

Attachment 1

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Clerk

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

**AGREEMENT REGARDING OPENING, OPERATING, AND
OTHER COVENANTS**

This **AGREEMENT REGARDING OPENING, OPERATING, AND OTHER COVENANTS** (“Agreement”) is made as of 10/12, 2017, by and between the **CITY OF GARDEN GROVE**, a California municipal corporation (“City”), and **GARDEN GROVE AUTOMOTIVE, INC.**, a California Corporation (“GGA”) (each, a “Party” and collectively, the “Parties”), with reference to the following:

A. GGA currently sells Kia automobiles, operating as Garden Grove Kia, on certain real property located at 10081 Garden Grove Boulevard, Garden Grove, CA and is desirous of relocating Garden Grove Kia to 13731 Harbor Boulevard, Garden Grove, California (the “Site”) and, to this end, has entered into an agreement to acquire the Site. The Site is legally described in Exhibit A and shown on the Site Map attached as Exhibit B.

B. Because the sale of Kia automobiles generates a significant number of jobs and sales tax, the City is desirous of encouraging GGA to continue to sell Kia automobiles in the City.

C. GGA is negotiating an agreement with Kia Motors to sell new Kia automobiles at the Site.

D. The City has found that it will benefit the City for GGA to open and operate a Kia Franchise and comply with the Covenants contained in this Agreement.

E. GGA is willing to be bound by the terms of the Covenants contained in this Agreement in return for which, and subject to the fulfillment of the contingency that GGA complies with the Covenants each year, the City will pay Covenant Consideration to GGA.

NOW, THEREFORE, the parties hereby agree, as follows:

1. Definitions.

1.1 “Additional Franchise” means a Franchise in addition to the Kia Franchise.

1.2 “**Affiliate**” means any person, directly or indirectly, in control of, controlled by, or under common control with, a Party. A Party shall be deemed to control another person if such Party possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

1.3 “**Agreement**” means this Agreement Regarding Operating and Other Covenants.

1.4 “**Alternative Franchise**” means a Franchise other than the Kia Franchise.

1.5 “**Annual Certificate of Compliance**” means a certificate, in the form attached hereto as Exhibit E and incorporated herein by reference, certifying Annual Compliance.

1.6 “**Annual Compliance**” means compliance each year by GGA with the representations and certifications set forth in the Annual Certificate of Compliance.

1.7 “**Annual Payments**” is defined in Section 3.1.

1.8 “**Annual Period**” means the one (1) year period from July 1 to June 30 each year, commencing on the first July 1 following the Opening for Business and each July 1 thereafter.

1.9 “**Business Day(s)**” shall mean days other than Saturdays, Sundays and legal holidays and closures observed by the City. If the time for performance of an obligation under this Agreement falls on other than a Business Day, the time for performance shall be extended to the next Business Day.

1.10 “**City**” means the City of Garden Grove, a California municipal corporation.

1.11 “**Conditions Precedent**” is defined in Section 4.

1.12 “**Covenant Consideration**” is defined in Section 3.1.

1.13 “**Covenants**” is defined in Section 2.7.

1.14 “**Date of Agreement**” is defined in the Preamble.

1.15 “**Day(s)**” shall mean calendar day(s).

1.16 “**Default**” is defined in Section 5.

1.17 “**Environmental Claim**” shall mean any claim, action, suit, or proceeding for personal injury (including sickness, disease or death), or for tangible or intangible injury or damage to property or natural resources or the environment, including, without limitation, compensation for lost profits, wages, business income, or other economic loss, consequential damages, diminution of property value or loss of use of property, nuisance, or for any violation or alleged violation of, or noncompliance with, the requirements of any Environmental Law.

1.18 “**Environmental Cleanup Liability**” shall mean any cost or expense incurred to investigate, monitor, remove, remediate, treat, clean up, abate or otherwise respond to any

Release or threatened Release of Hazardous Materials, including, without limitation, the cost of obtaining site closure from applicable governmental agencies and the cost of restoring the affected property upon completion of responsive action, all to the extent necessary in consideration of the commercial use of the Site.

1.19 “Environmental Compliance Costs” shall mean any cost or expense necessary to enable the real property impacted by the presence of Hazardous Materials to comply with all applicable Environmental Laws.

1.20 “Environmental Law” shall mean any applicable federal, California, regional or local law, statute, ordinance, rule, regulation or order for the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the Clean Air Act (42 U.S.C. § 7401 *et seq.*); the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*); the Emergency Planning and Community Right To Know Act of 1986 (42 U.S.C. § 11001 *et seq.*); the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*); the Carpenter Presley Tanner Hazardous Substance Account Act (Health and Safety Code § 25300 *et seq.*); the Hazardous Waste Control Law (Health and Safety Code § 25100 *et seq.*); the Hazardous Waste Disposal Land Use law (Health and Safety Code § 25220 *et seq.*); the Porter Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); Hazardous Materials Release Response Plans and Inventory (Health and Safety Code § 25500 *et seq.*); Underground Storage of Hazardous Substances (Health and Safety § 25280 *et seq.*); The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (Health and Safety Code § 25249.5 25249.13); the Asbestos Notification Law (Health and Safety Code § 25915 *et seq.*); the California Occupational Safety and Health Act (Labor Code § 6300 *et seq.*); Chapters 10 and 11, Division 4.5, Title 22, California Code of Regulations; and any law or regulation implementing, amending or succeeding any of the foregoing, and any similar laws or regulations at any time in effect having any of the purposes designated above.

1.21 “Example of Covenant Consideration Calculations” is shown in Exhibit D attached hereto and incorporated herein by reference.

1.22 “Force Majeure” is defined in Section 16.

1.23 “Franchise(s)” means the Kia Franchise which will operate under the name “Garden Grove Kia” on the Site pursuant to a Franchise Agreement and/or any other automobile dealership permitted to Operate on the Site pursuant to Section 2.5, hereof.

1.24 “Franchise Agreement” means the agreement between GGA and Kia Motors pursuant to which GGA is permitted to operate the Kia Franchise, or such other agreement between an automobile manufacturer and GGA permitting the sale of new automobiles and which has been approved by the City under Section 2.6 hereof.

1.25 “FTE Job(s)” means a full time equivalent, permanent job(s) totaling 2080 hours of paid time, including payment for actual work and/or any applicable paid leave consistent with applicable law.

1.26 “**Garden Grove Kia** ” means the name under which GGA Operates the current Kia dealership and will Operate the Kia Franchise on the Site.

1.27 “**GGA**” means Garden Grove Automotive, Inc., a California corporation whose principal shareholder is Hardin Enterprises, Inc., a California corporation. GGA also includes (i) any approved or deemed approved Franchise, (ii) transferee/assignee of GGA’s rights and obligations hereunder, or (iii) partner or Affiliate.

