITNESS WHEREOF, the Developer and the City 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”

**TIPTON ENTERPRISES, INC., a
California corporation**


Date: June 9, 2015

By: 
Its: General Mgr / Pres.

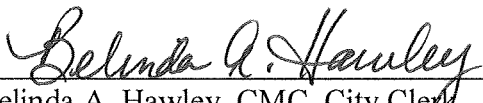
“City”

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

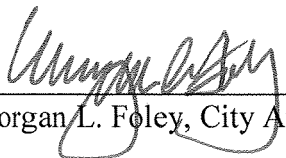
Date: June 10, 2015

By: 
Douglas Williford, City Manager

ATTEST:


Belinda A. Hawley, CMC, City Clerk

APPROVED AS TO FORM:


Morgan L. Foley, City Attorney

ATTACHMENT "1"

LEGAL DESCRIPTION OF SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122; THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75 FEET; THENCE SOUTH 0° 03' 52" EAST, A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 4° 59' 26" A DISTANCE OF 86.23 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED RECORDED TO THE STATE OF CALIFORNIA ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS THENCE ALONG SAID NORTHERLY LINE, SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 11' 57" A DISTANCE OF 8.78 FEET TO A POINT ON SAID CURVE, THE RADIAL TO WHICH HAS A BEARING OF NORTH 35° 10' 41" WEST; THENCE LEAVING SAID CURVE AND NORTHERLY RIGHT OF WAY LINE, NORTH 0° 05'40" WEST A DISTANCE OF 633.88 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE OF SCHULENBERG TRACT; THENCE NORTH 89° 58' 30" EAST ALONG SAID PARALLEL LINE 320.00 FEET TO A POINT WHICH BEARS NORTH 0° 05' 40" WEST, 440.68 FEET FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 05' 40" EAST, A DISTANCE OF 440.68 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF EL CAJON, FOR STREET PURPOSES BY DEED RECORDED APRIL 2, 1973, FILE NO. 73-085565 OF OFFICIAL RECORDS IN AND TO THE NORTHERLY 5 FEET THEREOF.

ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122, THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTH 0° 03' 52" EAST A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY

HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: 482-250-27

ATTACHMENT "2"

SCOPE OF DEVELOPMENT

[See Following Document]

Tipton Honda
 April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
GENERAL SUMMARY:			
Phase 1 build out area (sales and showroom)		6,874 sf	
Phase 2 build out area (Service)		3,341 sf	
Total build out area		10,215 sf	
DIV. 1	General Requirements		
DIV. 2	Demolition & Sitework		
DIV. 3	Concrete		
DIV. 4	Masonry		
DIV. 5	Metals		
DIV. 6	Carpentry		
DIV. 7	Insulation & Waterproofing		
DIV. 8	Doors/Windows/Glass		
DIV. 9	Finishes		
DIV. 10	Specialties		
DIV. 11	Equipment		
DIV. 12	Furnishings		
DIV. 13	Special Construction		
DIV. 14	Conveying Systems		
DIV. 15	Mechanical & Fire Sprinklers		
DIV. 16	Electrical		
SUBTOTAL DIRECT COSTS		10,215	
Mechanical engineering (plumbing, HVAC & Title 24)		1 ls	
Electrical Engineering		1 ls	
General Conditions		26 wks	
Liability Insurance		1.50%	
SUBTOTAL		10,215 sf	
Contingency		0.00%	
SUBTOTAL		0 sf	
Overhead & Profit		6.00%	
TOTAL		10,215 sf	

Qualifications and Exclusions

Estimate based on 11x17 floor plans and elevation dated May 13, 2014 issued by Wagner Architecture Group
 Architectural Design, structural & glazing engineering are excluded
 Permits & fees - permits paid for by SCI or it's subcontractors to be billed as direct reimbursable
 All millwork to be considered owner furnished and installed
 No existing fire sprinkler system therefore no fire sprinkler work is included
 Any all low voltage including but not limited to security, A/V, fire alarm and tel/date provided by owner's vendor
 Signage other than Honda monument by owner vendor
 Excavation that cannot be dug with a Case 580 backhoe or equal at a rate of 5 cyds and hour.
 Utility company charges for temp electricity and water
 Builder's Risk Insurance
 Handling or disposal of any hazardous materials
 Testing and Special Inspection
 Unforeseen conditions

