



REPORT TO COUNCIL City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
June 5, 2007

Honorable Mayor and Members of the City Council

Title: Agreement: Approve Ground Lease with Raption Investment Group, LLC for the Fulton Avenue Development Project

Location/Council District: 3701 Fulton Avenue, Council District 2

Recommendation: Adopt a **Resolution** authorizing the City Manager to execute a ground lease agreement with Raption Investment Group, LLC for the Fulton Avenue Development Project

Contact: James R. Rinehart, Citywide Economic Development Manager, 808-5054

Presenters: Not applicable

Department: Economic Development

Division: Citywide

Organization No: 4453

Description/Analysis

Issue: The Fulton Avenue Development Project is located on City property (3701 Fulton Avenue) that was formerly used by the Sacramento Trapshooting Club. Raption Investment Group LLC ("Raption LLC") and its affiliate, Mel Raption, Inc. ("Raption Inc."), have been negotiating with the City since 2004 for a lease of this site. On November 21, 2006, the City Council approved City Agreement No. 2006-1393, titled *Agreement Regarding Conditions Precedent to Lease of Land*, between the City and Raption LLC ("Conditions Precedent Agreement"). The Conditions Precedent Agreement memorializes the parties' progress in negotiating a lease and commits them to perform certain conditions. All of those conditions have been satisfied, and the City and Raption LLC are now prepared to execute the attached ground lease for the site.

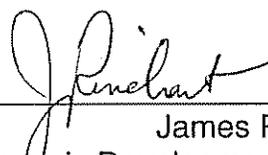
Policy Considerations: The Fulton Avenue Development Project is consistent with the City of Sacramento Strategic Plan goals to expand economic development throughout the City and achieve sustainability and livability.

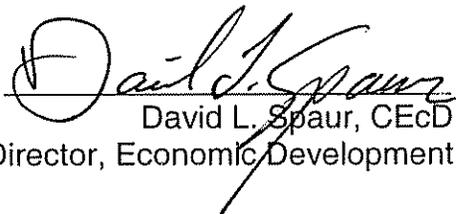
Environmental Considerations: The City Council approved the Fulton Avenue Development Project and an accompanying environmental impact report in January 2007. The project complies with the California Environmental Quality Act (CEQA).

Rationale for Recommendation: The City of Sacramento and Rapton LLC have expended extensive time and financial and professional resources to remediate and develop the site of the Fulton Avenue Development Project. Both parties have fulfilled their contractual obligations to date. In order for the Fulton Avenue Development Project to achieve the highest and best use of the site, it is recommended that the City Council direct the City Manager to execute the attached Ground Lease between the City and Rapton LLC.

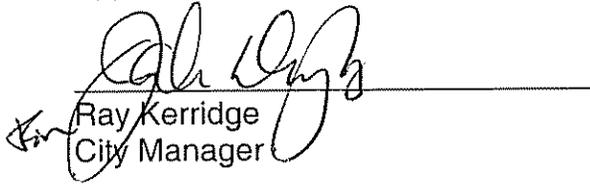
Financial Considerations: Once the Ground Lease is executed, the project site will generate lease revenues of \$1,000/month during construction. Once Rapton occupies the site, it will remit \$54,313/month in rent and approximately \$700,000 annually in sales tax revenues. The lease payments will be used to pay the debt service on the \$6.4 million CRCIP "bridge loan".

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 
James R. Rinehart
Citywide Economic Development Manager

Approved by: 
David L. Spaur, CEcD
Director, Economic Development

Recommendation Approved:



Ray Kerridge
City Manager

Table of Contents:

	Pg	1-3	Report
Attachments			
1	Pg	4	Background
2	Pg	5	Agreement Regarding Conditions Precedent to Lease of Land and Resolution #2006-898
3	Pg	7	Ground Lease
4	Pg	58	Resolution approving Ground Lease

Attachment 1**FULTON AVENUE DEVELOPMENT BACKGROUND REPORT**

The City had leased 21± acres of Del Paso Park (the "Site") to the Sacramento Trapshooting Club ("STC") site since approximately 1915. In 2002, the City Council directed staff to examine potential alternatives for the "highest and best" uses of the Site. In 2004, Colliers Macaulay Nicolls (California), Inc., which does business as Colliers International, presented the City with a written request from Mel Rapton, Inc. ("Rapton Inc.") for a lease of a portion of the Site. Rapton Inc. does business as Mel Rapton Honda and desires to relocate its automobile dealership from Fulton Avenue to the Site. To this end, on June 1, 2004, the City and Rapton Inc. executed an *Exclusive Right to Negotiate* (the "ERN"). The City Council has renewed the ERN twice, and Rapton Inc. has assigned its rights under the ERN to its affiliate, Rapton Investment Group LLC ("Rapton LLC").

In July 2004, the City initiated a process under the regulatory oversight of the County of Sacramento Environmental Management Department (the "EMD") and the Central Valley Regional Water Quality Control Board (the "Board"), by which the contamination of the Site would be characterized and appropriate remediation would be developed and ultimately implemented.

On September 30, 2004, STC's lease of the Site expired, and the City notified STC that its lease had converted to a month-to-month basis. The City subsequently terminated the lease, effective June 30, 2006.

On December 12, 2006, the City Council approved an *Agreement Regarding Conditions Precedent to Lease of Land* between the City and Rapton LLC. That agreement memorializes the parties' progress in negotiating a lease of the Site and commits the parties to perform specified tasks.

In January 2007, the City Council approved the following documents in connection with development of the site: Environmental Impact Report; Mitigation Monitoring Plan; General Plan Amendment to re-designate 20± gross acres from Parks, Recreation, and Open Space to Heavy Commercial/Warehouse; Rezone of 20± gross acres from the Single Family (R-1) zone to the Heavy Commercial Planned Unit Development (C-4 PUD) zone; Establishment of the Fulton Avenue Planned Unit Development (PUD), including PUD Guidelines and a PUD Schematic Plan; Tentative Parcel Map to subdivide one parcel into two parcels; and Subdivision Modifications to allow non-standard streets.

In March 2007, the EMD approved the Final Implementation Plan for the remediation of the Site. In April and May 2007, the City received approval from the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, and the Central Valley Regional Water Quality Control Board for work associated with the remediation of the Site.

Financing for this project has been provided by a "pre-development funding" in the amount of \$500,000 and by a "bridge loan" in the amount of \$6.4 million, approved by the City Council on May 23, 2006.

Attachment 2

RESOLUTION NO. 2006-898

Adopted by the Sacramento City Council

December 12, 2006

**AGREEMENT REGARDING CONDITIONS PRECEDENT TO
LEASE OF LAND BETWEEN THE CITY AND MEL RAPTON, INC.
FOR THE FULTON AVENUE DEVELOPMENT PROJECT (CB33)**

BACKGROUND

- A The City of Sacramento owns the property at 3701 Fulton Avenue, the proposed site of the Fulton Avenue Development Project
- B In 2002, the City Council directed staff to examine potential alternatives for the "highest and best" uses for the site that would offer a compatible and productive use of the property
- C An Exclusive Rights to Negotiate (ERN) was executed on June 1, 2004, between the City and Mel Rapton, Inc. The ERN grants Mel Rapton, Inc. the exclusive right to negotiate with the City for a lease of 3701 Fulton Avenue. It has been renewed by City Council three times and expires on August 31, 2007
- D The Fulton Avenue Development Project is currently undergoing environmental analysis under California Environmental Quality Act (CEQA) and will not be presented to the City Council for consideration until January 2007, therefore, the City cannot execute a lease for this project at this time
- E The Agreement Regarding Conditions Precedent to Lease of Land presented to the City Council at this meeting is a legal instrument that was negotiated by the Economic Development Department and the City Attorney's Office with Mel Rapton Honda's representatives. It memorializes the parties' progress in negotiating a lease and commits both parties to perform specified actions

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1 The facts set forth in the Background are correct
- Section 2. The agreement regarding the conditions precedent to lease of land between the City and Mel Rapton, Inc. is approved and the City Manager is authorized to execute such agreement
- Section 3 The City Manager may make non-substantive changes to the Agreement with the approval of the City Attorney

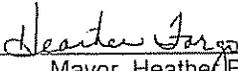
Adopted by the City of Sacramento City Council on December 12, 2006 by the following vote.

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo

Noes: None

Abstain: None

Absent: None



Mayor, Heather Fargo

Attest:


Shirley Concolino, City Clerk

Attachment 3

GROUND LEASE

This Ground Lease ("this Lease"), dated _____, 2007, is between the **City of Sacramento** ("Landlord"), a California municipal corporation; and **Rapton Investment Group LLC** ("Tenant"), a California limited-liability company.

Background

A. Landlord owns the real property generally located at 3701 Fulton Avenue in Sacramento, California, and comprising approximately 17.5 gross acres (the "Property"). The Property is more particularly described and depicted in **Exhibit A**.

B. Early in 2004, Tenant's affiliate, Mel Rapton, Inc. ("Rapton"), informed Landlord that it desires to relocate its Honda dealership to the Property. Landlord desires to lease the Property to Rapton, given Rapton's over 30 years of experience in operating successful, quality motor-vehicle dealerships within the Sacramento-area market. Accordingly, Landlord and Rapton entered into an Agreement for Exclusive Right to Negotiate a Lease dated June 1, 2004, and amended as of August 1, 2004; August 31, 2005; and August 31, 2006. Landlord and Rapton subsequently agreed that Rapton not only would relocate its Honda dealership to the Property but also would have the right to sublease a portion of the Property to a High-Volume Dealership (defined in Section 1.05). With Landlord's consent, Rapton has assigned to Tenant all of Rapton's rights and obligations under the Agreement for Exclusive Right to Negotiate a Lease.

C. During the negotiations for this Lease, Landlord, Tenant, and Rapton entered into an Agreement Regarding Conditions Precedent to Lease of Land, designated as City Agreement No. 2006-1393 and dated December 12, 2006 (the "Conditions Precedent Agreement"), which provided the framework for Landlord's leasing the Property to Tenant. Among other things, it obligated Tenant and Rapton to provide Landlord with specified financial information, and it obligated Landlord to do the following:

- (1) Obtain a parcel map reconfiguring the Property into legal parcels; a rezoning of the Property to a C-4 designation; a planned-unit development, including any associated special permits and approvals, that allows the sale of new and used automobiles on the Property as well as the installation of a freeway pole sign and other on-site signage for two High-Volume Dealerships (defined in Section 1.05); and any general-plan amendments needed for C-4 zoning and the planned-unit development.
- (2) Comply with the California Environmental Quality Act ("CEQA"), as required by law.

D. All of the conditions set forth in the Conditions Precedent Agreement to Lease have been satisfied, including Landlord's compliance with CEQA.

Article 1: Definitions

This article defines the terms "Effective Date," "Premises," "Area 1," "Area 2," "Improvements," "Motor Vehicles," and "High-Volume Dealership." Other terms are defined in the provisions where they first appear.

Section 1.01. The Effective Date

The "Effective Date" of this Lease is the date as of which both Landlord and Tenant have signed this Lease, as indicated by the dates in the signature blocks below.

Section 1.02. The Premises; Area 1 and Area 2

Unless expressly provided otherwise, "the Premises" means all of the following: the Property, all rights and easements appurtenant to the Property, all improvements Landlord has made to the Property in accordance with Subsection 6.01, and the Improvements identified in Subsection 1.03(a). For purposes of identification, the Premises are depicted on the site map attached as Exhibit B, which divides the Premises into "Area 1" and "Area 2." Area 1 comprises approximately 9.1 acres and will be subleased to Rapton, and Area 2 comprises approximately 8.4 acres and may be subleased to a High-Volume Dealership (see Sections 1.05 and 12.04). Unless expressly provided otherwise, "the Premises" does not mean the Improvements that are identified in Subsection 1.03(b) and placed by Tenant (or, for Area 2, a subtenant) on the Property, regardless of whether those Improvements are considered affixed to, and part of, the Property.

Section 1.03. The Improvements

Unless expressly provided otherwise, the "Improvements" means all of the following:

- (a) The asphalt paving required to create the impermeable cap on the Property in accordance with the Remediation Plan described in Subsection 6.01(a). Tenant shall install this paving at no cost to the Landlord.
- (b) All buildings, landscaping, lighting, related structures, and other appropriate features (1) that Tenant constructs or causes to be constructed on Area 1 for use by Rapton's automobile dealership and (2) that Tenant, an assignee, or a subtenant constructs or causes to be constructed on Area 2 for use by a High-Volume Dealership (see Section 1.05). Each dealership may include a vehicle-repair-and-maintenance facility, a car wash, a body-repair shop, and as many as two above-ground fuel-storage tanks; alternatively, Tenant may install and operate a single fueling station, with two above-ground fuel-storage tanks, to serve both Area 1 and Area 2. In addition, each dealership may include any other lawful use that is reasonably related to the operation of a High-Volume Dealership and any other uses that Landlord approves in writing; Landlord shall not withhold, condition, or delay its approval unreasonably.

Section 1.04. Motor Vehicles

“Motor Vehicles” means one or more of the following: cars, vans, mini-vans, sport-utility vehicles, and pickup trucks.

Section 1.05. High-Volume Dealership

“High-Volume Dealership” means either of the following:

- (a) For Area 1, the Honda dealership owned and operated by Rapton, i.e., Mel Rapton Honda.
- (b) For Area 2, a franchised dealership (which may hold multiple franchises) that sells and services new and used Motor Vehicles and meets the following sales criteria:
 - (1) The following definitions apply in this Subsection 1.05(b):
 - (A) “State Economic Impact Report” means the *State Economic Impact Report of California Franchised New Car and Truck Dealerships* published annually by the California Motor Car Dealers Association. Each year’s report contains an Industry Profile showing total dollar sales for an average California dealership during the immediately preceding year.
 - (B) “Available Data” means the information Tenant provides to Landlord in accordance with Subsection 12.04(b)(3).
 - (C) “CPI” means the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose, All Items (reference base 1982-84 = 100).
 - (2) A dealership qualifies as a “High-Volume Dealership” if the Available Data indicate, to Landlord’s reasonable satisfaction, that during the first 12 months of the dealership’s operations on Area 2 the dealership will sell at least 1,000 motor vehicles from its operations on Area 2 (with at least 50% of those motor vehicles being new) and will generate total gross revenues from its operations on Area 2 at least equal to the product that results from multiplying \$37,500,000 by a fraction that has—
 - (A) a numerator equal to the total dollar sales for an average California dealership, as shown in the Industry Profile contained in the most current State Economic Impact Report available when Landlord determines whether a dealership qualifies as a High-Volume Dealership; and
 - (B) a denominator equal to \$61,748,237, which was the total dollar sales for an average California dealership in 2005, as shown in the State Economic Impact Report for 2006.