1.28 “**Governmental Requirement(s)**” means all valid and enforceable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer or the Site, including, without limitation, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation (to the extent applicable), Labor Code Sections 1770 *et seq.* (Prevailing Wage Laws), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

1.29 “**Guaranty**” means the Guaranty of Hardin Enterprises, Inc., a California corporation or a Replacement Guarantor in the form substantially attached hereto as Exhibit C and incorporated herein by reference.

1.30 “**Hazardous Materials**” shall mean any pollutant, contaminant, hazardous or toxic substance, material or waste which is or becomes identified, listed or regulated as such under any Environmental Law by the United States government, the State of California or any regional or local governmental authority having jurisdiction over the Site.

1.31 “**Indemnitees**” is defined in Section 2.3.

1.32 “**Kia Franchise**” means the Franchise granted by Kia Motors under which Garden Grove Kia will be Operated on the Site.

1.33 “**Liquidated Damages Amount**” is defined in Section 5.4.

1.34 “**Opening for Business,**” “**Open(s) for Business,**” or “**Opened for Business**” is defined in Section 2.1.

1.35 “**Operate**” or “**Operation**” is defined in Section 2.1.

1.36 “**Operating Period**” is defined in Section 2.1.

1.37 “**Operator(s)**” is defined in Section 9.

1.38 “**Permitted Assignee**” is defined in Section 9.

1.39 “**Person**” or “**Party**” is defined in Section 17.

1.40 “**Release**” shall mean the release, as defined in Health and Safety Code §§ 25320 and 25321, of a Hazardous Material or Hazardous Materials.

1.41 “**Replacement Guarantor**” means a person or entity approved by the City, acting in its reasonable discretion, which replaces the Guarantor or Replacement Guarantor which person or entity has a net worth of not less than Fifteen Million Dollars (\$15,000,000), including liquid assets of not less than Two Million Dollars (\$2,000,000) as of the date of transfer and annually thereafter.

1.42 “**Sales and Use Tax Law**” is defined in Section 1.42 in the definition of Sales Tax Revenues.

1.43 “**Sales Tax Revenues**” means that portion of tax revenues derived and received by the City from the imposition of the Bradley Burns Uniform Local Sales and Use Tax Law, commencing with Section 7200 of the Revenue and Taxation Code of the State of California, as amended, or its equivalent (the “**Sales and Use Tax Law**”), that the State Board of Equalization determines are generated by the Franchise(s) on the Site, conducted from the date on which Garden Grove Kia Opens for Business on the Site until the expiration or earlier termination of the Sales Tax Revenue Accrual Period. Sales Tax Revenues shall be based upon the total Sales Tax Revenues received by the City for unrestricted use by the City’s general fund (less any State Board of Equalization adjustments that would have modified previous payments to GGA) during the applicable preceding Annual Period as confirmed by the report furnished by the City’s sales tax consultant as provided by the State Board of Equalization, and the sales tax returns as filed by GGA, and any verifiable reporting as it relates to sales and leasing activities generated by GGA and use taxes assessed and collected thereon by a third party leasing or financing company. GGA shall provide documentation supporting the calculation of Sales Tax Revenues to the City.

1.44 “**Sales Tax Revenue Accrual Period**” means the period commencing upon the date Garden Grove Kia Opens for Business on the Site and terminates on the date which is the earlier to occur of (i) of the twentieth (20th) anniversary date of the date on which Garden Grove Kia Opens for Business on the Site, (ii) payment in the aggregate of Two Million, Five Hundred Thousand Dollars of Covenant Consideration, or (iii) suspension and/or termination of this Agreement in accordance with the terms hereof.

1.45 “**Site**” is defined in Recital A.

1.46 “**Site Map**” means that map attached hereto as Exhibit B and incorporated herein by reference showing the Site.

2. Opening, Operating and Restrictive Covenants.

2.1 Opening and Operating Covenant. Subject to the Conditions Precedent described in Section 4 hereof, GGA, hereby covenants and agrees that it shall open, or cause to be opened, for business to the general public, as evidenced by written notice from GGA to the City of such opening (“**Opening for Business**,” “**Open(s) for Business**,” or “**Open(ed) for Business**”) and continuously operate, or cause to be operated, an automobile dealership during normal business hours under the name “**Garden Grove Kia** ” on the Site primarily for the sale and lease of all makes and models of new Kia automobiles, and secondarily, the sale and lease of used vehicles, and other ancillary automotive uses commonly associated with such uses from time to time, including without

limitation the servicing and repair of vehicles, and vehicle parts sales (“**Operate**” or “**Operation**”) for a period of twenty-five (25) years from the date of Opening for Business (the “**Operating Period**”). Such continuous Operation shall be subject to the Force Majeure provisions of Section 16 hereof.

2.2 Restrictive Covenants. During the Operating Period, GGA shall do, or cause to be done, the following: (1) designate the Site as the point of sale for sales tax purposes in all retail sales and lease contracts for vehicles whose sales and leases originate from the Site; (2) cause all vehicles purchased through GGA’s internet/online sales and scheduled for delivery in Southern California to be delivered from the Site, (3) at no cost to City, keep and maintain the Site and the improvements on the Site and all facilities appurtenant thereto, consistent with the requirements of the Franchise Agreement(s), in good order and repair and safe condition, and the whole of the Site, the improvements, and landscaping in a clean, sanitary, and orderly condition free from debris, graffiti and waste materials, and (4) observe and comply with all Governmental Requirements.

2.3 Indemnities/Release. GGA agrees to indemnify, protect, defend, reimburse and hold the City and their elected and appointed officials, employees, representatives, agents, consultants, attorneys, volunteers, successors and assigns, each of them jointly and severally (collectively, the “Indemnitees”), harmless from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses, proceedings, lawsuits, orders, judgments, fines, obligations, encumbrances, liens, expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not any such claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and attorneys’ fees and remedial and response costs) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, at law or in equity, any of which are suffered or incurred by said Indemnitees, or assessed, levied or asserted by any person or entity (whether governmental or private) against said Indemnitees, relating to, resulting from, arising out of or based upon, in whole or in part, the following: (i) any act, omission or negligence of GGA or any lessee of GGA, or their respective contractors, licensees, invitees, agents, sublessees, servants or employees, wheresoever on or adjacent to the Site that the same may occur, (ii) any use of the Site, or any accident, injury, death or damage to any person or property occurring in, on or about the Site or any part thereof, or from the conduct of GGA’s business or from any activity, work or thing done, permitted or suffered by GGA or its sublessees, contractors, employees, or invitees, in, on, or about the Site, (iii) GGA’s failure to comply with one or more Governmental Requirements, (iv) the presence, release, use, generation, discharge, storage, disposal, removal or remediation of any Hazardous Materials on, in, under, or emanating from the Site, (v) the violation, or alleged violation, or compliance with the requirements of any Environmental Law, or any other statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials to, from, on, in, under, about or around the Site, or (vi) any Environmental Cleanup Liability or Environmental Compliance Costs related to the Site. This indemnity shall include, without limitation, any liabilities arising from or out of or relating in any manner to any Environmental Claim or any nuisance, contamination, leak, spill, release or other adverse effect on the environment caused by or resulting from any Hazardous Material, or toxic substances or waste existing on, under, or emanating from the Site. Notwithstanding the foregoing, the indemnities described in (i) and (ii) above and the paragraph immediately below regarding Hazardous Materials shall not apply if and to the extent of the sole negligence or willful misconduct of the Indemnitees.