Approximate Phase Breakout

Phase 1 Showroom Expansion
 Phase 2 Service Expansion
 Site Improvements (drive approaches and site stairs)

Tipton Honda

April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
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Spec #	Item Description	Quantity	Comments
DIVISION 1 - GENERAL REQUIREMENTS			
	Dumpsters	6 ea	
	General field labor (labor, materials, tools and equipment)	26 days	
	Temporary sanitary facilities	6 m	
	Construction Fencing with screen cloth (phase 2)	1 ls	
	Temp barricades/walls/dust control to accommodate phasing	1 ls	
	General safety measures - barricades, fall protection, signage, first aid, etc	26 wk	
	Routine and Final cleaning - Phase 1	6,874 sf	
	Routine and Final cleaning - Phase 2	3,341 sf	
DIVISION 2 - DEMOLITION & SITEWORK			
STRUCTURE DEMOLITION			
	Safe off of all existing utilities prior to demolition	1 ls	
	Exterior demolition - Phase 1	1 ls	
	Demo and remove existing storefront	incl	
	Demo and remove stucco ceiling	incl	
	Demo and remove stucco from 12 columns to accommodate new framing	incl	
	Demo and remove approx. 3200 sf concrete slab (up to 5" thick)	incl	
	Demo and remove curved façade	incl	
	Demo and remove existing signage	incl	
	Haul off and dump site tickets for record	incl	
	Interior demolition - Phase 1	1 ls	
	Demo and remove existing restroom slab to accommodate new layout	incl	
	Demo and remove 2488 sf of ceramic tile and thinset	incl	
	Demo and remove 632 VCT	incl	
	Demo and remove interior partitions	incl	
	Demo and remove restroom finishes and fixtures	incl	
	Demo and remove existing front desk and fixtures	incl	
	Exterior demolition - Phase 2	1 ls	
	Demo and remove exterior wall and finish to accommodate new openings	incl	
	Demo and remove existing storefront	incl	
	Demo and remove 3875 sf of concrete paving for expansion	incl	
	Interior demotion - Phase 2	1 ls	
	Demo and remove existing flooring finishes	incl	
	Sitework demolition	1 ls	
	Demo and remove drive approaches - 2 total	incl	
	Demo flatwork to accommodate new steps	incl	
HARDSCAPE/FLATWORK			
	Concrete drive approaches per city standards	2 ea	
	Traffic control	2 ea	
	A/C patch back	1 ls	
	Concrete steps and stem wall	1 ls	
	Railing at concrete steps and ramp	1 ls	
DIVISION 3 - CONCRETE			
	Building foundation - Phase 1	3,036 sf	
	Over sand and visqueen	incl	
	5" thick with #4 rebar at 18" on center	incl	
	Drill and epoxy into existing	1 ls	
	Add for foundation to accommodate Honda monument structure	1 ls	

Tipton Honda
April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
	Building foundation - Phase 2	3,341 sf	
	Over sand and visqueen	incl	
	5" thick with #4 rebar at 18" on center	incl	
	4x4 tooled/saw cut joints	incl	
	Drill and epoxy into existing	1 ls	
	Add for pier/spread footings to accommodate potential structural column	12 ea	
DIVISION 4 - MASONRY			
DIVISION 5 - METALS			
STRUCTURAL STEEL			
	Steel structure at Honda monument structure - Phase 1	1 ls	
	Tube steel columns	incl	
	Rolled beams	incl	
	Anchor bolt templates FOB	incl	
	Steel structure at Service expansion - Phase 2	1 ls	
	Tube steel columns - total 12	incl	
	W14 beams (canopy roof structure)	incl	
	1 1/2" gauge metal deck	incl	
	Anchor bolt templates FOB	incl	
DIVISION 6 - CARPENTRY			
ROUGH CARPENTRY			
	Plywood sheathing at new exterior framing - Phase 1	1 ls	
	Patch at columns	incl	
	Honda monument framing	incl	
	Structural wood framing - Phase 2	1,200 sf	
	TJI or similar roof joists (at enclosed area)	incl	
	Roof sheathing and crickets	incl	
FINISH CARPENTRY & MILLWORK			
	Bathroom countertops - Phase 1	20 sf	
	Subtops	incl	
	In wall support brackets	4 ea	
DIVISION 7 - THERMAL/MOISTURE PROTECT.			
INSULATION:			
	Thermal building insulation - Phase 1	1 ls	
	Misc. patch back	incl	
	Sound insulation at interior walls	1 ls	
	Thermal building insulation - Phase 2	1 ls	
	Misc. patch back	incl	
ROOFING			
	Roofing - Phase 1	1 ls	
	Misc roof patches at new HVAC units and penetrations	incl	
	Roofing - Phase 2	3,842 sf	
	60 mil single ply cool roof	incl	
	Densdeck mechanically fastened to roof	incl	
SHEET METAL AND FLASHING			
	Sheet metal paneling at Honda Monument sign - Phase 1	1 ls	
	Series 400 open jointed drained and back ventilated rain screen panel system		
	4mm PC core aluminum composite material in white, silver and blue		
	Coping metal - 24 gauge kynar coated steel - Phase 1	130 lf	
	24" wide coping metal - 24 gauge kynar coated steel - Phase 2	210 lf	
CAULKING AND SEALANTS			
	Misc. caulking and sealants - Phase 1	6,874 sf	
	Misc. caulking and sealants - Phase 2	3,341 sf	

