

TOWN OF NORMAL
NORMAL, ILLINOIS

CITY HALL
PHONE: 454-2444

PROPOSED AGENDA FOR SPECIAL TOWN COUNCIL MEETING

Tuesday, February 28, 2012

5:15 p.m.

Marriott Hotel & Conference Center
Ballroom D

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. OMNIBUS VOTE AGENDA
(All items under the Omnibus Vote Agenda are considered to be routine in nature and will be enacted by one motion. There will be no separate discussions of these items unless a Council Member so requests, in which event, the item will be removed from the Omnibus Vote Agenda and considered as the first item after approval of the Omnibus Vote Agenda.)

None

GENERAL ORDERS

5. Resolution Authorizing Approval of an Economic Assistance Agreement with Dan O'Brien of Extreme Motors Regarding the Relocation of his Hyundai Dealership to the Property at 600 Greenbriar Drive, Normal, which was the Former Site of the Saturn Automobile Dealership

NEW BUSINESS

None

ADJOURNMENT

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February 24, 2012

Resolution Authorizing Approval of an Economic Assistance Agreement with Dan O'Brien of Extreme Motors Regarding the Relocation of his Hyundai Dealership to the Property at 600 Greenbriar Drive, Normal, which was the Former Site of the Saturn Automobile Dealership

PREPARED BY: Mark R. Peterson, City Manager

REVIEWED BY: Steven D. Mahrt, Corporation Counsel

BUDGET IMPACT: The proposed agreement includes a sales tax sharing provision. However, no new sales tax from this project has been projected in the Town's Five Year Operating and Capital Improvements Budget. Therefore, no direct budget impact will result from the approval of this agreement.

STAFF RECOMMENDATION: Approval

ATTACHMENTS: Proposed Resolution, Proposed Agreement, Aerial Map of the Site

BACKGROUND

In 2000, the Scherer family of Peoria purchased a three acre tract on Greenbriar Drive in the Northland Commercial Subdivision for the purpose of siting a new Saturn automobile dealership business. The Scherer family had been in the automobile business in the Peoria area for many years prior to opening this new dealership in Normal. The new Saturn dealership opened in 2001.

In addition to a large vehicle storage and sales lot, the Scherer's constructed an approximate 16,500 square foot building on the site to incorporate an office, show room space and a vehicle maintenance area. The Scherer family successfully operated the Saturn dealership at this location up until the fall of 2009 when it closed after General Motors discontinued the Saturn brand by ceasing all vehicle production and severing all franchise agreements. Since that time, the property has remained vacant.

This past fall, the Town was approached by Dan O'Brien who owns and operates Extreme Motors in Bloomington. Extreme consists of three dealerships which are Nissan, Hyundai and Kia. Nissan has a standalone facility in south Bloomington. Kia and Hyundai share a showroom, maintenance facility and sales lot at 1608 South Morrissey Drive in Bloomington. Mr. O'Brien has decided to separate the Kia and Hyundai dealerships so they each have their own facilities.

Mr. O'Brien considered two sites in Normal; those included the former Saturn facility on Greenbriar Drive as well as the former Rebbec facility on Landmark Drive. After considering the size and the expense associated with both alternatives, Mr. O'Brien began to focus his attention on the former Saturn property located at 600 North Greenbriar Drive.

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Even though the Saturn facility is relatively new and is, by and large, in good condition, the transfer of his Hyundai dealership to that location will require a significant investment in the property in the form of cosmetic changes to comply with Hyundai brand standards, signage and all new vehicle maintenance equipment. Mr. O'Brien has indicated that the three acre site is adequate for the current Hyundai dealership; he also acknowledged that it will likely not meet the long term needs of the dealership. It would be his hope to acquire additional land in the future to allow for anticipated growth of the business.

Given the investment required to make the transfer of his Hyundai dealership to this new standalone location, Mr. O'Brien asked the Town to provide some financial assistance. In the past, the Town has provided a partial rebate of sales tax revenue to assist new businesses in establishing a location in Normal. With a sales tax rebate, the Town is essentially taking no risk. It is simply sharing new revenue created by a business back with that business to help offset some of their costs associated with establishing the new or expanded enterprise in Normal.

After several weeks of discussion, Mr. O'Brien and staff reached an agreement on a sales tax rebate program that would, in Mr. O'Brien's opinion, render the relocation of his Hyundai dealership to this new site economically viable.

DISCUSSION/ANALYSIS

The proposed agreement details a variety of conditions whereby Mr. O'Brien has agreed to lease the existing Saturn property and relocate his Hyundai dealership to that currently vacant facility. Although Mr. O'Brien would retain an option to purchase the property, his uncertainty about the ability to acquire adjacent land to accommodate future growth of the business has lead him to opt for a multi-year lease arrangement with a future option to purchase the property.

As set forth in the proposed agreement, Mr. O'Brien has agreed to lease the property for a minimum term of seven (7) years and to establish a Hyundai dealership at that location that will sell both new vehicles, under the Hyundai brand, as well as used vehicles under various brands. Mr. O'Brien expects to invest a minimum of \$2.2 million in this project in the form of property lease payments and various property improvements.

The proposed agreement also provides for a 50% rebate, back to Mr. O'Brien, of the 1% sales tax receipts from all dealership sales over a 48 month period with a maximum cumulative rebate amount of \$600,000. Mr. O'Brien projects the total annual gross sales at this new location to be a minimum of \$20 million. Sales at this level would result in an estimated annual rebate back to the dealership of \$100,000. Obviously, the dealership would have to perform substantially better in order for Mr. O'Brien to capture the full amount of the \$600,000 rebate allowance. Again, the rebate is capped at either 48 months or \$600,000, whichever comes first. The remaining 50% of the 1% sales tax would benefit the Town's General Fund.