GGA hereby fully and entirely releases and discharges the City (including their elected and appointed officials, employees, representatives, agents, consultants, attorneys, volunteers, successors and assigns), and of each of them alone, of and from any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses, proceedings, lawsuits, orders, judgments, fines, obligations, encumbrances, or liens, of whatever kind or nature, matured or not matured, anticipated or unanticipated, known or unknown, at law or in equity, on account of the presence of any Hazardous Materials (i) in, on, under, or emanating from the Site, or (ii) in connection with, or in any way related to, the Site, or (iii) for or on account of the physical condition of the Site. This release constitutes an explicit waiver by GGA of each and all of the provisions of California Civil Code Section 1542, which states 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.”

GGA hereby declares and represents that it is effecting and executing this release of the City after having read all of this release and with full understanding of its meaning and effect and after having received full legal advice as to its rights from an attorney.

2.4 FTE Jobs. GGA hereby covenants to make available not less than forty (40) FTE Jobs as certified upon Opening for Business and annually thereafter.

2.5 Additional/Alternative Franchise(s). Subject to compliance with applicable laws related thereto, including, without limitation, the provisions of Government Code Section 53084 et seq., GGA, or any Affiliate of GGA, shall have the right to Operate Additional Franchise(s) or Alternative Franchises on the Site; provided however, GGA shall notify the City Manager of the City, in writing, of GGA’s intent to open an Additional Franchise on the Site (upon such notice, the Additional Franchise shall be deemed approved) or Operate an Alternative Franchise but only with the written approval of the City which approval shall be granted or rejected based on the City’s determination, acting in its reasonable discretion, as to whether the Replacement Franchise has historically generated, in other comparable locations, FTE Jobs and sales tax substantially equivalent to the Kia Franchise. The provisions of this Agreement shall apply with respect to Additional Franchise(s) or Alternative Franchise(s).

2.6 Annual Certificate of Compliance. GGA shall have filed on or before August 1 of each year the Annual Certificate of Compliance and be in conformity with the representations and certifications contained therein.

2.7 Covenants. The foregoing sub-Sections 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 are collectively hereinafter referred to as the “Covenants.”

3. Covenant Consideration.

3.1 Payment of Consideration. Subject to the contingency that GGA fulfill the Covenants and generate sufficient Sales Tax Revenue to entitle it to Covenant Consideration, City agrees to pay to GGA (i) an amount equal to (x) thirty-five percent (35%) of the Sales Tax Revenues each year (i.e., from July 1 through June 30) during the Sales Tax Revenue Accrual Period in excess

of One Hundred Fifty Thousand Dollars (\$150,000), which payments shall be made until the expiration of or earlier termination of the Sales Tax Revenue Accrual Period (payments described in clause (ii) are referred to herein as the “**Annual Payments**,” and referred to herein as the “**Covenant Consideration**”). The covenant Considerations due and payable each year is sometimes referred to herein as “**Annual Payment(s)**.” An example of the calculation to determine Covenant Consideration is shown in Exhibit D. GGA and City acknowledge and agree that the definition of Sales Tax Revenues as used herein is used strictly as a measure of the amount of payment due hereunder and as a means of computing the Annual Payments. Annual Payments shall be made annually, on or before October 1 of each year during the Sales Tax Revenue Accrual Period, consistent with the procedure described in the definition of “**Sales Tax Revenues**” above. The City shall determine the total Sales Tax Revenues actually paid to the City during the prior Annual Period. Based on the data provided by the State Board of Equalization to City, and based upon such determination and the formula described above, the City shall determine the amount of the applicable Annual Payment. In the event that the first Annual Payment or the last Annual Payment due hereunder covers less than a full Annual Period, the Annual Payment for such partial Annual Period shall be calculated by first establishing a new base number in place of the One Hundred Fifty Thousand Dollars (\$150,000) by multiplying the total Sales Tax Revenue for such partial period by a fraction the numerator of which is the number of days during that period and the denominator is 365. The result is then multiplied by 35% to determine the Covenant Consideration for the partial period. An example of the calculation of the Covenant Consideration for less than the full Annual Period is included within Exhibit D.

3.2 Cap on Consideration. Notwithstanding anything else herein contained, in no event shall the aggregate Annual Payments paid to GGA pursuant to Section 3.1 exceed the sum of Two Million, Five Hundred Thousand Dollars (\$2,500,000).

3.3 No Acceleration. It is acknowledged by the parties that any payments by the City provided for herein may only be paid in those periods in which GGA is in compliance with the Covenants provided for herein. Therefore, the failure of the City to make any payments as and when provided for in Section 3.1 shall not cause the acceleration of any future payments by the City to GGA beyond the date of GGA’s uncured default.

4. Conditions Precedent. The following are the Conditions Precedent to the Parties’ obligations hereunder:

(a) GGA (directly or through an Affiliate) shall have acquired the Site (or Transaction);

(b) GGA shall have Opened for Business and commenced Operation of Garden Grove Kia on the Site on or before June 30, 2018; and

(c) GGA shall timely file its Annual Certificate of Compliance with the City with respect to each Annual Period on or before August 1 of each year commencing on the August 1 first following the date on which Garden Grove Kia Opens for Business on the Site.

(d) GGA has delivered the executed Guaranty to the City.

(e) GGA is in conformance with the Franchise Agreement.

(f) GGA has provided the City with an executed copy of the Franchise Agreement.

5. Defaults and Remedies. Occurrence of any or all of the following shall constitute a breach by GGA under this Agreement:

5.1 GGA's failure to fully and completely comply with the representations and certifications set forth in the Annual Certificate at such time as the Annual Certificate of Compliance is required to be filed with the City each year.

5.2 GGA's failure to fully and completely comply with the Covenants at any time.

5.3 The filing of a petition in bankruptcy by or against GGA or appointment of a receiver or trustee of any property of GGA, or an assignment by GGA for the benefit of creditors, or adjudication that GGA is insolvent by a court, and a failure of GGA to cause such petition, appointment or assignment to be removed or discharged within one hundred twenty (120) days.