If the State Economic Impact Report is no longer published, and if a comparable report of sales volumes for California automobile dealerships is not available, then the numerator of the fraction described in Subsection 1.05(b)(2) will be equal to the most recent bimonthly CPI that is available when Landlord determines whether a dealership qualifies as a High-Volume Dealership, and the denominator will be equal to the CPI for 2006.

- (3) The sales criteria in this Subsection 1.05(b) are relevant only to the City's approval of proposed subtenants of Area 2. They do not establish annual operating requirements for approved subtenants. Nor do they preclude Tenant from proposing, for Landlord's consideration, a subtenant that does not meet the specified criteria. Landlord may approve or reject such a proposed subtenant in Landlord's sole and absolute discretion.

Article 2: Lease of Premises and Term of Lease

Section 2.01. Lease of Premises

Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, on the terms and conditions set forth in this Lease.

Section 2.02. Term of Lease

- (a) *Initial Term.* The "Initial Term" of this Lease consists of three phases:
- (1) The "Pre-Possession Phase," which begins on the Effective Date and ends on the date when Landlord has completed work on the Remediation Plan and improvements described in Section 6.01 and delivered possession of the Premises to Tenant. For purposes on this Subsection 2.02(a)(1), work on the Remediation Plan will be considered complete when the remaining tasks under the Remediation Plan (e.g., post-closure monitoring) will not interfere unreasonably with Tenant's use of the Premises.
 - (2) The "Construction Phase," which begins at the end of the Pre-Possession Phase and ends on the date when Landlord, acting as a governmental entity, has issued Tenant a certificate of occupancy for the first dealership on the Premises.
 - (3) The "Operations Phase," which begins at the end of the Construction Phase and ends 30 years after the Construction Phase begins. Within 30 days after the Operations Phase begins, Landlord and Tenant shall execute, and Landlord shall record, a Memorandum of Commencement Date in the form attached as **Exhibit C**.
- (b) *First Extended Term.* Upon expiration of the Initial Term, Tenant will have the right to extend the Lease for an additional 15 years (the "First Extended Term"). The First Extended Term will be upon the same terms and conditions that applied during the Operations Phase of the Initial Term, except as otherwise provided. To exercise this

right, Tenant must give Landlord a written notice of extension no later than 180 days before the Initial Term expires.

- (c) *Second Extended Term.* Upon expiration of the First Extended Term, Tenant will have the right to extend the Lease for an additional 10 years (the "Second Extended Term"). The Second Extended Term will be upon the same terms and conditions that applied during the Operations Phase of the Initial Term, except as otherwise provided. To exercise this right, Tenant must give Landlord a written notice of extension no later than 180 days before the First Extended Term expires.

Section 2.03. Expiration of Lease; Holding Over

This Lease expires automatically at the end of the Initial Term unless extended in accordance with Subsection 2.02(b). If this Lease is extended under Subsection 2.02(b), then it expires automatically at the end of the First Extended Term unless extended in accordance with Subsection 2.02(c). If this Lease is extended under Subsection 2.02(c), then it expires automatically at the end of the Second Extended Term. Any holding over after expiration will not constitute a renewal of this Lease but will be on a month-to-month tenancy on the same terms and conditions that applied at expiration.

Section 2.04. Subtenants' Exercise of Right to Extend Term.

- (a) *One Subtenant.* If Tenant fails to exercise its right to extend under either Subsection 2.02(b) or 2.02(c) while either Area 1 or Area 2 (but not both) is under a sublease that complies with Section 12.04, then the subtenant may notify Landlord that the subtenant requests an assignment of this Lease from Tenant and desires to extend the term. The subtenant's notice must include the information specified in Section 12.01(c). Landlord shall determine whether the subtenant has the experience and wherewithal to successfully manage the Premises consistently with the purposes of this Lease and shall respond to the subtenant's notice within 60 days after receiving it; Landlord's failure to respond within this time constitutes a rejection of the subtenant's request. If Landlord determines, in accordance with Section 12.01, that the subtenant has the requisite experience and wherewithal, then Landlord shall so notify both Tenant and the subtenant. As soon as possible after receiving Landlord's notice, but in any event before the Lease term then in effect expires, Tenant shall assign this Lease to the subtenant in accordance with Subsection 12.02(a)(3), with the term of this Lease extended in accordance with Subsection 2.02(b) or 2.02(c), as appropriate, and Tenant will be released from all further obligations under this Lease.
- (b) *Two Subtenants.* If Tenant fails to exercise its right to extend under either Subsection 1.02(b) or 2.02(c) while both Area 1 and Area 2 are under subleases that comply with Section 12.04, then each subtenant may notify Landlord that the subtenant requests an assignment of this Lease from Tenant and desires to extend the term. Each subtenant's notice must include the information specified in Section 12.01(c). Landlord shall respond to each subtenant's notice within 60 days after receiving it; Landlord's failure to respond within this time constitutes a rejection of the subtenant's request. If only one subtenant requests an assignment and extension, then Landlord shall proceed

in accordance with Subsection 2.02(d)(2). If both subtenants request an assignment and extension, then Landlord shall terminate this Lease and enter a new, individual ground lease directly with each subtenant. The new ground leases will include the same terms and conditions as this Lease, except as follows: the new ground leases will not include terms and conditions that have already been fulfilled or no longer apply; and each new ground lease will reflect that only Area 1 or Area 2 is covered, as appropriate, with rent adjusted accordingly.

Section 2.05. Status of Title

- (c) Title to the leasehold estate created by this Lease is subject to all exceptions, easements, rights, rights of way, and other matters of record existing as of the Effective Date.
- (d) In addition to the matters set forth in Subsection 2.04(a), title to the leasehold estate is subject to, and subordinate to, all easements, rights of entry, rights-of-way, and other rights and interests that may subsequently be required by governmental agencies other than Landlord as a condition for approving construction of the Improvements.

Article 3: Rent

Section 3.01. No Pre-Possession Phase Rent

During the Pre-Possession Phase, Landlord will be satisfying its obligations under Section 6.01, and Tenant will not have possession of the Premises. Accordingly, Tenant is not obligated to pay rental during the Pre-Possession Phase.

Section 3.02. Construction Phase Rent

- (a) *Amount of Construction Phase Rent.* Tenant shall pay Landlord the following amounts as rental for the use and occupancy of the Premises during the Construction Phase of the Initial Term ("Construction Phase Rent"):
 - (1) For the first twelve months, \$1,000 a month.
 - (2) For the remaining months, \$27,156.92 a month, except as follows: if the final recorded parcel map that creates the Property shows that the Property comprises less than or greater than 17.5 gross acres, then rent for the remaining months shall be recalculated by multiplying the actual gross acreage by \$1,551.82 an acre, and Landlord and Tenant shall amend this Lease to set forth the exact gross acreage of the Property and the recalculated Construction Phase Rent.
- (b) *Due Date for Construction Phase Rent.* Construction Phase Rent is due and payable on the first day of each calendar month at the address set forth in Subsection 14.01.
- (c) *Proration of Construction Phase Rent.* If the Construction Phase begins on a day other than the first day of a month, then the first payment of Construction Phase Rent will be

prorated. If the Construction Phase ends on a day other than the first day of a month, then the last payment of Construction Phase Rent will be prorated.

Section 3.03. Monthly Rent

As rental for use and occupancy of the Premises during the Operations Phase of the Initial Term ("Monthly Rent"), Tenant shall pay Landlord \$54,313.83 a month, except as follows: if the final recorded parcel map that creates the Property shows that the Property comprises less than or greater than 17.5 gross acres, then Monthly Rent shall be recalculated by multiplying the actual gross acreage by \$3,103.65 an acre, and Landlord and Tenant shall amend this Lease to set forth the exact gross acreage of the Property and the recalculated Monthly Rent.

- (a) *Due Date for Monthly Rent.* Monthly Rent is due and payable on the first day of each calendar month at the address set forth in Subsection 14.01.
- (b) *Adjustments to Monthly Rent.* On the first day of the sixth year of the Operations Phase, and every five years afterward while this Lease is in effect, the Monthly Rent will be increased by 12%.
- (c) *Proration of Monthly Rent.* If the Operations Phase begins on a day other than the first day of a month, then the first and last months' payment of Monthly Rent will be prorated.

Article 4: Use of Premises

Section 4.01. Permitted Uses

Tenant and its subtenants may use the Premises solely for the purposes of constructing, maintaining, repairing, replacing, and operating the Improvements. As used in this Section 4.01, the phrase "operating the Improvements" not only includes the selling, leasing, servicing, and repairing of motor vehicles but also includes, as an ancillary business in conjunction with each dealership, the selling, leasing, servicing, and repairing of vehicles and equipment such as motorcycles, all-terrain vehicles, snowmobiles, and personal watercraft. Any violation of this Section 4.01 will constitute a breach of this Lease.

Section 4.02. Compliance With Laws

- (a) In using and occupying the Premises, Tenant shall comply, at its own cost, with all valid and applicable statutes, ordinances, regulations, rules, and orders of all federal, state, and local governmental entities with jurisdiction over the Premises, whether those statutes, ordinances, regulations, rules, and orders are in force when the Operations Phase of the Initial Term begins or are later enacted, with the exception of the following: Tenant is not obligated to comply with any Environmental Laws that apply to any Hazardous Substances (see Article 9) already existing at, under, or on the Premises on

or before the Effective Date. Without limiting the generality of the previous sentence, Tenant and its subtenants shall construct, maintain, repair, replace, and operate the Improvements in substantial compliance with—

- (1) all provisions of the Americans with Disabilities Act and any similar law that is in effect on or after the date the Operations Phase begins or;
 - (2) the requirements of any board of fire underwriters or similar body that exists on or after the date the Operations Phase begins; and
 - (3) any certificate of occupancy or other official direction issued by a government agency with jurisdiction over the Premises (including Landlord acting in a governmental capacity).
- (b) If any license, permit, or other governmental authorization is required for the lawful use or occupancy of all or any portion of the Premises, then Tenant shall obtain and maintain it while this Lease is in effect.
- (c) The final judgment of any court of competent jurisdiction, or Tenant's admission in a proceeding brought against Tenant by any government entity, that Tenant has violated such a statute, ordinance, regulation, rule, or order will be conclusive between Landlord and Tenant and will constitute grounds for Landlord's termination of this Lease if not corrected within a reasonable time.

Section 4.03. Prohibited Uses

Tenant shall not use or permit the Premises to be used in any way that violates this Lease or any valid and applicable statute, ordinance, regulation, rule, or order of any federal, state, or local governmental entity. Tenant shall not maintain or commit, or permit the maintenance or commission of, any public or private nuisance as defined by any law applicable to the Premises on or after the Effective Date. Tenant shall not install and maintain a below-ground fuel-storage tank on the Premises. Tenant shall not undertake or permit any activity that damages the impermeable barrier Landlord installs over the contaminated soil remaining on the Premises.

Section 4.04. Signage; Landlord's Approval Required

Tenant and its subtenants shall not install or maintain on the Premises or on the Improvements any billboards or advertising signs, except as follows:

- (a) Tenant and its subtenants may install and maintain those billboards and advertising signs that Landlord approves in writing while acting in its governmental capacity in accordance with its zoning or sign ordinances.
- (b) Tenant may construct, maintain, repair, and operate one freeway pole sign displaying the names and logos of each dealership operating at the Premises. This pole sign is to be located on the portion of Area 2 that is designated in **Exhibit B** as "the Marketing Area," subject only to obtaining all necessary permits from the appropriate government entities (including Landlord acting in a governmental capacity). In addition, Tenant and its subtenants may display

automobiles on the Marketing Area.

Article 5: Taxes and Utilities

Section 5.01. Tenant to Pay Taxes

Subject to Section 5.02, during the Construction Phase and at all times afterwards while this Lease is in effect, Tenant shall pay, without abatement, deduction, or offset, all personal-property taxes, possessory-interest taxes, general and special assessments, special taxes, and other charges of any description (including any increase caused by a change in the tax rate or a change in assessed valuation) that any governmental entity levies or assesses on or against the Premises, the Improvements, Tenant's personal property located on the Premises or the Improvements, or the leasehold estate created by this Lease. Without limiting the generality of the previous sentence, Tenant's duty to pay taxes under this Section 5.01 includes the payment of any possessory-interest tax levied or assessed by any governmental entity on or against Tenant's possessory interest under this Lease or in the Premises or the Improvements.

Section 5.02. Proration of First- and Last-Year Taxes

During the tax years in which the Operations Phase of the Initial Term commences and ends, all taxes, assessments, and other charges described in Section 5.01 will be prorated between Landlord and Tenant as of 12:01 a.m. on the date the Operations Phases begins and as of 12:01 a.m. on the date this Lease expires or terminates, on the basis of a tax year that begins on July 1 and ends on June 30. Landlord shall pay the taxes, assessments, and other charges for the year in which this Lease begins, and, on receiving Landlord's written request, Tenant shall promptly reimburse Landlord for Tenant's share of those taxes, assessments, and other charges. Tenant shall pay the taxes, assessments, and other charges for the year in which this Lease ends, and, on receiving Tenant's written request, Landlord shall promptly reimburse Tenant for Landlord's share of those taxes, assessments, and other charges even though Landlord may be a governmental entity on the date this Lease ends or otherwise may be exempt from taxes, assessments, and other charges.

Section 5.03. Separate Assessment of Leased Premises

If the Premises are assessed and taxed as part of other property Landlord owns before the Effective Date, then Landlord shall try in good faith to have the taxing authorities tax and assess the Premises, while this Lease is in effect, as a separate parcel distinct from the Landlord's other property. If, for the year in which this Lease begins, the Premises are assessed and taxed as part of other property Landlord owns, then the share of the taxes, assessments, and other charges that Tenant must pay under Section 5.01 will be calculated as follows: (1) divide the acreage of the Property by the acreage of Landlord's total taxed property; (2) multiply the resulting quotient by the sum of the taxes, assessments, and other charges on Landlord's total taxed property, excluding taxes, assessments, and other charges attributable to any improvements; and (3) add to the resulting product the taxes, assessments, and other charges attributable to any improvements on the Premises that are constructed by, or at the direction of, Tenant or its subtenants. Upon the completion of construction of a new motor-vehicle dealership on Area 1 or Area 2, Tenant shall apply to the taxing authorities for separate tax assessments and tax bills for Area 1 and Area 2, at

Tenant's expense. Landlord shall cooperate with Tenant's efforts to obtain separate tax assessments and tax bills by timely executing any documents the taxing authorities reasonably require in connection with Tenant's application.

