



Report to City Council

TO: Mayor and City Council

FROM: Mike Lee, Economic Development Director

AGENDA DATE: March 1, 2016

TITLE: OPERATING COVENANT AND AGREEMENT FOR M.R.S. BROWN, A LIMITED LIABILITY COMPANY, DBA HYUNDAI OF MORENO VALLEY

RECOMMENDED ACTION

Recommendations: That the City Council:

1. Conduct a Public Hearing.
2. Adopt Resolution No. 2016-xxxx. A Resolution of the City Council of the City of Moreno Valley, California, Accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083, regarding an Operating Covenant and Agreement between the City of Moreno Valley and M.R.S. Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley.
3. Adopt Resolution No. 2016-xxxx. A Resolution of the City Council of the City of Moreno Valley, California, approving the Operating Covenant and Agreement between the City of Moreno Valley and M.R.S. Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley.
4. Authorize the City Manager to execute the Operating Covenant and Agreement and make related findings.

SUMMARY

New automotive sales dealerships are typically one of the highest sales tax generators for a municipality. Sales tax revenue generated from automotive sales goes directly into the general fund to be utilized for many essential city services. Securing a new automotive dealership is very competitive and oftentimes difficult due to various factors (e.g., carmaker corporate approvals, franchisee approvals, construction financing, Department of Motor Vehicle restrictions, market demands, competition from other

municipalities). Over the past several months, the Economic Development Department has been working diligently on bringing a new automotive sales dealership into the City, which when completed, will generate substantial revenues to the City.

This report recommends that the City Council convene a Public Hearing to accept public comment and consider staff recommendations to accept the Economic Development Subsidy Report and approve the Operating Covenant and Agreement for M.R.S. Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley. The Economic Development Subcommittee reviewed this material and recommended approval at their February 11, 2016 meeting.

DISCUSSION

M.R.S. Brown, LLC, a limited liability company (“Company”) is proposing to develop a new state of the art Hyundai automobile sales dealership within the City at 27500 Eucalyptus Avenue, Moreno Valley, CA 92555 (see Attachments 1 and 2 for a site plan and dealership elevation). The Company is the Hyundai corporate franchise designee for this trade area. Over the past several months, the Company has been negotiating with the property owner, Trilogy, to purchase approximately 4.9 acres vacant parcel east of the Stoneridge Towne Center. Trilogy is also the owner of the Stoneridge Towne Center and has received approvals from the major anchors of the shopping center, Target and Kohl’s Department Store. Both Trilogy and major anchors are desirous to bring additional economic activity to the center.

The new dealership may generate substantial revenue for the City and create new jobs that might not otherwise be available to the community for many years. The development of this dealership will be the first new dealership that is built in the City of Moreno Valley in almost 12 years. Direct economic benefits to the City would include the payment of sales, property, business license gross receipts, and utility users’ taxes, plus indirect economic benefits would be achieved through local expenditures by employees.

In the current, competitive business attraction environment, cities often utilize incentives as tools to enhance the desirability of their location and to encourage prospective business tenants to locate there. For example, the City of Ontario executed a generous sales tax rebate to share up to 60% of substantial new sales tax revenues with QVC Corporation for forty-one years. Similarly, Moreno Valley executed a sales tax rebate in 2015 to share new internet sales tax revenues with Deckers Outdoor Corporation.

To incentivize and memorialize Company’s establishment of an automobile sales dealership in Moreno Valley, and to secure the recruitment and employment of Moreno Valley residents, staff proposes approval of a resolution (Resolution Approving the Operating Covenant Agreement between the City of Moreno Valley and M.R.S Brown, LLC - Attachment 3) and execution of the attached Operating Covenant and Agreement (“OCA” - see Attachment 4).

The OCA implements sales tax sharing, providing for covenant payments that are calculated based upon the dealership's sales tax generation. The OCA also reflects components of the Hire MoVal program. Following are the deal points of the OCA, if the City Council approves it as proposed:

1. The City would cooperate with Company to establish a new Hyundai automobile dealership within the City.
2. The City would rebate annual payments to Company based on the new sales tax revenues received by the City as a direct result of the Company's automobile and parts sales for the first four (4) years, or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership's operation as a Point of Sale in Moreno Valley.
3. The payments will be due annually, thirty (30) calendar days after the sales data for the preceding calendar year's four (4) quarters of sales activity is released.
4. The amounts of the payments shall be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of sales tax revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of sales tax revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of sales tax revenues exceeding the Second Threshold shall be retained by the City.
 - d. Upon completion of the four (4) year term of the agreement the City will retain all future sales tax received from the Company.
5. The Company will participate in Hire MoVal; it will recruit and employ at the dealership, and continue to employ for the duration of the OCA, at least thirty percent (30%) of full-time employees (minimum of six (6) full-time employees) that are Moreno Valley residents. Company shall provide written notification of compliance annually during the term of the OCA.
6. In the event the Company fails to comply with this component of the OCA, City shall only pay a pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%.
7. The City will assist the Company with identifying qualified applicants who are residents of the City to support and maintain the 30% Moreno Valley resident employment during the OCA term. The City will utilize the Moreno Valley Employment Resources Center to assist the Company in the fulfillment of its obligation.

In compliance with Assembly Bill 562 (AB 562), which took effect on January 1, 2014, cities are required to provide an Economic Development Subsidy Report and conduct a

public hearing prior to adopting a resolution to approve any subsidies in excess of \$100,000. Since the value of the subsidy provided in the OCA is not to exceed \$240,000, an Economic Development Subsidy Report is included as Attachment 5. Staff has published a notice (see Attachment 6) and recommends that the City Council conduct a public hearing to accept public comment on the proposed economic development subsidy. Following the public hearing, staff further recommends that the City Council approve the proposed Resolution Accepting the Economic Development Subsidy Report (Attachment 7). The Economic Development Subcommittee reviewed this material and recommended approval at their February 11, 2016 meeting.

ALTERNATIVES

1. Conduct the Public Hearing and adopt the Resolutions approving the Economic Development Subsidy Report and Operating Covenant and Agreement as proposed. This alternative allows the development of the automobile sales dealership, creating new jobs and generating substantial new revenues to the City. *Staff recommends this alternative.*
2. Decline to conduct the Public Hearing and decline to adopt the Resolutions approving the Economic Development Subsidy Report and Operating Covenant and Agreement. *Staff does not recommend this alternative.*

FISCAL IMPACT

The OCA is not anticipated to result in any additional costs to the City's General Fund. The development of the project will create substantial **new** revenues to the City's General Fund in the form of sales, property, business license gross receipts, and utility users' taxes. Entering into the OCA ensures that sales, property, utility users, and other related taxes and City revenues generated by the Company will remain in the City for at least the OCA term.

Considering sales taxes alone, based on the current economic environment, it is estimated that the Company will generate approximately \$400,000 in new sales tax revenue to the City per year. Over the four year term of the agreement, it is estimated that this new dealership will generate more than \$1,600,000 in cumulative new sales tax revenue to the City. The sales tax revenue share to Company is limited to \$240,000 over the OCA's term. Any and all sales tax revenues after the initial four year term will be retained by the City.

Combined with property, business license gross receipts, and utility users tax revenues, the new dealership is estimated to generate revenue to the City, before the Company share is deducted, of \$1,870,000 in the first four years and over \$5,350,000 in ten years. After the \$240,000 deduction to the Company, the combined net revenue to the City is estimated to be \$1,630,000 during the OCA term and \$5,110,000 in ten years.

These assumptions are based on current economic conditions and will vary as many factors affect the national and local economy. The data is provided to demonstrate that the economic benefit of the OCA to the City will be significant in any event.

NOTIFICATION

Notice of the public hearing was published in the Press Enterprise on February 20, 2016. The notice was also posted on the City's website.

PREPARATION OF STAFF REPORT

Prepared By:
Michele Patterson
Economic Development Manager

Department Head Approval:
Mike Lee
Economic Development Director

Concurred By:
Marshall Eyerman
Chief Financial Officer / City Treasurer

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

Positive Environment. Create a positive environment for the development of Moreno Valley's future.

ATTACHMENTS

1. M.R.S. Brown Dealership Site Plan
2. M.R.S. Brown Dealership Elevation
3. Resolution Approving the Operating Covenant and Agreement
4. Operating Covenant and Agreement with M.R.S. Brown LLC
5. Economic Development Subsidy Report
6. Notice of Public Hearing - Operating Covenant and Agreement
7. Resolution Accepting the Economic Development Subsidy Report

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	2/16/16 10:17 AM
City Attorney Approval	<u>✓ Approved</u>	2/18/16 8:17 AM
City Manager Approval	<u>✓ Approved</u>	2/18/16 9:58 AM





RESOLUTION NO. 2016 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF MORENO VALLEY AND M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY AND MAKING RELATED FINDINGS.

WHEREAS, M.R.S Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley ("Company"), a retailer of automobiles with worldwide distribution, is purchasing 4.9 acres of land on which to construct and operate an automobile sales and repair dealership of approximately 23,276 square feet (the "Facility") within the City of Moreno Valley, California ("City") at 27500 Eucalyptus Avenue, Moreno Valley, CA, 92555 (the "Property"); and

WHEREAS, the Facility will primarily operate as an automobile sales dealership with ancillary parts sales and repair services ("Dealership"); and

WHEREAS, Moreno Valley Municipal Code Section 5.02 requires every business within the City to pay an annual business license fee and a gross receipts tax as set by City Council resolution from time to time; and

WHEREAS, based upon the current intended use of the Facility, the City believes the activity at the Dealership should be classified in Category A: Wholesaling, Retailing, Private Utilities, Manufacturing for purposes of business license tax assessment; and

WHEREAS, the environmental impacts of the project were considered in an Addendum to the adopted Mitigated Negative Declaration for the Stoneridge Towne Centre project that was certified by the Planning Commission on March 9, 2006; and

WHEREAS, the incentives provided in the Operating Covenant and Agreement ("Agreement"), a copy of which is attached to this Resolution as Exhibit A, are intended to ensure Company establishes a new Dealership within the City; and

WHEREAS, if the Agreement is approved by the City Council, the start date of the economic development subsidy will be the date of commencement of operations at the Dealership, which is anticipated to occur in Fall 2016. The end date will be four (4) years after the start date or when a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of sales tax revenues received as a consequence of the Dealership's operation as a point of sale within the jurisdictional boundaries of the City, whichever occurs later ("Term").

WHEREAS, the economic development subsidy will be calculated annually based on Company's quarterly sales tax revenue and the incentive payments shall be

due annually, thirty (30) calendar days after the sales data for the preceding calendar year's four (4) quarters of sales activity is released; and

WHEREAS, the economic development subsidy incentive payment shall be calculated as follows:

1. The City shall provide annual payments ("City Payments") to the Company based on the City's portion of sales tax revenues received as a consequence of the Dealership's operation as a point of sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of sales tax revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of sales tax revenues received in excess of the First Threshold, up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of sales tax revenues exceeding the Second Threshold shall be retained by the City.

WHEREAS, Company agrees to employ City residents at a rate of at least 30% of its full-time workforce. Company shall meet the local hire requirement annually upon the anniversary of the date of commencement of operations. Company shall provide written notification of compliance with such requirement signed by an officer of the Company under penalty of perjury on or around the Commencement of Operations date and each anniversary of the Commencement of Operations date, and in any event within thirty (30) days of receiving a request therefor by the City. Company agrees to maintain such compliance during the period in which the Agreement is in effect. In the event Company fails to satisfy the 30% requirement in a particular year due to circumstances beyond its control, the City shall provide the Company with an opportunity to cure, which can be mutually approved by both parties. If Company fails to cure within the thirty (30) day period, City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%. This limitation shall apply on a year by year basis and in no event shall such limitation apply to any payments owed by City for a previous year.

WHEREAS, City agrees to assist the Company's human resources staff with identifying qualified applicants who are residents of the City to support and maintain the thirty percent (30%) and at least six (6) full-time employees hiring requirement, during the period in which this Agreement is in effect. The City will utilize resources within the City of Moreno Valley Employment Resources Center to assist the Company in the recruitment and fulfillment of its obligation; and

WHEREAS, the City has determined that the establishment and operation of the new Dealership within the City will generate substantial revenue for the City, create new jobs, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, on March 1, 2016, the City Council of the City of Moreno Valley conducted a Public Hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings.

- (a) Public Purpose. Entering into the Agreement serves a public purpose. As a result of this Agreement, the development of this facility will assist the City in the development of automobile sales space within Moreno Valley. This development will generate substantial revenue for the City, create new jobs, and result in community and public improvements that might not otherwise be available to the community for many years. The City anticipates additional revenues and job opportunities will result for the City and its residents. By bringing a business entity of this type into the community, there will be approximately 20 new jobs directly created, public and private improvements made, plus the energy and synergistic effect may stimulate additional growth and job opportunities within the community. Additionally, Company is a good public partner who will improve the City through civic and community involvement. Based upon these and other public benefits the City Council finds that the public purposes of the Agreement outweigh any private benefit to private persons or entities.

SECTION 3. Approve Agreement. The City Council hereby approves the Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 4. CEQA Compliance. Pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA

Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), the environmental impacts of the project were considered in an Addendum to the adopted Mitigated Negative Declaration for the Stoneridge Towne Centre project that was certified by the Planning Commission on March 9, 2006.

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

APPROVED AND ADOPTED this 1st day of March, 2016.