5.4 The failure by GGA to comply with any other material provision of this Agreement.

In the event of any breach under the terms of this Agreement, the nonbreaching party shall give written notice to the breaching party. The breaching party shall commence and diligently thereafter pursue the curing of said breach within thirty (30) days after receipt of notice of such breach; provided, however, if such a cure cannot reasonably be effected within such thirty (30) day period, such failure shall not be a breach so long as the breaching party promptly commences a cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. Failure to cure, as specified above, shall constitute a "**Default**" hereunder.

5.5 Liquidated Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IF THERE IS A DEFAULT BY GGA HEREUNDER, THEN CITY'S SOLE AND EXCLUSIVE REMEDY FOR SUCH EVENT OF DEFAULT SHALL BE TO TERMINATE THIS AGREEMENT AND RECEIVE FROM GGA AS LIQUIDATED DAMAGES AN AMOUNT EQUAL TO TWENTY FIVE PERCENT (25%) THE TOTAL AMOUNT OF COVENANT CONSIDERATION PAID TO GGA AS OF THE DATE OF SUCH TERMINATION (THE "**LIQUIDATED DAMAGES AMOUNT**"). THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF SUCH AN EVENT OF DEFAULT BY GGA, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES AMOUNT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE PARTIES ACKNOWLEDGE THAT SUCH PAYMENT OF THE DEPOSIT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL

CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

Initials: City _____ GGA 

5.6 Consequences of a GGA Default. In the event of Default by GGA, and without seeking judicial relief, the following shall automatically and immediately occur: (i) GGA's right to receive Covenant Consideration during the period that the Franchise is not in compliance with the Covenants shall be suspended and the term of the payment period described in Section 2 herein shall not be extended; and (ii) subject to the provisions of Section 17 below, in the event the Franchise is closed for a continuous period of one (1) year or more, GGA's right to receive payments from City pursuant to this Agreement shall be permanently terminated and the terms of this Agreement shall be of no further force or effect, except for the provisions of Sections 2.3, 5, 10, 13, 20, 21, and 31 hereof which shall survive termination as set forth herein. Damages for a Default shall be limited to the Liquidated Damages.

6. Representations and Warranties of GGA. GGA hereby represents and warrants as follows, each of which representations and warranties is made as of the Date of Agreement:

6.1 GGA is a California corporation, duly organized, validly existing and in good standing under the laws of the State of California, with corporate and/or partnership powers adequate for the making and performing of this Agreement and for carrying on the business now conducted or proposed to be conducted by it. GGA has taken all corporate action required to execute, deliver and perform this Agreement and to make all of the provisions of this Agreement the valid and enforceable obligations they purport to be and has caused this Agreement to be executed by a duly authorized partner or officer. Such corporate action is evidenced by a Resolution of the Board of Directors of GGA which resolution shall be delivered to City concurrently with GGA's delivery to City of an executed copy of this Agreement.

6.2 The execution and delivery of this Agreement and all related documents and the performance of its obligations hereunder by GGA do not conflict with any provision of any law or regulation to which GGA is subject, conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which GGA is a party or by which GGA is bound, or any order or decree applicable to GGA, or result in the creation or imposition of any lien on any of GGA's assets or property which would materially and adversely affect the Agreement; and GGA has obtained all consents, approvals, authorizations or orders of any court or governmental agency or body, if any, required for the execution, delivery, and performance by GGA of its obligations under this Agreement.

6.3 There are no judgments, orders or decrees of any kind of record against GGA which are unpaid or unsatisfied, nor are there any other legal or administrative proceedings pending, threatened or reasonably anticipated which could be filed before any court or administrative agency which has or is likely to have any material adverse effect on (a) the business or assets or the condition, financial or otherwise, of GGA, or (b) the ability of GGA to perform its obligations under this Agreement.

6.4 GGA has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against GGA. No general

assignment of GGA's property has been made for the benefit of creditors, and no receiver, master, liquidator, or trustee has been appointed for GGA or any of its property. GGA is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render GGA insolvent. GGA has now and will have throughout the term of this Agreement, sufficient capital or net worth to meet its current obligations, including all obligations under this Agreement.

6.5 GGA is a sophisticated investor and its decision to enter into this Agreement is based upon its own independent investigations, evaluations, and assessments. GGA has not relied in entering into this Agreement upon any oral or written information from City or its employees, agents, consultants, advisors, or representatives, other than the express representations and warranties of City specifically set forth herein. GGA acknowledges no employee, agent, consultant, advisor or representative of City has been authorized to make, and GGA has not relied upon, any statements or representations made thereby, other than those specifically contained in this Agreement.

6.6 The information provided to City by GGA was, is, and shall remain true and correct and accurate and complete in all material respects throughout the term of this Agreement.

7. Representations and Warranties of City. City represents and warrants as follows, each of which representations and warranties is made as of the Date of Agreement:

7.1 The execution of this Agreement and the performance by City of its obligations hereunder have been duly authorized and approved.

7.2 The execution and delivery of this Agreement and all related documents and the performance of City's obligations hereunder by City do not conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which City is a party or by which City is bound, or any order or decree applicable to City, or result in the creation or imposition of any lien on any of City's assets or property which would materially and adversely affect the Agreement; and City has obtained all consents, approvals, authorizations or orders of any court or governmental agency or body, if any, required for the execution, delivery, and performance by City of its obligations under this Agreement.

7.3 There are no judgments, orders or decrees of any kind of record against City which are unpaid or unsatisfied, nor are there any other legal or administrative proceedings pending, threatened or reasonably anticipated which could be filed before any court or administrative agency which has or is likely to have any material adverse effect on (a) the business or assets or the condition, financial or otherwise, of City, or (b) the ability of City to perform its obligations under this Agreement.

7.4 City has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against City. No general assignment of City's property has been made for the benefit of creditors, and no receiver, master, liquidator, or trustee has been appointed for City or any of its property. City is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render City insolvent.

7.5 The information provided to GGA by City was, is, and shall remain true and correct and accurate and complete in all material respects throughout the term of this Agreement.

8. Disclaimer of Representations and Warranties of City.

8.1 There are no representations, agreements, arrangements, or circumstances, oral or written, between the parties hereto relating to the subject matter contained in this Agreement that are not fully expressed herein, and City has not made and does not make any representation or warranty concerning any matter or thing affecting or relating to the Kia Franchise and/or the Site.

8.2 City has made no representations or warranties with regard to zoning and subdivision laws, ordinances, resolutions and regulations of governmental authorities having jurisdiction over the Site, and the use and improvement of the Site.