Section 5.04. Payment Before Delinquency

Tenant shall pay all taxes and assessments, installments of taxes and assessments, and other charges that Tenant is obligated to pay by this Article 5 before each tax, assessment, installment, or charge becomes delinquent. On Landlord's written request, Tenant shall provide Landlord with proof from the County of Sacramento that confirms, to Landlord's reasonable satisfaction, the payment of the taxes, assessments, installments, and other charges.

Section 5.05. Taxes Payable in Installments

If a special tax or assessment that is levied or assessed on the Premises may be either (a) paid in full before a delinquency date while this Lease is in effect or (b) paid in installments, then Tenant may opt to pay the tax or assessment in installments. Tenant may exercise this option even if the installments will extend beyond this Lease, will result in the Premises being encumbered with bonds, or will cause interest to accrue on the tax or assessment. If Tenant exercises this option, then Tenant will be obligated to pay only the installments that become due while this Lease is in effect. At Tenant's written request, Landlord shall execute or join Tenant in executing any instruments required for the special tax or assessment to be paid in installments.

Section 5.06. Contest of Tax

Tenant may contest, oppose, or object to the amount or validity of any tax, assessment, or other charge levied or assessed on the Premises; and Landlord shall reasonably cooperate with Tenant in the contest, opposition, or objection, at no out-of-pocket expense to itself. The contest, opposition, or objection must be filed before the tax, assessment, or other charge at which it is directed becomes delinquent; and written notice of the contest, opposition, or objection must be given to Landlord at least 15 days before the date the tax, assessment, or other charge becomes delinquent. Tenant shall be responsible for, and shall pay all expenses of, any contest or legal proceeding Tenant institutes. Landlord will not be liable for such expenses, and Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord harmless from such expenses. Tenant shall not continue or maintain such a contest, opposition, or objection after the date the tax, assessment, or other charge at which it is directed becomes delinquent unless Tenant has done one of the following:

- (a) Paid the tax, assessment, or other charge under protest before it becomes delinquent.

- (b) Obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment, or other charge by posting a bond or other security required by law for such a stay.
- (c) Delivered to Landlord a surety bond issued by a corporation authorized to transact surety business in California. The bond must be in a reasonable amount specified by Landlord and be conditioned on Tenant's payment of the tax, assessment, or charge, together with any fines, interest, penalties, costs, and expenses that may have accrued or been imposed, within 30 days after a final determination of Tenant's contest, opposition, or objection.

Section 5.07. Tax Returns and Statements

Tenant shall prepare and file any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any ad valorem real estate taxes, special assessments, or other similar charges that are or may be levied or assessed on the Premises, the Improvements, Tenant's personal property located on or in the Premises or the Improvements, or the leasehold estate created by this Lease.

Section 5.08. Tax Hold-Harmless Clause

Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold harmless Landlord and Landlord's property, including the Premises and the Improvements located on the Premises on or after the Effective Date, from and against—

- (a) all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs that arise from any taxes, assessments, or other charges this Article 5 requires Tenant to pay;
- (b) all interest, penalties, and other sums imposed on the taxes, assessments, or charges this Article 5 requires Tenant to pay; and
- (c) any sales or other proceedings to enforce collection of the taxes, assessments, or other charges this Article 5 requires Tenant to pay.

Section 5.09. Utilities

During the Construction Phase and Operations Phase of the Initial Term, and during the First and Second Extended Terms, if any, Tenant shall pay (or cause to be paid) and to hold Landlord and Landlord's property, including the Premises, free and harmless from all charges and expenses for—

- (a) water, sewerage, gas, electricity, telephone, cable television, and other public utilities furnished to the Premises; and
- (b) the removal of garbage and rubbish from the Premises.

Section 5.10. Payment by Landlord

If, within the time specified in this Article 5, Tenant fails to pay any tax, assessment, or other charge this Article 5 requires Tenant to pay, then Landlord may pay, discharge, or adjust that tax, assessment, or other charge for Tenant's benefit after giving Tenant at least 15 days' prior written notice. (If this Article 5 does not specify the time within which Tenant must pay a charge, then Tenant shall pay that charge before it becomes delinquent.) Tenant shall reimburse Landlord promptly, on receipt of Landlord's written demand, for the full amount Landlord incurs to pay, discharge, or adjust the tax, assessment, or other charge, together with interest at the then-maximum legal rate from the date Landlord pays, discharges, or adjusts the tax, assessment, or charge to the date of Tenant's reimbursement. Tenant's failure to reimburse Landlord when required by this Section 5.10 will constitute a breach of this Lease.

Article 6: Improvements**Section 6.01. Remediation and Improvements by Landlord**

To put the Premises in a condition for commercial development, Landlord shall complete or cause to be completed, at no cost to Tenant and before Landlord delivers possession of the Premises to Tenant, the remediation and improvements described in this Section 6.01. Landlord shall begin this work as soon as practicable after the Effective Date and to pursue the work diligently without unnecessary interruption, with a goal of delivering possession of the Premises to Tenant at the earliest feasible date. Landlord will be excused, however, for any delays in beginning or completing the work that are caused by a Force Majeure Event, as defined in Subsection 14.03(b). Landlord shall use reasonable diligence to avoid such delays and to resume work as promptly as possible after a delay.

- (a) *Remediation.* Sacramento County's Environmental Management Department (the "County") has been designated as the lead agency for overseeing Landlord's efforts to excavate, remove, and dispose of contaminated soil, lead shot, and clay-pigeon debris located on the Property. **Exhibit D** to this agreement is a copy of Landlord's proposed plan for excavating, removing, and properly disposing of the soil, shot, and debris and for installing asphalt paving to create an impermeable cap on the Property. Landlord submitted this plan to the County for review, and the County has approved the plan. Landlord shall implement the approved plan (the "Remediation Plan") at no cost to Tenant, except as provided in Subsections 1.03(a) and 6.02(a)(1). Tenant acknowledges that Landlord has made no investigation concerning the possible presence of hazardous substances on the Property other than the investigation on which the Remediation Plan is based. Landlord shall provide Tenant with a copy of any no-further-action clearance letter or written approval to reuse the Premises that Landlord receives from the County concerning implementation of the Remediation Plan.
- (b) *Rough Grading Etc.* Landlord shall place the Property in a condition suitable for Tenant's installation of the asphalt cap required under the Remediation Plan. Specifically, Landlord shall fill, compact, and rough grade the Property to an elevation ranging from 60 feet above sea level on the north side to 69 feet above sea level on the south side; shall place all contaminated soils on the portion of

the Property designated as Parcel B on Landlord's tentative parcel map of the Property (a copy of which is attached as **Exhibit A**); and shall install an impermeable liner and aggregate base materials.

- (1) Before beginning the filling, compacting, and rough grading, Landlord shall submit the following documents for Tenant's review:
 - (A) Filling, compacting, grading, and drainage plans prepared and signed by a licensed civil engineer. The plans must identify the existing topography, any proposed cut and fill, and the proposed finished grade; they must also include calculations of anticipated water runoff and identify concentration points.
 - (B) A soils report prepared by a licensed civil engineer or licensed geologist.
 - (C) Plans for an underground storm-water-drainage system to be installed on the Property.
- (2) Tenant and its agents may observe the filling, compacting, and rough grading at all times, subject only to reasonable security and safety precautions required by Landlord or Landlord's contractors. But the work may proceed even if Tenant or its agents are not present. All work must be conducted under the overall supervision of a licensed civil or geo-technical engineer. When the work is completed, Landlord shall provide Tenant with the following documents:
 - (A) A final certificate of grading operations by a soil-testing laboratory reasonably acceptable to Tenant.
 - (B) A written certification from a civil or geo-technical engineer that the Property has been filled, compacted, and graded to the required elevations in accordance with the plans described in Subsection 6.01(b)(1).
- (3) After giving Landlord reasonable notice, Tenant's agents and consultants may conduct tests to ascertain the amount and extent of the fill or of any surface or subsurface condition on the Property. Tenant shall provide Landlord with copies of any reports concerning these tests, at no cost to Landlord.
- (4) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's officers, employees, and agents harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs that arise directly or indirectly from the activities of Tenant or Tenant's agents or consultants in accordance with this Subsection 6.01(b), except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's officers, employees, or agents. The term "costs" is to be interpreted broadly and includes reasonable attorneys' fees and

litigation costs through final resolution on appeal, as well as fees and costs associated with execution upon any judgment or order. Tenant's obligation under this Subsection 6.01(b)(4) includes but is not limited to liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs arising from any—

- (A) injuries to any persons, including but not limited to members, officers, gents, consultants, and invitees of Tenant; and
- (B) damage to any property, including but not limited to any impermeable liner installed on the Property in accordance with the Remediation Plan described in Subsection 6.01(a).

Tenant's obligations under this Subsection 6.01(b)(4) will survive the expiration or termination of this agreement.

- (c) *Utilities.* From existing available access points, Landlord shall locate, install, and extend stubs for the following utility services to the perimeter boundary of the Property at the locations designated in **Exhibit E** to this Lease: water, sewer, gas, electricity, and telephone. Landlord shall do this at no cost to Tenant. Before installation, Landlord shall consult with Tenant concerning the sizes and capacities of the utility services.
- (d) *Drainage.* Landlord shall have the Property graded and will install an underground storm-water-drainage system so as to cause the discharge of all water in a manner approved by the governmental agencies with jurisdiction over such discharges.
- (e) *Street Improvements.* Landlord shall construct all roadways, curbs, gutters, sidewalks, landscaping and irrigation, street lights, stop signs, and traffic signals described on **Exhibit E** to this agreement. All construction will be done in compliance with Landlord's standards for public streets and at no cost to Tenant, except as follows: Tenant shall contribute one half of the cost of all traffic signals Caltrans or Landlord requires as mitigation for the Land Use Entitlements identified in Subsection 6(a) of the Conditions Precedent Agreement (see Paragraph C of the Background), up to a maximum total contribution of \$100,000, payable to Landlord within 30 days after the Effective Date.
- (f) *Wetlands.* In connection with Landlord's remediation of the Property (under Subsection 6.01(a)) and its subsequent filling, compacting, and rough grading of the Property (under Subsection 6.01(b)), Landlord shall be responsible for filling the existing wetlands and drainage ditches on the Property and for—
 - (1) obtaining and complying with all necessary permits from the U.S. Army Corps of Engineers under the Clean Water Act;
 - (2) obtaining and complying with any necessary Streambed Alteration Agreement from the California Department of Fish and Game, as required under California's Fish and Game Code;

- (3) complying with the associated mitigation requirements of the U.S. Fish and Wildlife Service and the California Department of Fish and Game for the loss of species listed as threatened or endangered and the loss of the species' habitat (but Landlord may terminate this Lease by written notice, without further obligation to Tenant under this Lease, if the actual or estimated cost of mitigation for endangered species exceeds \$600,000); and
 - (4) obtaining and complying with all necessary permits from the Central Valley Regional Water Quality Control Board.
- (g) Landlord shall complete the work described in Subsections 6.01(a) through 6.01(f) within 12 months after the Effective Date, subject to extension for Force Majeure Events in accordance with Section 14.03. If Landlord fails to complete this work 18 months after the Effective Date, then Tenant will have the right to terminate this Lease by giving Landlord written notice.

Section 6.02. Construction of Improvements by Tenant or its Subtenants

Tenant and its subtenants shall construct the Improvements on the Property (or cause them to be constructed) according to the terms and conditions in this Section 6.02 and consistent with the permitted uses of the Premises set forth in Article 4, all at no cost to Landlord. Without cost to itself, Landlord shall cooperate with Tenant and Tenant's subtenants in their efforts to secure building permits and other permits and authorizations needed for any construction or alterations of the Improvement. Landlord's cooperation does not indicate consent to the filing of mechanic's liens, notices of intention to file a mechanic's liens, or any claims relating a mechanic's liens; nor does Landlord's obligation to cooperate apply when Landlord is acting in a governmental capacity.

- (a) *Compliance with Approved Plans.* All Improvements must be constructed in accordance with one of the following, and at locations approved by Landlord: the improvement-and-business plans that Landlord reviews and approves under Subsections 6.02(a)(1) and 6.02(a)(2); or the plans and specifications that Landlord approves under Subsection 6.02(a)(3).
- (1) *Improvement-and-Business Plans.* Before Tenant or its subtenant begins construction on the Improvements for a dealership, Tenant or its subtenant shall submit to the Landlord, for Landlord's review and approval, two identical sets of detailed improvement-and-business plans. The plans must be consistent, in Landlord's sole and absolute judgment, with the operation on the Property of a High-Volume Dealership. The plans for the first dealership on the Property must also include installation (at no cost to Landlord) of the asphalt cap required by the Remediation Plan. Within 30 days after Landlord receives the plans for a dealership, Landlord shall either—
 - (A) approve the plans by endorsing Landlord's approval on them and returning one set of the plans to Tenant or its subtenant; or

- (B) notify Tenant or its subtenant in writing of Landlord's objections to the plans, specifying in detail each objection.

If Landlord does not respond in accordance with either Subsection 6.02(a)(1)(A) or 6.02(a)(1)(B) within 30 days after receiving the plans, then the plans will be considered approved. If Landlord timely responds, then within 20 days after Tenant or its subtenant receives written notice of Landlord's objections to the plans, Tenant or its subtenant may deliver corrective amendments to Landlord. Within 20 days after receiving the corrective amendments, Landlord shall serve written notice on Tenant of Landlord's approval or rejection of the amended plans. If Landlord does not serve Tenant or its subtenant with written notice of approval or rejection within 20 days after receiving the corrective amendments, then the amended plans will be considered approved.

- (2) *Changes to Improvement-and-Business Plans.* Landlord must approve, in writing, any substantial change in the improvement-and-business plans Landlord approves under Subsection 6.02(a)(1). For purposes of this Subsection 6.02(a)(2), "substantial change" means a change that materially changes the size, appearance, or layout of the Improvements. If Landlord does not give Tenant or its subtenant written notice of objection to a proposed change within 30 days after Tenant or its subtenant serves Landlord with a written statement of the proposed change, then the change will be considered approved. Landlord need not approve changes in work or materials that are not substantial changes, but Tenant or its subtenant shall provide Landlord with a copy of the changed improvement-and-business plans.
- (3) *Improvements not Included in the Improvement-and-Business Plans.* Any component of the Improvements that costs more than \$50,000 to construct and is not included in the improvement-and-business plans or is not consistent with this Lease ("Component") may be constructed on the Property only if Landlord has approved, in writing, the plans and specifications (which must include the proposed location) for the Component. Tenant and its subtenants shall not split or separate a Component into smaller units for the purpose of evading this restriction. Landlord may disapprove the plans and specifications of any Component that is not consistent with this Lease or with any easements or interests that may be imposed in connection with the Premises in accordance with Subsection 2.04(b). Landlord has 10 days to approve any plans and specifications for a Component that Tenant or its subtenant submits under this subsection 6.02(a)(3). If Landlord disapproves any plans and specifications, then Landlord shall provide Tenant or its subtenant with a written statement of the reasons for disapproval and the changes necessary to obtain approval. Landlord's failure to give notice of approval or disapproval within 10 days after Tenant or its subtenant submits plans and specifications to Landlord will be considered to be an approval for purposes of this Lease. Tenant acknowledges that Landlord's initial approval of plans and specifications is at all times subordinate to approvals by the City of Sacramento's Design Review Board and Planning Commission and that the

approvals by the Design Review Board and Planning Commission will control over Landlord's conflicting approvals or disapprovals.