The proposed agreement also contains a section that is commonly referred to as the "claw back" provision. In the event that Mr. O'Brien ceases operation of his dealership prior to the minimum seven year commitment, he will be obligated to repay to the Town any and all sales tax rebate payments that he has received up until that time. Given the amount of investment that Mr. O'Brien is committing to the property, we believe the likelihood of him leaving short of seven years is remote. However, we felt the language was important to include and Mr. O'Brien had no objection to incorporating the claw back provision into the agreement.

In addition to the sales tax sharing provisions, the agreement also specifies that the Town will support a Zoning Code waiver for a pylon sign that is taller than what Code currently permits at this location. Businesses that are in close proximity to an Interstate highway are authorized by Town Code to erect a free standing sign of up to 75 feet in height. Even though the site for this new Hyundai dealership is

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located beyond the zone permitted for Interstate signage, it is still relatively close to I-55 and, therefore, the staff recommends that the Town support a waiver for a sign up to 75 feet in height. Mr. O'Brien has indicated that he ultimately might not install a sign quite that high but would like to have the flexibility to do so if he determines it necessary.

This property has remained vacant now for over two years and it is our understanding that there have been few serious inquiries from potential commercial buyers/leasees. Given that the building was constructed for an automobile dealership, it would be difficult to retrofit the building for other non-automotive commercial uses.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF AN ECONOMIC ASSISTANCE AGREEMENT WITH OBRIEN IMPORTS OF BLOOMINGTON, INC.

WHEREAS, the Town of Normal is a home rule unit of local government with authority to legislate in matters concerning its local government and affairs; and

WHEREAS, pursuant to the Illinois Municipal Code the Town of Normal also has authority to enter into economic Assistance agreements; and

WHEREAS, O'Brien Imports of Bloomington, Inc. has indicated a willingness to invest in certain vacant property located within the Town of Normal and improve said property and operate a new car sales dealership from said property; and

WHEREAS, the development of a new car dealership facility in the Town of Normal will create job opportunities within the Town of Normal and provide an economic stimulus for future development adjacent to said dealership and otherwise stabilize the property tax base for the Town of Normal; and

WHEREAS, it is in the best interests of the health, safety and welfare of the citizens of Normal to enter into an Economic Assistance Agreement with O'Brien Imports of Bloomington, Inc. as provided herein.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE TOWN OF NORMAL, ILLINOIS:

SECTION ONE: That the President be and he is hereby authorized to execute for and on behalf of the Town of Normal, an Economic Assistance Agreement with O'Brien Imports of Bloomington, Inc., a copy of said Agreement is marked Exhibit A, attached hereto and incorporated herein by reference.

SECTION TWO: That the Town Clerk be and she is hereby authorized and directed to attest the signature of the President on said Agreement and retain an original in her office for public inspection.

ADOPTED this _____ day of _____, 2012.

APPROVED:

President of the Board of Trustees of
the Town of Normal, Illinois

ATTEST:

Town Clerk

(seal)

ECONOMIC ASSISTANCE AGREEMENT

This Agreement is entered into this ____ day of _____ 2012, by and between the Town of Normal, Illinois, a home rule unit of local government (hereafter referred to as Town) and O'Brien Imports of Bloomington, Inc.(hereafter referred to as Developer).

RECITALS

WHEREAS, the Town is a home rule unit of local government with authority to undertake matters to improve the health, safety and welfare of the citizens of Normal; and

WHEREAS, in addition to its home rule authority conferred by the Illinois Constitution, the Town has authority pursuant to the Illinois Municipal Code (65 ILCS 5/8-11-20) to enter into economic assistance agreements; and

WHEREAS, Developer desires to purchase or lease property in the Town, improve such property for the purpose of operating an automobile dealership; and

WHEREAS, the construction cost of the project including land acquisition and soft costs is estimated to be approximately two million seven hundred thousand dollars (\$2,700,000.00); and

WHEREAS, Developer would not undertake the project without the assistance of the Town as set forth in this Agreement; and

WHEREAS, the property Developer desires to purchase or lease is improved with the former Saturn dealership facility; and

WHEREAS, the Saturn dealership has not operated at said location for over one year, and the building located on said property has been vacant for over one year; and

WHEREAS, operation of an automobile dealership on the property by Developer will create job opportunities within the Town of Normal; and

WHEREAS, development of the project by Developer will provide an economic stimulus for further development of adjacent areas; and

WHEREAS, Developer meets high standards of credit worthiness and financial strength sufficient to provide evidence of equity financing for not less than ten percent of the total project costs; and

WHEREAS, the project will strengthen the commercial sector of the Town; and

WHEREAS, the project will enhance the tax base of the Town; and

WHEREAS, the Town finds that development of the project as contemplated herein is in the best interests of the Town and the health, safety, morals and welfare of its residents and in accordance with the public purposes and provisions of applicable law.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS AND OBLIGATIONS OF THE PARTIES CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY WHEREOF ARE HEREBY ACKNOWLEDGED AT THE PARTIES HERETO INTENDING TO BE LEGALLY BOUND HEREBY COVENANT AND AGREE AS FOLLOWS:

ARTICLE I: DEFINITIONS

- 1.1 Definition of Terms.** Certain terms used in this Agreement shall have the following meanings unless their content or use clearly indicates otherwise:

"Applicable Law" means all laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all Governmental Authorities, that now or hereafter during the term of this Agreement may be applicable to the Town, the Developer, and/or the Project, and the construction, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, Hazardous Materials, and accessibility of public facilities.

