

# UNOFFICIAL COPY

Published in pamphlet form by authority of the  
Mayor and Village Council of the Village of Palatine  
On May 7, 2007

Village of Palatine  
Village Clerk's Office  
200 E. Wood Street  
Palatine, IL 60067

PINS: 02-02-203-009--014  
02-02-203-020--022  
02-02-203-035,036  
02-02-205-018

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE  
A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF PALATINE AND  
ARLINGTON AUTOMOTIVE GROUP, INC. FOR THE PROPERTIES AT THE  
NORTHEAST CORNER OF RAND AND HICKS ROADS

ORDINANCE NO. 0-62-07

Doc#: 0714449021 Fee: \$222.50  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 05/24/2007 09:45 AM Pg: 1 of 100



Property of Cook County Clerk's Office

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5/8/2007 10:38 AM

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE  
A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF PALATINE AND  
ARLINGTON AUTOMOTIVE GROUP, INC. FOR THE PROPERTIES  
AT THE NORTHEAST CORNER OF RAND AND HICKS ROADS**

**ORDINANCE NO. 0-62507**

WHEREAS, the Village of Palatine by Ordinance Nos. 0-23-03, 0-24-03, 0-25-03

and passed by the Mayor and Village Council on January 27, 2003 established a Tax Increment Financing District, adopted a Tax Increment Redevelopment Plan for Rand Road Corridor and designated a Redevelopment Project Area; and

WHEREAS, the Mayor and Village Council have on May 7, 2007 considered the proposed Redevelopment Agreement with Arlington Automotive Group, Inc. and

have determined that entering into this Agreement furthers the purposes of the Tax Increment Financing District and the Redevelopment Plan for the Rand Road Corridor TIF District and furthers the public interest; and

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Village Council of the Village of Palatine, acting in the exercise of their home rule power that:

**SECTION 1:** The Village of Palatine hereby authorizes the Mayor to execute

the Redevelopment Agreement, attached hereto as Exhibit A, pursuant to the Tax Increment Financing Act, Section 65 ILCS 5/1-1.7-4-4(c) and authorizes the Mayor to execute any other supporting documents to the extent permitted by law.

**SECTION 2:** This Ordinance shall be in full force and effect upon passage and

approval as provided by law.

PASSED: This 7 day of May, 2007

AYES: 6 NAYS: 0 ABSENT: 0 PASS: 0

APPROVED by me this 7 day of May, 2007

Mayor of the Village of Palatine

ATTESTED and FILED in the office of the Village Clerk this 7 day of

May, 2007

Village Clerk

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required by law:

following ordinances, after giving all notices required and after conducting the public hearings pursuant to the Act, the Village created the Rand Road Corridor TIF District by adopting the

**WHEREAS**, to stimulate and induce redevelopment in the Rand Road Corridor

otherwise be in the best interests of the Village; and

agreements with third parties for the purpose of achieving the aforesaid purposes, and Village, to increase employment opportunities within the Village, and to enter into contractual

additional tax revenues realized by the Village, foster increased economic activity within the of blight, to encourage private development in order to enhance the local tax base, to increase

promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence

**WHEREAS**, the Village has the authority, pursuant to the laws of the State of Illinois, to

VII, Section 6, of the Constitution of the State of Illinois, 1970; and

**WHEREAS**, the Village is a home rule unit of government in accordance with Article

## RECITALS

"Party" and collectively as the "Parties").

("DNA"). (The Village, DNA, and Car Dealer are sometimes referred to individually as a

Illinois corporation (the "Car Dealer") and DNA REALTY, INC., an Illinois Corporation

in Cook County, Illinois (the "Village"), and ARLINGTON AUTOMOTIVE GROUP, INC., an

the VILLAGE OF PALATINE, ILLINOIS, an Illinois municipal home rule corporation, located

as of the 11<sup>th</sup> day of May, 2007 ("Agreement Date") by and between

**THIS REDEVELOPMENT AGREEMENT** (this "Agreement"), is made and entered into

## **REDEVELOPMENT AGREEMENT**

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described in Article 2 under the definition of Project (the "Planned Development"); and  
 planned development to seek approval to construct an automobile dealership as more fully  
 Village is still an owner of part of the Property at the time of application, an application for a  
**WHEREAS**, Car Dealer and DNA intend to file and Village agrees to execute, if the  
**WHEREAS**, DNA desires to own and Car Dealer desires to redevelop the Property; and

other experts and consultants in the construction and operation of such a Project; and  
 to provide the Project with the necessary skill, knowledge and expertise as well as input from  
 principals, are skilled in the development and operation of automobile dealerships and are able  
**WHEREAS**, Car Dealer represents and warrants to Village that Car Dealer, and its

redevelopment in accordance with the conditions and requirements set forth in the Act; and  
 Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "Act"), to finance  
**WHEREAS**, the Village is authorized under the provisions of the Tax Increment  
 of Rand Road and Hicks Road in the Rand Road TIF District; and

Opportunity seeking development proposals for the properties located at the northeast corner  
**WHEREAS**, on March 29, 2007, the Village published a Notice of Development  
 Redevelopment Project Area in the Village of Palatine, Cook County, Illinois"; and  
 Tax Increment Financing for the Village of Palatine Rand Road Corridor Area Tax Increment