Mayor of the City of Moreno Valley

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**OPERATING COVENANT AND AGREEMENT
BETWEEN THE CITY OF MORENO VALLEY AND
M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY**

This Operating Covenant and Agreement (“Agreement”), is dated as of _____, 2016 and effective as of the Effective Date (defined below), is made by and between the City of Moreno Valley, a California municipal corporation (“City”) and M.R.S Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley (“Company”), with the City and Company sometimes individually referred to herein as a “Party” and together, as the “Parties,” with respect to the following:

RECITALS

A. The Company has purchased or is about to purchase approximately 4.9 acres of property in the jurisdictional boundaries of the City located along State Route 60 east of Nason Street (the “Property”), address 27500 Eucalyptus Avenue, Moreno Valley, CA 92555, a legal description and depiction of which is attached hereto and incorporated herein by this reference as Exhibit “A”; and

B. The Company intends to develop a Hyundai brand automobile dealership (“Dealership”) on the Property, including for both new and used car sales, auto parts distribution, and repair services; and

C. Based on the City’s participation in the State’s “triple flip” program (in which local government share of sales tax was decreased by 0.25% and the State’s portion of sales tax was increased by 0.25%, among other changes), the City’s share of sales tax is currently 0.75% of the taxable sales that occur within the City; and

D. Irrespective of the rights and obligations under this Agreement, the Dealership will be a Point of Sale (as defined herein) that generates new sales taxes within the City; and

E. The Moreno Valley City Council finds that (i) it is of substantial benefit to the City and its residents for the City to obtain an operating covenant from Company for the operation of the Dealership, (ii) the Dealership will be a Point of Sale for the Company within the jurisdictional boundaries of the City and additional new sales tax revenue will be generated and additional employment created in connection with operation of the Dealership, and (iii) the receipt of additional sales tax not otherwise collectable by the City and creation of additional employment constitute valid public purposes for the City’s entry into and execution of this Agreement; and

F. In consideration for the Company’s agreement to be bound by this Agreement, the City has agreed to make certain payments to the Company and moreover, the Parties acknowledge that the amount of each City payment hereunder is a fair exchange for the consideration actually furnished to the City by the Company during each fiscal year of the City in which such payment is made; and

Attachment 3 - Exhibit A

G. The City has determined that each City payment to be made hereunder has been calculated so that it will not exceed the resources available to make the payment, and that in no event shall the City be indebted to Company for any aggregate payment herein provided; and

H. The purpose and intention of the City in making payments to the Company is set forth as follows: (i) to memorialize certain terms of the Company's operation of the Dealership within the jurisdictional boundaries of the City after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and after the City's issuance of a Certificate of Occupancy ("COO Issuance") for all such improvements (put another way, City payments shall be made only after all improvements are constructed to completion and after COO Issuance); (ii) for the Dealership to remain a Point of Sale for the Company within the City after COO Issuance; and (iii) to further the well-being of the City's residents by enhancing local employment opportunities and expanding the City's tax revenue base; and

I. The City Council has, prior to approving this Agreement, made findings as required by Government Code section 53083 with respect to the beneficiary, nature, term, public purpose and amount of the economic development subsidy provided by this Agreement as well as the benefits, projected tax revenues and estimated number of jobs to be created as a consequence of this Agreement. Such information is posted on the City's internet website and will remain posted for the term of this Agreement. The City Council has provided public notice and conducted a public hearing prior to approving this Agreement as required by Government Code section 53083; and

J. The Parties acknowledge that no financial assistance provided to the Company by the City under this Agreement shall serve as any incentive or inducement for Company to establish its business operations within the jurisdictional boundaries of the City, nor shall such assistance be used in any way by the Company toward purchase of any real property upon which the Dealership will be situated nor for construction of the Dealership or any part thereof. The Company also hereby acknowledges that it is entering into this Agreement upon its own volition without any incentive whatsoever made by City, as it has determined that it is a sound decision for the Company.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT AND COVENANT

ARTICLE I

SUBJECT OF AGREEMENT

Section 1.01. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

Section 1.02. Purpose of Agreement. The purpose of this Agreement is to effectuate the economic goals of the City by (i) memorializing certain terms of the Company's operation of the Dealership within the City after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and after the COO Issuance for all such improvements (put another way, City payments shall be made only after all improvements are constructed to completion and after COO Issuance); (ii) ensuring that the Dealership remains a Point of Sale for the Company within the City after COO Issuance; and (iii) providing an incentive for the Company's employment of City residents, in accordance with the City's Hire MoVal Incentive Program adopted by the City Council on April 28, 2015, through Resolution 2015-28. The operation of the Dealership on the Property pursuant to this Agreement, and the fulfillment generally of the requirements of this Agreement, are in the vital and best interests of the City and the welfare of the City's citizens, and in accord with the provisions of applicable federal, state and local law. No portions of the City Payments (as defined in Section 2.02(a) of this Agreement) received by the Company are permitted to be utilized toward Company's acquisition of the Property or construction of the Dealership or any portion thereof.

Section 1.03. Effective Date. This Agreement shall not take effect nor be binding or impose any obligations on, or confer any rights or benefits to, either Party until the Effective Date, as defined in Section 1.04 below.

Section 1.04. Definitions. The following words or phrases shall have the meanings ascribed to them in this section.

(a) "Affiliate" means any entity which is: (i) owned or controlled by the Company, or under common control with the Company; (ii) shares the same management as the Company; or (iii) created by the Company or the Company's management. For purposes of this definition, "control" means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting rights, membership, the power to appoint members, directors, trustees or management, whether by contract or otherwise.

(b) "Commencement of Operations" shall mean the date of COO Issuance. Sales Tax Revenues sharing between the Company and the City shall commence on the Commencement of Operations date, in accordance with Section 2.02 of this Agreement.

(c) "Default" has the meaning as described in Section 3.01.

(d) "Effective Date" shall be the Commencement of Operations.

(e) "Force Majeure" means any act of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor strike or lockout, act of the public enemy, war (declared or undeclared),

insurrection, riot, or explosion that: (i) prevents one Party from performing any of its obligations under this Agreement; (ii) could not reasonably be anticipated as of the date of this Agreement; (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or affiliate of that Party); and (iv) by the exercise of due diligence the affected Party is unable to avoid or overcome (provided that nothing in this clause iv shall be construed so as to require a Party to accede to or agree to any provision not satisfactory to it to settle and terminate a strike or lockout). Force Majeure shall not include changes in the financial condition of a Party, changes in market conditions or changes in financial profitability of the transactions contemplated by this Agreement.

(f) "Point of Sale" means a place where a retail (as defined by California Board of Equalization Law in Section 6007) transaction is completed as described in Recital D.

(g) "Sales Tax Law" means the Bradley Burns Uniform Local Sales and Use Tax, California Revenue & Taxation Code section 7200 *et seq.*

(h) "Sales Tax Revenues" means that portion of taxes derived from the imposition of the Sales Tax Law with respect to all businesses and activities conducted for the Dealership, including any direct retail sales as well as California E-Commerce sales, which taxes are actually received by the City and are legally available for unrestricted use by the City's general fund.

Section 1.05. City Land Use Approvals. Nothing in this Agreement shall be construed to grant City approval for the construction or operation of the Dealership. The City retains all of its discretionary approval authority regarding such matters, including but not limited to review pursuant to the California Environmental Quality Act ("CEQA," California Public Resources Code section 21000 *et seq.*).

ARTICLE II

OPERATING COVENANT

Section 2.01. Company Obligations

(a) The Company shall use its good faith and commercially reasonable efforts to operate a new Hyundai brand automobile dealership at the Property by December 31, 2017. Such operations shall be maintained for the duration of the Term, as defined in Section 2.02(a) of this Agreement.

(b) The Company shall, within fifteen (15) days after the Commencement of Operations date, provide written notice of such to the City.

(c) The Company shall ensure that the Dealership shall remain as a Point of Sale for the Company within the City only after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and only after COO Issuance, for the duration of the Term.

(d) The Company shall recruit and employ and continue to employ for the duration of the Term at least thirty percent (30%) and at least six (6) full-time employees, of its workforce from City residents.

(e) All City Payments, as defined in Section 2.02(a), received by the Company shall be utilized toward Company's payment of the salaries of employees hired pursuant to Section 2.01(d) of this Agreement. If any amounts that comprise City Payments should remain after payment of such salaries, Company may utilize those costs toward other operational costs. In no event shall Company use City Payments for any other purposes.

(f) The Company, on its behalf and on behalf of its successors-in-interest and its Affiliates, hereby waives its right to protect against disclosure of the information contained in its California state sales and use tax returns (but solely for the limited purpose of determining compliance with the terms of this Agreement). The Company hereby further authorizes the release of such information by the State of California to the City, and will cooperate with the City as necessary to obtain such release. Upon written request of the City, Company shall within twenty-one (21) days of the request also provide to the City copies of the Company's and its Affiliates' California state sales and use tax returns evidencing sales and the payments of sales and use taxes that are the subject of this Agreement. The provisions of this subsection shall survive the expiration or sooner termination of this Agreement for a period of eighteen (18) months.

(g) The foregoing subparagraphs of this Section 2.01 are hereinafter referred to in this Agreement as the "Covenant."

Section 2.02. City Obligations

(a) City Payments.

- i. Subject to Section 5.02 of this Agreement, the City shall make annual payments to Company of an amount measured by the amount of new Sales Tax Revenues received by the City as a direct result of the Company's automobile and parts sales for the period, commencing on the Effective Date and continuing for a period of four (4) years or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City, whichever occurs later ("Term"). The payments shall be due annually, thirty (30) calendar days after the

sales data for the preceding calendar year's four (4) quarters of sales activity is released. The amounts of the payments shall be as follows:

1. The City shall provide annual payments ("City Payments") to the Company of the City's portion of Sales Tax Revenues received as a consequence of the Dealership operating as a Point of Sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of Sales Tax Revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of Sales Tax Revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of Sales Tax Revenues exceeding the Second Threshold shall be retained by the City.
 2. City Payments shall continue annually in accordance with this Section 2.02, until a total amount of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City.
- ii. Notwithstanding anything else to the contrary, the City Payments due hereunder shall be payable from any source of funds legally available to the City. The determination of the source of funds for the City Payments shall be in the sole and absolute discretion of the City. The Company acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds. Sales Tax Revenues are used merely as a measure of the amount of City Payments due hereunder and as a means of computing the City's payment obligation. Notwithstanding anything else to the contrary, the City's obligation to make City Payments provided for herein is contingent upon actual receipt by the City of the Sales Tax Revenues derived from operation of the Dealership, which revenues are paid to the City by the State of California; moreover, Company acknowledges the same. The City shall not be obligated to make any payments hereunder if Sales Tax

Revenues are not actually received by the City from the State of California.

- iii. City Payments shall be made only for those years in which the Company is in compliance with the Covenant and other material terms of this Agreement. The failure of the City to make any payment required by this Agreement because of any Default (as defined in Section 3.01 hereof) by Company in complying with the Covenant or other requirements of this Agreement shall not cause acceleration of any future payments by the City to Company beyond the date of such Default.

Section 2.03. Conditions Precedent; Company

(a) The obligations of the Company as set forth in Section 2.01 of this Agreement are contingent upon satisfaction or written waiver by the Company of each of the following:

- (i) The Company has secured approval of all plans and specifications, if necessary, for the proposed operation of the Dealership and has been issued all required permits, licenses and entitlements therefor.
- (ii) There is no litigation challenging the validity of any provision of this Agreement or that may have a material adverse effect on the Property or the Dealership, the Company's intended operations or use thereof, or the City's payment obligations prescribed in Section 2.02 of this Agreement.

Section 2.04. Conditions Precedent; City

(a) The obligations of the City to make City Payments to Company are contingent upon satisfaction or written waiver by the City of each of the following:

- (i) The Company shall operate the Dealership as a Point of Sale for the Company and its Affiliates within the jurisdictional boundaries of the City pursuant to the Sales Tax Law, as of the Effective Date.
- (ii) The Company has secured approval from the City for all land use entitlements,, permits, licenses, plans and specifications, if any, required for the construction and operation of the Dealership and has paid all necessary fees to entitle Company to the issuance of permits therefor.
- (iii) The Company has recruited and will have employed and continues to employ for the duration of the Term, at least thirty percent (30%) and at least six (6) full-time employees of its workforce from City residents.

(iv) The Company has performed and complied in all material respects, with all terms, agreements, and covenants required by this Agreement to be performed or complied with by Company within the time periods required hereunder.

(v) There is no litigation challenging the validity of any provision of this Agreement or that may have a material adverse effect on the Property or the Dealership, the Company's intended operations or use thereof, or the City's payment obligations prescribed in Section 2.02 of this Agreement.

ARTICLE III

DEFAULTS AND REMEDIES

Section 3.01. Event of Default. The occurrence of any or all of the following shall constitute a default ("Default") under this Agreement:

(a) The Company's failure to comply with any material term of the Covenant or this Agreement.

(b) The City's failure to comply with any material term of its obligations pursuant to Section 2.02 hereof or of this Agreement.

(c) The filing of a petition in bankruptcy by or against the Company or appointment of a receiver or trustee for the Company, or an assignment by the Company for the benefit of creditors, or any adjudication that the Company is insolvent by a court of competent jurisdiction, and failure of Company to cause such petition, appointment or assignment to be removed or discharged within sixty (60) days from the date of such filing, appointment, assignment or adjudication.

(d) An unapproved assignment that would have otherwise required approval of the City pursuant to Section 4.01.