"Environmental Laws" means all statutes specifically described in the definition of Hazardous Materials and all federal, state and local environmental, health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

"Exterior Architectural Appearance" means the architectural character, general composition and general arrangements of the exterior of the Project, and the adjacent plazas and pedestrian areas, including the kind, color and texture of the building material and the type and character of all windows, doors, light fixtures, signs and appurtenant elements, visible from public streets and thoroughfares.

"Final Site Plan" means the final plan for the Project or any Phase thereof which sets forth the limits of the work to be done, the building locations, ingress and egress, loading areas, parking, if any, landscaping, signage and adjoining streets including one or

more elevations or sketches showing the exterior features and designs of all the buildings or structures.

“Final Completion” means the date upon which the following shall have occurred: (i) final completion of the Project in accordance with the Project Requirements as evidenced by the issuance of a certificate final completion by the Town City Manager; (ii) the issuance of any approval of construction required under the Franchise Documents; (iii) a certificate of occupancy has been issued for each component of the Project by the Town Zoning Administrator; and (iv) all improvements on the Project Site are fully completed, open and operational.

“Franchise Documents” means any and all license or franchise agreements for the Project, together with any and all documents executed or delivered in connection therewith, between the Developer and the Franchisor.

“Franchisor” means Hyundai Motor America (with a Hyundai dealership) with a license or franchise agreement for a Hyundai dealership.

“Franchise Approvals” means all approvals which are required to be obtained from the Franchisor from the commencement of the development of the Project until Final Completion of the Project in connection with the construction of the Project pursuant to Franchise Documents.

“Franchisor Requirements” means all requirements imposed upon the Project by the Franchisor pursuant to the Franchise Documents.

"Hazardous Materials" means any substance, material, waste, gas or particulate matter which is regulated by any local, state or federal governmental authority, including, but not limited to (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radioactive materials, and (v) any other material or substance which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any statute, rule or regulation of any jurisdiction including without limitation Section 311 of the Clean Water Act, Section 1004 of the Resource Conservation and Recovery Act, and Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

"Preliminary Plans" means plans and drawings for the Project or any phase thereof which are preliminary to the Construction Plans, which plans and drawings include but are not limited to the limits of the work to be done, the location of buildings and all auxiliary structures, ingress and egress, loading areas, parking, if any, proposed signage,

landscaping and one or more elevations showing the Exterior Architectural Appearance of the Project of any phase thereof.

"Preliminary Site Plan" means the site layout for the Project or any phase thereof including parking, if any, buildings, ingress and egress, pedestrian and vehicular circulation, utilities, grading, storm water detention, landscaping and service areas, and the proposed dedications and easements.

"Project" means the retail building and related facilities to be developed, and improved by the Developer or its assigns on the Project Site **as a full service new car dealership franchised by Hyundai Motor America.**

"Project Site" means the real property area upon which the Project is to be constructed.

"Sales Tax Receipts" means the revenue received by the Town from the municipal share of the State Retailer's and Service Occupation Taxes which are paid to the Town from the Local Government Tax Fund as created by an Act of the Illinois General Assembly 35 ILCS 120/3 excluding any revenue received from Home Rule Municipal Retailer's Occupation Tax which taxes are generated as a result of retail sales occurring at the Project Site.

"Substantial Completion or Substantially Complete" means complete construction, except for minor and ancillary alterations or additional work, so as to be available for the issuance of a certificate of occupancy pursuant to codes of the Town.

ARTICLE II: DEVELOPMENT OF THE PROJECT

- 2.1 Acquisition of the Project Site.** The Developer will utilize its best efforts to purchase or lease (with options to extend) for a term of seven years the Project Site (as described in Exhibit A attached hereto). In the event Developer is not able to purchase or lease the Project Site for a term of seven years (including options to extend) within 90 days of execution of this Agreement, then this Agreement shall automatically terminate unless extended by mutual agreement.

- 2.2 Development of the Project.** Developer shall use its best efforts to substantially develop the Project. The Project shall be completed and open to the public on or before August 1, 2012.
- 2.3 Progress Reports.** During the development process, the Developer shall submit monthly reports to the Town commencing 30 days after taking possession of the Property, and on the first day of each month thereafter until Substantial Completion of the Project which will provide the Town with information concerning costs of the Project, design of the Project, financing efforts and other matters relevant to the development and construction of the Project.
- 2.4 Building Footprint and Site Layout Changes.** If the Developer desires to alter the building footprint or make changes in site layout then Developer shall submit plans for town review and approval as required by applicable town codes.
- 2.5 Commencement and Completion Requirements.**
- 2.5.1 Commencement.** The Developer shall commence construction of the Project, no later than thirty (30) days after approval of the Construction Plans by the Town.
- 2.5.2 Completion.** The Developer shall Substantially Complete construction of the Project, on or before August 1, 2012, or other mutually agreeable date.
- 2.6 Quality of Construction and Conformance to Federal, State and Local Requirements.** All work with respect to the Project, the Real Property and any other structures or buildings on the Real Property shall conform to Applicable Law including, but not limited to, environmental codes and life safety codes. The Developer shall cause the Project to be commenced and to be prosecuted with due diligence and in good faith in accordance with the terms of this Agreement, and without delay and shall cause the Project to be constructed in a good and workmanlike manner in accordance with Applicable Law and approved plans.
- 2.7 Rights of Inspection:** During development of the Project, the Town or its designee shall have the right at any time and from time to time to enter upon the Project for the purposes of inspection. Inspection by the Town of the Project shall not be construed as

a representation by the Town that there has been compliance with the Construction Plans or any building or life safety codes adopted by the Town; or that the Project will be or is free of faulty materials or workmanship, or a waiver of any right the Town or any other party may have against the Developer or any other party for noncompliance with the Construction Plans, Preliminary Plans, building or life safety codes or any other ordinances of the Town or the terms of this Agreement.