- (4) *Disclosure of Improvement-and-Business Plans.* Tenant or its subtenant may designate portions of the improvement-and-business plans that it believes qualify as confidential financial records and proprietary information exempt from disclosure under the California Public Records Act ("Proprietary Information"). Landlord shall take all reasonable and lawful measures to keep Proprietary Information confidential in accordance with the following:
- (A) Landlord shall notify Tenant or its subtenant within 10 days after Landlord receives a request for disclosure of Proprietary Information under the California Public Records Act or is served with a legal or administrative demand for disclosure (e.g., by subpoena, civil investigative demand, or court-ordered or -sanctioned discovery) so that Tenant or its subtenant may seek an appropriate protective order or may consent in writing to disclosure. Absent a protective order or written consent to disclosure, received before the time disclosure is required, Landlord may disclose Proprietary Information as required by law.
 - (B) Landlord is not obligated to defend against any litigation brought to compel disclosure of Proprietary Information, but Tenant or its subtenant may defend against the litigation as the real party in interest, subject to the following: Tenant shall indemnify and hold Landlord harmless against all damages and costs awarded against Landlord in the litigation, including reasonable attorney's fees and litigation costs through final resolution on appeal.
- (b) *Utilities.* Tenant shall install (or cause to be installed) in, on, and within the Premises all facilities necessary to supply water, sewerage, gas, electricity, telephone, cable television, and other utility services required for Tenant's maintenance and operation of the Improvements while this Lease is in effect, all at no cost to Landlord.
- (c) *Drainage.* All surface water from the Premises must be discharged into the underground storm-water-drainage system installed by Landlord in accordance with Subsection 6.01(d).
- (d) *All Work on Written Contract.* All work required to construct the Improvements must be performed only by competent contractors licensed under California law and must be performed under written contracts with those contractors. As used in this Subsection 6.02(d), "work" means not only the actual construction of the Improvements but also any site-preparation, landscaping, and utility installation.
- (e) *Compliance with Law and Standards.* The Improvements must be constructed, and all work on the Premises must be performed, in accordance with all valid and applicable statutes, ordinances, regulations, rules, and orders of all federal, state, or local

governmental entities with jurisdiction over the Premises. All work performed on the Premises under this Lease must be done in a good workmanlike manner and only with new materials of good quality and high standard.

- (f) *Time for Completion.* Tenant shall cause construction of the Improvements for Area 1 (which will be subleased to Rapton) to begin by the later of the following: the date the Construction Phase begins, or 60 calendar days after Tenant receives all required building permits. Tenant shall cause construction of those Improvements to be pursued diligently without unnecessary interruption and shall cause those Improvements to be completed and ready for occupancy and use within two years after the Construction Phase begins, except that Tenant will be excused for any delays in beginning or completing construction that are caused by a Force Majeure Event, as defined in Subsection 14.03(b). Tenant shall use reasonable diligence to avoid such delays and to resume construction as promptly as possible after a delay. Any default by Tenant, Rapton, or a subtenant under this Subsection 6.02(f) as to Area 1 will not constitute a default by Tenant, Rapton, or a subtenant as to Area 2.
- (g) *Mechanics' Liens.* While this Lease is in effect, Tenant and its subtenants shall keep the Premises and the Improvements free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. If Tenant or a subtenant does not pay and discharge such liens and claims of liens or cause the Premises and the Improvements to be released from such liens or claims of lien within 30 days after Landlord serves Tenant and its subtenants with a written request to do so, then Landlord may pay, adjust, compromise, and discharge any such lien or claim of lien on any terms Landlord considers appropriate in Landlord's reasonable discretion. On or before the first day of the next calendar month following any such payment by Landlord, Tenant shall reimburse Landlord for the full amount Landlord incurred to pay, adjust, compromise, and discharge the lien or claim of lien, including any attorneys' fees or other costs expended by Landlord (together with interest at the then-maximum legal rate from the date of payment by Landlord to the date of Tenant's reimbursement). Nothing in this Lease gives Landlord's consent or request (whether express, implied, or otherwise) to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of the Premises or the Improvements. Landlord is entitled at all reasonable times to post and keep posted on the Premises any notices of non-responsibility Landlord believes necessary to protect Landlord and the Premises and the Improvements from liens imposed by any contractor, subcontractor, laborer, or materialman.
- (h) *Use Permits and Design-Review.* Tenant and its subtenants are responsible for obtaining all building permits and all design-review approvals (if any) required for the Improvements they construct on the Premises. Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's property (including but not limited to the Premises) harmless from and against all costs related to such building permits and design-review approvals.

- (i) *Ownership of the Improvements.* Tenant will own title to all Improvements Tenant constructs on the Premises until this Lease expires or terminates. When this Lease expires or terminates—
- (1) the Improvements will automatically become Landlord's property without any act of Tenant or any third party, and without compensation to Tenant;
 - (2) Tenant shall surrender the Improvements to Landlord free of all liens and encumbrances other than those, if any, permitted under this Lease or otherwise created or consented to by Landlord; and
 - (3) Landlord may require Tenant to remove some or all surface Improvements, underground Improvements, utilities, and foundations from Parcel A of the Property, at no cost to Landlord, by giving Tenant written notice. Notice under this Subsection 6.02(i)(3) must specify the surface Improvements, underground Improvements, utilities, and foundations to be removed and must be given before expiration or termination.

If Landlord requests, Tenant shall execute, acknowledge, and deliver to Landlord any instrument Landlord considers necessary to perfect Landlord's right, title, and interest to the Improvements and the Premises. Tenant shall not remove any of the Improvements from the Property or waste, destroy, or modify any of the Improvements, except as permitted or required by this Lease, subject to the following: Tenant is entitled (but not obligated) to remove any trade fixtures installed at the Premises or in the Improvements at any time without first obtaining Landlord's consent, so long as Tenant repairs any damage caused to the Premises or the Improvements by the removal.

Article 7: Encumbrance of Leasehold Estate

Section 7.01. Tenant's and Subtenant's Right to Encumber

While this Lease is in effect, and without Landlord's consent, Tenant and its subtenant may encumber any part of their interests under this Lease or a sublease, for any purpose, by granting a deed of trust, mortgage, or other security instrument (a "Leasehold Encumbrance"). A Leasehold Encumbrance may not constitute a lien or encumbrance on Landlord's fee interest in the Premises. Except as otherwise provided in this Lease, each Leasehold Encumbrance will be subject to all covenants, conditions, and restrictions set forth in this Lease and to all of Landlord's rights, title, and interest. Tenant and its subtenants shall give Landlord prior written notice of any Leasehold Encumbrance affecting their interests under this Lease or a sublease, together with a copy of the deed of trust, mortgage, or other security interest evidencing the Leasehold Encumbrance. If this Lease is divided and assigned in accordance with Article 12, then the rights and obligations of any Lender relating to this Lease or the rights of Tenant or an assignee of this Lease will also be divided between Area 1 and Area 2.

Section 7.02. Notice to Lenders

If a lender who holds a Leasehold Encumbrance in Area 1 or Area 2 ("Lender") provides Landlord with written notice of the its name and address, then—

- (a) Landlord shall provide the Lender with a copy of each notice or written communication Landlord gives to Tenant in connection with this Lease, including but not limited to any notice of breach, notice regarding any matter on which Landlord may claim a breach, or notice of termination; and
- (b) such a notice or written communication will be effective only if the notice is also provided to the Lender.

Landlord may satisfy its obligation under this Section 7.02 by placing the copy of the notice or communication in an envelope addressed to the Lender (at the last mailing address the Lender provided to Landlord in writing) and by depositing the envelope in the U.S. Mail with first-class postage prepaid.

Section 7.03. No Modification Without Lender's Consent

So long as any Leasehold Encumbrance is in effect, Tenant and Landlord shall not modify or cancel this Lease without the Lender's written consent, except as follows: any modification or cancellation that only affects Area 1 will not require the written consent of any Lender that has an interest only in Area 2, and vice versa. This Section 7.03 does not apply to early termination under Subsection 2.02(d), Section 12.04, or Article 13.

Section 7.04. Right of Lender to Realize on Security

A Lender with a Leasehold Encumbrance is entitled while this Lease is in effect and during the existence of the Leasehold Encumbrance to do the following:

- (a) Perform any act required of Tenant under this Lease, and the Lender's performance will prevent a forfeiture of Tenant's rights under this Lease.
- (b) Realize on the security afforded by the leasehold estate by foreclosure proceedings, by accepting an assignment in lieu of foreclosure, or by any other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance (the "Security Instrument"), and—
 - (1) transfer, convey, or assign Tenant's title to the leasehold estate to any purchaser at any foreclosure sale (whether the foreclosure sale is conducted under court order or under a power of sale contained in the Security Instrument) or to an assignee under an assignment in lieu of foreclosure; and
 - (2) acquire and succeed to Tenant's interest under this Lease by virtue of any foreclosure sale (whether the sale is conducted under a court order or under a power of sale contained in the Security Instrument) or by virtue of an assignment in lieu of foreclosure.

The Lender or any person or entity acquiring the leasehold estate will be obligated to

perform Tenant's obligations under this Lease only during the time the Lender, entity, or person owns the leasehold estate or possesses the Premises.

Section 7.05. Right of Lender to Cure Breaches

So long as a Leasehold Encumbrance is in effect, Landlord shall not terminate this Lease because of Tenant's breach unless Landlord first gives the Lender written notice of the breach and affords the Lender an opportunity, after service of the notice, to do one of the following:

- (a) For a breach that can be cured by paying money to Landlord or some other person: cure the breach within 30 days after Tenant's opportunity to cure has expired.
- (b) For a breach that must be cured by something other than the payment of money: cure the breach within 45 days after Tenant's opportunity to cure has expired.
- (c) For a breach that must be cured by something other than the payment of money, if the cure cannot be performed within 45 days after Tenant's opportunity to cure has expired: cure the breach in any reasonable time that may be required, but only if the Lender (1) commences work on the cure within 45 days after Tenant's opportunity to cure has expired and (2) diligently prosecutes the work to completion.

Section 7.06. Foreclosure in Lieu of Curing Breach

Notwithstanding any other provision of this Lease, the Lender under a Leasehold Encumbrance may forestall termination of this Lease for Tenant's breach by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings may be for foreclosure by court order or for foreclosure under a power of sale contained in the Security Instrument. But the proceedings will not forestall Landlord's termination of this Lease for the Tenant's breach unless—

- (a) they are commenced within 60 days after service on the Lender of notice under Section 7.05;
- (b) they are diligently pursued to completion in the manner required by law; and
- (c) the Lender keeps and performs all of the terms, covenants, and conditions of this Lease that require Tenant to pay or expend money until the proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to the Lender.

Section 7.07. Assignment Without Consent on Foreclosure

Transfer of the Tenant's leasehold estate to any of the following does not require Landlord's prior consent:

- (a) A purchaser at a foreclosure sale of the Leasehold Encumbrance, whether the sale is conducted under a court order or under a power of sale in the Security Instrument. The Lender under the Leasehold Encumbrance must give Landlord written notice of the purchase, including the name and address of the purchaser and the effective date of the purchase.
- (b) An assignee of the leasehold estate under an assignment in lieu of foreclosure. The Lender under the Leasehold Encumbrance must give Landlord written notice of the assignment, including the name and address of the assignee and the effective date of the assignment.
- (c) A purchaser at a foreclosure sale of the Leasehold Encumbrance (or an assignee of the purchaser) or the assignee of Tenant's leasehold estate by an assignment in lieu of foreclosure. The purchaser or assignee must deliver to Landlord its written agreement to be bound by all provisions of this Lease.

Section 7.08. New Lease to Lender

Notwithstanding any other provision of this Lease, if Landlord terminates this Lease because of Tenant's breach, then Landlord shall enter into a new lease of the Premises with the Lender under a Leasehold Encumbrance if all of the following conditions are satisfied:

- (a) Within 60 days after Landlord serves the Lender with notice under Section 7.05, the Lender has served Landlord with a written request for the new lease.
- (b) The term of the new lease ends on the same date this Lease would have expired had this Lease not been terminated.
- (c) The new lease provides for payment of rent at the same rate that would have been payable under this Lease had it not been terminated; in addition, the new lease contains the same terms, covenants, conditions, and provisions that are in this Lease (except those that have already been fulfilled or no longer apply).
- (d) On Landlord's execution of the new lease, the Lender pays all sums that would have been due at the time under this Lease but for its termination; in addition, the Lender remedies (or agrees in writing to remedy) all of Tenant's other breaches of this Lease to the extent they can be remedied.
- (e) On Landlord's execution of the new lease, the Lender pays all reasonable costs and expenses, including attorneys' fees and court costs, Landlord incurred in terminating this Lease, recovering possession of the Premises from Tenant or Tenant's representative, and preparing the new lease.

- (f) If Tenant has subleased the Premises and the subleases are still in effect, then the new lease will be subject to each sublease for which the subtenant has agreed in writing to attorn to Lender or to Lender's assignee.
- (g) The Lender may assign the new lease without Landlord's prior consent. But an assignee of the Lender (the "Lender's Assignee") may assign the new lease only with Landlord's prior written consent, which Landlord shall not withhold, delay, or condition unreasonably.
- (h) If this Lease is divided and assigned under Article 12, then, upon the request of Lender or Lender's Assignee, Landlord shall enter into a separate ground lease with Lender or Lender's Assignee relating solely to Area 1 or Area 2, as applicable.

Section 7.09. No Merger of Leasehold and Fee Estates

So long as any Leasehold Encumbrance exists, the leasehold estate created by this Lease and Landlord's fee estate in the Premises will not merge merely because both estates are acquired or become vested in the same person or entity, unless the Lender consents otherwise in writing.