9. Assignment and Assumption. The terms, Covenants, and obligations of GGA pursuant to this Agreement shall run with the Site and be binding upon GGA's lessees, successors and assigns to the Site or any portion thereof. It is understood that it is possible that the identity of the fee owner of the Site may be different from GGA and different from the operator of the Franchise(s) (the "Operator(s)"). Wherever the term GGA is used in this Agreement, such term shall be deemed to refer to GGA and/or any other owner of all or a portion of the Site and/or the Operators and any authorized successor or assign of same, as provided herein. Except as to a transfer described in the last paragraph of this Section 9, notwithstanding any transfer by GGA of the Site or any portion thereof or any rights therein or any assignment by GGA of any obligations under this Agreement to an Affiliate or any other person or entity, GGA shall remain fully liable for all obligations and requirements set forth in this Agreement. During the Operating Period, GGA shall include reference to this Agreement in any lease or operating agreement respecting the Site, and each lessee or Operators must, in such lease or operating agreement, acknowledge and agree (i) that its interests, rights and obligations are subject to this Agreement, and (ii) that it must comply, or enable GGA to comply, with all terms and provisions of this Agreement applicable and in force and effect following the effective date of such lease or operating agreement. The rights of GGA under this Agreement shall not be subject to assignment by attachment, execution or proceedings under any provision of the Bankruptcy Act, and any such assignment or transfer shall be wholly void and of no force and effect unless written consent thereto is first obtained from the City.

GGA may transfer its interests in all or any portion of the Site and/or Franchise(s) being operated on the Site, including its rights and obligations under this Agreement, with the written approval of the City, as described below, to any entity approved by Kia Motor or, if more than one Franchise or an Alternative Franchise is being operated on the Site, to any entity approved by the automobile manufacturer issuing the Franchise that is the subject of GGA's proposed transfer (a "Permitted Assignee"); provided that the effectiveness of any such transfer shall be subject to (i) approval by the City, acting in its reasonable discretion, of a Replacement Guarantor, (ii) express assumption by the proposed assignee of the rights and obligations of the transferor, and (iii) the express assumption of the obligations under the Guaranty by the Replacement Guarantor.

If the conditions for the effectiveness of a transfer as described immediately above are fulfilled, GGA and the existing Guarantor shall, following the date of such assignment, be relieved of any and all obligations including, without limitation, the Covenants set forth in Section 2 accruing after the date of such assignment.

Notwithstanding the foregoing, in the event that the fee simple ownership of the Site is held by a different person or entity than the person or entity that owns and operates the Franchise, nothing

herein shall be construed to limit the ability of the fee simple owner from transferring the fee simple ownership without consent of the City.

10. Guaranty of GGA Obligations. Hardin Enterprises, a California Corporation, Inc. an Affiliate of GGA, or such other person or entity approved by the City pursuant to Section 9, above, will guaranty the obligation of GGA pursuant to the Guaranty.

11. Notices. All notices under this Agreement shall be given in writing by personal delivery, or by certified mail or registered United States Mail, return receipt requested, postage prepaid, or by overnight delivery, or by facsimile and shall be deemed communicated when received if given by personal delivery or upon receipt or rejection if mailed as provided above or upon the delivery date or attempted delivery date shown on the air bill or facsimile on a business day during business hours in the location where received, and if not then on the next business day, as the case may be. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this article:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Manager

With copies to: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: Community and Economic
Development Director

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Attorney

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: Thomas P. Clark, Jr.

To GGA: Hardin Enterprises, Inc.
1381 Auto Center Drive
Anaheim, California 92806
Attn: Jared Hardin, Vice President

With a copy to: Ferruzzo & Ferruzzo, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Attn: Thomas G. Ferruzzo

12. Miscellaneous. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings written

and oral. This Agreement may not be modified or amended except in a writing signed by all parties hereto.

13. Brokerage Commissions. City and GGA shall each indemnify, defend and hold the other Party harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from the Indemitor's dealing with any broker, agency or finder, license or otherwise in connection with the transaction covered by this Agreement.

14. Construction. The Parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

15. Police Power. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, or its departments, commission, agencies and boards and the officers of the City, including without limitation, any general plan or any zoning ordinances, or any of their duties, obligations, rights or remedies thereunder or pursuant thereto or the general policy powers, rights, privileges and discretion in the furtherance of the public health, welfare and safety of the inhabitants of the City of Garden Grove, provided, however, that neither shall take any action to frustrate or hinder the intent or effect of this Agreement.

16. Force Majeure. Time for performance hereunder shall be extended by any period of delay caused by circumstances beyond the reasonable control of the party claiming the delay despite the party's diligent efforts, other than financial ability, provided the party claiming the delay provides written notice to the other party within a reasonable period following commencement of any such circumstances which circumstances shall include, without limitation, fire/casualty losses; strikes; litigation; unusually severe weather; inability to secure necessary labor, materials, or tools; environmental remediation; including governmental review and processing of environmental remediation; delays of any contractor, subcontractor, or supplier; delay caused by the other party; and acts of God (collectively, "Force Majeure").

17. Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "Party" include corporation, partnership, firm, trust, or association where the context so requires.

18. Time of the Essence. Time is of the essence of this Agreement and all parties' obligations under this Agreement.

19. Authority to Execute. The person or persons executing this Agreement on behalf of GGA warrant and represent that they have the authority to execute this Agreement on behalf of their corporation, partnership or business entity and warrant and represent that they have the authority to bind GGA to the performance of its obligations hereunder.

20. Warranty Against Payment of Consideration for Agreement. GGA warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

21. Release of Public Officials. No member, official, agent, employee, or attorney of the City or City shall be personally liable to GGA, or any successor in interest of GGA, in the event of any default or breach by the City or for any amount which may become due to GGA or its successors, or on any obligations under the terms of this Agreement. GGA hereby waives and releases any claim it may have personally against the members, officials, agents, employees, consultants, or attorneys of the City with respect to any default or breach by them or for any amount which may become due to GGA or its successors, or on any obligations under the terms of this Agreement. GGA makes such release with full knowledge of Civil Code Section 1542, and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable California Civil Code Section 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.”

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

23. Venue. In the event of any litigation under this Agreement, all such actions shall be instituted in the Superior Court of the County of Orange, State of California, or in an appropriate municipal court in the County of Orange, State of California.

24. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

25. Successors and Assigns. The provisions of this Agreement shall be binding upon, and inure to the benefit of, the City and GGA and their successors and assigns as the case or context may require.

26. No Joint Venture. Nothing contained in this Agreement shall be construed to render the City in any way or for any purpose a partner or joint venturer, or in any manner associated in any relationship with GGA, nor shall this Agreement be construed to authorize any party to act as agent for the other.

27. Waiver. The waiver by the City or GGA of any breach by the other party of any term, covenant, or condition in this Agreement contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent 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 breach by the other party of any term, covenant, or condition of this Agreement, regardless of such party's knowledge of such preceding breach at the time of acceptance of such performance.

28. 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 (1) Agreement, binding on the parties hereto.