Section 3.02. Cure and Default. In the event of any Default as provided in Section 3.01 occurs, the nondefaulting Party shall give written notice to the defaulting Party. The defaulting Party shall immediately commence and diligently thereafter pursue curing the Default within thirty (30) days after receipt of notice. Failure to cure a Default within such thirty (30) day period shall constitute a breach of this Agreement; provided, however, that if a Default as specified in Section 3.01(a) or 3.01(b) cannot reasonably be completed within such thirty (30) day period, such failure shall not be a breach so long as such Party promptly commences to cure within thirty (30) day period and thereafter diligently prosecutes such cure to completion.

Section 3.03. Limitation of City Remedies. Nothing herein is intended to limit or restrict whatever specific performance or other equitable remedies either Party may have in accordance with applicable law; provided, however, that notwithstanding

any other provision of this Agreement, the City shall not have the remedy of specific performance to enforce the Company's Default of the Covenant, or any portion thereof.

Section 3.04. Termination. Notwithstanding anything to the contrary contained in this Agreement, Company and the City shall have the on-going right to terminate this Agreement: (i) upon six (6) months written notice pursuant to which Company shall repay fifty percent (50%) of the City Payments received through the effective date of termination, if the termination occurs prior to the date that is the third (3rd) anniversary of the Effective Date or (ii) in the event any third party brings any such action challenging the validity of this Agreement, or any term thereof, or the operation of the Dealership as a Point of Sale within the jurisdictional boundaries of the City, subject to Company's obligation to defend and indemnify the City pursuant to Section 5.05 of this Agreement. All such obligations shall survive any termination of this Agreement. Either Party may upon the Default of the other Party, after expiration of all applicable notice and cure periods, and in addition to pursuing all remedies otherwise available to it, terminate this Agreement and all of its obligations and rights hereunder without cost, expense or liability to itself.

ARTICLE IV

ASSIGNMENT

Section 4.01. Prohibition against Assignment of Agreement.

(a) The qualifications and identity of the Company are of particular concern to the City. It is because of these unique qualifications and the identity of the Company that the City has entered into this Agreement. No voluntary or involuntary successor-in-interest of the Company shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(b) Except as otherwise provided in this Agreement, Company shall not assign all or any part of this Agreement without prior written approval of the City which shall not be unreasonably withheld, delayed or conditioned.

(c) The Company may, subject to the prior written approval of the City Council, assign this Agreement to a separate ownership entity, which would assume all of the obligations of Company hereunder and which would assume all of the business related activities of Company.

(d) The Company may, with thirty (30) days prior written notice to the City, but without the City Council's prior consent, assign this Agreement to a subsidiary or Affiliate of the Company. In addition, Company may, with thirty (30) days prior notice to the City, but without the City's prior consent, assign this Agreement to an entity with which Company or the parent of Company or any subsidiary or Affiliate of Company might merge or consolidate. Moreover, the Company preserves its right to assign this

Agreement to any entity that retains control over the Company via an asset acquisition or stock sale.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01. Compliance With Bradley-Burns Uniform Local Sales and Use Tax Law. The Company shall carry out the operation of its automobile sales, parts sales, and automobile repair transactions through the Dealership in conformity with the Sales Tax Law.

Section 5.02. Local Hiring Requirement. The Company shall recruit and employ at the Dealership and continue to employ for the duration of the Term, at least thirty percent (30%) of full-time employees and at least six (6) full-time employees that are City residents. The term "full-time employee" as used herein means an employee that works at least 1750 hours per year performing tasks directly related to the products or services of the Company. At all times during the term of this Agreement commencing on the Effective Date, Company shall meet and continue to meet the local hire requirement prescribed herein. Company shall provide written notification of compliance with such requirement signed by an officer of the Company under penalty of perjury on or around the Effective Date and each anniversary of the Effective Date, and in any event within thirty (30) days of receiving a request therefor by the City.

(a) Notwithstanding the default provisions set forth in Article III of this Agreement, in the event the Company fails to comply with the requirements set forth in Section 2.01(d) of this Agreement in any calendar year due to circumstances beyond its control, the City shall provide the Company with an opportunity to cure the Default. If Company fails to provide City with an explanation of its attempt to cure within the thirty (30) day period the City shall be entitled to a recapture of a pro-rata share of City Payments or sales tax sharing payments for that particular year, as follows: if Company fails to comply with the requirements set forth in Section 2.01(d) of this Agreement, City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%. By way of example only, if Company should only reach 15% of the local hire requirement, the City shall pay Company half of the annual City Payments obligation that would otherwise be owed to Company. By way of further example, if Company should only reach 10% of the local hire requirement, the City shall pay Company one-third of the annual City Payments obligation that would otherwise be owed to Company. The limitations set forth in this Section shall apply on a year by year basis and in no event shall such limitation apply to any payments owed by City for a previous year.

(b) The City agrees to assist the Company's human resources staff with identifying qualified applicants who are residents of the City to support and maintain the thirty percent (30%) and at least six (6) full-time employees hiring requirement, during the period in which this Agreement is in effect. The City will utilize

resources within the City of Moreno Valley Employment Resources Center to assist the Company in the recruitment and fulfillment of its obligation.

Section 5.03. Notices. All notices under this Agreement shall be given in writing by personal delivery, by certified mail or registered United States mail, return receipt requested, postage prepaid, addressed as set forth below. Either Party may change its address by giving written notice thereof to the other in accordance with the provisions of this section.

CITY: City of Moreno Valley
Attention: City Manager
14177 Frederick Street
Moreno Valley, CA 92553

Copy to: City of Moreno Valley
Attention: City Attorney
14177 Frederick Street
Moreno Valley, CA 92553

HYUNDAI OF MORENO VALLEY: Hyundai of Moreno Valley
27500 Eucalyptus Avenue
Moreno Valley, CA,
Attention: Mr. Mike Brown

Copy to: Hyundai of Moreno Valley
27500 Eucalyptus Avenue
Moreno Valley, CA,
Attention: General Counsel

Section 5.04. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Company concerning the subject matter hereof, and supersedes all prior agreements and understandings whether written or verbal. This Agreement may not be modified or amended except in a writing signed by the Parties.

Section 5.05. Indemnity. The Company shall defend (with representation of Company's choosing and acceptable to the City), indemnify and hold harmless the City, its elected officials, officers, employees and agents (collectively, "City Parties") from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expenses (including reasonable attorneys' fees) arising from or in connection with or caused by an act, omission or negligence of Company and its contractors, agents and employees in connection with this Agreement, including, but not limited to, claims regarding the validity of this Agreement, and the operation of the Dealership as a Point of Sale within the jurisdictional boundaries of the City, except to the extent arising as a result of the City's negligence or willful misconduct. The City shall fully cooperate in the defense of any such actions and, upon the written request of

Company, shall provide to Company such documents and records in the possession of the City that are relevant to such actions. Notwithstanding anything else herein or to the contrary, Company shall defend (with representation of Company's choosing and acceptable to the City), indemnify and hold harmless the City Parties from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expenses (including reasonable attorneys' fees) arising from or in connection with or caused by failure to pay prevailing wages under the Labor Code during the course of construction of the Dealership or any portion thereof.

Section 5.06. Force Majeure. The time for performance of any obligation hereunder shall be extended by any period of delay caused by Force Majeure provided the Party claiming the existence of an event of Force Majeure provides written notice to the other Party within thirty (30) days following commencement of any such circumstances.

Section 5.07. Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural and the words "person" and "party" include corporation, partnership, firm, trust or association where the context so requires. The Parties agree that each Party and its counsel have reviewed this Agreement and that any rule of construction of the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments of exhibits to this Agreement.

Section 5.08. Time of the Essence. Time is of the essence of this Agreement and the Parties' obligations under this Agreement.

Section 5.09. Authority to Execute. The person or persons executing this Agreement on behalf of Company warrant and represent that they have authority to execute the Agreement on behalf of Company and warrant and represent that they have the authority to bind Company to the performance of its obligations hereunder.

Section 5.10. Release of City Officials. No elected official, officer, employee or agent of the City ("Released Persons") shall be personally liable to Company, or any successors-in-interest of Company, in the event of any Default or breach by City or for any amount which may become due to Company or its successors, or on any obligations under the terms of this Agreement. Company hereby waives and releases any claim it may have against the Released Persons with respect to any Default or breach by the City or for any amount which may be come due to Company or its successors, or on any obligations under the terms of this Agreement. Company makes such release with full knowledge of California Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this release. Civil Code 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if

known by him or her must have materially affected his or her settlement with the debtor.”

Section 5.11. Headings. The headings to the sections of this Agreement have been inserted for convenience only and shall not, to any extent, have the effect of modifying, amending or changing the expressed terms and provisions of the Agreement.

Section 5.12. Venue and Attorneys' Fees. In the event of any litigation under this Agreement, all such actions shall be instituted in the Superior Court of the County of Riverside, State of California, or in the United States District Court, Central District of California, Eastern Division. In any such action, the prevailing party may recover its reasonable attorneys' fees and costs incurred.

Section 5.13. Applicable Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of California, without giving effect to its conflict of law principles.

Section 5.14. Successors and Assigns. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the City and Company and their respective successors and assigns.

Section 5.15. No Joint Venture. Nothing contained in this Agreement shall be constructed to render the City in any way, or for any purpose, a partner, joint venturer, or associated in any relationship with Company nor shall this Agreement be constructed to authorize any Party to act as an agent for the other.

Section 5.16. No Third Party Beneficiaries. No provisions, term or condition of this Agreement is intended to, nor shall be constructed as conferring any benefit to, any third party, person or entity.

Section 5.17. Waiver. The waiver by the City or Company of any Default or breach by the other Party of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent Default or breach of the same or any other term, covenant or condition herein contained. Any Party's acceptance of any performance by the other Party after the due date of such performance shall not be deemed to be a waiver by any Party or any preceding Default or breach by the other Party of any term, covenant or condition of the Agreement, regardless of such Party's knowledge of such preceding Default or breach at the time of acceptance of such performance.

Section 5.18. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or part, of this Agreement is declared invalid, unconstitutional or void for any reason, the

remainder of this Agreement shall continue in full force and effect unless to do so would deprive one of the Parties of a material benefit of its bargain under this Agreement.

Section 5.19. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts each of which shall be deemed an original, but all of which shall constitute one Agreement, binding on the Parties.

Section 5.20. Recordation. The Parties agree that immediately upon execution, this Agreement shall be recorded in the Riverside County Recorder's Office.

SIGNATURE PAGE TO FOLLOW

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

CITY OF MORENO VALLEY

M.R.S. BROWN, LLC, DBA
HYUNDAI OF MORENO VALLEY

BY: 

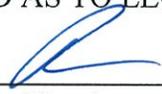
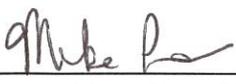
~~Chief Financial Officer/
City Manager/Mayor
(Select only one please)~~

BY: Michael L. Brown
TITLE: President
(President or Vice President)

3.23.16
Date

11/23/15
Date


BY: Michael L. Brown

<u>INTERNAL USE ONLY</u>
ATTEST: _____ City Clerk (only needed if Mayor signs)
APPROVED AS TO LEGAL FORM:  _____ City Attorney <u>3-11-16</u> Date
RECOMMENDED FOR APPROVAL:  _____ Department Head (if contract exceeds 15,000) <u>3/22/16</u> Date

TITLE: _____
(Corporate Secretary)

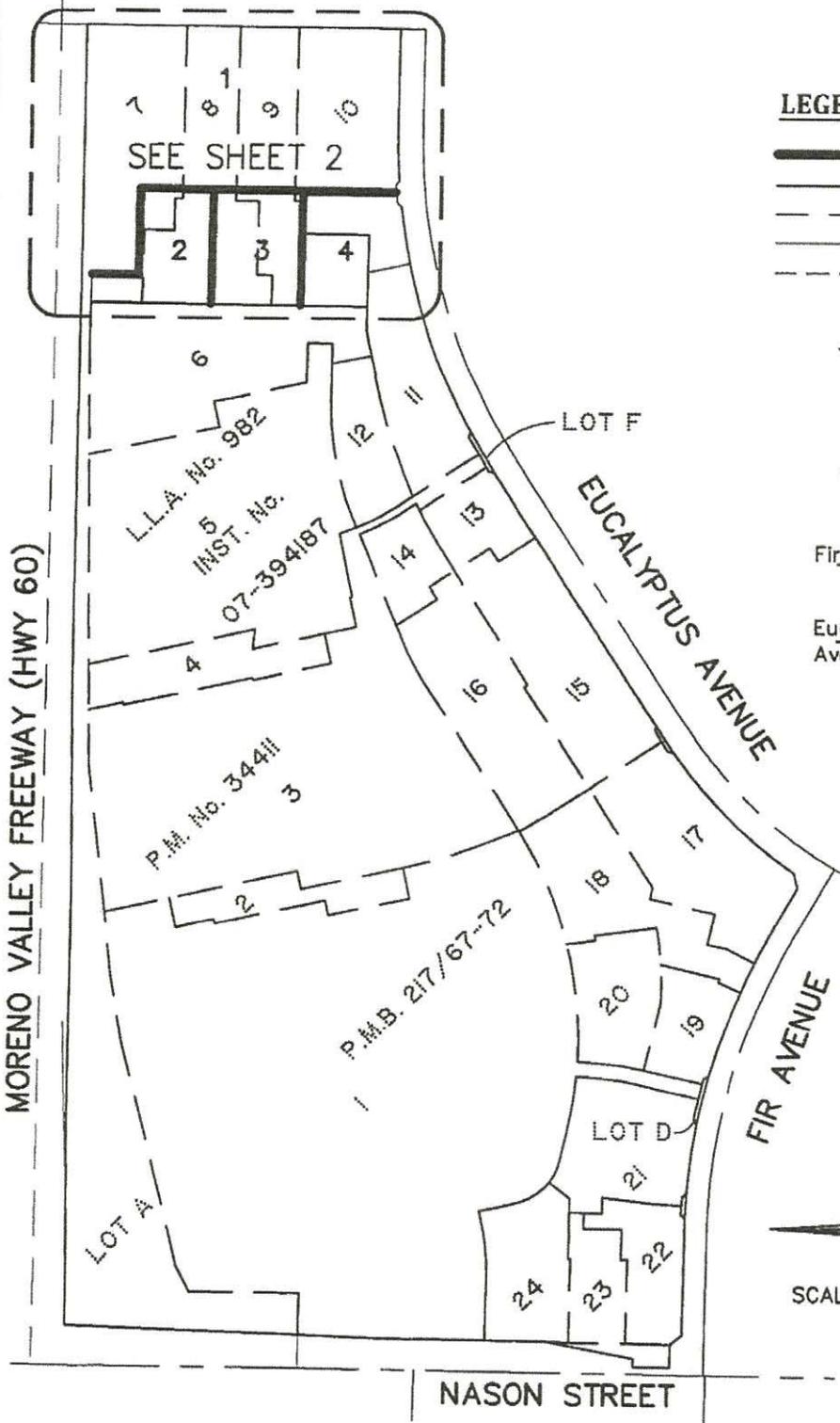
Date

EXHIBIT "A"