Tipton Honda
April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
DIVISION 8 - DOORS/WINDOWS/GLASS			
EXTERIOR DOORS AND WINDOWS			
	Storefront glazing - Phase 1	1 ls	
	2 1/4"x7" offset clear anodized curtain wall system at radius Honda monument	incl	
	3'x7' single storefront doors with overhead concealed closers at Honda monument	incl	
	2"x4" clear anodized centerset storefront at exterior openings - 9 total	incl	
	Pair of 6'x7' doors - 2 total, one oversized	incl	
	Single 3'x7' door	incl	
	Hook locks, thresholds and standard hardware at doors	incl	
	1" dual glazed glass with a make up of 1/4" clear Solar Ban 60, 1/2" air space and 1/4" clear	incl	
	Perimeter caulked with standard Dow Corning silicone for water tight seal	incl	
	Shop drawings	incl	
	Storefront glazing - Phase 2	1 ls	
	2"x4" clear anodized centerset storefront at exterior openings - 9 total	incl	
	Pair of 6'x7' doors - 1 total	incl	
	Hook locks, thresholds and standard hardware at door	incl	
	1" dual glazed glass with a make up of 1/4" clear Solar Ban 60, 1/2" air space and 1/4" clear	incl	
	Perimeter caulked with standard Dow Corning silicone for water tight seal	incl	
	Shop drawings	incl	
INTERIOR DOORS AND WINDOWS			
	Interior door assemblies - Phase 1	3 ea	
	3'x7' prefinished Maple doors	incl	
	Aluminum frames	incl	
	Commercial grade hardware sets and closers	incl	
	Interior glazing - Phase 2	1 ls	
	1 3/4"x4" clear anodized centerset storefront	incl	
	Pair of 6'x7' doors - 1 total	incl	
	Single 3'x7' doors - 2 total	incl	
	Hook locks, thresholds and standard hardware at door	incl	
	1/4" clear tempered glass	incl	
	Shop drawings	incl	
DIVISION 9 - FINISHES			
LATH AND PLASTER			
	Misc Plaster patch and repair - Phase 1	1 ls	
	Patch at columns	incl	
	Misc repairs to existing above new storefront	incl	
	3 coat plaster - Phase 2	1 ls	
	Plaster at service addition (walls)	incl	
	Plaster at service canopy columns and walls	incl	
	Plaster at service canopy ceiling	incl	
	Sand finish to match existing texture	incl	
	Lifts/scaffold for access to complete work	incl	
METAL STUDS AND DRYWALL			
	Exterior and interior metal stud framing and drywall - Phase 1	1 ls	
	Furr existing columns	incl	
	Install 6" 18 gauge exterior wall 24' high	incl	
	Furr existing soffit at existing exterior wall	incl	
	Furr existing wall at Internet Sales	incl	
	Install new 3 5/8" interior walls	incl	
	Skim coat existing interior ceiling	incl	
	Skim coat existing walls	incl	
	Misc patch and repair at existing walls	incl	
	Wall framing at restrooms	incl	
	Install new drywall at restroom walls	incl	
	Install new drywall ceilings at restrooms	incl	