- 2.8 Certificate of Completion.** Promptly after Substantial Completion of the Project and upon request of the Redeveloper, the Town will execute and deliver to the Developer a certificate of completion. Said instrument of certification by the Town shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction with respect to the obligations of the Developer and its successors and assigns that the construction of the Project thereof has been Substantially Complete in accordance with the provisions of this Agreement.
- 2.9 Additional Property.** Developer may expand the Project Site by adding adjacent property provided such modified Project Site is processed for town approval pursuant to applicable town code.
- 2.10 Sign Variance.** Developer desires to install a seventy-five (75') foot pole sign at the Project Site. Town agrees to support Developer's request for a sign height variance. Developer agrees to process such variance through the Zoning Board of Appeals as required by Town Code. In the event the sign height variance is not approved pursuant to the variation process, then Developer may terminate this Agreement.

ARTICLE III: PUBLIC INVESTMENT

- 3.1 Open Book Process.** The Town and the Developer agree that the Developer, throughout the development process of the Project or any phase thereof, shall provide the Town with project cost information.
- 3.2 Developer Reimbursement.**
- (a) The Town and Developer recognize that Developer would not undertake the Project without public assistance from the Town. In furtherance of the findings set forth in the Recitals to this Agreement Town agrees to provide Developer a rebate of certain sales tax proceeds received by Town from sales originating on the Project Site all as hereafter provided. Developer will undertake the Project described herein based in part on a reimbursement to be paid solely from a portion of the total non-home rule revenue from the municipal share of the State Retailer's and Service Occupation taxes which are paid to the Town from the Local Government Tax Fund as created by an Act of the Illinois General Assembly, 35 ILCS 120/3, as amended, on sales by retailers and servicemen located on the Project Site as shown on the attached Exhibit B (hereafter referred to as "SALES TAX RECEIPTS"). The amount of reimbursement to Developer shall be capped at \$600,000.00. The duration of the reimbursement period shall be four

years (48 months) from completion of the Project or until Developer receives \$600,000.00 whichever occurs first. The allocation of SALES TAX RECEIPTS to be shared with Developer is outlined below.

For SALES TAX RECEIPTS from sales from the Project Site provided Developer is in compliance with this Agreement: 50% of SALES TAX RECEIPTS to the Town, 50% of SALES TAX RECEIPTS to Developer. The fifty per cent (50%) represents one-half of the one (1%) per cent non-home rule municipal share of the State Retailer's and Service Occupation Taxes paid to the Town, as described above.

(b) The Town and Developer recognize that the Town also imposes a Home Rule Municipal Retailer's Occupation Tax and Vehicle Use Tax as provided by Illinois law. None of the proceeds from the Home Rule portion of the Municipal Retailer's Occupation Tax and Vehicle Use Tax received by the Town is subject to this reimbursement section. The parties recognize that the Town's receipt of sales tax revenue flows through the Illinois Department of Revenue and such receipts may be delayed a period of 6 to 12 months due to the State collection procedure. The Town's obligation to remit a portion of SALES TAX RECEIPTS as provided herein is conditioned upon proper verification of sales tax revenue generated from the Project Site by the Illinois Department Revenue and timely receipt of sales tax proceeds from the Illinois Department of Revenue. The Town shall remit sales tax reimbursements to Developer within 60 days of receipt of such Sales Tax Receipts from the State of Illinois. Unless otherwise agreed by the Parties, payment shall not commence until the March 31 following completion of the Project. The Town shall have the right, but is not required to remit sales tax reimbursement to Developer more often than described above. At no time shall total dollars remitted exceed six hundred thousand dollars (\$600,000.00).

(c) In the event Developer ceases to operate a Hyundai dealership on the Project Site at any time prior to full reimbursement of the \$600,000.00 amount as provided above, and such cessation is not the result of fire, casualty or condemnation, or other event beyond the reasonable control of Developer, the Town shall have no obligation to continue to rebate SALES TAX RECEIPTS as set forth above and the reimbursement shall immediately cease. In the event Developer ceases to operate a Hyundai dealership as provided above, and such cessation is the result of casualty or condemnation, or other event beyond the reasonable control of Developer, the Town shall suspend reimbursement of SALES TAX RECEIPTS until Developer resumes operation of a Hyundai dealership at the Project Site.

(d) The terms, covenants and agreements set forth in this Article III are binding upon Developer, its heirs, successors or assigns and upon the Town and its successors in office except Developer's right to receive a portion of the SALES TAX RECEIPTS as provided herein is a personal right and does not run with the land or accrue to the benefit of any new owner of the Project Site unless specifically assigned by Developer to such new owner by separate instrument which consent for assignment shall not be unreasonably withheld by Town. In such event Developer agrees to notify the Town of such assignment and release the Town of any liability to remit to Developer any SALES TAX RECEIPTS.

- 3.3 Project Costs.** Within thirty (30) days following Substantial Completion of the Project, the Developer shall submit in writing a list of Project Costs incurred and paid by the Developer in connection with the construction of the Project. The Town may request such underlying documentation as it deems reasonably necessary to establish the validity of such Project Costs.