29. Recordation of Agreement. This Agreement shall be recorded in the records of the Orange County Recorder's Office after the Site is acquired by GGA (directly or through an Affiliate). Following the termination of the Operating Period or the earlier termination of this Agreement in accordance with the terms thereof, the parties shall cooperate in removal of the Agreement from the records of the Orange County Recorder's Office.

30. Original Signatures. Only original signatures shall be binding upon the parties upon signing and delivering.

31. Attorneys' Fees. In the event that suit is brought for the enforcement of this Agreement or as of the result of any alleged breach hereof, the prevailing party in such suit shall be entitled to recover their reasonable attorneys' fees from the losing party, and any judgment or decree rendered in such proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

32. No Third Party Beneficiary. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights and any person who is not a party hereto, unless expressly provided otherwise.

33. City Approvals and Actions. Except as provided in the last sentence of this Section 33, the City shall maintain authority with respect to this Agreement and its implementation through the City Manager (or his duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Agreement and, to the extent allowable and consistent with the goals and objectives of the City pursuant to this Agreement, to reasonably accommodate requests of lenders. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

34. Captions. The captions of this Agreement are inserted for convenience and are not part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Regarding Operating Covenant and Restrictive Covenants as of the Date of Agreement.

CITY:

CITY OF GARDEN GROVE, a California
Municipal Corporation

By: _____
Name:
Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Thomas P. Clark, Jr.
Stradling Yocca Carlson & Rauth
Special Counsel

GGA:

GARDEN GROVE AUTOMOTIVE, INC.,
a California corporation

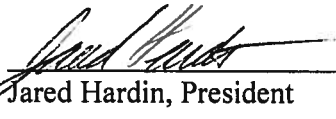
By:  _____
Jared Hardin, President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Garden Grove , County of Orange, State of California, described as follows:

THE NORTHERLY 312.00 FEET OF THE EASTERLY 420.00 FEET OF THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH QUARTER OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 5 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51, PAGE 12, OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTH OF THE RIGHT OF WAY OF THE LOS ANGELES INTER-URBAN RAILWAY COMPANY, AS DESCRIBED IN DEED RECORDED AUGUST 1, 1905 IN BOOK 121, PAGES 48 OF DEEDS, AND IN DECREE RECORDED NOVEMBER 8, 1905 IN BOOK 122, PAGE 18 OF DEEDS.

SAID LAND IS ALSO DELINEATED AS PARCEL B ON PARCEL MAP 22905 FILED IN BOOK 8 PAGE 44 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

APN: 100-130-52

EXHIBIT B
SITE MAP

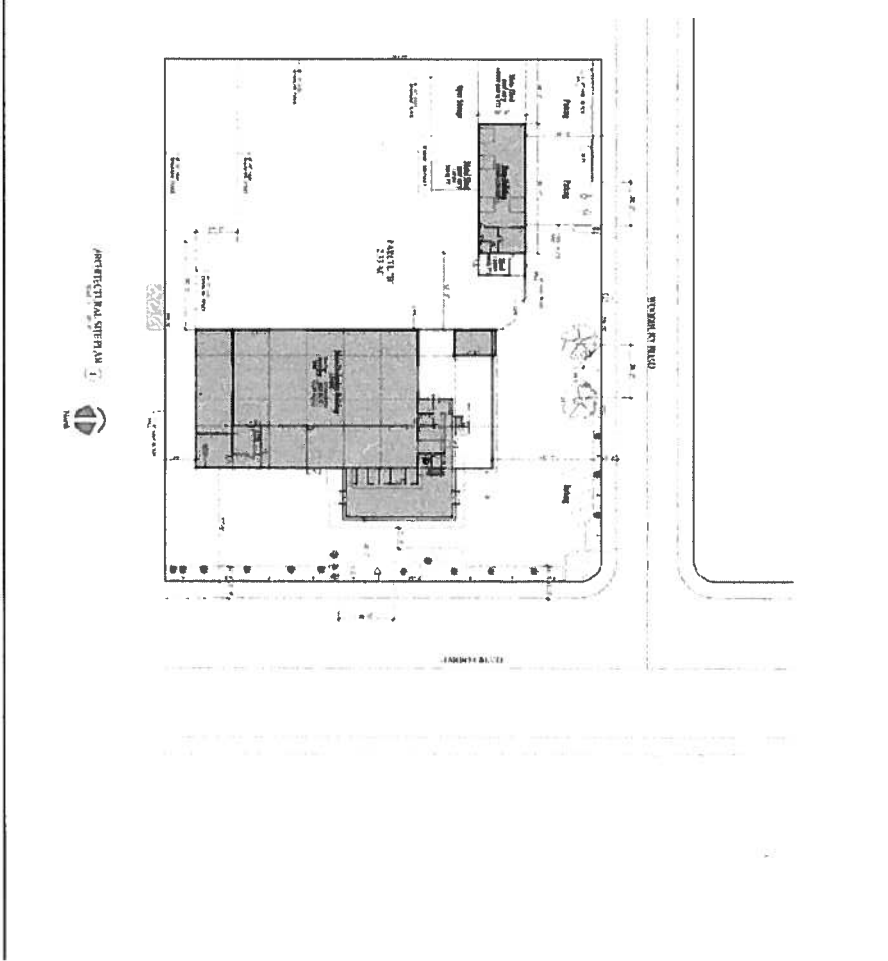


Exhibit B-1

EXHIBIT C
GUARANTY

THIS GUARANTY (this “**Guaranty**”), is entered into as of _____, 2017, by HARDIN ENTERPRISES, INC., a California corporation (“**Guarantor**”) and by, and for the benefit of, the CITY OF GARDEN GROVE, a municipal corporation (the “**City**”).

RECITALS :

WHEREAS, Garden Grove Automotive, Inc., a California corporation (“**GGA**”) and the City are parties to that certain Agreement Regarding Opening, Operating, and Other Covenants, dated _____, 2017 (the “**Agreement**”) attached hereto as Attachment No. 1 and incorporated herein by reference pursuant to which the City agreed to pay certain Covenant Consideration contingent upon certain performance by GGA on the terms and conditions set forth therein. Unless otherwise defined herein, capitalized terms used in this Guaranty shall have the meanings set forth in the Agreement; and

WHEREAS, upon fulfillment of the Conditions Precedent described in Section 4 of the Agreement, the City shall accept this Guaranty as being the Guaranty under the Agreement.

WHEREAS, by this Guaranty, GGA is further guaranteeing to City that GGA shall comply with its obligations under the Agreement.

NOW, THEREFORE, for good and valuable consideration, Guarantor, intending to be legally bound, hereby covenants, agrees, represents and warrants as follows:

ARTICLE 1 – GUARANTEED OBLIGATIONS

Section 1.1 Guaranteed Obligations. Guarantor hereby guarantees timely and full compliance with and performance under the Agreement, including but not limited to, the indemnity obligations set forth in Section 2.3 thereof (collectively, the “**Guaranteed Obligations**”).