Section 7.10. Lender as Assignee of Lease

A Lender will not be liable to Landlord as an assignee of this Lease unless the Lender acquires all of Tenant's rights under this Lease through foreclosure, an assignment in lieu of foreclosure, or some other action or remedy provided by law or by the Security Instrument.

Section 7.11. Lender Includes Subsequent Security Holders

Except for purposes of Section 7.08, the term "Lender" means not only the institutional lender that lent Tenant money and is named as beneficiary, mortgagee, secured party, or security holder in the Security Instrument but also all subsequent purchasers or assignees of the leasehold estate.

Section 7.12. Two or More Lenders

If two or more Lenders each exercise their rights under this Lease and a conflict arises that renders compliance with all Lender requests impossible, then the Lender whose Leasehold Encumbrance would have senior priority in a foreclosure will prevail. If a division and assignment under Article 12 results in separate Lenders for Area 1 and Area 2, then the Lender for Area 1 will be automatically deemed to have priority as to Area 1 and the Lender for Area 2 will be automatically deemed to have priority as to Area 2.

Article 8: Repairs and Restoration

Section 8.01. Maintenance by Tenant

While this Lease is in effect—

- (a) Except as provided in Section 6.01, Landlord is not obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises and the Improvements; and
- (b) at no cost to Landlord, Tenant and its subtenants shall (1) keep and maintain the Premises, the Improvements, and all appurtenant facilities in first-class condition, good order and repair, and safe-and-clean condition; and (2) keep and maintain the whole of the Premises, the Improvements, all appurtenances, and all landscaping in clean, sanitary, safe, orderly, litter-free, and attractive condition.

Section 8.02. Requirements of Laws and Governmental Agencies

- (a) While this Lease is in effect, Tenant and its subtenants shall do the following at no cost to Landlord: comply with all valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Premises or the Improvements and are enacted or issued by any federal, state, or local governmental entity with jurisdiction over the Premises or the Improvements (whether enacted or issued before, on, or after the date of this Lease), other than any statutes, ordinances, regulations, rules, and orders pertaining to the presence and remediation of Hazardous Substances (defined in Article 9) that existed on the Premises before the Effective Date.
- (b) At its sole discretion and at no cost to Landlord, Tenant may institute appropriate legal proceedings to contest, in good faith, the validity or applicability of any statute, ordinance, regulation, rule, or order that concerns the Premises or the Improvements. Tenant may do this in its own name or, if appropriate or required, in the names of both Tenant and Landlord. Tenant shall protect the Premises, the Improvements, and Landlord from Tenant's failure to comply with the contested statute, ordinance, regulation, rule, or order during the contest.
- (c) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's property, including the Premises, harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise from Tenant's or any subtenant's failure to perform as this Section 8.02 requires.

Section 8.03. Tenant's Duty to Restore Premises

- (a) Except as provided by Section 8.03(b) and Section 8.04, this Lease will continue in full effect even if any of the Improvements are damaged or destroyed in whole or part by any cause covered by the property-and-casualty insurance Tenant is required to carry

under this Lease. Tenant shall repair and restore, at no cost to Landlord, any Improvements so damaged or destroyed. Any repairs or restoration by Tenant (or by its subtenants) must comply with original plans for the Improvements, as described in Article 6, except (1) as Tenant (or its subtenants) may modify the plans to comply with the terms of any sublease of the Premises, or (2) as Tenant (or its subtenants) may modify the plans with Landlord's written approval, which Landlord shall not withhold, delay, or condition unreasonably. Tenant shall begin the work of repair and restoration within 180 days after the damage or destruction occurs and shall complete the work with due diligence within 12 months after the work begins. In all other respects, Tenant (or its subtenants) shall perform the work of repair and restoration in accordance with the requirements for original construction work set forth in Article 6. Tenant shall use any insurance proceeds it receives or is entitled to receive because of the damage or destruction to repair and restore the Premises unless required by a Lender to pay off any leasehold mortgage or deed of trust on the Premises.

- (b) Notwithstanding anything to the contrary in Subsection 8.03(a), Tenant is not required to repair or restore the Improvements if—
- (1) the damage or destruction does not arise from an insured cause; or
 - (2) more than 50% of the Improvements are damaged or destroyed and the damage or destruction occurs during the last two years of the Initial Term (if Tenant opts not to extend this Lease under Subsection 2.02(b)), or during the last two years of the First Extended Term (if Tenant opts to extend this Lease under Subsection 2.02(c)), or during the last two years of the Second Extended Term.

Tenant shall notify Landlord in writing of its election not to repair or restore the Improvements. If Tenant elects not to repair or restore the Improvements, then Tenant shall satisfy all Leasehold Encumbrances and to assign to Landlord all remaining insurance proceeds Tenant received for the damage or destruction of the Improvements (less any insurance proceeds attributable to Tenant's trade fixtures and personal property), and this Lease will terminate when all Leasehold Encumbrances are satisfied and all proceeds assigned.

Section 8.04. Option to Terminate Lease for Destruction

Notwithstanding Section 8.03, Tenant is entitled to terminate this Lease by giving Landlord 30 days' prior written notice of termination if all Leasehold Encumbrances are satisfied and removed, and either—

- (a) the Improvements are damaged or destroyed during the last two years of the Initial Term (if Tenant opts not to extend this Lease under Subsection 2.02(b)), or during the last two years of the First Extended Term (if Tenant opts to extend this Lease under Subsection 2.02(c)), or during the last two years of the Second Extended Term by a casualty for which Tenant is not required under this Lease to carry insurance; or

- (b) the cost to repair or restore the damaged or destroyed Improvements exceeds 50% of the fair-market value of the Improvements immediately before the damage or destruction.

Section 8.05. Application of Insurance Proceeds

All insurance proceeds that become payable while this Lease is in effect because of damage to, or destruction of, any of the Improvements will be paid to Tenant in trust and applied by Tenant to the cost of repairing and restoring the damaged or destroyed Improvements as required by Section 8.03. If, however, Tenant terminates this Lease under Section 8.03 or Section 8.04, then all insurance proceeds for the Improvements, but not for Tenant's trade fixtures and personal property, will be used to satisfy any outstanding Leasehold Encumbrances with the remainder of the proceeds being turned over to Landlord, and Landlord may decide in its sole and absolute discretion whether to apply the proceeds to the repair and restoration of the Premises and the Improvements or to retain the proceeds for other uses.

Article 9: Hazardous Substances

Section 9.01. Definitions; Hazardous Substances; Environmental Laws

The following definitions apply in this Lease:

- (a) "Hazardous Substance" means—
- (1) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic waste," "solid waste," "pollutant," or "contaminant" under Environmental Laws (defined in Subsection 9.01(b));
 - (2) any substance listed as hazardous substances by the U.S. Department of Transportation at 49 C.F.R. § 172.101, by the U.S. Environmental Protection Agency at 40 C.F.R. Part 302, or by any successor agencies;
 - (3) any other substance, material, or waste that is or becomes regulated or classified as hazardous or toxic under Environmental Laws (defined in Subsection 9.01(b));
 - (4) any material, waste, or substance that is (A) a petroleum or refined petroleum product, (B) asbestos or asbestos-containing materials, (C) polychlorinated biphenyl, (D) designated as a hazardous substance under 33 U.S.C. § 1321, or listed under 33 U.S.C. § 1317, (E) a flammable explosive, (F) a radioactive material, or (G) a lead-based paint;
 - (5) any substance listed by the State of California under subdivision (a) of Health and Safety Code section 25249.8, as amended, as a chemical known by the state to cause cancer or reproductive toxicity;

- (6) any material that, because of its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, threatens to damage health, safety, or the environment or is required by any law or public agency to be remediated, including remediation that the law or public agency requires for the Premises to be put to any of the uses specified in Subsection 4.01;
 - (7) any material that, if present, would require remediation under the guidelines set forth in California's Leaking Underground Fuel Tank Field Manual, regardless of whether the presence of the material resulted from a leaking underground fuel tank;
 - (8) any pesticide regulated under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.);
 - (9) any material regulated under the federal Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) or California's Occupational Safety and Health Act (Health & Saf. Code, § 63000 et seq.);
 - (10) any material regulated under the federal Clean Air Act (42 U.S.C. 7401 et seq.) or under division 26 of California's Health and Safety Code;
 - (11) any material that qualifies as an "extremely hazardous waste," "hazardous waste," or "restricted hazardous waste" under section 25115, 25117, or 25122.7 of California's Health and Safety Code, or as "medical waste" under section 25281, 25316, 25501, 25501.1, 25023.2, or 39655 of California's Health and Safety Code; and
 - (12) any material listed or defined as a "hazardous waste," "extremely hazardous waste," or an "acutely hazardous waste" under chapter 11 of title 22 of the California Code of Regulations.
- (b) "Environmental Laws" means any statute, ordinance, regulation, rule, order, decree, or other law or requirement that is enacted, promulgated, or issued by any federal, state, or local government entity (whether before, on, or after the Effective Date) and—
- (1) regulates, relates to, or imposes liability or standards of conduct concerning any Hazardous Substance (defined in Subsection 9.01(a));
 - (2) regulates land use or regulates or protects the environment, including but not limited to air, soil, soil vapor, groundwater, surface water, flora, or fauna; or
 - (3) pertains to occupational health or industrial hygiene or to occupational or environmental conditions on, under, or about the Premises.

Without limiting the generality of the foregoing, "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 et seq.); the Clean Water Act, also known as the

Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1251 et seq.); the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. § 1801 et seq.); the Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.); the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. § 6901 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (OSHA) (29 U.S.C. §§ 655 and 657); the California Underground Storage of Hazardous Substance Act (Health & Saf. Code, § 25280 et seq.); the California Hazardous Waste Control Act (Health & Saf. Code, § 25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (Health & Saf. Code, § 24249.5 et seq.); and the Porter-Cologne Water Quality Act (Water Code, § 13000 et seq.), together with any amendments of these statutes and regulations promulgated under them (whether enacted or promulgated before, on, or after the Effective Date).

Section 9.02. Landlord Warranty and Indemnity

- (a) Landlord represents and warrants that, when it delivers possession of the Premises to Tenant in accordance with this Lease, there will be no Hazardous Substances on the Premises that have not been remediated and for which Landlord has not obtained, from the applicable government regulatory agencies, either no-further-action clearance letters or written approvals to reuse the Premises for the purposes set forth in this Lease. Landlord shall indemnify, defend (with attorneys reasonably acceptable to Tenant), protect, and hold Tenant and Tenant's members, directors, officers, shareholders, employees, assignees, subtenants, and Lenders harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise from Hazardous Substances existing on the Premises on or before the date Landlord delivers possession of the Premises to Tenant, or from Landlord's possession, use, generation, transportation, release, threatened release, handling, remediation, storage, or disposal of Hazardous Substances on or about the Premises, except as follows: Landlord is not obligated under this Subsection 9.02(a) for matters caused by Tenant's intentional disturbance, spread, or exposure of pre-existing Hazardous Substances or by the negligence or willful misconduct of Tenant or Tenant's members, directors, officers, employees, agents, contractors, assignees, subtenants, Lenders, or invitees with regard to pre-existing Hazardous Substances.
- (b) Landlord's obligation under Subsection 9.02(a) includes all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs related to—
- (1) any required or necessary remediation, repair, cleanup, or detoxification of the Premises or the Improvements and the preparation of closure plans and other required plans, whether the actions and plans are required or necessary before or after expiration or termination of this Lease; and

- (2) any death, bodily injury, personal injury, property damage or destruction (including injury to the environment), and economic injury that arises from the possession, use, generation, transportation, release, handling, storage, or disposal of Hazardous Substances on, at, or from the Premises by Landlord.
- (c) Landlord's obligation under this Section 9.02 will survive the expiration or termination of this Lease.

Section 9.03. Compliance with Environmental Laws

- (a) In using the Premises, Tenant shall comply with all Environmental Laws pertaining to the Premises and the Improvements. Without limiting the generality of the previous sentence, Tenant shall require that its members, officers, employees, agents, contractors, assignees, subtenants, and invitees handle, transport, store, treat, dispose of, and use Hazardous Substances in, on, or about the Premises or the Improvements in strict compliance with all applicable Environmental Laws.
- (b) Notwithstanding Subsection 9.03(a), Tenant is not obligated to comply with Environmental Laws that pertain to the remediation, removal, release, treatment, transport, storage, encapsulation, or disposal of Hazardous Substances that existed in, on, or about the Premises on or before the date Landlord delivers possession of the Premises to Tenant, except as follows: Tenant shall comply with Environmental Laws, at no cost to Landlord, if Tenant's intentional, negligent, or willful misconduct causes or exacerbates a release of those Hazardous Substances.

Section 9.04. Tenant's Indemnity

- (a) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold harmless—
 - (1) Landlord and Landlord's elected officials, officers, employees, agents, and property; and
 - (2) any successor to, or assignee of, Landlord's interest in this Lease or in the title to the Premises, and the successor's or assignee's directors, officers, shareholders, partners, members, employees, agents, and property,

from and against any and all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorney's fees and litigation costs through final resolution on appeal) that arise directly or indirectly from the possession, use, generation, transportation, release, threatened release, handling, storage, or disposal of Hazardous Substances on or about the Premises by any person or entity on the Premises while this Lease is in effect (other than Landlord's employees or agents), except as follows: Tenant is not obligated to provide this indemnity for any Hazardous Substances that existed in, on, or about the Premises on or before the date Landlord delivers possession of the Premises to Tenant unless Tenant's intentional,

negligent, or willful misconduct causes or exacerbates a release of those Hazardous Substances.

- (b) Tenant's obligation under Subsection 9.04(a) includes but is not limited to all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs related to—
 - (1) any required or necessary remediation, repair, cleanup, or detoxification of the Premises or the Improvements and the preparation of closure plans and other required plans, whether the actions and plans are required or necessary before or after expiration or termination of this Lease; and
 - (2) any death, bodily injury, personal injury, property damage or destruction (including injury to the environment), and economic injury that arises from the possession, use, generation, transportation, release, handling, storage, or disposal of Hazardous Substances on, at, or from the Premises by Tenant or by any person or entity who occupies or operates the Premises or the Improvements on Tenant's behalf or as Tenant's subtenant.
- (c) Tenant's obligation under this Section 9.04 will survive the expiration or termination of this Lease.