ARTICLE IV: CONDITIONS PRECEDENT TO TOWN OBLIGATIONS AND ONGOING BENEFITS

- 4.1 Conditions Precedent to Transaction.** The Town's obligations under this Agreement (including, without limitation, the obligation for Public Investment) shall be subject to:
- (a) Plans.** Approval of the Plans and construction plans pursuant to Article II hereof.
 - (b) Construction Contracts.** Executed construction contracts covering the construction and phase.
 - (c) Project Financing.** Evidence of equity and/or debt financing for the Project in an amount sufficient to complete the phase of the Project.
 - (d) Reimbursement Certificate.** A certificate executed by the Developer to the effect that on and as of the date of the request for payment of Public Investment, pursuant to Article III hereof:
 - 1. All representations and warranties made by the Developer in this Agreement and all schedules, documents, certificates of exhibits given to the Town pursuant to this Agreement are true and correct in all material respects; and
 - 2. All of the covenants and obligations to be performed by the Developer under this Agreement as of the date of the certificate have been timely and properly performed.
 - 3. The Project is in compliance with Franchisor requirements with evidence from Franchisor of such full compliance.

- (e) **Public Investment Reimbursement Adjustment.** Town is providing public investment to Developer pursuant to Article III based on representations by Developer that such investment is necessary in order for the Project to develop in a commercially reasonable manner. Developer has represented that the Project will provide employment opportunities within the Town and will be operated for a minimum of seven years in compliance with Hyundai franchise requirements as a full service new car sales dealership. In the event Developer fails to operate the Project for a minimum of seven years in compliance with Hyundai franchise requirements for new car sales dealerships or in a manner substantially equivalent to other new car sales dealerships located in the Normal/Bloomington area then Town may adjust the Public Investment to be remitted to Developer as follows: 1. If the Hyundai franchise is lost then all public investment remaining to be paid to Developer shall cease and Developer shall repay Town any and all public investment (Sales Tax Receipts Remitted to Developer) paid by Town pursuant to Article III above; 2. If Developer fails to operate a full service new car dealership on the Project Site in a manner substantially equivalent to other new car sales dealerships in located in Normal and Bloomington then the Public Investment shall be reduced on a pro rata basis equivalent to the number of employees employed by Developer at the Project Site compared to the average number of employees employed at other full service new car dealerships in Normal and Bloomington and the Developer shall repay Town a similar pro rata amount of any and all public investment paid by Town pursuant to Article III above. For example if Developer employ 50% of the average number of employees employed in other full service new car dealerships in Normal and Bloomington then the remaining Public Investment shall be reduced by 50%, and any amount paid to Developer by Town shall be repaid to Town by Developer on a similar pro rata basis.

ARTICLE V: DEVELOPMENT AND OPERATION OF THE PROJECT

- 5.1 Compliance with Applicable Law.** During the development and operation of the Project, Developer and its agents, contractors, officers and employees shall comply with Applicable Law.
- 5.2 Operation and Maintenance of the Dealership.** The Developer for itself and its successors and assigns covenants that it will maintain the Hyundai Dealership in good condition (reasonable wear and tear excepted) during the term of this Agreement. The Developer shall operate the Hyundai Dealership in a professional manner that meets Franchisor Requirements. In addition, the Developer will do all things reasonably necessary to operate the Hyundai Dealership in substantial compliance with Applicable Law.
- 5.3 Minimum Cost of Project.** The Developer covenants and agrees that the cost of the Project, including real property acquisition and soft costs, shall not be less than Two

Million Seven Hundred Thousand (\$2,700,000) Dollars. Such costs including payments made under a lease for all extended terms or fee acquisition cost of two million (\$2,000,000) dollars and building improvements and equipment of at least seven hundred thousand (\$700,000) dollars.

- 5.4 Final Project Cost Analysis for the Project.** Upon completion of the Project and the issuance of the Certificate of Occupancy by the Town, the Developer shall submit to the Town the Final Project Cost Analysis for the Project. The Town, upon reasonable notice to the Redeveloper, may request copies of the underlying documentation and the records of the Redeveloper that support the information contained in the Final Project Cost Analysis. The Final Project Cost Analysis shall be signed by both the Town and the Developer.

ARTICLE VI: DEVELOPER COVENANTS AND RESTRICTIONS

- 6.1 Project Subject to Redevelopment Plan and Agreement.** The Developer agrees to comply with the terms and conditions of this Agreement and to use its best efforts to construct the Project subject to the terms, covenants, building and use restrictions, and other conditions in the Approved Plans and this Agreement.
- 6.2 Non-discrimination.** The Developer shall not discriminate in violation of any applicable federal, state or local laws or regulations upon the basis of race, color, religion, sex, age, or national origin or other applicable factors in the sale, lease or rental, or in the use or occupancy of the Project or any part thereof.
- 6.3 Property Taxes.** Developer acknowledges that the Town in executing this Agreement has relied upon its reasonable expectation that the construction and operation of the Project will increase the amount of real property taxes with respect to the Project and the Project Site. The Developer covenants that in the event it applies for, seeks, or authorizes any exemption from the imposition of general real property taxes on the Project or Project Site, or any portion thereof, and, as a result thereof, the property taxes are not or will not be paid with respect to the Project or the Project Site, or a portion thereof, the Town, no less than sixty (60) days after written notice to the Developer, shall be entitled to rescind the grant of benefits by the Town to the Developer pursuant to this Agreement and after such rescission the Developer shall promptly reimburse the Town for the cost of all the benefits granted by the Town to the Developer pursuant to this Agreement that have theretofore been received by the Developer. Notwithstanding the above, if, within sixty (60) days following the receipt of

the written notice from the Town to the Developer, the Developer takes such action as is necessary to void such application for, attempt for, or authorization of such exemption from the imposition of general real property taxes on the Project or the Project Site, or a portion thereof, the Town's right to rescind, pursuant to this provision, the grant of benefits shall be null and void and the Developer shall not be obligated to convey, repay or otherwise reimburse the Town for any benefits granted and received pursuant to this Agreement. Nothing herein shall be construed so as to prevent the Town from enforcing any other rights it may have pursuant to this Agreement. Also, nothing herein shall be construed so as to prevent the Developer from otherwise contesting the assessment or collection of any real property taxes under procedures set forth in the laws of the State of Illinois or any political subdivision thereof, provided that the Developer gives the Town fifteen (15) days prior written notice of its intent to contest the assessment or collection of real property taxes; provided, however, that the Developer covenants and agrees that nothing contained herein shall relieve the Developer from complying with all laws, rules and regulations of the State of Illinois and any political subdivision thereof pertaining to the levy and collection of said general real estate taxes. This Section shall be an obligation of the Developer (or assignee of the Developer or subsequent Owner of the Project or Project Site or any portion thereof, as the case may be) only during the period that the Developer (or assignee of the Developer or subsequent Owner of the Project or Project Site or any portion thereof, as the case may be) owns a direct or indirect interest in the Project or Real Property or any portion thereof.