Attachment 3 - Exhibit A to Exhibit A

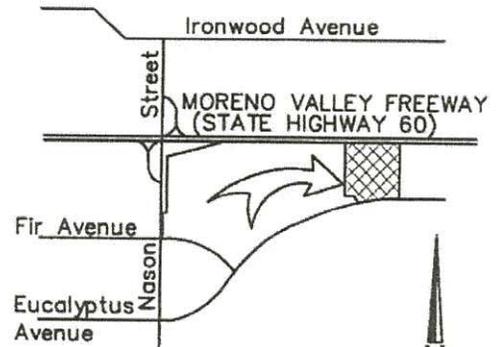
EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE



LEGEND

- NEW PROPERTY LINE
- EXISTING PROPERTY LINE
- OLD PROPERTY LINE
- CENTERLINE
- EXISTING EASEMENT LINE



VICINITY MAP
NOT TO SCALE

NOTE:

1. SEE SHEET 3 FOR LINE, CURVE TABLES AND DETAILS.
2. SEE SHEET 4 FOR EASEMENTS NOTES.

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION



SCALE: 1" = 350'



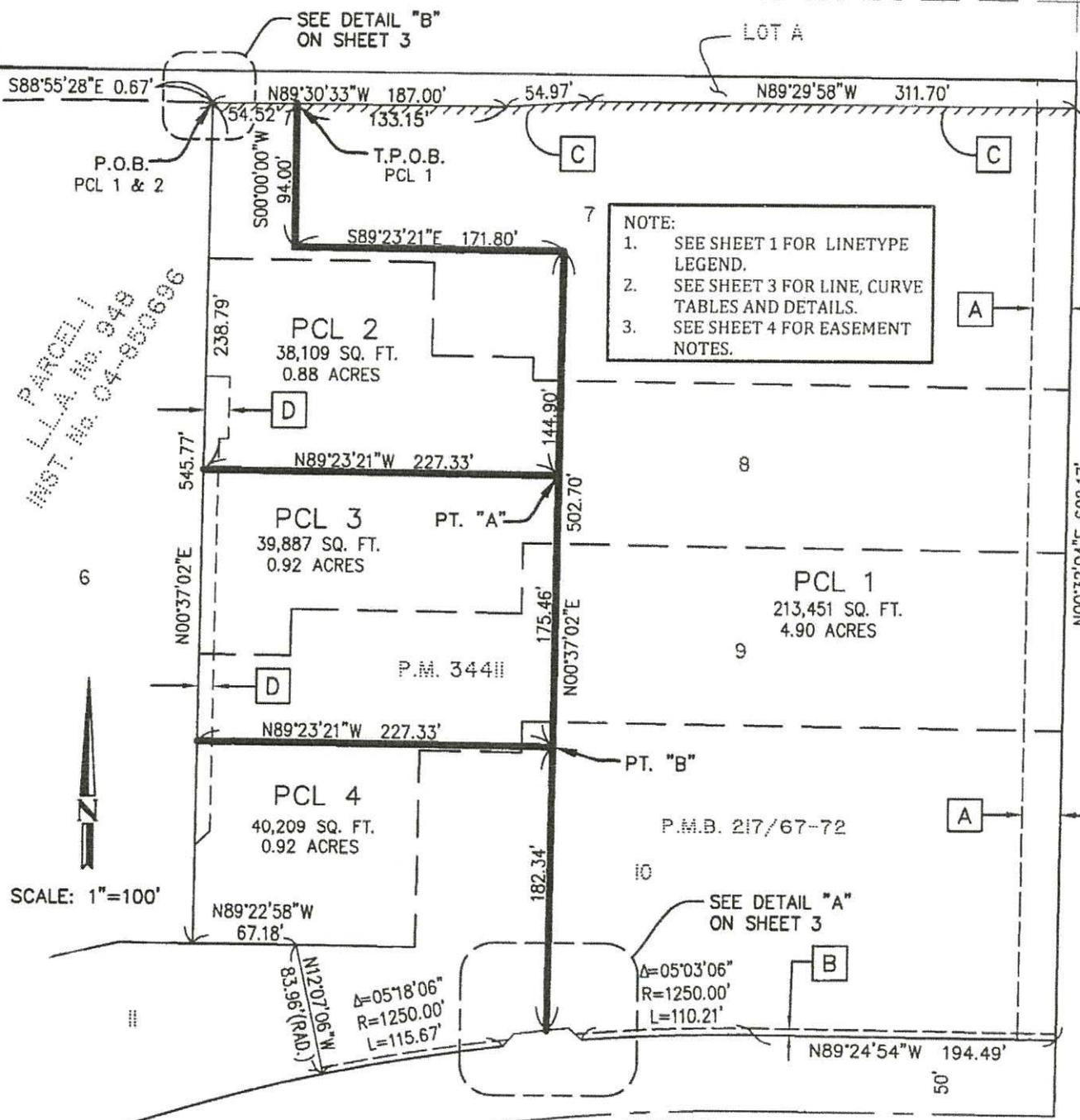
PASCAL R. APOTHELOZ P.L.S. 7734 DATE

L:\2015\15-926 Mo. Valley S\eneridga Towne Ctr-PH2\EX\LLA\15-926ex01.dwg; Nov 07, 2015 - 3:45pm

EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE

MORENO VALLEY FREEWAY (HWY 60)



NOTE:

1. SEE SHEET 1 FOR LINETYPE LEGEND.
2. SEE SHEET 3 FOR LINE, CURVE TABLES AND DETAILS.
3. SEE SHEET 4 FOR EASEMENT NOTES.

PARCEL 1
 L.L.A. No. 949
 INST. No. 04-950696

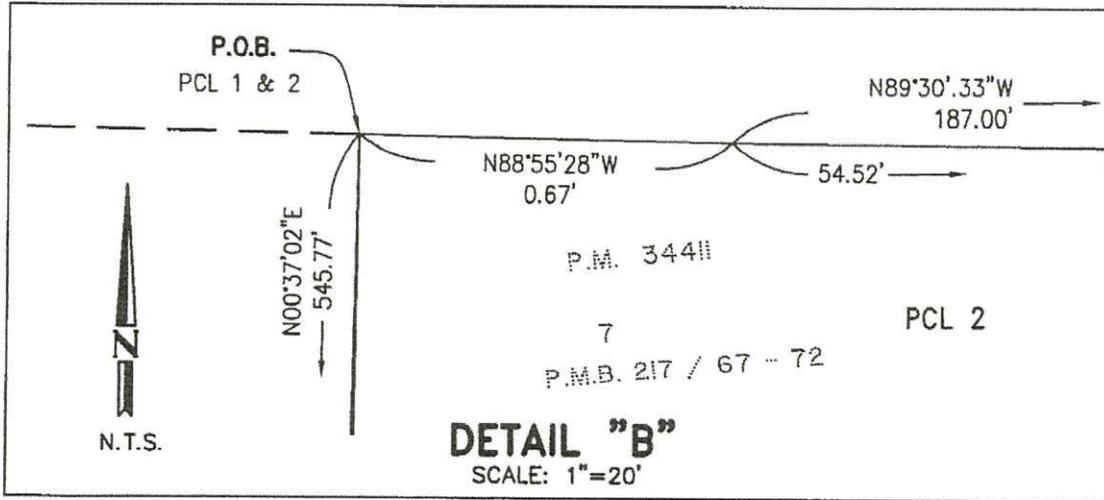
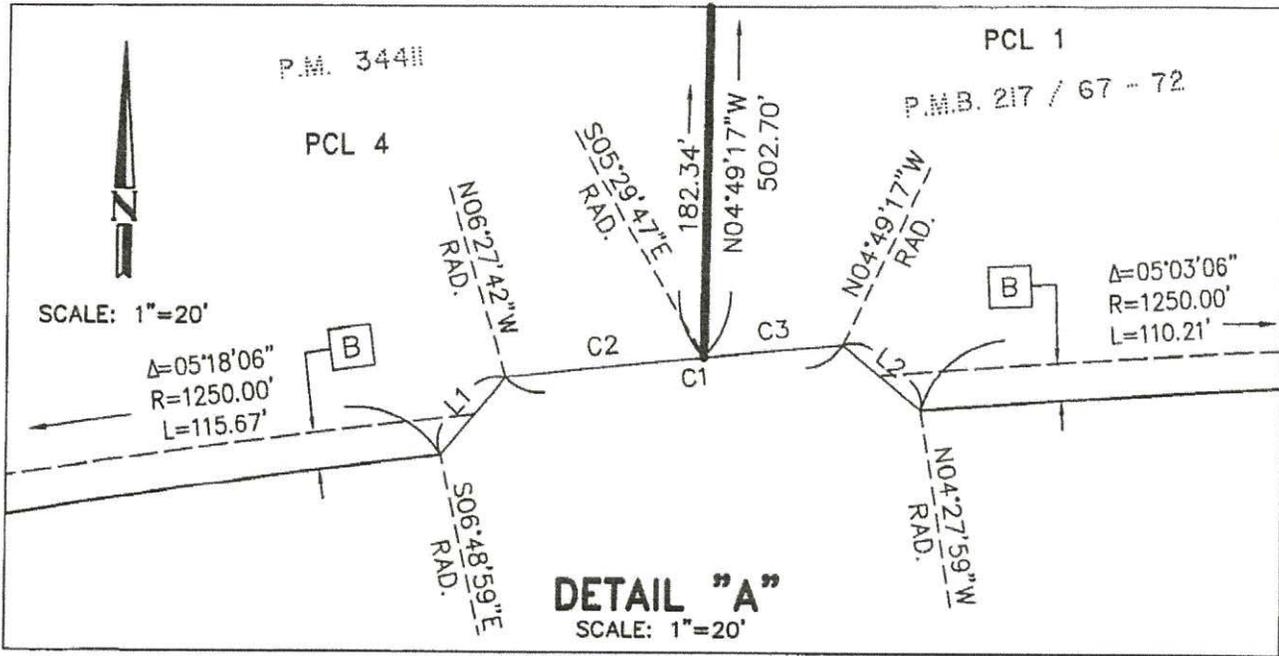
N00°32'04"E 602.17'
 P.M. 30882
 P.M.B. 208/3-8

TR. 32836
 M.B. 402/30-37

L:\2015\15-926 Mo. Valley Stoneridge Towne Ctr-PH2\Ex\LLA\15-926ex01.dwg, Nov 02, 2015 - 3:45pm

EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE



NOTE:
1. SEE SHEET 1 FOR LINETYPE LEGEND.
2. SEE SHEET 4 FOR EASEMENTS NOTES.

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	01°38'25"	1257.50'	36.00'
C2	00°57'55"	1257.50'	21.19'
C3	00°40'30"	1257.50'	14.82'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S39°21'31"W	10.80'
L2	S50°38'29"E	10.80'

L:\2015\15-926 Mo. Valley Stoneridge Towne Ctr-PH2\Cx\ALLA\15-926x01.dwg; Nov 02, 2015 -- 3:45pm

EXHIBIT "A" - LEGAL PLATLOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE

EASEMENT NOTES

- A** AN EASEMENT IN FAVOR OF EASTERN MUNICIPAL WATER DISTRICT FOR PIPELINE PURPOSES, RECORDED ON APRIL 16, 1991 AS INSTRUMENT NO. 123040 OF OFFICIAL RECORDS.
- B** AN EASEMENT TO THE CITY OF MORENO VALLEY FOR PUBLIC ACCESS PURPOSES, DEDICATED ON PARCEL MAP NO. 34411, FILED IN BOOK 217, PAGES 67 THROUGH 72 OF PARCEL MAPS.
- C** THE FACT THAT SAID LAND DOES NOT INCLUDE RIGHTS OF ACCESS TO OR FROM THE STREET OR HIGHWAY ABUTTING SAID LAND, SUCH RIGHTS HAVING BEEN SEVERED FROM SAID LAND PER PARCEL MAP NO. 34411, FILED IN BOOK 217, PAGES 67 THROUGH 72 OF PARCEL MAPS.
- D** AN EASEMENT IN FAVOR OF EASTERN MUNICIPAL WATER DISTRICT FOR PUBLIC UTILITIES PURPOSES, RECORDED ON JUNE 22, 2007 AS INSTRUMENT NO. 2007-0408784 OF OFFICIAL RECORDS.