Section 9.05. Remediation by Tenant

If Tenant or Tenant's members, directors, officers, employees, agents, contractors, assignees, subtenants, or invitees cause the presence of Hazardous Substances on the Premises or the release of Hazardous Substances on or from the Premises, and if that presence or release results in the contamination or deterioration of the Premises, or of any water or soil on or beneath the Premises, or of any property in the vicinity of the Premises, or of the atmosphere, then Tenant shall promptly take all action necessary to investigate and remedy that contamination or deterioration in compliance with Environmental Laws, at no cost to Landlord. In addition, if Tenant or Tenant's members, directors, officers, employees, agents, contractors, assignees, subtenants, or invitees damage the impermeable barrier Landlord installed over the contaminated soil remaining on the Property, then Tenant shall promptly take all action necessary to repair the barrier and to remedy any contamination caused by the damage, all in compliance with Environmental Laws and at no cost to Landlord.

Section 9.06. Restrictions on Use of Hazardous Substances

- (a) Except as provided otherwise in Subsection 9.06(b), Tenant and Tenant's members, directors, officers, employees, agents, contractors, assignees, subtenants, and invitees shall not use, handle, store, transport, generate, release, or dispose of any Hazardous Substances on, under, or about the Premises.
- (b) Tenant and Tenant's members, directors, officers, employees, agents, contractors, assignees, subtenants, and invitees may use—

- (1) quantities of common chemicals needed to conduct Tenant's or a subtenant's business on the Premises consistent with this Lease, including but not limited to adhesives, lubricants, motor-vehicle fuels, paints, solvents, used motor oil and oil filters, brake fluid, and cleaning fluids; and
- (2) other Hazardous Substances that are necessary to Tenant's or a subtenant's conduct of business on the Premises consistent with this Lease and for which Landlord has given written consent before the Hazardous Substances are brought on the Premises. Within 10 days after receiving a written request from Landlord, Tenant shall disclose in writing all Hazardous Substances being used on the Premises, the nature of the use, and the manner of storage and disposal.

Section 9.07. Notification Obligations

Landlord and Tenant shall promptly notify each other in writing of all oral or written communications from a governmental entity that relate to the Premises and concern Hazardous Substances or the violation of Environmental Laws.

Article 10: Indemnity and Insurance

Section 10.01. Tenant's Indemnity Agreement

- (a) *Definitions.* For purposes of this Section 10.01—
 - (1) "the Premises" includes any of the Improvements located on the Premises on or after the Effective Date;
 - (2) "Person" is to be interpreted broadly and includes Tenant's members, directors, officers, employees, and agents; and
 - (3) "Occurrence" means (A) the death of, or injury to, any Person; and (B) damage to, or destruction of, any real or personal property or the environment (broadly interpreted).
- (b) Tenant shall indemnify, defend (with attorneys reasonably acceptable to Landlord), protect, and hold Landlord and Landlord's property (including the Premises) harmless from and against all liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise directly or indirectly from Tenant's possession and use of the Premises, except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's elected officials, officers, employees, contractors, or agents. Tenant's obligation under this Section 10.01 includes but is not limited to liabilities, claims, demands, damages, fines, penalties, judgments, settlements, and costs arising from any of the following:
 - (1) Any Occurrence on the Premises.

- (2) Any Occurrence that is in any way connected with the Premises or with any personal property on the Premises.
- (3) Any Occurrence caused or allegedly caused by either (A) the condition of the Premises created by Tenant or by any Person on the Premises with Tenant's permission or (B) some act or omission on the Premises by Tenant or by any Person on the Premises with Tenant's permission.
- (4) Any Occurrence caused by, or related in any way to, work performed on the Premises or materials furnished to the Premises at the request of Tenant or any person or entity acting for Tenant or with Tenant's permission.
- (5) Tenant's failure to perform any provision of this Lease, to comply with any requirement of law applicable to Tenant, or to fulfill any requirement imposed by any governmental entity on Tenant or Tenant's use of the Premises.

Section 10.02. Liability Insurance

While this Lease is in effect (except during the Pre-Possession Phase of the Initial Term), Tenant shall procure and maintain, at no cost to Landlord, a broad-form comprehensive-coverage policy of public-liability insurance that insures Tenant and Landlord against loss or liability caused by, or connected with, Tenant's possession and use of the Premises under this Lease, in amounts not less than the following:

- (a) \$2,000,000 for injury to, or death of, one person and, subject to that limitation, of not less than \$2,000,000 for injury to, or death of, two or more persons as a result of any one accident or incident.
- (b) \$2,000,000 for damage to, or destruction of, any property.

The policy must include an endorsement naming Landlord and all Lenders as additional insureds.

Section 10.03. Garage Liability Insurance

While this Lease is in effect (except during the Pre-Possession and Construction Phases of the Initial Term), Tenant shall require that each subtenant of the Premises procure and maintain, at no cost to Landlord, a garage-liability insurance policy that insures the subtenant, Tenant, and Landlord against loss or liability caused by, or connected with, the subtenant's possession and use of the Premises under this Lease and any sublease, in amounts not less than the following:

- (a) \$1,000,000 for injury to, or death of, one person and, subject to that limitation, of not less than \$1,000,000 for injury to, or death of, two or more persons as a result of any one accident or incident.

(b) \$1,000,000 for damage to, or destruction of, any property.

The policy must include an endorsement naming Landlord, Tenant, and all Lenders as additional insureds.

Section 10.04. Pollution Insurance

While this Lease is in effect (except during the Pre-Possession Phase of the Initial Term), Tenant shall procure and maintain, at no cost to Landlord, a pollution-insurance policy that insures Tenant and Landlord against loss or liability caused by, or connected with, Tenant's possession and use of the Premises under this Lease, in an amount not less than \$1,000,000. The policy must include an endorsement naming Landlord as an additional insured. Tenant may comply with this Section 10.04 by requiring each subtenant to procure and maintain the required insurance policy, at no cost to Landlord, with the policy including an endorsement naming Landlord, Tenant, and all Lenders as additional insureds.

Section 10.05. Fire-and-Casualty Insurance

While this Lease is in effect (except during the Pre-Possession Phase of the Initial Term), Tenant shall procure and maintain, at no cost to Landlord, a fire-insurance policy insuring the Improvements for their full replacement value against damage or destruction by fire and the perils commonly covered under the standard extended-coverage endorsement to fire-insurance policies issued on real property in Sacramento County. The policy required by this Section 10.05 must insure the Improvements against loss or destruction by windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, fire, smoke damage, and sprinkler leakage, even if these perils are not commonly covered under the standard extended-coverage endorsement. During construction of the Improvements, the policy must also include coverage for course of construction, vandalism, and malicious mischief and insure the Improvements and all materials delivered to the construction site for their full insurable value. In addition, so long as any Leasehold Encumbrance exists, the policy must include a standard lender endorsement.

Section 10.06. Landlord's Approval of Policies; Certificates and Copies

Each insurance policy required under this Article 10 must be issued by an insurance company authorized to transact insurance business in California and will be subject to Landlord's approval, which Landlord shall not withhold, delay, or condition unreasonably. Tenant shall deliver to Landlord one or more certificates of insurance confirming that all policies are in effect, with each certificate executed by the insurance company or companies or by their authorized agents. Tenant shall deliver the certificate or certificates within 10 days after (a) this Lease is fully executed by Landlord and Tenant and (b) any policy is replaced, rewritten, or renewed. Upon Landlord's written request, Tenant shall promptly provide Landlord with accurate and complete copies of each policy, including all endorsements.

Section 10.07. Notice of Cancellation of Insurance

Each insurance policy required under this Article 10 must include an endorsement stating that the policy cannot be cancelled or materially altered for any reason unless the insurer gives at least 30-days' prior written notice of the cancellation or material alteration to Landlord and all Lenders in the manner required by this Subsection 14.01 for service of notices.

Article 11: Condemnation**Section 11.01. Total Condemnation**

If, while this Lease is in effect, any public or quasi-public entity uses the power of eminent domain to take fee title to all of the Premises, or to take fee title to all of the Improvements, or to take the Tenant's entire leasehold estate (a "Total Taking"), then this Lease will terminate at 12:01 a.m. on the earlier of—

- (a) the day legal title is vested in the entity exercising the power of eminent domain; or
- (b) the day the entity exercising the power of eminent domain takes actual physical possession.

Thereafter, both Landlord and Tenant will be released from all obligations under this Lease except those specified by Section 11.03 or by the indemnity obligations specified to survive termination or expiration of this Lease.

Section 11.02. Partial Taking; Replacement Improvements

- (a) If, while this Lease is in effect, a taking of the Premises or the Improvements occurs that is less than a Total Taking (a "Partial Taking"), then all compensation and damages payable for the Partial Taking and attributable to the Improvements will be made available to Tenant as reasonably needed to do the following:
 - (1) Repair all or any portion of the Improvements not taken.
 - (2) Replace the Improvements taken on the portion of the Premises not taken (the "Replacement Improvements"), if replacement is permitted by then-existing law. Plans and specifications for the Replacement Improvements must be compatible in architecture and construction quality with the Improvements not taken and must be approved in writing by Landlord before construction begins.
- (b) Notwithstanding Subsection 11.02(a), Tenant may elect to terminate this Lease for a Partial Taking if the portion of the Premises or the Improvements taken is so substantial that even with Replacement Improvements Tenant's use of the Premises for the uses described in Section 4.01 will be materially impaired. To terminate this Lease under this Subsection 11.02(b), Tenant must serve Landlord with written notice of termination

within 60 days after Tenant receives, from Landlord or the entity exercising the power of eminent domain, a written notice describing the extent and scope of the taking. The termination will be effective on the earlier of—

- (1) the termination date specified in Tenant's notice to Landlord; or
 - (2) the date the condemning authority takes physical possession of the portion of the Premises or the Improvements taken by eminent domain.
- (c) When the termination under Subsection 11.02(b) becomes effective—
- (1) all subleases and subtenancies created by Tenant in or on the Premises or any portion of the Premises will also terminate, and Tenant shall deliver the Premises and the remaining Improvements to Landlord free and clear of those subleases and subtenancies, except as follows: in its sole and absolute discretion, Landlord may notify any subtenant in writing that the subtenant may attorn to Landlord and continue its occupancy of the Premises as a tenant of Landlord;
 - (2) Tenant shall deliver the Premises and remaining Improvements free and clear of all liens and encumbrances not created by Landlord; and
 - (3) both Landlord and Tenant will be released from all obligations under this Lease except those specified in Section 11.03 and the indemnity obligations specified to survive termination or expiration of this Lease.

Section 11.03. Condemnation Award

Compensation awarded because of a taking by eminent domain will be allocated between Landlord and Tenant as follows:

- (a) Compensation for any land that is part of the Premises will be paid to Landlord and be Landlord's sole property, free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant. Tenant is entitled to just compensation for the value of its leasehold estate.
- (b) When only a portion of the Premises is taken by eminent domain and Tenant is not entitled to or does not terminate this Lease, compensation for any of the Improvements constructed or located on the portion of the Premises taken will be applied in accordance with Subsection 11.02(a) toward the Replacement Improvements.
- (c) When this Lease is terminated under Section 11.01 or Subsection 11.02(b), any compensation awarded for any of the Improvements located on the portion of the Premises taken will be allocated between Tenant and Landlord as follows:
 - (1) Tenant will receive, as its sole property, the percentage of the compensation awarded for the Improvements that equals the percentage of the term of this Lease then in effect that has not expired when the termination becomes effective.

- (2) Landlord will receive, as its sole property, the percentage of the compensation awarded for the Improvements that equals the percentage of the term of this Lease then in effect that has expired when the termination becomes effective.
- (3) Illustration of Subsections 11.03(c)(1) and 11.03(c)(2): If the termination becomes effective at the end of the fifth year of the First Extended Term, then Tenant would receive 66.67% of the compensation awarded for the Improvements, and Landlord would receive 33.33% of the compensation awarded for the Improvements.
- (4) For purposes of this Subsection 11.03(c), a termination becomes effective at 12:01 a.m. on the earlier of—
 - (A) the date that title to the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain; or
 - (B) the date that physical possession of the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain.
- (d) Any severance damages awarded because only a portion of the Premises is taken by eminent domain shall be—
 - (1) Tenant's sole and separate property during the first 70% of the term of this Lease then in effect;
 - (2) equally divided between Tenant and Landlord during the next 20% of the term of this Lease then in effect, except to the extent needed for Replacement Improvements when Tenant cannot or does not terminate this Lease; and
 - (3) Landlord's sole and separate property during the last 10% of the term of this Lease.
- (e) Any damages awarded for relocation expenses, loss of business, or loss of goodwill will belong exclusively to Tenant.

Section 11.04. Partial Termination and Reduction of Monthly Rent for Partial Taking

If, while this Lease is in effect, a public or quasi-public agency or entity uses the power of eminent domain to take title to, and possession of, only a portion of the Premises, and if Tenant does not or cannot terminate this Lease under Subsection 11.02(b), then this Lease will terminate as to the portion of the Premises taken (a "Partial Termination") at 12:01 a.m. on the earlier of—

- (a) the date that title to the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain; or

- (b) the date that physical possession of the portion of the Premises on which the Improvements are located is taken by the entity exercising the power of eminent domain.

Upon a Partial Termination, the Monthly Rent payable under this Lease will be reduced in the same proportion that the value of the portion of the Premises taken by eminent domain bears to the full value of the Premises immediately before the Partial Termination. As to the portion of the Premises still subject to this Lease after the Partial Termination, Tenant shall construct Replacement Improvements in accordance with Subsection 11.02(a) and to do all other acts, at no cost to Landlord, that are required to make the remaining portion of the Premises fit for the uses described in Section 4.01.

Section 11.05. Voluntary Conveyance in Lieu of Eminent Domain

Landlord's voluntary conveyance of title to a public or quasi-public entity of all or a portion of the Premises under threat by that entity to take it by eminent domain will be considered a taking of title to all or a portion of the Premises under the power of eminent domain for purposes of this Article 11.

Article 12. Assignment and Subletting

Section 12.01. No Assignment Without Landlord's Consent

- (a) Tenant may assign this Lease only with Landlord's prior written consent, which Landlord shall not withhold, delay, or condition unreasonably. An assignment made contrary to this Section 12.01 is void unless otherwise permitted by this Article 12.
- (b) An assignment may cover all of Tenant's interests in this Lease or may be limited to Tenant's interests with respect to either Area 1 or Area 2. If Tenant partially assigns its interests and obligations in Area 1 or Area 2 to an assignee approved by the Landlord, then as of the date of the assignment this Lease will be interpreted so that rights and obligations pertaining to Tenant are divided between Area 1 and Area 2, and the interests and obligations of Tenant as to one area and of the assignee as to the other area will each stand on their own as if there were separate and independent ground leases with Landlord for Area 1 and Area 2.
- (c) An assignee must be a person or entity who, in Landlord's sole and absolute judgment, has the experience and wherewithal needed to successfully manage the Premises consistently with the purposes of this Lease. To assist Landlord in determining whether to consent to an assignment, Tenant shall provide Landlord with the proposed assignee's complete, detailed financial statements (audited by a certified public accountant reasonably satisfactory to Landlord, if the proposed assignee has the statements audited in its normal course of business), together with complete, detailed information about—
 - (1) the proposed assignee's business experience;

- (2) the proposed assignee's intended use of the Premises and the Improvements;
 - (3) the proposed assignee's sources of funds for repaying any indebtedness of Tenant that the proposed assignee will assume, take subject to, or agree to pay, and all other claims on those funds; and
 - (4) any other information that Landlord may reasonably require to determine whether the proposed assignee is qualified.
- (d) Landlord's consent to one assignment will not be considered consent to any subsequent assignment.