Section 1.2 Guaranty of Payment and Performance.

(a) The obligations of Guarantor hereunder constitute a guarantee of payment and performance, as applicable, and not merely of collection, are absolute and unconditional and shall not in any event be discharged, impaired, or otherwise affected except by payment in full of all amounts guaranteed hereunder to the City and/or performance in full of all other obligations guaranteed hereunder, as the case may be. Guarantor agrees that it will, upon notice from the City that any Guaranteed Obligations by GGA are in Default (“**Defaulted Obligations**”), (i) immediately perform Defaulted Obligations, (ii) reimburse the City for all attorneys’ fees and costs, and (iii) if GGA fails to comply with the Guaranteed Obligations to indemnify and/or reimburse City, within twenty (20) days of City’s invoice to GGA, for costs incurred by City to timely comply with the obligations under the Agreement, including but not limited to, costs described under Section 2.3, or with the enforcement of this Guaranty.

(b) The City shall have the right to pursue performance and/or payment from Guarantor of the Defaulted Obligations without first being required to bring a lawsuit or any other legal proceeding against GGA.

ARTICLE 2 – CANCELLATION/COSTS/BANKRUPTCY

Section 2.1. Cancellation. This Guaranty and all obligations and liabilities of Guarantor hereunder will be cancelled when all Guaranteed Obligations have been satisfied and/or paid in full; provided, however, that this Guaranty shall be reinstated and remain in full force and effect for so long as any payment hereunder may be voided or rescinded in bankruptcy proceedings as a preference or for any other reason.

Section 2.2. Insolvency of GGA or Guarantor.

(a) The obligations of Guarantor under this Guaranty shall not be discharged, impaired or otherwise affected by the insolvency, bankruptcy, liquidation, readjustment, composition, dissolution or other similar proceeding involving or affecting either or both GGA or Guarantor, proceedings affecting the ownership of any of the above through merger, consolidation or otherwise, inconsistent orders in or claims by parties to any such proceedings or other release of obligations by operation of law.

(b) Guarantor understands and agrees that, if GGA becomes insolvent or is adjudicated bankrupt, whether by voluntary or involuntary petition, or if any bankruptcy action involving GGA is commenced or filed, or if a petition for reorganization, arrangement or similar relief is filed against GGA, or if a receiver of any part of GGA's property or assets is appointed by any court, Guarantor will immediately pay to City the amount of all accrued, unpaid and accruing Guaranteed Obligations that are payment obligations.

ARTICLE 3 – AGREEMENTS AND WAIVERS

Section 3.1. Agreements. Guarantor hereby:

(a) agrees that any failure or delay by the City to exercise any right or remedy under this Guaranty shall not be construed as a waiver of the right to exercise the same or any other right or remedy hereunder at any time and from time to time thereafter;

(b) agrees that under no circumstances (other than payment and performance, as applicable, in full of the Guaranteed Obligations) shall it become subrogated to any claims of the City against GGA under the Agreement;

(c) agrees that the obligations undertaken in this Guaranty shall not be affected by the lack of validity or enforceability of the Agreement (or any portion thereof) or of any of the Guaranteed Obligations and Guarantor expressly waives any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of GGA or any principal of GGA or any defect in the formation of GGA or any principal of GGA ;

(d) agrees that no single exercise of the power to bring any action or institute any proceeding under this Guaranty shall be deemed to exhaust such power, but such power shall

continue undiminished and may be exercised from time to time as often as City may elect until all of Guarantor's liabilities and obligations hereunder have been satisfied;

(e) agrees that its liability under this Guaranty shall in no way be released or otherwise affected by the commencement, existence or completion of any proceeding by the City against GGA with respect to the enforcement and/or collection of the Guaranteed Obligations; and the City shall be under no obligation to take any action and shall not be liable for any action taken or any failure to take action or any delay in taking action against Guarantor or; and

(f) waives any notice of (i) City's intention to act in reliance of this Guaranty, (ii) any presentment, demand, protest or notice of dishonor, nonpayment or other Default, and (iii) the commencement or prosecution of any enforcement proceeding against GGA with respect to the Guaranteed Obligations.

Section 3.2 Waivers.

(a) Guarantor expressly waives:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to Guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive, and 2899, 2953 and 3433;

(ii) all benefits and defenses under California Civil Code Sections 2809 and 2810;

(iii) any defense or benefits arising out of any federal or state bankruptcy, insolvency, or debtor relief laws, including without limitation under Sections 364 or 1111(b)(2) of the United States Bankruptcy Code;

(iv) any and all rights it may have now or in the future to require or demand that City pursue any right or remedy that City may have against GGA or any third party; and

(v) the right to require City to proceed against GGA, exhaust any security which City now holds or may hold in the future from GGA or pursue any other right or remedy available to City.

(b) Guarantor hereby (i) waives notice of acceptance of this Guaranty by GGA and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (ii) agrees to refrain from asserting, until after GGA's full performance of each of the Guaranteed Obligations, any defense, right of set-off or other claim which Guarantor may have against GGA, (iii) waives presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (iv) waives any failure by City to inform Guarantor of any facts City may now or hereafter know about GGA or any of the Guaranteed Obligations, it being understood and agreed that City has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by GGA of all circumstances bearing on the risk of nonperformance of the Guaranteed Obligations. City shall not have any obligation to disclose or discuss with Guarantor its assessment of the financial condition of GGA. Guarantor acknowledges that no representations of any kind whatsoever have been made by City.

No modification or waiver of any of the provisions of this Guaranty shall be binding upon City except as expressly set forth in a writing duly signed and delivered by City.

(c) Guarantor further agrees that the Guarantor's liability as guarantor shall not be impaired or affected by: (i) any waiver of any terms or conditions of the Agreement, (ii) City's failure or election not to pursue any other remedies it may have against GGA or Guarantor or any third party, and (iii) any change, modification or termination of the Agreement, it being the intent hereof that, subject to City's compliance with the terms of this Guaranty, Guarantor shall remain liable for the performance of the Guaranteed Obligations, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety.

Section 3.3. Enforceability.

(a) Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of City's consideration for entering into this transaction, City has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses, and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to City that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by City, and that City is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

(b) This Guaranty is independent of the obligations of GGA under the Agreement. City may bring a separate action to enforce the provisions hereof against Guarantor without taking action against GGA or any other party or joining GGA or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guaranty.