**OPERATING COVENANT AND AGREEMENT
BETWEEN THE CITY OF MORENO VALLEY AND
M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY**

This Operating Covenant and Agreement (“Agreement”), is dated as of _____, 2016 and effective as of the Effective Date (defined below), is made by and between the City of Moreno Valley, a California municipal corporation (“City”) and M.R.S Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley (“Company”), with the City and Company sometimes individually referred to herein as a “Party” and together, as the “Parties,” with respect to the following:

RECITALS

A. The Company has purchased or is about to purchase approximately 4.9 acres of property in the jurisdictional boundaries of the City located along State Route 60 east of Nason Street (the “Property”), address 27500 Eucalyptus Avenue, Moreno Valley, CA 92555, a legal description and depiction of which is attached hereto and incorporated herein by this reference as Exhibit “A”; and

B. The Company intends to develop a Hyundai brand automobile dealership (“Dealership”) on the Property, including for both new and used car sales, auto parts distribution, and repair services; and

C. Based on the City’s participation in the State’s “triple flip” program (in which local government share of sales tax was decreased by 0.25% and the State’s portion of sales tax was increased by 0.25%, among other changes), the City’s share of sales tax is currently 0.75% of the taxable sales that occur within the City; and

D. Irrespective of the rights and obligations under this Agreement, the Dealership will be a Point of Sale (as defined herein) that generates new sales taxes within the City; and

E. The Moreno Valley City Council finds that (i) it is of substantial benefit to the City and its residents for the City to obtain an operating covenant from Company for the operation of the Dealership, (ii) the Dealership will be a Point of Sale for the Company within the jurisdictional boundaries of the City and additional new sales tax revenue will be generated and additional employment created in connection with operation of the Dealership, and (iii) the receipt of additional sales tax not otherwise collectable by the City and creation of additional employment constitute valid public purposes for the City’s entry into and execution of this Agreement; and

F. In consideration for the Company’s agreement to be bound by this Agreement, the City has agreed to make certain payments to the Company and moreover, the Parties acknowledge that the amount of each City payment hereunder is a fair exchange for the consideration actually furnished to the City by the Company during each fiscal year of the City in which such payment is made; and

Attachment 4

G. The City has determined that each City payment to be made hereunder has been calculated so that it will not exceed the resources available to make the payment, and that in no event shall the City be indebted to Company for any aggregate payment herein provided; and

H. The purpose and intention of the City in making payments to the Company is set forth as follows: (i) to memorialize certain terms of the Company's operation of the Dealership within the jurisdictional boundaries of the City after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and after the City's issuance of a Certificate of Occupancy ("COO Issuance") for all such improvements (put another way, City payments shall be made only after all improvements are constructed to completion and after COO Issuance); (ii) for the Dealership to remain a Point of Sale for the Company within the City after COO Issuance; and (iii) to further the well-being of the City's residents by enhancing local employment opportunities and expanding the City's tax revenue base; and

I. The City Council has, prior to approving this Agreement, made findings as required by Government Code section 53083 with respect to the beneficiary, nature, term, public purpose and amount of the economic development subsidy provided by this Agreement as well as the benefits, projected tax revenues and estimated number of jobs to be created as a consequence of this Agreement. Such information is posted on the City's internet website and will remain posted for the term of this Agreement. The City Council has provided public notice and conducted a public hearing prior to approving this Agreement as required by Government Code section 53083; and

J. The Parties acknowledge that no financial assistance provided to the Company by the City under this Agreement shall serve as any incentive or inducement for Company to establish its business operations within the jurisdictional boundaries of the City, nor shall such assistance be used in any way by the Company toward purchase of any real property upon which the Dealership will be situated nor for construction of the Dealership or any part thereof. The Company also hereby acknowledges that it is entering into this Agreement upon its own volition without any incentive whatsoever made by City, as it has determined that it is a sound decision for the Company.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT AND COVENANT

ARTICLE I

SUBJECT OF AGREEMENT

Section 1.01. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

Section 1.02. Purpose of Agreement. The purpose of this Agreement is to effectuate the economic goals of the City by (i) memorializing certain terms of the Company's operation of the Dealership within the City after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and after the COO Issuance for all such improvements (put another way, City payments shall be made only after all improvements are constructed to completion and after COO Issuance); (ii) ensuring that the Dealership remains a Point of Sale for the Company within the City after COO Issuance; and (iii) providing an incentive for the Company's employment of City residents, in accordance with the City's Hire MoVal Incentive Program adopted by the City Council on April 28, 2015, through Resolution 2015-28. The operation of the Dealership on the Property pursuant to this Agreement, and the fulfillment generally of the requirements of this Agreement, are in the vital and best interests of the City and the welfare of the City's citizens, and in accord with the provisions of applicable federal, state and local law. No portions of the City Payments (as defined in Section 2.02(a) of this Agreement) received by the Company are permitted to be utilized toward Company's acquisition of the Property or construction of the Dealership or any portion thereof.

Section 1.03. Effective Date. This Agreement shall not take effect nor be binding or impose any obligations on, or confer any rights or benefits to, either Party until the Effective Date, as defined in Section 1.04 below.

Section 1.04. Definitions. The following words or phrases shall have the meanings ascribed to them in this section.

(a) "Affiliate" means any entity which is: (i) owned or controlled by the Company, or under common control with the Company; (ii) shares the same management as the Company; or (iii) created by the Company or the Company's management. For purposes of this definition, "control" means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting rights, membership, the power to appoint members, directors, trustees or management, whether by contract or otherwise.

(b) "Commencement of Operations" shall mean the date of COO Issuance. Sales Tax Revenues sharing between the Company and the City shall commence on the Commencement of Operations date, in accordance with Section 2.02 of this Agreement.

(c) "Default" has the meaning as described in Section 3.01.

(d) "Effective Date" shall be the Commencement of Operations.

(e) "Force Majeure" means any act of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor strike or lockout, act of the public enemy, war (declared or undeclared),

insurrection, riot, or explosion that: (i) prevents one Party from performing any of its obligations under this Agreement; (ii) could not reasonably be anticipated as of the date of this Agreement; (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or affiliate of that Party); and (iv) by the exercise of due diligence the affected Party is unable to avoid or overcome (provided that nothing in this clause iv shall be construed so as to require a Party to accede to or agree to any provision not satisfactory to it to settle and terminate a strike or lockout). Force Majeure shall not include changes in the financial condition of a Party, changes in market conditions or changes in financial profitability of the transactions contemplated by this Agreement.

(f) "Point of Sale" means a place where a retail (as defined by California Board of Equalization Law in Section 6007) transaction is completed as described in Recital D.

(g) "Sales Tax Law" means the Bradley Burns Uniform Local Sales and Use Tax, California Revenue & Taxation Code section 7200 *et seq.*

(h) "Sales Tax Revenues" means that portion of taxes derived from the imposition of the Sales Tax Law with respect to all businesses and activities conducted for the Dealership, including any direct retail sales as well as California E-Commerce sales, which taxes are actually received by the City and are legally available for unrestricted use by the City's general fund.

Section 1.05. City Land Use Approvals. Nothing in this Agreement shall be construed to grant City approval for the construction or operation of the Dealership. The City retains all of its discretionary approval authority regarding such matters, including but not limited to review pursuant to the California Environmental Quality Act ("CEQA," California Public Resources Code section 21000 *et seq.*).

ARTICLE II

OPERATING COVENANT

Section 2.01. Company Obligations

(a) The Company shall use its good faith and commercially reasonable efforts to operate a new Hyundai brand automobile dealership at the Property by December 31, 2017. Such operations shall be maintained for the duration of the Term, as defined in Section 2.02(a) of this Agreement.

(b) The Company shall, within fifteen (15) days after the Commencement of Operations date, provide written notice of such to the City.

(c) The Company shall ensure that the Dealership shall remain as a Point of Sale for the Company within the City only after construction of any and all improvements that shall comprise the Dealership and any ancillary facilities or buildings, and only after COO Issuance, for the duration of the Term.

(d) The Company shall recruit and employ and continue to employ for the duration of the Term at least thirty percent (30%) and at least six (6) full-time employees, of its workforce from City residents.

(e) All City Payments, as defined in Section 2.02(a), received by the Company shall be utilized toward Company's payment of the salaries of employees hired pursuant to Section 2.01(d) of this Agreement. If any amounts that comprise City Payments should remain after payment of such salaries, Company may utilize those costs toward other operational costs. In no event shall Company use City Payments for any other purposes.

(f) The Company, on its behalf and on behalf of its successors-in-interest and its Affiliates, hereby waives its right to protect against disclosure of the information contained in its California state sales and use tax returns (but solely for the limited purpose of determining compliance with the terms of this Agreement). The Company hereby further authorizes the release of such information by the State of California to the City, and will cooperate with the City as necessary to obtain such release. Upon written request of the City, Company shall within twenty-one (21) days of the request also provide to the City copies of the Company's and its Affiliates' California state sales and use tax returns evidencing sales and the payments of sales and use taxes that are the subject of this Agreement. The provisions of this subsection shall survive the expiration or sooner termination of this Agreement for a period of eighteen (18) months.

(g) The foregoing subparagraphs of this Section 2.01 are hereinafter referred to in this Agreement as the "Covenant."

Section 2.02. City Obligations

(a) City Payments.

- i. Subject to Section 5.02 of this Agreement, the City shall make annual payments to Company of an amount measured by the amount of new Sales Tax Revenues received by the City as a direct result of the Company's automobile and parts sales for the period, commencing on the Effective Date and continuing for a period of four (4) years or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City, whichever occurs later ("Term"). The payments shall be due annually, thirty (30) calendar days after the

sales data for the preceding calendar year's four (4) quarters of sales activity is released. The amounts of the payments shall be as follows:

1. The City shall provide annual payments ("City Payments") to the Company of the City's portion of Sales Tax Revenues received as a consequence of the Dealership operating as a Point of Sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of Sales Tax Revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of Sales Tax Revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of Sales Tax Revenues exceeding the Second Threshold shall be retained by the City.
 2. City Payments shall continue annually in accordance with this Section 2.02, until a total amount of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City.
- ii. Notwithstanding anything else to the contrary, the City Payments due hereunder shall be payable from any source of funds legally available to the City. The determination of the source of funds for the City Payments shall be in the sole and absolute discretion of the City. The Company acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds. Sales Tax Revenues are used merely as a measure of the amount of City Payments due hereunder and as a means of computing the City's payment obligation. Notwithstanding anything else to the contrary, the City's obligation to make City Payments provided for herein is contingent upon actual receipt by the City of the Sales Tax Revenues derived from operation of the Dealership, which revenues are paid to the City by the State of California; moreover, Company acknowledges the same. The City shall not be obligated to make any payments hereunder if Sales Tax

Revenues are not actually received by the City from the State of California.

- iii. City Payments shall be made only for those years in which the Company is in compliance with the Covenant and other material terms of this Agreement. The failure of the City to make any payment required by this Agreement because of any Default (as defined in Section 3.01 hereof) by Company in complying with the Covenant or other requirements of this Agreement shall not cause acceleration of any future payments by the City to Company beyond the date of such Default.

Section 2.03. Conditions Precedent; Company

(a) The obligations of the Company as set forth in Section 2.01 of this Agreement are contingent upon satisfaction or written waiver by the Company of each of the following:

- (i) The Company has secured approval of all plans and specifications, if necessary, for the proposed operation of the Dealership and has been issued all required permits, licenses and entitlements therefor.
- (ii) There is no litigation challenging the validity of any provision of this Agreement or that may have a material adverse effect on the Property or the Dealership, the Company's intended operations or use thereof, or the City's payment obligations prescribed in Section 2.02 of this Agreement.

Section 2.04. Conditions Precedent; City

(a) The obligations of the City to make City Payments to Company are contingent upon satisfaction or written waiver by the City of each of the following:

- (i) The Company shall operate the Dealership as a Point of Sale for the Company and its Affiliates within the jurisdictional boundaries of the City pursuant to the Sales Tax Law, as of the Effective Date.
- (ii) The Company has secured approval from the City for all land use entitlements,, permits, licenses, plans and specifications, if any, required for the construction and operation of the Dealership and has paid all necessary fees to entitle Company to the issuance of permits therefor.
- (iii) The Company has recruited and will have employed and continues to employ for the duration of the Term, at least thirty percent (30%) and at least six (6) full-time employees of its workforce from City residents.

(iv) The Company has performed and complied in all material respects, with all terms, agreements, and covenants required by this Agreement to be performed or complied with by Company within the time periods required hereunder.

(v) There is no litigation challenging the validity of any provision of this Agreement or that may have a material adverse effect on the Property or the Dealership, the Company's intended operations or use thereof, or the City's payment obligations prescribed in Section 2.02 of this Agreement.

ARTICLE III

DEFAULTS AND REMEDIES

Section 3.01. Event of Default. The occurrence of any or all of the following shall constitute a default ("Default") under this Agreement:

(a) The Company's failure to comply with any material term of the Covenant or this Agreement.

(b) The City's failure to comply with any material term of its obligations pursuant to Section 2.02 hereof or of this Agreement.