- 6.4 Duration of Covenants.** It is intended and agreed that the covenants provided in this Article shall remain in effect until payment of the Public Investment provided in Article V and that the covenants provided in Section 6.2 hereof shall remain effective without any time limitation; provided, that all such covenants shall be binding on the Developer only for such period as the Developer maintains a direct interest in the Project Site or the Project or part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), and only with respect to such direct interest in the Project Site or the Project or part thereof.
- 6.5 Covenants Running with the Land.** Subject to Section 6.4, it is intended and agreed that the covenants set forth in Sections 6.1 through 6.3 above shall be covenants running with the land and that they shall in any event be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the Town, and with regard to Section 6.2 hereof, the Town, the State of Illinois and the United States of America.

ARTICLE VII: INDEMNIFICATION

7.1 Developer Indemnification of the Town. So long as the Developer maintains a direct interest in the Project or Project Site or any part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), the Developer agrees to indemnify and save the Town and its officers and employees harmless against all claims by or on behalf of any person, firm or corporation arising from (i) the Developer's operation or management of the Project, or from any work or thing done by the Developer on the Project Site, or any work or activity of the Developer connected to the construction of the Project; (ii) any breach or default on the part of the Developer in the performance of any of its obligations under or in respect of this Agreement; (iii) any act of negligence or willful or wanton misconduct of the Developer or any of its agents, contractors, servants or employees; (iv) any violation by the Developer of any easements, conditions, restrictions, building regulations, zoning ordinances, environmental regulations or land use regulations affecting the Project Site or the Project; (v) any violation of Applicable Law or (vi) any violation by the Developer of state or federal securities law in connection with the offer and sale of interests in the Developer, its affiliates or any part of the Project. The Developer agrees to indemnify and save the Town harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Developer, upon receipt of notice in writing from the Town setting forth the particulars of such claim or action, the Developer shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The Town shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Town. It is agreed and understood that the aforesaid indemnities in this Article IX shall be binding on the Developer only for such period as the Developer maintains a direct interest in the Project or Project Site or part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), and only with respect to such direct interest in the Project or Project Site or part thereof. Provided, notwithstanding the foregoing, the Developer shall not be liable to indemnify and hold the Town harmless from any portion of any such loss, liability, cost or expense which results from the sole negligence or willful misconduct of the Town, its officials, agents, or employees.

7.2 Town Indemnification of the Developer. To the extent not prohibited by law, the Town of Normal, so long as the Developer maintains a direct interest in the Project or Project Site or any part thereof (excluding, for example, an interest therein solely as a creditor or mortgagee), shall indemnify and hold harmless the Developer and its directors, officers, employees and

agents from any and all claims, damages, costs, and expenses, including without limitation, reasonable attorney's fees caused by the Town of Normal or any of its agents, contractors, officials or employees arising from: (i) any act of negligence or willful and wanton misconduct of the Town or any of its agents, contractors, officials or employees; (ii) the Town's construction of the Public Improvements; (iii) any breach or default on the part of the Town in the performance of any of its obligations under or in respect of this Agreement; or (iv) any violation of Applicable Law. The Town agrees to indemnify and save the Developer harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Town, upon receipt of notice in writing from the Developer setting forth the particulars of such claim or action, the Town shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The Developer shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Developer. Notwithstanding the foregoing, the Town of Normal retains any and all defenses and immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* In addition, neither party intends this paragraph to waive its rights to limited liability under the Illinois Worker's Compensation Act or *Kotecki* line of cases (146 Ill 2d 155, 585 NE 2d 1023 (1991)). Provided, further, notwithstanding the foregoing, the Town shall not be liable to indemnify and hold the Developer harmless from any portion of any such loss, liability, cost or expense which results from the negligence or willful misconduct of the Developer, its officials, agents, or employees.

ARTICLE VIII: PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

8.1 Prohibition Against Transfer of Project and Project Site Prior to Completion of Construction. The Developer represents and agrees that prior to the Substantial Completion of construction of the Project as certified by the Town (in accordance with Sections 2.10 and 2.11 hereof) the following prohibitions and restrictions shall apply to the transfer of the Project and Project Site:

8.1.1 Prohibitions. Except only by way of security for a mortgage, deed of trust or other facility only for the purpose of obtaining equity or debt financing necessary to enable the Developer to construct the Project, the Developer has not made or created, and will not, prior to the Substantial Completion of construction of the Project as certified by the Town, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement, the Project, the Project Site or any part thereof or any interest therein, or any contract agreement to do any of the same, except for utility, support, ingress and egress and similar easements, without the prior written approval of the Town. In addition, transfers to the holder of a

mortgage, deed of trust or other facility (such as a foreclosure sale or transfer in lieu of foreclosure) shall also be permitted subject to this Agreement.