Section 12.02. Permitted Assignments

For purposes of this Section 12.02, "Tenant" means the original Tenant under this Lease, Rapton Investment Group LLC. Notwithstanding Section 12.01, Landlord consents to the following assignments (each, a "Permitted Assignment"):

- (a) *Assignment to Affiliate.* Tenant may assign its rights and obligations under this Lease—
- (1) to a partnership, so long as (A) Tenant is one of the general partners or (B) Tenant has greater than a 50% ownership interest (directly or indirectly) in an entity that is one of the general partners;
 - (2) to a limited-liability company in which Tenant is the managing member; or
 - (3) to the then-current subtenant of Area 1 (if other than Rapton) or Area 2.
- (b) *Estate Planning.* Any transfer of shares or membership interests in Tenant to a shareholder's or member's estate-planning trust, family partnership, spouse, children, or grandchildren if the transfer results from the shareholder's or member's death, retirement, estate plan, or disability. Tenant shall give Landlord at least 10-days' prior written notice of such a transfer.

Section 12.03. Leasehold Encumbrances and Subsequent Transfers

Notwithstanding Section 12.01, Landlord's consent is not required for the following:

- (a) Tenant's assignment to a Lender under a Leasehold Encumbrance (as defined in Section 7.01) of all or a portion of Tenant's interest under this Lease and all Tenant's leasehold estate;
- (b) A transfer, conveyance, or assignment resulting from a foreclosure or from a Lender's acceptance of a deed in lieu of foreclosure.

- (c) Any transfer, conveyance, or assignment by a Lender following its acquisition of this Lease and Tenant's leasehold estate as a result of foreclosure or acceptance of a deed in lieu of foreclosure.

Section 12.04. Subleases

- (a) *Sublease of Area 1.* Tenant shall sublease Area 1 of the Premises to Rapton before the Operations Phase of the Initial Term begins (see Subsection 2.02(a)(3)). The term of the sublease to Rapton must be co-extensive with the Initial Term of this Lease. If Rapton's sublease of Area 1 expires, terminates, or is terminated before the expiration or termination of this Lease, then, at Landlord's sole and absolute discretion, Landlord may terminate this Lease as to Area 1 alone in accordance with Subsection 12.04(d).
- (b) *Sublease of Area 2.* Tenant may sublease Area 2 of the Premises, subject to the following:
- (1) *Initial Sublease.* The initial sublease of Area 2 must be with a subtenant who, in Landlord's reasonable judgment, has the experience and wherewithal needed to successfully operate a High-Volume Dealership on Area 2, and it must obligate the subtenant to have a High-Volume Dealership in operation on Area 2 within two years after the date of the sublease. If Tenant fails to enter into an initial sublease of Area 2 within three years after the Construction Phase begins, or if a High-Volume Dealership is not in operation on Area 2 within two years after the date of the initial sublease, then it will not be a default by Tenant under this Lease but Landlord may terminate this Lease as to Area 2 in accordance with Subsection 12.04(d). If Landlord terminates this Lease as to Area 2 in accordance with this Subsection 12.04(b), then Landlord shall not re-lease Area 2 to any High-Volume Dealership from which Tenant received a bona-fide written offer to sublease Area 2 (the preclusive effective of this sentence will not apply to more than three High-Volume Dealerships and will expire at 11:59 p.m. on December 31, 2010).
 - (2) *Subsequent Subleases.* If the initial sublease or any subsequent sublease of Area 2 expires, terminates, or is terminated before the expiration or termination of this Lease, then Landlord may terminate this Lease as to Area 2 in accordance with Subsection 12.04(d) unless Tenant subleases Area 2 to a new subtenant within 18 months after the previous sublease expired or terminated. The new sublease must be with a subtenant who, in Landlord's reasonable judgment, has the experience and wherewithal needed to successfully operate a High-Volume Dealership on Area 2, and it must obligate the subtenant to have a High-Volume Dealership in operation on Area 2 within twelve months after the date of the new sublease. If Tenant fails to sublease Area 2 to a new subtenant within the 18 months, or if a High-Volume Dealership is not in operation on Area 2 within twelve months after the date of the new sublease, then Landlord may terminate this Lease as to Area 2 in accordance with Subsection 12.04(d).
 - (3) *Landlord's Approval of Subtenants.* Tenant shall not enter into a sublease of Area 2 until Landlord notifies Tenant in writing of Landlord's

determination that the proposed subtenant has the experience and wherewithal needed to successfully operate a High-Volume Dealership on Area 2. To assist Landlord in making this determination, Tenant shall provide Landlord with the following:

- (A) Complete, detailed information about the proposed subtenant's business experience.
- (B) The proposed subtenant's complete, detailed financial statements for the most recent business year (audited by a certified public accountant reasonably satisfactory to Landlord, if the proposed subtenant has the statements audited in its normal course of business).
- (C) The proposed subtenant's intended use of Area 2 and the associated Improvements.
- (D) Pro forma financial statements for the first 12 months of the proposed subtenant's operations on Area 2, showing, to Landlord's reasonable satisfaction, the projected sales of new and used motor vehicles (number of units plus dollar amounts).
- (E) Any other information that Landlord may reasonably require to determine whether the proposed subtenant is qualified.

A proposed subtenant of Area 2 will be considered approved unless Landlord disapproves the proposed subtenant in writing within 30 days after Landlord receives all of the information described in this Subsection 12.04(b)(3).

- (c) *Common Sublease Provisions.* Each sublease must be expressly subject to all terms and conditions of this Lease, which will be superior to those set forth in the sublease; must require the subtenant to attorn to Landlord if Tenant breaches or Landlord terminates this Lease; and must have a term that does not extend beyond the term of this Lease then in effect. In addition, each sublease must authorize Tenant to terminate the sublease if, after the subtenant begins operating a High-Volume Dealership on the Premises, the subtenant discontinues operations for more than 60 consecutive days for reasons other than a Force Majeure Event (see Section 14.03).
- (d) *Termination Procedures.* To exercise its right under this Section 12.04 to terminate this Lease as to Area 1 or Area 2, Landlord must serve Tenant with a written notice of termination, which will be effective 30 days after service.
 - (1) On the effective date of a notice of termination, Tenant or the subtenant, whichever is then in possession, shall surrender to Landlord the affected area of the Premises and the associated Improvements, all of which must be in as good, safe, and broom-clean condition as practicable, excepting reasonable wear and tear and damage by forces beyond Tenant's reasonable control. At Landlord's written request, Tenant shall execute and provide to Landlord quitclaim deeds or other reasonable documents in recordable form acceptable to Landlord that reflect

the termination of Tenant's and the subtenant's right, title, and interest in this Lease, the Premises, and the Improvements.

- (2) The Monthly Rental will be reduced proportionately if Landlord terminates this Lease as to Area 1 or Area 2.
 - (3) Termination under this Section 12.04 will not relieve Tenant from the obligation to pay any sum due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.
- (e) *Effect of Termination of Lease on Area Not Terminated.* If Landlord partially terminates this Lease as to Area 1 or Area 2 in accordance with this Section 12.04, then the following apply:
- (1) This Lease will be construed so that Tenant's rights and obligations are divided between Area 1 and Area 2, with the leasehold interest in the area not terminated treated as a continuing, separate, and independent interest governed by this Lease.
 - (2) The terms "Property" and "Premises" in this Lease will refer only to the area not terminated, and Tenant or Tenant's assignee will have no further rights or obligations in connection with the terminated area.
- (f) *Invalid Subleases.* A sublease made contrary to this Section 12.04 is void.

Section 12.05. Certified Copies of Assignments and Subleases

Tenant shall provide Landlord with a copy of each executed assignment and each executed sublease as soon after execution as is reasonably practicable, and Tenant shall certify in writing that each copy so provided is complete and accurate.

Section 12.06. Non-disturbance of Subtenants

If Landlord terminates this Lease solely because of Tenant's breach or default, Landlord shall not terminate any subleases that are in effect on the termination date or disturb the possession or leasehold rights of the subtenants. To that end, when Tenant subleases Area 1 or Area 2 in accordance with Section 12.04, Landlord shall enter into a non-disturbance agreement with the subtenant, using the form attached as **Exhibit F**, within 10 days after receiving Tenant's written request for such an agreement. Landlord is not bound by any sublease or amendment to a sublease unless Landlord has consented to it; Landlord shall not withhold, delay, or condition its consent unreasonably.

Section 12.07. Assignment or Sublease to a REIT

Notwithstanding any other provision of this Lease, if Tenant assigns or subleases Area 2 in accordance with this Article 12, then the assignee or subtenant may in turn assign or sublet its leasehold interest to a real estate investment trust ("REIT"), without Landlord's consent, as

part of an assignment-and-leaseback transaction under which (a) the REIT simultaneously subleases its interest back to the assignee or subtenant; and (b) the assignee or subtenant operates a High-Volume Dealership on Area 2, in accordance with this Lease.

Article 13: Breach and Remedies

Section 13.01. Breach by Tenant

- (a) If Tenant violates any covenant, condition, or agreement of this Lease, and if Landlord serves Tenant with written notice of breach, then the following will apply:
- (1) *Non-monetary violations.* For non-monetary violations, Tenant will be in breach of this Lease if Tenant has not cured the violation within 60 days after service of the notice or, for a violation that cannot be cured within 60 days, has not begun work on a cure within 60 days after service of the notice and diligently pursued the cure to completion.
 - (2) *Monetary violations.* For monetary violations, Tenant will be in breach of this Lease if Tenant has not cured the violation within 30 days after service of the notice.
- (b) In addition to Tenant's failure to cure a violation of any covenant, condition, or agreement within the time permitted by Subsection 13.01(a), the following also constitute a breach by Tenant:
- (1) Tenant's failure for more than 60 consecutive days (except during the Construction Phase of the Initial Term) to have at least one High-Volume Dealership operating on the Premises during all commercially reasonable days of the week and hours of the day, except as excused under Section 14.03 because of a Force Majeure Event.
 - (2) The appointment of a receiver to take possession of the Premises or the Improvements, or of Tenant's interest under this Lease, or of Tenant's operations on the Premises, for any reason, including but not limited to an assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, if not released within 60 days.
 - (3) An assignment by Tenant for the benefit of creditors, or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition or other court action or suit under any law for the purpose of (1) adjudicating Tenant a bankrupt; (2) extending time for payment; (3) satisfaction of Tenant's liabilities; or (4) reorganization, dissolution, or arrangement because of bankruptcy or insolvency, or to prevent bankruptcy or insolvency. In the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 60 days after the filing or other initial event, then Tenant will not be in breach of this Lease.

- (4) The subjection of any right or interest of Tenant under this Lease to attachment, execution, or other levy, or to seizure under legal process, when the claim against Tenant is not released within 60 days.
- (5) Tenant's abandonment of, or vacation from, the Premises (failure to occupy and operate the Premises for 60 consecutive days will be considered an abandonment and vacation of the Premises and of the personal property remaining on the Premises). This Subsection 13.01(b)(5) does not apply to Tenant's vacating the Premises because the Improvements are damaged or destroyed, nor does it apply to any subsequent, reasonable period of repair or reconstruction.
- (6) Except for assignments approved or permitted under Article 12, assignment of the Premises or this Lease by Tenant, either voluntarily or by operation of law, and whether by judgment, execution, death, or any other means, without Landlord's written consent.
- (7) Use of the Premises for any purpose other than as authorized in this Lease.

Section 13.02. Termination and Unlawful Detainer

If Tenant breaches this Lease in accordance with Section 13.01, then, except as provided in Section 13.03, Landlord has the following remedies in addition to all other rights and remedies provided by law or equity. Landlord may resort to these remedies cumulatively or in the alternative, at Landlord's election:

- (a) Landlord may terminate this Lease by serving Tenant and its then-current subtenants with a written notice of termination ("Termination Notice"). If a Termination Notice is served, then all Tenant's rights in the Premises and the Improvements will terminate immediately. Promptly after the Termination Notice is served—
 - (1) Tenant shall surrender and vacate the Premises and the Improvements in "broom clean" condition;
 - (2) Landlord may re-enter and take possession of the Premises and the Improvements; and
 - (3) Except as otherwise provided in Section 12.06, Landlord may eject all persons and entities in possession or occupancy, or eject some and not others, or eject none.

Termination under this Subsection 13.02(a) will not relieve Tenant from the obligation to pay any sum due to Landlord or from any claim for damages previously accrued or then accruing against Tenant. Nor will termination relieve Tenant from indemnity obligations specified to survive termination of this Lease.

- (b) Landlord may—
- (1) re-enter the Premises and, without terminating this Lease, re-let the Premises and the Improvements, in whole or part, for the account and in the name of Tenant or otherwise; and
 - (2) eject all persons, or eject some and not others, or eject none, except as otherwise provided in Section 12.06.

Landlord shall apply all rents from re-letting in accordance with Subsection 13.02(f). Any re-letting may be for the remainder of the term then in effect or for a shorter period. Landlord shall execute any leases made under this provision in Landlord's name, and Landlord will be entitled to all rents from the use, operation, or occupancy of the Premises or the Improvements, or of both. Tenant nevertheless shall pay to Landlord, on the due dates specified in this Lease, the equivalent of all sums required of Tenant under this Lease plus reasonable Landlord's expenses, less the proceeds of any re-letting or attornment. No act by Landlord or on Landlord's behalf under this Subsection 13.02(b) will constitute a termination of this Lease unless Landlord serves Tenant with a Termination Notice.

- (c) Landlord may store Tenant's personal property and trade fixtures remaining on the Premises for Tenant's account and at Tenant's cost in accordance with California law. The election of one remedy for any one item will not foreclose the subsequent election of any other remedy for another item or for the same item.
- (d) Landlord will be entitled to each installment of rent or to any combination of installments for any period before termination, plus interest at 10% per annum from each installment's due date. The proceeds of re-letting or attorned sub-rents will be applied as follows when received: (1) to Landlord to the extent that the proceeds for the period covered do not exceed the amount due from, and charged to, Tenant for the same period; and (2) the balance to Tenant.
- (e) Landlord will be entitled to damages in the following sums:
- (1) the worth at the time of award of the unpaid rent that had been earned at the time of termination of this Lease;
 - (2) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of this Lease until the time of award, less the proceeds of all re-lettings and attornments, plus interest at the annual rate of 10%;
 - (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term then in effect after the time of award exceeds the amount of future rental loss that Tenant proves could be reasonably avoided; and
 - (4) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease.