(c) The filing of a petition in bankruptcy by or against the Company or appointment of a receiver or trustee for the Company, or an assignment by the Company for the benefit of creditors, or any adjudication that the Company is insolvent by a court of competent jurisdiction, and failure of Company to cause such petition, appointment or assignment to be removed or discharged within sixty (60) days from the date of such filing, appointment, assignment or adjudication.

(d) An unapproved assignment that would have otherwise required approval of the City pursuant to Section 4.01.

Section 3.02. Cure and Default. In the event of any Default as provided in Section 3.01 occurs, the nondefaulting Party shall give written notice to the defaulting Party. The defaulting Party shall immediately commence and diligently thereafter pursue curing the Default within thirty (30) days after receipt of notice. Failure to cure a Default within such thirty (30) day period shall constitute a breach of this Agreement; provided, however, that if a Default as specified in Section 3.01(a) or 3.01(b) cannot reasonably be completed within such thirty (30) day period, such failure shall not be a breach so long as such Party promptly commences to cure within thirty (30) day period and thereafter diligently prosecutes such cure to completion.

Section 3.03. Limitation of City Remedies. Nothing herein is intended to limit or restrict whatever specific performance or other equitable remedies either Party may have in accordance with applicable law; provided, however, that notwithstanding

any other provision of this Agreement, the City shall not have the remedy of specific performance to enforce the Company's Default of the Covenant, or any portion thereof.

Section 3.04. Termination. Notwithstanding anything to the contrary contained in this Agreement, Company and the City shall have the on-going right to terminate this Agreement: (i) upon six (6) months written notice pursuant to which Company shall repay fifty percent (50%) of the City Payments received through the effective date of termination, if the termination occurs prior to the date that is the third (3rd) anniversary of the Effective Date or (ii) in the event any third party brings any such action challenging the validity of this Agreement, or any term thereof, or the operation of the Dealership as a Point of Sale within the jurisdictional boundaries of the City, subject to Company's obligation to defend and indemnify the City pursuant to Section 5.05 of this Agreement. All such obligations shall survive any termination of this Agreement. Either Party may upon the Default of the other Party, after expiration of all applicable notice and cure periods, and in addition to pursuing all remedies otherwise available to it, terminate this Agreement and all of its obligations and rights hereunder without cost, expense or liability to itself.

ARTICLE IV

ASSIGNMENT

Section 4.01. Prohibition against Assignment of Agreement.

(a) The qualifications and identity of the Company are of particular concern to the City. It is because of these unique qualifications and the identity of the Company that the City has entered into this Agreement. No voluntary or involuntary successor-in-interest of the Company shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(b) Except as otherwise provided in this Agreement, Company shall not assign all or any part of this Agreement without prior written approval of the City which shall not be unreasonably withheld, delayed or conditioned.

(c) The Company may, subject to the prior written approval of the City Council, assign this Agreement to a separate ownership entity, which would assume all of the obligations of Company hereunder and which would assume all of the business related activities of Company.

(d) The Company may, with thirty (30) days prior written notice to the City, but without the City Council's prior consent, assign this Agreement to a subsidiary or Affiliate of the Company. In addition, Company may, with thirty (30) days prior notice to the City, but without the City's prior consent, assign this Agreement to an entity with which Company or the parent of Company or any subsidiary or Affiliate of Company might merge or consolidate. Moreover, the Company preserves its right to assign this

Agreement to any entity that retains control over the Company via an asset acquisition or stock sale.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01. Compliance With Bradley-Burns Uniform Local Sales and Use Tax Law. The Company shall carry out the operation of its automobile sales, parts sales, and automobile repair transactions through the Dealership in conformity with the Sales Tax Law.

Section 5.02. Local Hiring Requirement. The Company shall recruit and employ at the Dealership and continue to employ for the duration of the Term, at least thirty percent (30%) of full-time employees and at least six (6) full-time employees that are City residents. The term "full-time employee" as used herein means an employee that works at least 1750 hours per year performing tasks directly related to the products or services of the Company. At all times during the term of this Agreement commencing on the Effective Date, Company shall meet and continue to meet the local hire requirement prescribed herein. Company shall provide written notification of compliance with such requirement signed by an officer of the Company under penalty of perjury on or around the Effective Date and each anniversary of the Effective Date, and in any event within thirty (30) days of receiving a request therefor by the City.

(a) Notwithstanding the default provisions set forth in Article III of this Agreement, in the event the Company fails to comply with the requirements set forth in Section 2.01(d) of this Agreement in any calendar year due to circumstances beyond its control, the City shall provide the Company with an opportunity to cure the Default. If Company fails to provide City with an explanation of its attempt to cure within the thirty (30) day period the City shall be entitled to a recapture of a pro-rata share of City Payments or sales tax sharing payments for that particular year, as follows: if Company fails to comply with the requirements set forth in Section 2.01(d) of this Agreement, City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%. By way of example only, if Company should only reach 15% of the local hire requirement, the City shall pay Company half of the annual City Payments obligation that would otherwise be owed to Company. By way of further example, if Company should only reach 10% of the local hire requirement, the City shall pay Company one-third of the annual City Payments obligation that would otherwise be owed to Company. The limitations set forth in this Section shall apply on a year by year basis and in no event shall such limitation apply to any payments owed by City for a previous year.

(b) The City agrees to assist the Company's human resources staff with identifying qualified applicants who are residents of the City to support and maintain the thirty percent (30%) and at least six (6) full-time employees hiring requirement, during the period in which this Agreement is in effect. The City will utilize

resources within the City of Moreno Valley Employment Resources Center to assist the Company in the recruitment and fulfillment of its obligation.

Section 5.03. Notices. All notices under this Agreement shall be given in writing by personal delivery, by certified mail or registered United States mail, return receipt requested, postage prepaid, addressed as set forth below. Either Party may change its address by giving written notice thereof to the other in accordance with the provisions of this section.

CITY: City of Moreno Valley
Attention: City Manager
14177 Frederick Street
Moreno Valley, CA 92553

Copy to: City of Moreno Valley
Attention: City Attorney
14177 Frederick Street
Moreno Valley, CA 92553

HYUNDAI OF MORENO VALLEY: Hyundai of Moreno Valley
27500 Eucalyptus Avenue
Moreno Valley, CA,
Attention: Mr. Mike Brown

Copy to: Hyundai of Moreno Valley
27500 Eucalyptus Avenue
Moreno Valley, CA,
Attention: General Counsel

Section 5.04. Entire Agreement. This Agreement constitutes the entire agreement between the City and the Company concerning the subject matter hereof, and supersedes all prior agreements and understandings whether written or verbal. This Agreement may not be modified or amended except in a writing signed by the Parties.

Section 5.05. Indemnity. The Company shall defend (with representation of Company's choosing and acceptable to the City), indemnify and hold harmless the City, its elected officials, officers, employees and agents (collectively, "City Parties") from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expenses (including reasonable attorneys' fees) arising from or in connection with or caused by an act, omission or negligence of Company and its contractors, agents and employees in connection with this Agreement, including, but not limited to, claims regarding the validity of this Agreement, and the operation of the Dealership as a Point of Sale within the jurisdictional boundaries of the City, except to the extent arising as a result of the City's negligence or willful misconduct. The City shall fully cooperate in the defense of any such actions and, upon the written request of

Company, shall provide to Company such documents and records in the possession of the City that are relevant to such actions. Notwithstanding anything else herein or to the contrary, Company shall defend (with representation of Company's choosing and acceptable to the City), indemnify and hold harmless the City Parties from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expenses (including reasonable attorneys' fees) arising from or in connection with or caused by failure to pay prevailing wages under the Labor Code during the course of construction of the Dealership or any portion thereof.

Section 5.06. Force Majeure. The time for performance of any obligation hereunder shall be extended by any period of delay caused by Force Majeure provided the Party claiming the existence of an event of Force Majeure provides written notice to the other Party within thirty (30) days following commencement of any such circumstances.

Section 5.07. Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural and the words "person" and "party" include corporation, partnership, firm, trust or association where the context so requires. The Parties agree that each Party and its counsel have reviewed this Agreement and that any rule of construction of the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments of exhibits to this Agreement.

Section 5.08. Time of the Essence. Time is of the essence of this Agreement and the Parties' obligations under this Agreement.

Section 5.09. Authority to Execute. The person or persons executing this Agreement on behalf of Company warrant and represent that they have authority to execute the Agreement on behalf of Company and warrant and represent that they have the authority to bind Company to the performance of its obligations hereunder.

Section 5.10. Release of City Officials. No elected official, officer, employee or agent of the City ("Released Persons") shall be personally liable to Company, or any successors-in-interest of Company, in the event of any Default or breach by City or for any amount which may become due to Company or its successors, or on any obligations under the terms of this Agreement. Company hereby waives and releases any claim it may have against the Released Persons with respect to any Default or breach by the City or for any amount which may be come due to Company or its successors, or on any obligations under the terms of this Agreement. Company makes such release with full knowledge of California Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this release. Civil Code 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if

known by him or her must have materially affected his or her settlement with the debtor.”

Section 5.11. Headings. The headings to the sections of this Agreement have been inserted for convenience only and shall not, to any extent, have the effect of modifying, amending or changing the expressed terms and provisions of the Agreement.

Section 5.12. Venue and Attorneys' Fees. In the event of any litigation under this Agreement, all such actions shall be instituted in the Superior Court of the County of Riverside, State of California, or in the United States District Court, Central District of California, Eastern Division. In any such action, the prevailing party may recover its reasonable attorneys' fees and costs incurred.

Section 5.13. Applicable Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of California, without giving effect to its conflict of law principles.

Section 5.14. Successors and Assigns. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the City and Company and their respective successors and assigns.

Section 5.15. No Joint Venture. Nothing contained in this Agreement shall be constructed to render the City in any way, or for any purpose, a partner, joint venturer, or associated in any relationship with Company nor shall this Agreement be constructed to authorize any Party to act as an agent for the other.

Section 5.16. No Third Party Beneficiaries. No provisions, term or condition of this Agreement is intended to, nor shall be constructed as conferring any benefit to, any third party, person or entity.

Section 5.17. Waiver. The waiver by the City or Company of any Default or breach by the other Party of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent Default or breach of the same or any other term, covenant or condition herein contained. Any Party's acceptance of any performance by the other Party after the due date of such performance shall not be deemed to be a waiver by any Party or any preceding Default or breach by the other Party of any term, covenant or condition of the Agreement, regardless of such Party's knowledge of such preceding Default or breach at the time of acceptance of such performance.

Section 5.18. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or part, of this Agreement is declared invalid, unconstitutional or void for any reason, the

remainder of this Agreement shall continue in full force and effect unless to do so would deprive one of the Parties of a material benefit of its bargain under this Agreement.

Section 5.19. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts each of which shall be deemed an original, but all of which shall constitute one Agreement, binding on the Parties.

Section 5.20. Recordation. The Parties agree that immediately upon execution, this Agreement shall be recorded in the Riverside County Recorder's Office.

SIGNATURE PAGE TO FOLLOW

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

CITY OF MORENO VALLEY

M.R.S. BROWN, LLC, DBA
HYUNDAI OF MORENO VALLEY

BY: 

~~Chief Financial Officer/
City Manager/Mayor
(Select only one please)~~

BY: Michael L. Brown
TITLE: President
(President or Vice President)

3.23.16
Date

11/23/15
Date

Michael L. Brown
BY: Michael L. Brown

TITLE: _____
(Corporate Secretary)

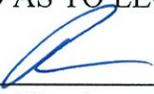
Date

INTERNAL USE ONLY

ATTEST:

City Clerk
(only needed if Mayor signs)

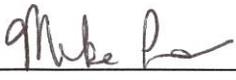
APPROVED AS TO LEGAL FORM:



City Attorney

3-11-16
Date

RECOMMENDED FOR APPROVAL:



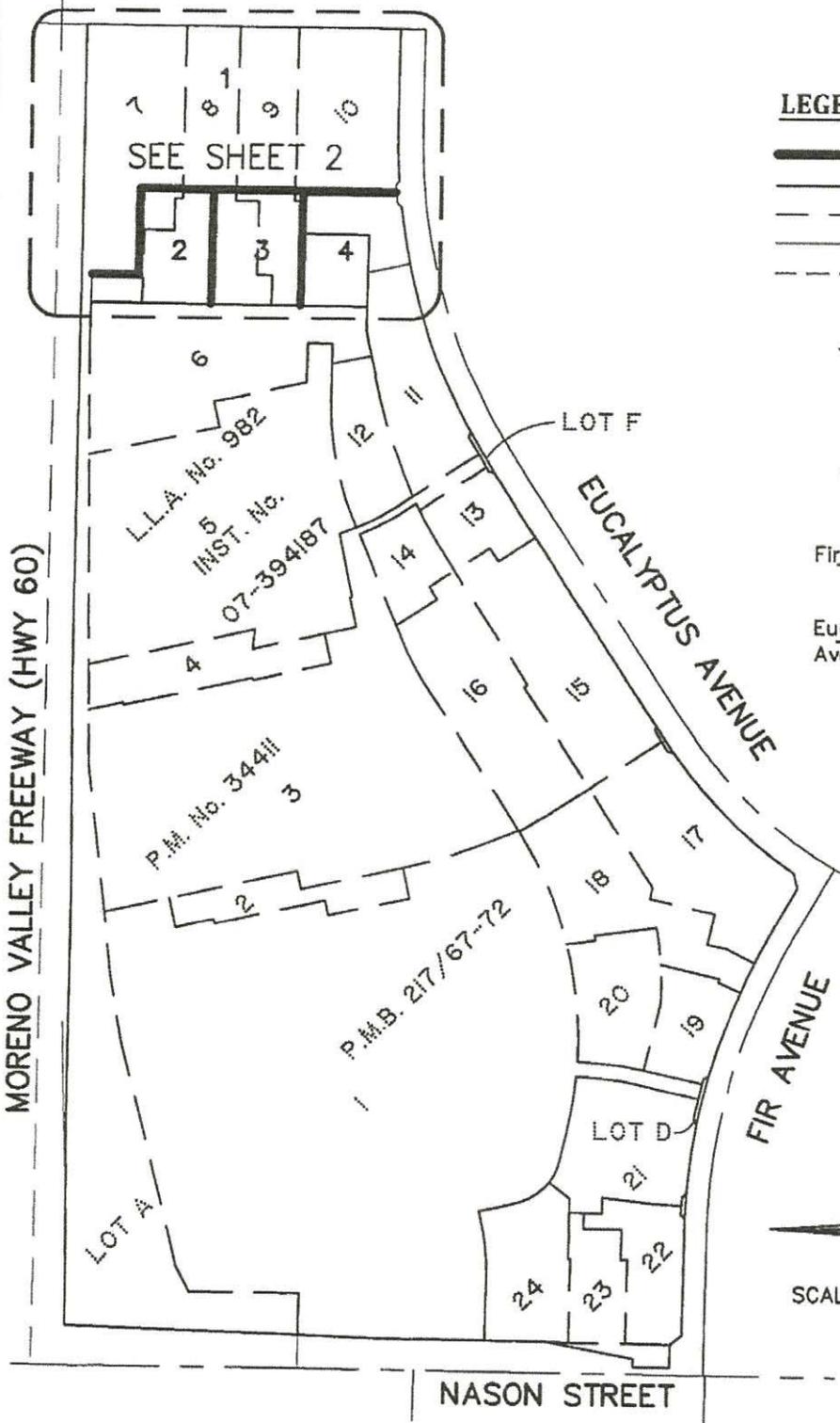
Department Head
(if contract exceeds 15,000)

3/22/16
Date

EXHIBIT "A"

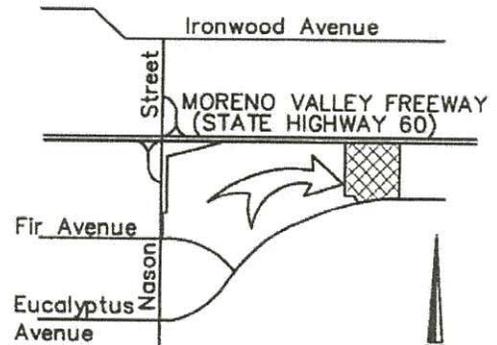
EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE



LEGEND

- NEW PROPERTY LINE
- EXISTING PROPERTY LINE
- OLD PROPERTY LINE
- CENTERLINE
- EXISTING EASEMENT LINE



NOTE:

1. SEE SHEET 3 FOR LINE, CURVE TABLES AND DETAILS.
2. SEE SHEET 4 FOR EASEMENTS NOTES.

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION



SCALE: 1" = 350'



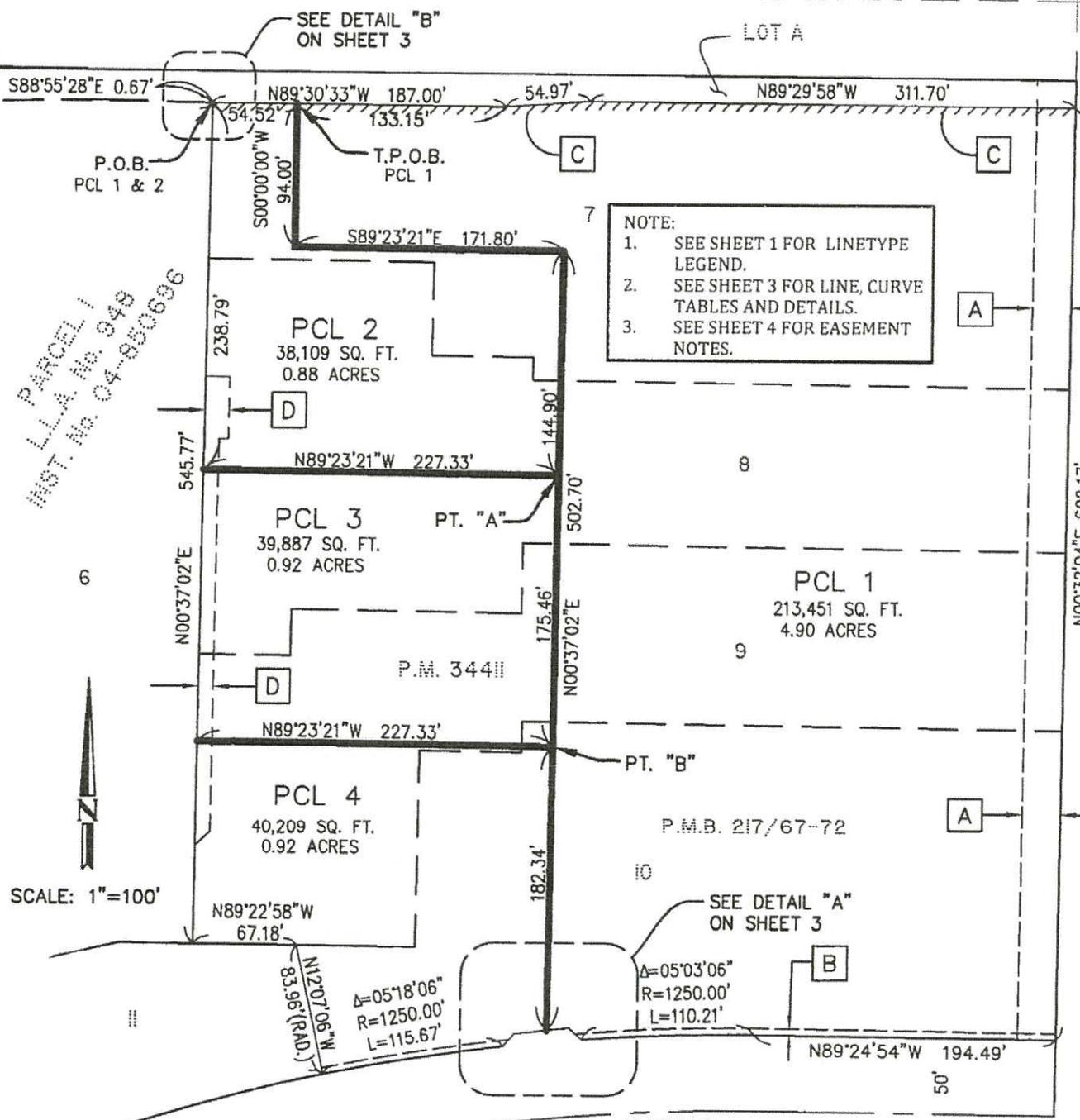
PASCAL R. APOTHELOZ P.L.S. 7734 DATE

L:\2015\15-926 Mo. Valley S\eneridgr Towne Ctr-PH2\EX\LLA\15-926ex01.dwg; Nov 07, 2015 - 3:45pm

EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE

MORENO VALLEY FREEWAY (HWY 60)



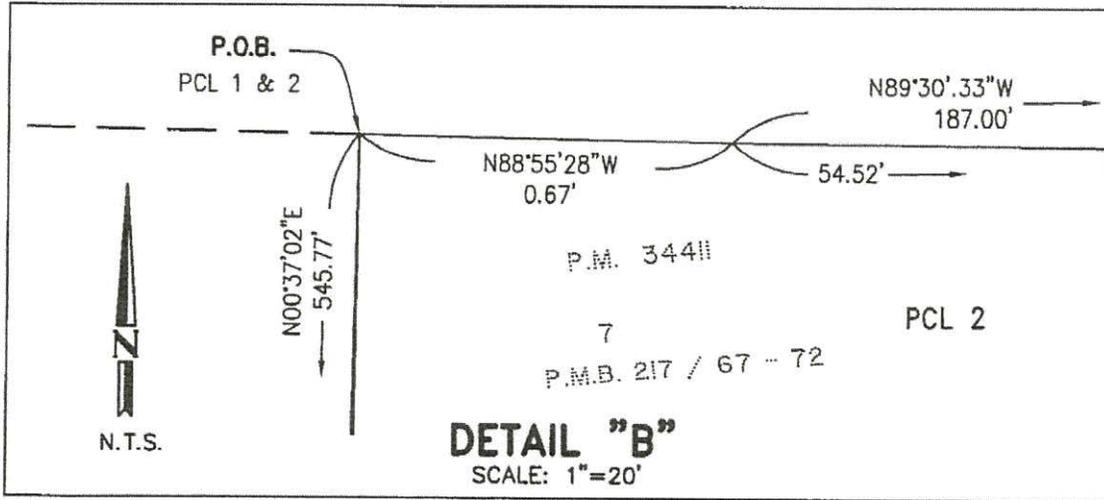
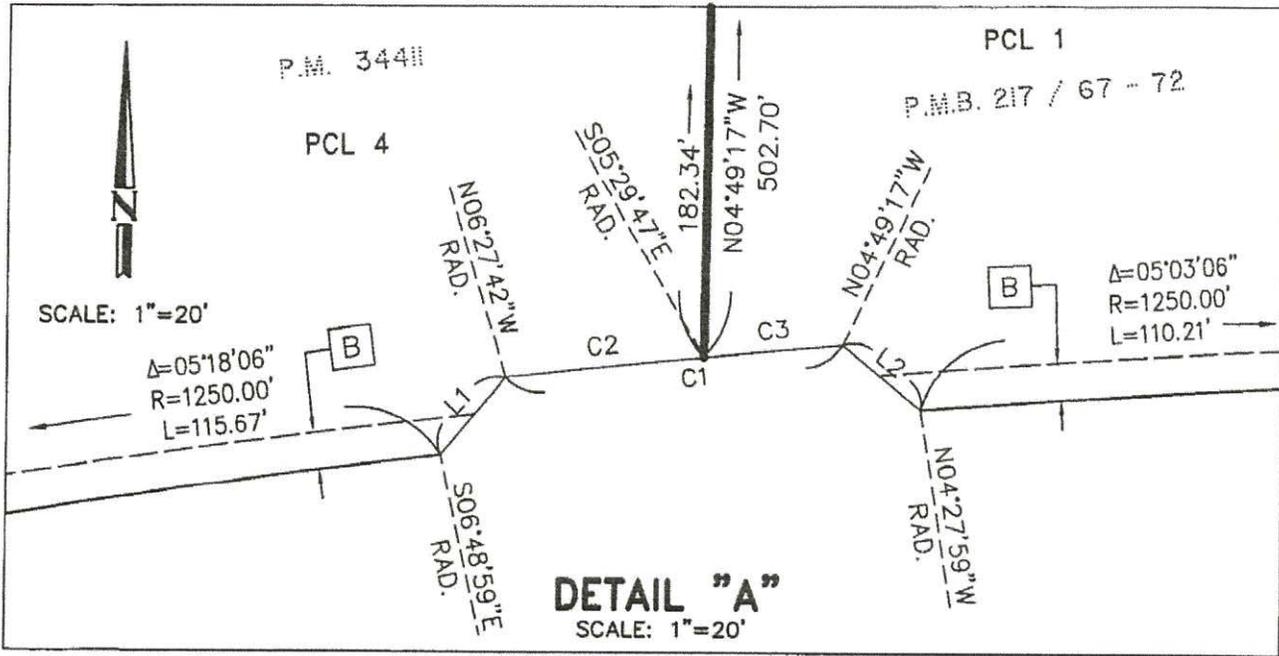
PARCEL 1
 L.L.A. No. 949
 INST. No. 04-950696



L:\2015\15-926 Mo. Valley Stoneridge Towne Ctr-PH2\Ex\LLA\15-926ex01.dwg, Nov 02, 2015 - 3:45pm

EXHIBIT "A" - LEGAL PLAT

LOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE



NOTE:
1. SEE SHEET 1 FOR LINETYPE LEGEND.
2. SEE SHEET 4 FOR EASEMENTS NOTES.

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	01°38'25"	1257.50'	36.00'
C2	00°57'55"	1257.50'	21.19'
C3	00°40'30"	1257.50'	14.82'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S39°21'31"W	10.80'
L2	S50°38'29"E	10.80'

L:\2015\15-926 Mo. Valley Stoneridge Towne Ctr-PH2\Cx\ALLA\15-926x01.dwg; Nov 02, 2015 -- 3:45pm

EXHIBIT "A" - LEGAL PLATLOT LINE ADJUSTMENT NO. _____ / AND CERTIFICATE OF COMPLIANCE

EASEMENT NOTES

- A** AN EASEMENT IN FAVOR OF EASTERN MUNICIPAL WATER DISTRICT FOR PIPELINE PURPOSES, RECORDED ON APRIL 16, 1991 AS INSTRUMENT NO. 123040 OF OFFICIAL RECORDS.
- B** AN EASEMENT TO THE CITY OF MORENO VALLEY FOR PUBLIC ACCESS PURPOSES, DEDICATED ON PARCEL MAP NO. 34411, FILED IN BOOK 217, PAGES 67 THROUGH 72 OF PARCEL MAPS.
- C** THE FACT THAT SAID LAND DOES NOT INCLUDE RIGHTS OF ACCESS TO OR FROM THE STREET OR HIGHWAY ABUTTING SAID LAND, SUCH RIGHTS HAVING BEEN SEVERED FROM SAID LAND PER PARCEL MAP NO. 34411, FILED IN BOOK 217, PAGES 67 THROUGH 72 OF PARCEL MAPS.
- D** AN EASEMENT IN FAVOR OF EASTERN MUNICIPAL WATER DISTRICT FOR PUBLIC UTILITIES PURPOSES, RECORDED ON JUNE 22, 2007 AS INSTRUMENT NO. 2007-0408784 OF OFFICIAL RECORDS.