8.1.2 Conditions for Approval. The Town shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval pursuant to this Section 8.1, that:

- (a)** Any proposed transferee shall have the qualifications and financial responsibility and capacity, as reasonably determined by the Town, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or related to part of the Project, such obligations to the extent that they relate to such part).
- (b)** Any proposed transferee, by instrument in writing reasonably satisfactory to the Town and in a form recordable among the land records, shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event that the transfer is of or relates to part of the Project, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project, or any part thereof, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the Town of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project or Project Site or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the Town of any rights or remedies or controls regarding the Project and the construction thereof that the Town would have had, had there been no such transfer.
- (c)** There shall be submitted to the Town for review all instruments and other legal documents involved in effecting the transfer.
- (d)** The Developer and its transferee shall comply with such other reasonable conditions as the Town may find desirable in order to achieve and safeguard the purposes of the Approved Plan and this Agreement.

- (e) The consideration payable for the transfer or assignment by the transferee or assignee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Developer of the Project (or allocable part) and the purpose of this provision is to preclude assignment of this Agreement or transfer of the Project or the Project Site (or any parts thereof) for pecuniary gain or profit prior to Substantial Completion of the Project, and to provide that in the event any such assignment or transfer is made (and is not cancelled), the Town shall be entitled to any pecuniary gain to be received by the Developer to the extent that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this Section 8.1.2(e) and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the Town at the same time as or prior to the transfer.

8.2 Transfer of Project After Completion of Construction. After Substantial Completion of construction of the Project as certified by the Town the Redeveloper (and any subsequent Owner of a the Project or any part thereof) may transfer the Project (or any portion thereof) without the consent of the Town by instrument in writing reasonably satisfactory to the Town, and in a form recordable among the land records, pursuant to which the transferee shall expressly assume with regard to the Project all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject with regard to the Project or any portion thereof. Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Project (or any portion thereof), shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, agreements, conditions, or restrictions, or deprive or limit the Town of or with respect to any rights or remedies or controls with respect to the Project or the construction thereof; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of the Project (or any portion thereof), or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate legally or practically, to deprive or limit the Town of any rights or remedies or controls regarding the Project and the construction thereof that the Town would have had, had there been no such transfer. No such transfer shall be deemed to transfer any rights of the Developer to the reimbursements set forth under Article III above, unless such rights are expressly set forth in the instrument of assignment.

8.3 Status of Assignee. Any assignee of the Developer prior to Substantial Completion, who is approved under the terms above, shall be considered the "Developer" for all purposes of this Agreement as to such portion of the Project that has been assigned.

8.4 Assignment to Affiliated Entity. Nothing herein shall be construed to prevent the Developer from assigning its interest in this Agreement to an affiliated entity owned or

controlled by the Developer or a majority of the owners of the Developer, provided that such entity or its guarantors has the financial capacity to perform the obligations of the Developer pursuant to this Agreement and such entity in writing assumes such obligations and conditions in compliance with the terms and conditions set forth in this Agreement.

- 8.5 Release of Developer.** Any consent by the Town pursuant to Section 8.1 above to any total or partial transfer of the Project or the Project Site shall not be deemed a release of the Developer from any of its obligations hereunder, or from any conditions or restrictions to which the Developer is subject, unless the Developer is expressly released in writing by the Town. However, a transfer of the Project or the Project Site pursuant to Section 8.2 above shall be deemed a release of Developer from all of its obligations hereunder.

ARTICLE IX: DEFAULT AND REMEDIES

- 9.1 Events of Default.** The following shall be events of default (the "Events of Default") with respect to this Agreement:
- 9.1.1 Misrepresentation.** If any material representation made by the Developer or the Town in this Agreement, or in any certificate, notice, demand or request made by the Developer or the Town in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect as of the date made; or
 - 9.1.2 Breach.** If there is a breach by the Developer or the Town of any material covenant, warranty or obligation set forth in this Agreement.
- 9.2 Remedies Upon Default.** In the case of an Event of Default by either party hereto or any successors to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice (or within a reasonable time if the Event of Default cannot be diligently cured within such sixty (60) day period). If, in such case action is not taken, or not diligently pursued, or the Event of Default shall not be cured or remedied within a reasonable time, the aggrieved party may terminate this Agreement pursuant to Article X below, or may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Event of Default, including but not limited to, proceedings to compel specific performance by the party in default of its obligations. In no event, however, shall the Town exercise the right of specific performance in order to compel the continuous operation of a new car Hyundai Dealership on the Project Site; provided that if the operations of the Project shall cease as a new car Hyundai Dealership and not recommenced within the time frames set forth in this Article IX then the Town's obligations to make the Public Investment pursuant to Article III above shall cease on a date that is ninety (90) days prior to the last day of continuous operation of the Project as a new car Hyundai Dealership.

In case the Town or the Developer shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the party initiating such proceedings, then and in every such case the Developer and the Town shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the Town shall continue as though no such proceedings had been taken.

9.3 Other Rights and Remedies of Town and Developer: Delay in Performance Waiver.

9.3.1 No Waiver by Delay. Any delay by the Town or the Developer in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the Town or the Developer should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by the Town or the Developer with respect to any specific Event of Default by the Developer or the Town under this Agreement be considered or treated as a waiver of the rights of the Town or the Developer under this Section or with respect to any Event of Default under any section in this Agreement or with respect to the particular Event of Default, except to the extent specifically waived in writing by the Town or the Developer.