For purposes of Subsections 13.02(e)(1) and 13.02(e)(2), the "worth at the time of award" will be calculated by adding 3% to the discount rate of the Federal Reserve Bank of San Francisco at the time of the award. For purposes of Subsection 13.02(e)(3), the "worth, at the time of award" will be calculated by adding 2% to the discount rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (f) Tenant hereby assigns to Landlord all sub-rents and other sums falling due from subtenants, licensees, and concessionaires during any period in which Landlord has the right under this Lease, exercised or not, to re-enter the Premises for Tenant's breach, and Tenant will not have any right to these sums during that period. This assignment is subject and subordinate to all assignments of the same sub-rents and other sums made, before the breach in question, to a Lender holding a Leasehold Encumbrance. Landlord may re-enter the Premises and the Improvements with or without process of law, and without terminating this Lease, and collect these sums or bring an action for the recovery of the sums from such obligors, or both. Landlord will receive and collect all sub-rents and proceeds from re-letting, applying them as follows:
- (1) first, to the payment of reasonable expenses (including attorney's fees or brokers' commissions, or both) paid or incurred by Landlord or on Landlord's behalf in recovering possession, placing the Premises and the Improvements in good condition, and preparing or altering the Premises or the Improvements for re-letting;
 - (2) second, to the reasonable expense of securing new tenants;
 - (3) third, to the fulfillment of Tenant's covenants to the end of the term then in effect; and
 - (4) fourth, to Landlord's uses and purposes.

Tenant nevertheless shall pay to Landlord, on the due dates specified in this Lease, the equivalent of all sums required of Tenant under this Lease plus Landlord's expenses, less the proceeds of the sums assigned and actually collected under this Subsection 13.02(f). Landlord may collect either the assigned sums or Tenant's balances, or both, or any installment or installments of them, either before or after expiration of the term then in effect. But the limitations period will not begin to run on Tenant's payments until the due date of the final installment to which Landlord is entitled, nor will it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

Section 13.03. Subtenant's Election to Continue Lease in Effect

As used in this Section 13.03 (except in Subsections 13.03(b)(1) and 13.03(b)(2)), "subtenant," "sublease," and "area" are singular if only one sublease is in effect and plural if two subleases are in effect. If Tenant breaches this Lease while a valid sublease is in effect, then Landlord may not terminate this Lease under Section 13.02 unless Landlord first notifies

the subtenant in accordance with this Section 13.03 and the time for the subtenant to respond to the notice has passed.

- (a) *Landlord's Notice.* Landlord's notice must (1) state that Tenant has breached this Lease; (2) describe the breach and the required cure; (3) state the time within which the cure must be completed; (4) explain that Landlord intends to terminate the Lease unless the subtenant notifies Landlord, within 30 days after receiving Landlord's notice, that the subtenant elects to cure the breach and take an assignment of this Lease as to the area covered by the subtenant's sublease; and (5) explain that the subtenant may take the assignment only if Landlord determines, in accordance with Section 12.01, that the subtenant has the experience and wherewithal needed to successfully manage the area covered by the sublease consistently with the purposes of this Lease (if, however, Landlord has previously approved the subtenant in accordance with Section 12.04, then Landlord's further approval is not required for the subtenant to take an assignment).
- (b) *Subtenant's Response.* The subtenant must respond to Landlord's notice within 30 days after receiving Landlord's notice, and the response must (1) affirm that the subtenant will cure the breach as required, within the time specified in Landlord's notice (or within a time acceptable to both Landlord and the subtenant); (2) affirm that the subtenant desires to take an assignment of this Lease as to the area covered by the subtenant's sublease; and (3) acknowledge that the assignment will be effective only if Landlord determines, in accordance with Section 12.01, that the subtenant has the experience and wherewithal needed to successfully manage the area covered by the subtenant's sublease consistently with the purposes of this Lease (if, however, Landlord has previously approved the subtenant in accordance with Section 12.04, then Landlord's further approval is not required for the subtenant to take an assignment).
- (1) If two subleases are in effect and both subtenants respond that they are willing to cure Tenant's breach and take an assignment of the Lease, then their respective obligations for curing Tenant's breach will be in the proportions that the acreages of Area 1 and Area 2 each bear to the acreage of the total Property, and Tenant shall partially assign the Lease to each subtenant based on the area covered by each subtenant's sublease.
- (2) If two subleases are in effect and only one of the two subtenants responds that it is willing to cure the Tenant's breach and take an assignment of the Lease, then the responding subtenant will be solely responsible for curing the Tenant's breach, and the Lease for the entire Premises will be assigned to the responding subtenant if Landlord determines, in accordance with Section 12.01, that such responding subtenant has the experience and wherewithal to successfully manage the entire Premises consistently with the purposes of this Lease.
- (c) *Assignment.* When Landlord notifies Tenant that a subtenant has elected to cure the breach and take an assignment, Tenant shall assign this Lease to the subtenant, in accordance with Subsection 12.02(a)(3), as to the area covered by the subtenant's sublease.

- (d) *Subtenant's Failure to Cure.* A subtenant's failure to cure the breach as required, within the time specified in Landlord's notice under Subsection 13.03(a) (or within a time acceptable to both Landlord and the subtenant) will constitute a breach under Section 13.01 that entitles Landlord to terminate this Lease, in accordance Section 13.02, as to the area covered by the subtenant's sublease.

Section 13.04. Continuation of Lease in Effect

If Tenant breaches this Lease and abandons the Premises while this Lease is in effect, and if Section 13.03 has not been invoked, then Landlord may continue this Lease in effect by not terminating Tenant's right to possession of the Premises. In that event, Landlord will be entitled to enforce all of its rights and remedies under this Lease, including the right to recover Monthly Rent as it becomes due. This Section 13.04 is to be applied in accordance with Civil Code section 1951.4, which provides that a landlord may continue a lease in effect after a tenant's breach and abandonment and recover rent as it becomes due if tenant has a right to sublet or assigns, subject only to reasonable limitations.

Section 13.05. Cumulative Remedies

The remedies given to Landlord in this Article 13 are not exclusive. They are cumulative with, and in addition to, all remedies provided elsewhere in this Lease or allowed by law on or after the Effective Date.

Section 13.6. Waiver of Breach

A party's failure to insist on strict performance of this Lease or to exercise any right or remedy upon the other party's breach of this Lease will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Lease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

Section 13.7. Surrender of Premises

On expiration or earlier termination of this Lease, Tenant shall surrender the Premises and the Improvements to Landlord in as good, safe, and broom-clean condition as practicable, excepting reasonable wear and tear and damage by forces beyond Tenant's reasonable control. At Landlord's written request, Tenant shall execute and provide to Landlord quitclaim deeds or other reasonable documents in recordable form acceptable to Landlord that reflect the expiration or termination of Tenant's right, title, and interest in this Lease, the Premises, and the Improvements.

Article 14: Miscellaneous

Section 14.01. Notices

Any notice or other communication under this Lease must be in writing and will be considered properly given and effective only when delivered or mailed to the following persons in the manner provided in this section:

(a) If to Landlord: City Manager City of Sacramento 915 I Street, Fifth Floor
Sacramento, CA 95814

(b) If to Tenant:

Rapton Investment Group LLC Attn: Mel Rapton, Manager 2820
Fulton Avenue
Sacramento, CA 95821

With a copy to—

Law Offices of Gregory D. Thatch 1730 "I" Street, Suite 220
Sacramento, CA 95814

Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section. If sent by mail, a notice or other communication will be effective or will be considered to have been properly given 48 hours after it has been deposited in the United States Mail (certified mail and return receipt requested) and addressed as set forth above, with postage prepaid. The parties shall not refuse or evade delivery of any notice. Notice personally served will be considered effective or to have been properly given upon delivery.

Section 14.02. Landlord's Right to Enter and Inspect

Tenant shall permit Landlord and Landlord's elected officials, officers, employees, agents, representatives, or consultants to enter upon the Premises during Tenant's normal business hours while this Lease is in effect to inspect the Premises and the Improvements for the purpose of determining Tenant's compliance with this Lease.

Section 14.03. Force Majeure

(a) Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either Landlord or Tenant is prevented or delayed because of a Force Majeure Event (defined in Subsection 14.03(b)), then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. This section

does not excuse Tenant from the obligation to pay rent promptly or the obligation of either party to perform an act rendered difficult or impossible solely because of that party's financial condition. (b) "Force Majeure Event" means a cause of delay that is not the fault of the party who is required to perform under this Lease and is beyond that party's reasonable control, including but not limited to the elements (including but not limited to floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riot, acts of terrorism, war or war-defense conditions, the acts of any public enemy, the actions or inactions of any governmental entity (excluding Landlord) or the entity's agents, litigation (including but not limited to litigation under CEQA), labor shortages (including but not limited to shortages caused by strikes or walkouts), and materials shortages.

Section 14.04. Time of Essence

Time is of the essence of this Lease.

Section 14.05. Relationship of the Parties

This Lease does not create any relationship or association between Landlord and Tenant other than that of landlord and tenant. For example, and without limiting the previous sentence, this Lease does not create between Landlord and Tenant the relationship of principal and agent, nor does it create a partnership or joint venture.

Section 14.06. Attorneys' Fees

The party prevailing in any litigation concerning this Lease, the Premises, or the Improvements will be entitled to an award by the court of reasonable attorneys' fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation.

Section 14.07. Binding on Successors and Assigns

This Lease binds and inures to the benefit of the successors and assigns of the parties. This Section 14.07 does not constitute Landlord's consent to any assignment of this Lease or any interest in the Lease.

Section 14.08. Partial Invalidity

If any nonmaterial provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.

Section 14.09. Memorandum of Lease for Recording

Neither Landlord nor Tenant may record this Lease without the other's written consent. Landlord and Tenant shall execute, at the request of either at any time while this Lease is in effect, a memorandum or "short form" of this Lease for purposes of, and in a form suitable

for, recordation. The memorandum or "short form" must describe the parties and the Premises, specify the term of this Lease, incorporate this Lease by reference, and include any other provisions required by any Lender. In the event of a division and partial assignment of this Lease under Article 12, and upon the request of any assignee, Landlord and the assignee shall execute and record an amended memorandum of lease referencing the partial assignment and confirming the assignee's rights under this Lease to Area 1 or Area 2, as applicable.

Section 14.10. Interpretation and Venue

This Lease is to be interpreted and applied in accordance with California law, except that the rule of interpretation in Civil Code section 1654 will not apply. Paragraphs A, B, C, and D of the Background are part of this Lease, as are **Exhibits A, B, C, D, E, and F**. Any litigation concerning this Lease must be brought and prosecuted in the Sacramento County Superior Court.

Section 14.11. Interest

Tenant shall pay interest at the annual rate of 10% on any sums Tenant owes Landlord under this Lease but fails to pay when due.

Section 14.12. Authority of Persons Signing Lease

Each person or entity signing this Lease on behalf of Landlord or Tenant warrants and represents that he, she, or it is authorized to execute this Lease and to bind Landlord or Tenant, as the case may be, to its provisions.

Section 14.13. Estoppel Certificates

Each party, within 10 business days after receiving a written request from the other party, shall execute and deliver to the requesting party an Estoppel Certificate that does the following:

- (a) certifies that this Lease is unmodified and in full effect (or, if this Lease has been modified, that this Lease is in full effect as modified);
- (b) states the amount of rental and dates to which the rental has been paid in advance, if any;
- (c) states, to the best knowledge of the party providing the certificate, whether the other party is in breach of the performance of any provision of this Lease, specifying each breach;
- (d) identifies whether the portion of the Premises being leased or subleased consists of either Area 1 or Area 2, or both; and

(e) such other pertinent information as Landlord, Tenant, a subtenant, or any Lender may request.

Prospective purchasers, lenders, and other similar lien holders of the Premises, and any assignee or subtenant of the Premises, may rely on such an Estoppel Certificate.

Section 14.14. Integration and Modification

This Lease sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

City of Sacramento

Rapton Investment Group LLC

By _____
Heather Fargo, Mayor

By _____
Mel Rapton, Manager

Dated: June __, 2007

Dated: June __, 2007

Attest:

Approved for Legal Form:

By _____
City Clerk

By _____
City Attorney

RESOLUTION NO. 2007- _____

Adopted by the Sacramento City Council

APPROVAL OF GROUND LEASE BETWEEN THE CITY AND RAPTON INVESTMENT GROUP, LLC

BACKGROUND

- A. The City of Sacramento owns the property at 3701 Fulton Avenue, the proposed site of the Fulton Avenue Development Project (the "Site").
- B. The City had leased the Site, comprising 21± acres of Del Paso Park, to the Sacramento Trapshooting Club since approximately 1915. The lease expired on September 30, 2004, but the Trapshooting Club continued to operate on the Site under a month-to-month agreement until the lease was terminated on June 30, 2006.
- C. In 2002, the City Council directed staff to examine potential alternatives for the "highest and best" uses for the Site.
- D. In March 2004, Colliers International presented the City with an opportunity to lease the Site to Mel Rapton, Inc., which does business as Mel Rapton Honda.
- E. An Exclusive Right to Negotiate (the "ERN") was executed on June 1, 2004, between the City and Mel Rapton, Inc. The ERN granted Mel Rapton, Inc. the exclusive right to negotiate with the City for the lease of the Site. It was renewed twice by the City Council and expires on August 31, 2007.
- F. The City Council certified an environmental impact report for the Fulton Avenue Development Project on January 16, 2007 (the "EIR").
- G. On December 12, 2006, the City Council approved an *Agreement Regarding Conditions Precedent to Lease of Land*, which is designated as City Agreement No. 2006-1393 (the "Conditions Precedent Agreement"). The Conditions Precedent Agreement memorializes the parties' progress in negotiating a lease and commits both parties to perform specific actions.
- H. Both parties have executed their responsibilities under the Conditions Precedent Agreement and are prepared to execute the attached Ground Lease.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The facts set forth in the Background are correct.
- Section 2: The City Council hereby approves the attached Ground Lease between the City and Rapton Investment Group LLC and authorizes the City Manager to sign that lease on the City's behalf.
- Section 3: If needed, the City Manager may make minor, non-substantive changes to the attached Ground Lease with the approval of the City Attorney.