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083
FOR AN OPERATING COVENANT AND AGREEMENT
BY AND BETWEEN
CITY OF MORENO VALLEY
AND
M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY**

Pursuant to Government Code Section 53083, the City Council of the City of Moreno Valley ("City") must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant and Agreement by and between the City of Moreno Valley and M.R.S. Brown, LLC, dba Hyundai of Moreno Valley ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on March 1, 2016.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

Name and address of business benefitting from the economic development subsidy:

M.R.S. Brown, LLC, dba
Hyundai of Moreno Valley ("Company")
27500 Eucalyptus Avenue
Moreno Valley, CA
Attention: Mr. Mike Brown

Location of facility:

27500 Eucalyptus Avenue
Moreno Valley, CA, 92555

Start and end dates for the subsidy:

If the Agreement is approved by the City Council, the start date of the economic development subsidy will be at the Commencement of Operations, defined in the Agreement as the date of Certificate of Occupancy Issuance.

The City shall make annual payments to Company of an amount measured by the amount of new Sales Tax Revenues received by the City as a direct result of the Company's automobile and parts sales for the period, commencing on the Commencement of Operations Date and continuing for a period of four (4) years or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the

City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City, whichever occurs later ("Term"). The economic development subsidy payments will be paid annually, thirty (30) calendar days after the sales data for the preceding calendar year's four (4) quarters of sales activity is released. City Payments shall continue annually in accordance with Section 2.02 of the Agreement, until a total amount of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's revenues received as a consequence of the Dealership's operation as a Point of Sale within the jurisdictional boundaries of the City.

A description of the economic development subsidy:

The subsidy will rebate a portion of the sales tax generated at the facility as follows:

1. The City shall provide annual payments ("City Payments") to the Company based on the City's portion of Sales Tax Revenues received as a consequence of the Dealership's operation as a Point of Sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of Sales Tax Revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of Sales Tax Revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of Sales Tax Revenues exceeding the Second Threshold shall be retained by the City.
2. As a commitment to hire locally, Hyundai of Moreno Valley would agree to recruit and employ, and continue to employ for the duration of the Term, Moreno Valley residents to fill at least 30% (6 full-time) positions. Compliance will be established annually through a written statement of compliance signed by a Hyundai of Moreno Valley executive under penalty of perjury on or around the Commencement of Operations Date and each anniversary of the Commencement of Operations Date, and in any event within thirty (30) days of receiving a request therefor by the City. If Hyundai of Moreno Valley fails to meet the 30% commitment, the City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%.

Statement of the public purpose of the subsidy:

Hyundai of Moreno Valley is developing a new automobile dealership within the City of Moreno Valley at 27500 Eucalyptus Avenue, Moreno Valley, CA, 92555, along the north side of Eucalyptus Avenue between Nason Street and Moreno Beach Drive. Dealership construction and fixture values are estimated at \$ 3,491,400. Commencement of Operations is currently scheduled for the Fall of 2016. Although there may be additional

supportive business activity conducted at the site, the primary purpose of the facility will be automobile sales.

Staff has determined that the establishment of the new Hyundai of Moreno Valley automobile dealership may generate substantial revenue for the City and create new jobs that might not otherwise be available to the community for many years. Direct economic benefits to the City would include the payment of sales, property, business license, and utility taxes, plus indirect economic benefits would be achieved through local expenditures by employees and corporate contracts. Hyundai of Moreno Valley is expected to generate approximately \$400,000 in new annual sales tax revenue (minus the subsidy to be paid to the Company).

The subsidy is provided to facilitate the creation of new local jobs and substantial net public revenues to provide expanded services to the community, expanded operating revenue to the Moreno Valley Utility, and increased economic and fiscal impact to the State and local community.

Projected tax revenue to the City as a result of the subsidy:

The four year projection of tax revenue (sales tax, property tax, utility tax and business license gross receipts tax) is **\$ 1,868,361**. The four year projection of the sales tax share provided to Hyundai of Moreno Valley is **\$ 240,000**.

Estimated number of jobs created by the economic development subsidy:

The subsidy is anticipated to result in the creation of 20 full time jobs.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 53083 of the California Government Code, the City Council (the "City Council") of the City of Moreno Valley (the "City") will hold a public hearing on March 1, 2016, at 6:00 P.M., at the regular meeting place of the City Council of the City, located at 14177 Frederick Street, Moreno Valley, California 92553, regarding an economic development subsidy to M.R.S. Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley and approval of an Operating Covenant and Agreement between the City of Moreno Valley and M.R.S. Brown, LLC, a limited liability company, dba Hyundai of Moreno Valley.

Any interested person may appear at said public hearing to address the City Council of the City on the foregoing matter.

Jane Halstead, City Clerk, CMC
CITY CLERK OF THE CITY OF MORENO VALLEY

RESOLUTION NO. 2016 - ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AND AGREEMENT BY AND BETWEEN THE CITY OF MORENO VALLEY AND M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY.

WHEREAS, M.R.S. Brown, LLC, dba Hyundai of Moreno Valley, ("Company"), a retailer of automobiles with worldwide distribution, is purchasing 4.9 acres of land on which to construct and operate an automobile sales and repair dealership of approximately 23,276 square feet (the "Facility") within the City of Moreno Valley, California ("City") at 27500 Eucalyptus Avenue, Moreno Valley, CA, 92555 ("the Property"); and

WHEREAS, the Facility will primarily operate as an automobile dealership with ancillary parts sales and repair services ("Dealership"); and

WHEREAS, the City and Company desire to enter into an Operating Covenant and Agreement ("Agreement") for an economic development subsidy based on Company' sales tax revenue; and

WHEREAS, on March 1, 2016, the City Council of the City of Moreno Valley conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, if the Agreement is approved by the City Council, the term of the economic development subsidy will be from the date of commencement of operations at the Dealership, which is anticipated to occur in Fall 2016, through the first four (4) years or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's portion of Sales Tax Revenues received as a consequence of the Dealership's operation as a Point of Sale in Moreno Valley ("Term").

WHEREAS, the economic development subsidy will be calculated annually based on Company's quarterly sales tax revenue and the incentive payments shall be due annually, thirty (30) calendar days after the sales data for the preceding calendar year's four (4) quarters of sales activity is released; and

WHEREAS, the economic development subsidy incentive payment shall be calculated as follows:

1. The City shall provide annual payments ("City Payments") to the Company based on the City's portion of Sales Tax Revenues received as a consequence of the Dealership's operation as a point of sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of Sales Tax Revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of Sales Tax Revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of Sales Tax Revenues exceeding the Second Threshold shall be retained by the City.

WHEREAS, as a commitment to hire locally, Company would agree to recruit and employ, and continue to employ for the duration of the Term, Moreno Valley residents to fill at least 30% (6 full-time) positions. Compliance will be established annually through a written statement of compliance signed by a Company executive under penalty of perjury on or around the Commencement of Operations Date and each anniversary of the Commencement of Operations Date, and in any event within thirty (30) days of receiving a request therefor by the City. If Company fails to meet the 30% commitment, the City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%; and

WHEREAS, the City agrees to assist Company's human resources staff with identifying qualified applicants who are residents of the City to support and maintain the 30% hiring requirement during the period in which the Agreement is in effect. The City will utilize resources within the City of Moreno Valley Employment Resources Center to assist the Company in the recruitment and fulfillment of its obligation to achieve 30% local hire requirement; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the economic development subsidy to Company pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the Agreement will ensure that the Company sales tax revenues and Company jobs remain in the City for at least the Agreement Term. The City further finds and determines that the establishment of the new Company Dealership within the City will generate substantial revenue for the City, create new jobs, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written Economic Development Subsidy Report form to the public and on its website, a copy of which is attached hereto as Exhibit A and

incorporated herein by this reference, and held a noticed public hearing on March 1, 2016 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED, by the City Council of the City of Moreno Valley, as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that

- (a) There are identifiable public purposes fulfilled by the Operating Covenant and Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and
- (b) The findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. Pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), the environmental impacts of the project were considered in an Addendum to the adopted Mitigated Negative Declaration for the Stoneridge Towne Centre project that was certified by the Planning Commission on March 9, 2006.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Moreno Valley shall certify as to the adoption of this Resolution.

APPROVED, AND ADOPTED this 1st DAY OF March, 2016.

Mayor of the City of Moreno Valley

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083
FOR AN OPERATING COVENANT AND AGREEMENT
BY AND BETWEEN
CITY OF MORENO VALLEY
AND
M.R.S. BROWN, LLC, DBA HYUNDAI OF MORENO VALLEY**

Pursuant to Government Code Section 53083, the City Council of the City of Moreno Valley ("City") must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant and Agreement by and between the City of Moreno Valley and M.R.S. Brown, LLC, dba Hyundai of Moreno Valley ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on March 1, 2016.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

Name and address of business benefitting from the economic development subsidy:

M.R.S. Brown, LLC, dba
Hyundai of Moreno Valley ("Company")
27500 Eucalyptus Avenue
Moreno Valley, CA
Attention: Mr. Mike Brown

Location of facility:

27500 Eucalyptus Avenue
Moreno Valley, CA, 92555

Start and end dates for the subsidy:

If the Agreement is approved by the City Council, the start date of the economic development subsidy will be at the Commencement of Operations, defined in the Agreement as the date of Certificate of Occupancy Issuance.

The City shall make annual payments to Company of an amount measured by the amount of new Sales Tax Revenues received by the City as a direct result of the Company's automobile and parts sales for the period, commencing on the Commencement of Operations Date and continuing for a period of four (4) years or until a total of two hundred forty thousand dollars (\$240,000) is paid to Company from the

City's portion of Sales Tax Revenues received as a consequence of the Dealership being operated as a Point of Sale within the jurisdictional boundaries of the City, whichever occurs later ("Term"). The economic development subsidy payments will be paid annually, thirty (30) calendar days after the sales data for the preceding calendar year's four (4) quarters of sales activity is released. City Payments shall continue annually in accordance with Section 2.02 of the Agreement, until a total amount of two hundred forty thousand dollars (\$240,000) is paid to Company from the City's revenues received as a consequence of the Dealership's operation as a Point of Sale within the jurisdictional boundaries of the City.

A description of the economic development subsidy:

The subsidy will rebate a portion of the sales tax generated at the facility as follows:

1. The City shall provide annual payments ("City Payments") to the Company based on the City's portion of Sales Tax Revenues received as a consequence of the Dealership's operation as a Point of Sale within the jurisdictional boundaries of the City for the Term. The payment will be calculated as follows:
 - a. City shall retain the first sixty thousand dollars (\$60,000) each year of the City's portion of Sales Tax Revenues received ("First Threshold").
 - b. City shall pay Company the City's portion of Sales Tax Revenues received in excess of the First Threshold up to and including an amount that is one hundred twenty thousand dollars (\$120,000) received ("Second Threshold").
 - c. The balance of the City's portion of Sales Tax Revenues exceeding the Second Threshold shall be retained by the City.
2. As a commitment to hire locally, Hyundai of Moreno Valley would agree to recruit and employ, and continue to employ for the duration of the Term, Moreno Valley residents to fill at least 30% (6 full-time) positions. Compliance will be established annually through a written statement of compliance signed by a Hyundai of Moreno Valley executive under penalty of perjury on or around the Commencement of Operations Date and each anniversary of the Commencement of Operations Date, and in any event within thirty (30) days of receiving a request therefor by the City. If Hyundai of Moreno Valley fails to meet the 30% commitment, the City shall only be responsible to pay City Payments for the pro rata share of the percentage amount of local residents hired by Company, based on a maximum of 30%.
- 3.

Statement of the public purpose of the subsidy:

Hyundai of Moreno Valley is developing a new automobile dealership within the City of Moreno Valley at 27500 Eucalyptus Avenue, Moreno Valley, CA, 92555, along the north side of Eucalyptus Avenue between Nason Street and Moreno Beach Drive. Dealership construction and fixture values are estimated at \$ 3,491,400. Commencement of Operations is currently scheduled for the Fall of 2016. Although there may be additional

supportive business activity conducted at the site, the primary purpose of the facility will be automobile sales.

Staff has determined that the establishment of the new Hyundai of Moreno Valley automobile dealership may generate substantial revenue for the City and create new jobs that might not otherwise be available to the community for many years. Direct economic benefits to the City would include the payment of sales, property, business license, and utility taxes, plus indirect economic benefits would be achieved through local expenditures by employees and corporate contracts. Hyundai of Moreno Valley is expected to generate approximately \$400,000 in new annual sales tax revenue (minus the subsidy to be paid to the Company).

The subsidy is provided to facilitate the creation of new local jobs and substantial net public revenues to provide expanded services to the community, expanded operating revenue to the Moreno Valley Utility, and increased economic and fiscal impact to the State and local community.

Projected tax revenue to the City as a result of the subsidy:

The four year projection of tax revenue (sales tax, property tax, utility tax and business license gross receipts tax) is **\$ 1,868,361**. The four year projection of the sales tax share provided to Hyundai of Moreno Valley is **\$ 240,000**.

Estimated number of jobs created by the economic development subsidy:

The subsidy is anticipated to result in the creation of 20 full time jobs.