ARTICLE 4 – REPRESENTATION AND WARRANTY

Section 4.1. Warranties and Representations. Guarantor warrants and represents that:

(a) Guarantor's Warranties. Guarantor warrants and acknowledges that: (a) Guarantor has reviewed all of the terms and provisions of the Agreement; (b) all conditions precedent to the effectiveness of this Guaranty have been fulfilled; (d) Guarantor has established adequate means of obtaining from sources other than City, on a continuing basis, financial and other information pertaining to GGA's financial condition, the progress of payment and performance of the Guaranteed Obligations, and the status of GGA's performance of its obligations under the Agreement, and City has made no representation to Guarantor as to any such matters; (e) the most recent financial statements of Guarantor previously delivered to City are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to City) and fairly present in all material respects

the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof and (f) Guarantor has not and will not sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, without first providing a Replacement Guarantor.

(b) Net Worth Requirement. During the term of this Agreement, Guarantor shall maintain a net worth of Fifteen Million Dollars (\$15,000,000), including liquid assets of not less than Two Million Dollars (\$2,000,000).

(c) Entity Matters. Guarantor is a duly organized, validly existing, organized and in good standing under the laws of the State of California, has all requisite power and authority to conduct its business and to own its property as now conducted or owned, and is qualified to do business in all jurisdictions where the nature and extent of its business is such that such qualification is required by law; and

(d) Material Economic Benefit. The Agreement constitutes a material economic benefit to Guarantor.

ARTICLE 5 – MISCELLANEOUS PROVISIONS

Section 5.1. Choice of Law. This Guaranty shall be governed, construed, applied and enforced in accordance with the laws of the State of California.

Section 5.2. City Assignment. This Guaranty may be assigned in whole or in part by City upon written notice to Guarantor.

Section 5.3. Miscellaneous. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of Guarantor and City. The liability of all persons and entities that are in any manner obligated hereunder shall be joint and several. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.

Section 5.4. No Oral Change. This Guaranty and any provisions hereof may not be modified, amended or waived except by an agreement in writing signed by the City and Guarantor.

Section 5.5. Authority. Guarantor represents and warrants that it has full power and authority to execute and deliver this Guaranty and the execution and delivery of this Guaranty has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Guarantor.

Section 5.6. Duplicate Originals. This Guaranty may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

Section 5.7. Notices. All notices given under this Guaranty must be in writing and (a) delivered personally by a process server providing a sworn declaration evidencing the date of service, the individual served, and the address where the service was made; (b) sent by certified mail,

return receipt requested; or (c) delivered by nationally recognized overnight delivery service that provides evidence of the date of delivery (for next morning delivery if sent by overnight delivery service), in all cases with charges prepaid addressed to the appropriate party at its address listed below:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Manager

With copies to: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: Community and Economic
Development Director

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Attorney

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: Thomas P. Clark, Jr.

To GGA/Guarantor: _____

Attention: _____

To GGA: Hardin Enterprises, Inc.
1381 Auto Center Drive
Anaheim, California 92806
Attn: Jared Hardin, Vice President

With a copy to: Ferruzzo & Ferruzzo, LLP
3737 Birch Street, Suite 400
Newport Beach, California 92660
Attn: Thomas G. Ferruzzo

Copies of any notice to the Guarantor shall also be sent to the GGA at the same time. Guarantor requests that City copy Guarantor on any notice of default given to GGA pursuant to the Agreement.

Section 5.8. WAIVER OF TRIAL BY JURY. EACH OF GUARANTOR AND THE CITY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN

CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS GUARANTY.

Section 5.9. Headings, etc. The headings and captions of various paragraphs of this Guaranty are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 5.10. Approval of Guarantor. The City hereby confirms that it approves Guarantor and accepts the guaranty of Guarantor under this Guaranty in satisfaction of the City's Conditions Precedent in Section 4 of the Agreement.

[Signature on Following Page]

IN WITNESS WHEREOF, Guarantor and the City each has caused this Guaranty to be duly executed by its duly authorized representative, all as of the day and year first above written.

GUARANTOR:

HARDIN ENTERPRISES, INC.,
a California corporation

By: _____
Jared Hardin, President

By: _____

Its: _____

CITY:

CITY OF GARDEN GROVE, a municipal corporation

By: _____
_____, City Manager

Attested to by:

By: _____
Teresa Pomeroy, CMC
City Clerk

Approved as to Form:

By: _____
Thomas P. Clark, Jr., Special Counsel

ATTACHMENT NO. 1
AGREEMENT REGARDING OPENING, OPERATING, AND
RESTRICTIVE COVENANTS

[To be inserted]

EXHIBIT D

EXAMPLE OF COVENANT CONSIDERATION CALCULATIONS (SECTION 3.1)

Example of calculation of Covenant Consideration:

Assume:

- Sales Tax Revenue for an Annual Period of \$250,000

Then:

- $250,000 - 150,000 \times 35\% = \$35,000$ in Covenant Consideration for the applicable Annual Period

Example of calculation of less than a full year under the definition of Covenant Consideration:

Assume:

- Opening for Business occurs on May 1, 2018
- Sales Tax Revenue for the period from May 1, 2018 to June 30, 2018 is \$20,000

Then:

$$30 \text{ day} \div 365 \text{ days} = .082$$

$$.082 \times \$150,000 = \$12,329 \text{ is the new base for the partial period}$$

$$\text{The Covenant Consideration for the partial period is therefor } (20,000 - 12,329) \times 35\% = \$2,685$$

EXHIBIT E

ANNUAL CERTIFICATE OF COMPLIANCE

City Manager
City Manager's Office
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Re: Annual Certification Pursuant to Agreement Regarding Opening, Operating, and Other Covenants ("Agreement") by and between the City of Garden Grove and Garden Grove Automotive, Inc. ("GGA").

Dear City Manager:

This Certification is submitted to the City of Garden Grove in accordance with the Agreement, for the Annual Period from July 1 _____ to June 30 _____. The undersigned authorized representatives of "GGA" under the Agreement hereby represent and certify the following:

1. Garden Grove Kia, located at 13731 Harbor Boulevard, Garden Grove, CA [Opened for Business on _____ and] confirms that [Garden Grove Kia] has continually operated as a [Kia] Franchise during the Annual Period in question.
2. [Garden Grove Kia] has been maintained in good condition, meeting the standards required by [Kia Motors America], during the Annual Period and consistent with the Franchise Agreement.
3. [Garden Grove Kia] has maintained forty (40) FTE Jobs during the Annual Period .
4. Garden Grove Kia is in compliance with the Restrictive Covenants.
5. Garden Grove Kia is in compliance with the Franchise Agreement.
6. No Additional Franchise and/or Alternative Franchise are operating on the Site without City Approval.
7. Copies of the Sales Tax amount paid quarterly to the State Board of Equalization (and/or other governmental agency to which such payments are to be made) during the Annual Period is provided in the attached.
8. The representations and warranties set forth in Section 6 of the Agreement remain true, complete and accurate.
9. The Guaranty was delivered on _____ and is still in full force and effect in accordance with its terms.

DATED: _____

By: _____

Its: _____

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