Tipton Honda
 April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
	Lift/scaffold to access work	incl	
	Exterior and interior metal stud framing and drywall - Phase 2	1 ls	
	Install 6" 18 gauge exterior wall 20' high	incl	
	Install 16 gauge headers at storefront	incl	
	Furr existing columns	incl	
	Install 14 gauge soffit between columns		
	Install new 3 5/8" interior walls	incl	
	Install new 3 5/8" low walls	incl	
	Install low wall posts	incl	
	Lift/scaffold to access work	incl	
	SUSPENDED CEILING SYSTEMS		
	Armstrong acoustic ceiling system - Phase 1	3,952 sf	
	Suprafine 9/16" 2x2 grid	incl	
	#1912 Ultima 2x2 tegular edge tile	incl	
	Armstrong acoustic ceiling system - Phase 2	1,124 sf	
	Suprafine 9/16" 2x2 grid	incl	
	#1912 Ultima 2x2 tegular edge tile	incl	
	FLOORING AND TILE		
	Tile flooring, base and carpet - Phase 1	1 ls	
	Carpet - Internet Sales	incl	
	Dal-Tile floor tile	incl	
	Thinset method over concrete slab	incl	
	Matching tile base	incl	
	Standard grout	incl	
	Dal-Tile wall tile	incl	
	48" wainscot in restroom	1 ls	
	Standard grout	incl	
	Tile flooring and base - Phase 2	1 ls	
	Carpet - Internet Sales	incl	
	Dal-Tile floor tile	incl	
	Thinset method over concrete slab	incl	
	Matching tile base	incl	
	Standard grout	incl	
	Sealed Concrete	2,427 sf	
	PAINTING		
	Interior and exterior painting - Phase 1	6,874 sf	
	Interior drywall surfaces (walls and restroom ceilings)	incl	
	Exterior painting (stucco surfaces)	6,874 sf	
	Interior and exterior painting - Phase 2	1,214 sf	
	Interior drywall surfaces (walls and restroom ceilings)	incl	
	Exterior painting (stucco surfaces)	2,427 sf	
	DIVISION 10 - SPECIALTIES		
	TOILET PARTITIONS AND ACCESSORIES PHASE 1 ONLY		
	Toilet partitions	1 ls	
	Standard p-lam floor mount with braced head rail	incl	
	Standard color	incl	
	Accessories	1 ls	
	Bobrick or equal	incl	
	Restroom mirrors	2 ea	
	Fire Extinguishers	4 ea	
	DIVISION 11 - EQUIPMENT		
	DIVISION 12 - FURNISHINGS		
	DIVISION 13 - SPECIAL CONSTRUCTION		
	DIVISION 14 - CONVEYING SYSTEMS		

Tipton Honda
 April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
DIVISION 15 - MECHANICAL			
PLUMBING			
	Fixtures - Phase 1	1 ls	
	Water closets - 3 total	incl	
	Lavatories - 4 total	incl	
	Urinals - 1 total	incl	
	Roof receptors - 3 total	incl	
	Interior hose bibs at bathrooms and laundry - 5 total	incl	
	Equipment - hot water heating equipment existing		
	Utility piping - Phase 1	1 ls	
	Waste and vent piping for fixtures	incl	
	Cold and hot water piping for fixtures	incl	
	Natural gas piping for A/C units	incl	
	Condensate drain piping for A/C units	incl	
	Excavation and back fill for plumbing work - Phase 1	1 ls	
	Fixtures - Phase 2	1 ls	
	Roof receptors - 4 total	incl	
	Utility piping - Phase 2	1 ls	
	Roof drain piping	incl	
HVAC			
	Equipment - Phase 1	1 ls	
	Gas package A/C units	incl	
	Roof curbs and economizers	incl	
	Air distribution and venting - Phase 1	1 ls	
	Ductwork	incl	
	Smoke duct detectors	incl	
	Diffusers and grilles	incl	
	Temperature controls - Phase 1	1 ls	
	Test and balance	incl	
	Equipment - Phase 2	1 ls	
	Gas package A/C units	incl	
	Roof curbs and economizers	incl	
	Air distribution and venting - Phase 2	1 ls	
	Ductwork	incl	
	Smoke duct detectors	incl	
	Diffusers and grilles	incl	
	Temperature controls - Phase 2	1 ls	
	Test and balance	incl	
DIVISION 16 - ELECTRICAL			
	Fixtures - Phase 1	1 ls	
	Budget based on equal or similar fixtures to fixtures designated under national account	incl	
	LED type fixtures	incl	
	Exit signs	incl	
	Title 24 lighting controls	incl	
	Power distribution - Phase 1	1 ls	
	Panel for mechanical loads fed from existing gear	incl	
	Lighting panel fed from existing gear	incl	
	Convenience receptacles	incl	
	Power to new signage	incl	
	Fixtures - Phase 2	1 ls	
	Budget based on equal or similar fixtures to fixtures designated under national account	incl	
	LED type fixtures	incl	
	Exit signs	incl	
	Title 24 lighting controls	incl	