9.3.2 Rights and Remedies Cumulative. Except as otherwise provided herein, the rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by either such party with respect to the performance, nor the manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

9.3.3 Delay in Performance. For the purposes of any of the provisions of this Agreement except with regard to payment of real estate taxes as provided herein, neither the Town, nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or in default of, its obligations with respect to the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of the public enemy, acts of federal, state or local government (other than

the Town, in the case of as assertion of *force majeure* by the Town), acts of the federal or state judiciary, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Town or the Developer with respect to the beginning and completion of the construction of the Project shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section, shall within thirty (30) days after the beginning of any such enforced delay have first notified the other party thereof in writing, of the cause or causes thereof, and requested an extension of the period of enforced delay. Such extensions of schedule shall be agreed to in writing by the parties hereto, and the parties agree to negotiate such extensions in good faith.

ARTICLE X: TERMINATION OF AGREEMENT

- 10.1 Termination by the Town.** The Town has the right to terminate this Agreement upon ten (10) days prior written notice to the Developer if any Event of Default by the Developer is not cured within the time frame set forth in Article IX above.
- 10.2 Termination by the Developer.** The Developer has the right to terminate this Agreement upon ten (10) days prior written notice to the Town if any Event of Default by the Town is not cured within the time frame set forth in Article IX above.
- 10.3 Term of Agreement.** Unless sooner terminated as provided herein, this Agreement shall expire seven years following opening of the project site to the public or August 1, 2022 whichever is later.

ARTICLE XI: REPRESENTATIONS OF THE DEVELOPER

The Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

- 11.1 Organization.** The Developer is an Illinois limited liability company and is in good standing with the State of Illinois.
- 11.2 Authorization.** The Developer has power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

- 11.3 Non-Conflict or Breach.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.
- 11.4 Pending Lawsuits.** There are no lawsuits either pending or threatened that would materially, adversely affect the ability of the Developer to proceed with the construction and development of the Project on the Project Site.
- 11.5 Location of Project.** The Project will be located within the Project Site.
- 11.6 Conformance with Requirements.** The Developer represents and warrants that the Construction Plans and construction of the Project in accordance with the Construction Plans will in all respects conform to and comply with all covenants, conditions, restrictions, zoning ordinances, environmental regulations and land use regulations affecting the Project Site.

ARTICLE XII: REPRESENTATIONS OF THE TOWN

The Town represents, warrants and agrees as a basis for the undertakings on its part contained herein that:

- 12.1 Organization and Authorization.** The Town is a municipal corporation organized and existing under the laws of the state of Illinois, and has the power to enter into and by proper action has been duly authorized to execute, deliver and perform this Agreement.
- 12.2 Non-Conflict or Breach.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Town is now a party or by which the Town is bound.

12.3 Pending Lawsuits. There are no lawsuits either pending or threatened that would affect the ability of the Town to perform this Agreement.

ARTICLE XIII: MISCELLANEOUS

13.1 Prevailing Wages. To the extent required by applicable law, the Developer shall pay prevailing wages for construction of the Public Improvements subject to the following:

- (a) A listing of the current prevailing wage rates is available through the Town.
- (b) Contractors must comply with provisions of Public Act 93-38 which requires certain language pertaining to prevailing wage be inserted into subcontracts. A list of prevailing wages in effect must be posted at the Project Site.
- (c) The Developer must submit certified payrolls, on a weekly basis, to assure the payment of prevailing wage. This requirement applies to all contractors and subcontractors working on the Project. Certified payrolls shall be submitted to the Town at 100 E. Phoenix Ave., Normal, Illinois 61761. The Town reserves the right to interview contractor's employees on the job to ascertain compliance with this requirement.

13.2 Authorized Representatives.

13.2.1 Developer. By complying with the notice provisions hereof, the Developer shall designate an authorized representative from time to time, who, unless applicable law requires action by the Board of Directors of the Developer, shall have the power and authority to make or grant or do all things, requests, demands, approvals, consents, agreements and other actions required or described in this Agreement for and on behalf of the Developer.

13.2.2 Town. By complying with the notice provisions hereof, the Town shall designate an authorized representative from time to time, who shall communicate with the Developer on behalf of the Town. Such representative shall not have the authority to make agreements on behalf of the Town.

13.3 Entire Agreement. The terms and conditions set forth in this Agreement and exhibits attached hereto supersede all prior oral and written understandings and constitute the entire agreement between the Town and the Developer with respect to the subject matter hereof.

13.4 Binding Upon Successors in Interest. This Agreement shall be binding upon all the parties hereto and their respective heirs, successors, administrators, assigns or other successors in interest.

13.5 Titles of Paragraphs. Titles of the several parts, paragraphs, sections or articles of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any provision hereof.

13.6 Notices. Notices or demands hereunder shall be in writing and shall be served (a) by personal delivery; or (b) by certified mail, return receipt requested to:

the Town:

with copies to:

Town Clerk

Town Hall

100 East Phoenix Ave.

Corporation Counsel

P.O. Box 589

Normal, Illinois 61761

the Developer:

with copies to: Bob Lenz

202 N Center, Bloomington IL 61701

O'Brien Imports of

Bloomington, Inc.

600 Greenbriar Drive

Normal, IL 61761

or to the last known address of either party or to the address provided by any assignee if such address has been given in writing. In the event said notice is mailed, the date of service of such notice shall be deemed to be two (2) business days after the date of delivery of said notice to the United States Post Office.

13.7 Severability. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby.

13.8 Memorandum of Agreement. At either party's request, the parties shall execute and record a Memorandum of Agreement with respect to the Project and the Project Site.

13.9 Further Assistance and Corrective Instruments. The Town and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required by the parties hereto for carrying out the intention of or facilitating the performance of this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused their respective seals to be affixed and attested thereto as of the date first above written.

TOWN OF NORMAL
an Illinois municipal corporation

O'Brien Imports of Bloomington, Inc.

By: _____
Christopher Koos

By: _____
Print Name: _____

Its Mayor

Attest:

By: _____

Wendellyn J. Briggs
Its City Clerk

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____