Tipton Honda

April 2015

c-e-023

Spec #	Item Description	Quantity	Comments
	Power distribution - Phase 2	1 ls	
	Panel for mechanical loads fed from existing gear	incl	
	Lighting panel fed from existing gear	incl	
	Convenience receptacles	incl	
	Power to new signage		
SUBTOTAL DIRECT COSTS		10,215 sf	

ATTACHMENT “3”

SCHEDULE OF PERFORMANCE

	Item of Performance	Time for Completion
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.	City 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"> • Detailed Site Plans • Revised Site Plans • Lighting Plans (photometric) • “Conceptual” Landscaping Plans • Preliminary Grading Plans • “Conceptual” Floor Plans • “Conceptual” Elevations 	Prior to Effective Date or within a reasonable time thereafter.
4.	Review of Developer Applications by applicable City departments and provision of any comments to Developer.	Prior to Effective Date or within a reasonable time thereafter.
5.	Developer to revise and resubmit (as necessary to address City comments) Developer Applications.	Prior to Effective Date or within a reasonable time thereafter.
6.	Re-review of Developer Applications by applicable City departments and preparation of conditions of approval.	Prior to Effective Date or within a reasonable time thereafter.
7.	Planning Commission and City Council hearing and consideration of Developer Applications, if applicable.	Prior to Effective Date or within a reasonable time thereafter.
8.	Developer’s submission of application for building permits.	Within sixty (60) days of receipt of City Council approval of Developer Applications.
9.	Plan check review by applicable City departments and preparation of any corrections to Developer.	City 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.
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.

	Item of Performance	Time for Completion
11.	Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer is entitled to issuance).	City 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 begins demolition portion of Project.	Within six (6) weeks of approval of building permits.
13.	Developer constructs Project improvements.	Within twelve (12) months of issuance of building permits, unless extended by the City Manager.
14.	Developer obtains certificate of occupancy for Project.	Upon completion of final inspection of the Project.
15.	City issues certificate of occupancy for Project.	Within two (2) days after City's final inspection of 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 City Manager so long as the Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than eighteen (18) 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 City's obligations under this schedule.

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

OWNER

Mailing address:

ADDRESS

ATTN:

[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 CITY OF EL CAJON, a charter city and municipal corporation (the "City"), in favor of TIPTON ENTERPRISES, INC., a California corporation (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Owner Participation and Development Agreement (the "Agreement") dated _____, 2015 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 Agreement, the City 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 Agreement), 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 City has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

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

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 Agreement 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 Agreement or any other provisions of any other documents executed pursuant to the Agreement, all of which shall remain enforceable according to their terms of the documents incorporated therein.

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

“Developer”

TIPTON ENTERPRISES, INC., a California corporation

Date: _____, 2015

By: _____
Its: _____

“City”

CITY OF EL CAJON, a charter city and municipal corporation

Date: _____, 2015

By: _____
Douglas Williford, City Manager

ATTEST:

Belinda A. Hawley, CMC, 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)

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122; THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75 FEET; THENCE SOUTH 0° 03' 52" EAST, A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 4° 59' 26" A DISTANCE OF 86.23 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED RECORDED TO THE STATE OF CALIFORNIA ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS THENCE ALONG SAID NORTHERLY LINE, SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 11' 57" A DISTANCE OF 8.78 FEET TO A POINT ON SAID CURVE, THE RADIAL TO WHICH HAS A BEARING OF NORTH 35° 10' 41" WEST; THENCE LEAVING SAID CURVE AND NORTHERLY RIGHT OF WAY LINE, NORTH 0° 05' 40" WEST A DISTANCE OF 633.88 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE OF SCHULENBERG TRACT; THENCE NORTH 89° 58' 30" EAST ALONG SAID PARALLEL LINE 320.00 FEET TO A POINT WHICH BEARS NORTH 0° 05' 40" WEST, 440.68 FEET FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 05' 40" EAST, A DISTANCE OF 440.68 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF EL CAJON, FOR STREET PURPOSES BY DEED RECORDED APRIL 2, 1973, FILE NO. 73-085565 OF OFFICIAL RECORDS IN AND TO THE NORTHERLY 5 FEET THEREOF.

ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122, THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTH 0° 03' 52" EAST A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID

CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: 482-250-27

ATTACHMENT "5"

CITY REIMBURSEMENT SCHEDULE

1. Reimbursement Payments. Starting in the first Operating Year, as defined below, following recordation of the Release of Construction Covenants as the term is defined in the Agreement, and each Operating Year thereafter for the Term of this Note, the City shall reimburse the Developer within sixty (60) days of the conclusion of the Operating Year in an amount equal to:

Sixty-five percent (65%) of the "Net Sales Taxes From the Site" generated on the Site during Operating Years 1 through 6, inclusive; and

Fifty percent (50%) of the "Net Sales Taxes From the Site" generated on the Site during Operating Years 7 through 12, inclusive.

The total amount of City Reimbursement shall not exceed the actual amount of Developer's costs incurred to complete the Project, but in no event shall it exceed \$2,300,000.

As used herein, the term "Net Sales Taxes from the Site" shall mean the "Sales Taxes From the Site" in excess of \$342,000 in each Operating Year. 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, as calculated by the State Board of Equalization.

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) The Developer 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) The Developer 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) within each Operating Year. 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) The Developer 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) The Developer 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.

3. Expiration of Reimbursement Obligation. If, after fifteen (15) years after the recordation of the Release of Construction Covenants, the cumulative applicable Net Sales Taxes From the Site has not fully reimbursed the Developer for its Eligible Rehabilitation Costs, the term of the Agreement notwithstanding, City's obligation to pay reimbursements to the Developer shall terminate and be of no further force or effect.

ATTACHMENT "6"
OPERATING COVENANT

[See Following Document]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

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 _____, 2015 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **TIPTON ENTERPRISES, INC.** a California corporation (the “Developer”), with reference to the following:

A. The City and the Developer have executed an Owner Participation and Development Agreement (“Agreement”), dated as of _____, 2015, 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 redevelopment thereon of Tipton Honda (the “Project”). The Agreement 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. The Developer’s affiliate Tipton Motors, Inc. owns the Land, which interest shall hereafter be referred to as the “Property.”

C. Pursuant to the Agreement, the Developer has agreed to construct the Project on the Property, and the City has agreed to provide the Developer with certain financial incentives to reimburse the Developer for costs associated therewith.

D. The Agreement 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 the Developer and the Developer’s successors and assigns.

E. The City 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 and Tipton Motors, Inc. 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) Construction of Project. The 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 Agreement 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 City's issuance of a Release of Construction Covenants for the Project as provided for in Section 2.8 of the Agreement. The foregoing covenant shall be deemed satisfied and shall terminate upon the City'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 fifteenth (15th) 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 City for each instance, which consent may be granted or withheld in the City'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 City'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 other public or governmental 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) the 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) The 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, the 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 the Developer and the 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 the Developer does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, the City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. However, prior to taking any such action, the City agrees to notify the 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 the Developer to cure the deficiencies. Upon notification of any maintenance deficiency, the 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 the Developer shall have forty-eight (48) hours to rectify the problem.

In the event the 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 the City shall have the right to maintain such improvements. The Developer agrees to pay the City such charges and costs. Until so paid, the City 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. The 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.

The 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. The 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 the 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.

The 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 City. The Developer represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of causing the construction of the Project on the Property and for no other purpose. The Developer 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 such violation arising out of actions by the Developer.

5. Sales and Use Tax Covenant.

From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the 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, the 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 the Developer's right to contest any such tax or assessment in good faith. During such period, the 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 Agreement, 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 City shall also have the right to pursue damages for the Developer's defaults, but in no event shall the Developer be entitled to damages of any kind from City, 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 City, service of process on the City shall be made by personal service upon the City Manager 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 Developer, service of process on the Developer shall be made by personal service upon any officer or director of the 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 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, Section 1462, 1465 and 1468 of the Civil Code of the State of

To Developer:

Tipton Enterprises, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No.: 619-440-1000
Attention: Kathie Stedham

To Fee Owner:

Tipton Motors, Inc.
889 Arnele Avenue
El Cajon, CA 92020
Phone No.: (619) 440-1000
Attention: Kathie Stedham

With a copy to:

Jason P. Saccuzzo, Esq.
Vivoli Saccuzzo, LLP
2550 5th Avenue, Suite 709
San Diego, CA 92103
Phone No.: 619-744-9992

[Signatures on Following Page]

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

“Developer”

TIPTON ENTERPRISES, INC., a California corporation

Date: _____, 2015

By: _____
Its: _____

“Fee Owner”

TIPTON MOTORS, INC., a California corporation

Date: _____, 2015

By: _____
Its: _____

“City”

CITY OF ELCAJON, a charter city and municipal corporation

Date: _____, 2015

By: _____
Douglas Williford, City Manager

ATTEST:

Belinda A. Hawley, CMC, 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 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)

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:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THAT PARTITION MAP ON FILE IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122; THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75 FEET; THENCE SOUTH 0° 03' 52" EAST, A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 4° 59' 26" A DISTANCE OF 86.23 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED RECORDED TO THE STATE OF CALIFORNIA ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS THENCE ALONG SAID NORTHERLY LINE, SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 11' 57" A DISTANCE OF 8.78 FEET TO A POINT ON SAID CURVE, THE RADIAL TO WHICH HAS A BEARING OF NORTH 35° 10' 41" WEST; THENCE LEAVING SAID CURVE AND NORTHERLY RIGHT OF WAY LINE, NORTH 0° 05' 40" WEST A DISTANCE OF 633.88 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM SAID NORTHERLY LINE OF SCHULENBERG TRACT; THENCE NORTH 89° 58' 30" EAST ALONG SAID PARALLEL LINE 320.00 FEET TO A POINT WHICH BEARS NORTH 0° 05' 40" WEST, 440.68 FEET FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 05' 40" EAST, A DISTANCE OF 440.68 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THE INTEREST CONVEYED TO THE CITY OF EL CAJON, FOR STREET PURPOSES BY DEED RECORDED APRIL 2, 1973, FILE NO. 73-085565 OF OFFICIAL RECORDS IN AND TO THE NORTHERLY 5 FEET THEREOF.

ALSO EXCEPT THEREFROM ALL THAT PORTION OF TRACT 7 OF JAMES HILL ESTATE OF THAT PARTITION OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SCHULENBERG TRACT AS SAME IS SHOWN ON MAP OF FLETCHER HILLS UNIT NO. 2, MAP NO. 2122, THENCE SOUTH 89° 58' 30" WEST ALONG THE NORTHERLY LINE OF SAID SCHULENBERG TRACT, A DISTANCE OF 75.00 FEET; THENCE SOUTH 0° 03' 52" EAST A DISTANCE OF 55.86 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1010.00 FEET; THENCE SOUTH SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 26' 15" A DISTANCE OF 95.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 990.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 5° 37' 15" A DISTANCE OF 97.12 FEET (95 FEET, MORE OR LESS, PER DEED) TO A POINT OF CUSP WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF JOHNSON AVENUE AS SAME IS SHOWN ON SAID MAP 2122, SAID POINT BEING THE NORTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 80-XI-SD-12-ECJ AND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED ON FEBRUARY 6, 1957, AS DOCUMENT NO. 18896 OF OFFICIAL RECORDS; THENCE ALONG NORTHERLY RIGHT OF WAY LINE SOUTH 72° 53' 30" WEST (SOUTH 72° 52' 40" WEST PER DEED) 288.19 FEET TO AN ANGLE POINT IN SAID NORTHERLY RIGHT OF WAY LINE; THENCE SOUTH 59° 00' 24" WEST (SOUTH 58° 59' 33" WEST PER DEED) 267.91 FEET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 59° 00' 24" WEST 364.55 FEET TO A POINT ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2525.00 FEET, A RADIAL TO SAID POINT HAVING A BEARING OF NORTH 34° 58' 44" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 0° 11' 57", A DISTANCE OF 8.78 FEET; THENCE LEAVING SAID CURVE NORTH 0° 05' 40" WEST A DISTANCE OF 18.31 FEET; THENCE NORTH 55° 33' 02" EAST A DISTANCE OF 387.62 FEET; THENCE SOUTH 0° 05' 40" EAST A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

APN: 482-250-27

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