3. Ordinance No. O-25-03, adopted January 27, 2003, titled "Ordinance Adopting  
 Area" ("Rand Road Corridor Redevelopment Project Area");  
 the Village of Palatine, Illinois, Rand Road Corridor Area Tax Increment Redevelopment Project  
 2. Ordinance No. O-24-03 adopted January 27, 2003, titled "Ordinance Designating

Development Plan and Project;  
 the Village of Palatine Cook County, Illinois, Rand Road Corridor Area Project Area  
 1. Ordinance No. O-23-03, adopted January 27, 2003, titled "Ordinance Approving

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execution of this Agreement in order to make the same binding upon DNA according to the consideration and review, the Directors have taken all actions required to be taken prior to the **WHEREAS**, this Agreement has been submitted to the Directors of DNA for

in the manner required by law; and

the Village precedent to the execution of this Agreement have been undertaken and performed Village according to the terms hereof, and any and all actions of the Corporate Authorities of to be taken prior to the execution of this Agreement in order to make the same binding upon the Village for consideration and review, the Corporate Authorities have taken all actions required **WHEREAS**, this Agreement has been submitted to the Corporate Authorities of the

necessary to foster development within the Rand Road Redevelopment Project Area; and in part, qualify the Rand Road Redevelopment Project Area as a blighted area and which are with the Act, which will serve a public purpose by reducing or eliminating conditions that, in connection with the Project by utilizing Tax Increment Financing in accordance **WHEREAS**, the Village proposes to finance its share of the costs to be incurred

herein; and

the Village, which the Village is willing to provide under the terms and conditions contained redevelopment of the Property but for certain tax increment financing ("TIF") incentives from **WHEREAS**, Car Dealer has been and continues to be unwilling to undertake the

Redevelopment Plan; and

Development ordinance, thereby implementing and bringing to completion a portion of the development of the Property, subject to the Village approval of the required Planned **Article 2)** that the Village enter into this Agreement with Car Dealer to provide for the **WHEREAS**, it is necessary for the successful completion of the Project (as defined in

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including above in the recitals hereto and as follows:  
and terms used in this Agreement shall have the meanings provided from place to place herein,  
For the purposes of this Agreement, unless the context clearly requires otherwise, words

## DEFINITIONS

### ARTICLE TWO

statements in such Recitals.  
agreements of the Village, DNA, and of Car Dealer according to the tenor and import of the  
though fully set out in this Article One, and constitute findings, representations and  
to this Agreement and are hereby incorporated into and made a part of this Agreement as  
The findings, representations and agreements set forth in the above Recitals are material

## INCORPORATION OF RECITALS

### ARTICLE ONE

sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:  
agreements herein contained, and other good and valuable consideration, the receipt and  
**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants and  
this Agreement have been undertaken and performed in the manner required by law.  
the terms hereof, and any and all action of Car Dealer's Directors precedent to the execution of  
execution of this Agreement in order to make the same binding upon Car Dealer according to  
consideration and review, the Directors have taken all actions required to be taken prior to the  
**WHEREAS**, this Agreement has been submitted to the Directors of Car Dealer for  
Agreement have been undertaken and performed in the manner required by law.  
terms hereof, and any and all action of DNA's Directors precedent to the execution of this

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"Change in Law" means the occurrence, after the Effective Date of an event described below that materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon. Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation; (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption,

shall be evidence of physical completion of the buildings. The final certificate of occupancy for the last building conditions contained in this Agreement. The final certificate of occupancy for the last building states that Car Dealer has completed and satisfied all construction terms, covenants and obligations of this Agreement with respect to the construction of the Project, which document Car Dealer or Construction Lender and has complied with all Village codes and with the Illinois Mechanics Lien Act or evidence of title insurance coverage over all such liens in favor of provided all required waiver of liens and sworn statements necessary to comply with the Village, within thirty (30) days after written request from Car Dealer and after Car Dealer has "Certificate of Completion" means the document to be provided to Car Dealer by the

036) immediately southeast of the Corner Property.

"Car Wash Property" means the parcel of property (PIN # 02-02-203-035 and 02-02-203-

successor in interest thereof permitted pursuant to Section 10.11 hereof.

"Car Dealer" means Arlington Automotive Group, Inc., an Illinois corporation, or any

"Agreement" means this Redevelopment Agreement.

74.4-1, et seq.

"Act" means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-

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revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency, but shall not include laws, rules, regulations and ordinances of the Village, acting voluntarily and not as a result of a mandate from a higher authority, except to the extent they are generally applicable throughout the Village and do not violate the express terms of this Agreement.

"Closing" means the acquisition of Property by Car Dealer.

"Corner Property" means the nine parcels of land identified as PIN #s 02-02-203-009, 02-02-203-010, 02-02-203-011, 02-02-203-012, 02-02-203-013, 02-02-203-014, 02-02-203-020, 02-02-203-021, and 02-02-203-022.

"Corporate Authorities" means the Village Mayor and Village Council of the Village of Palatine, Illinois.

"Day" means a calendar day.

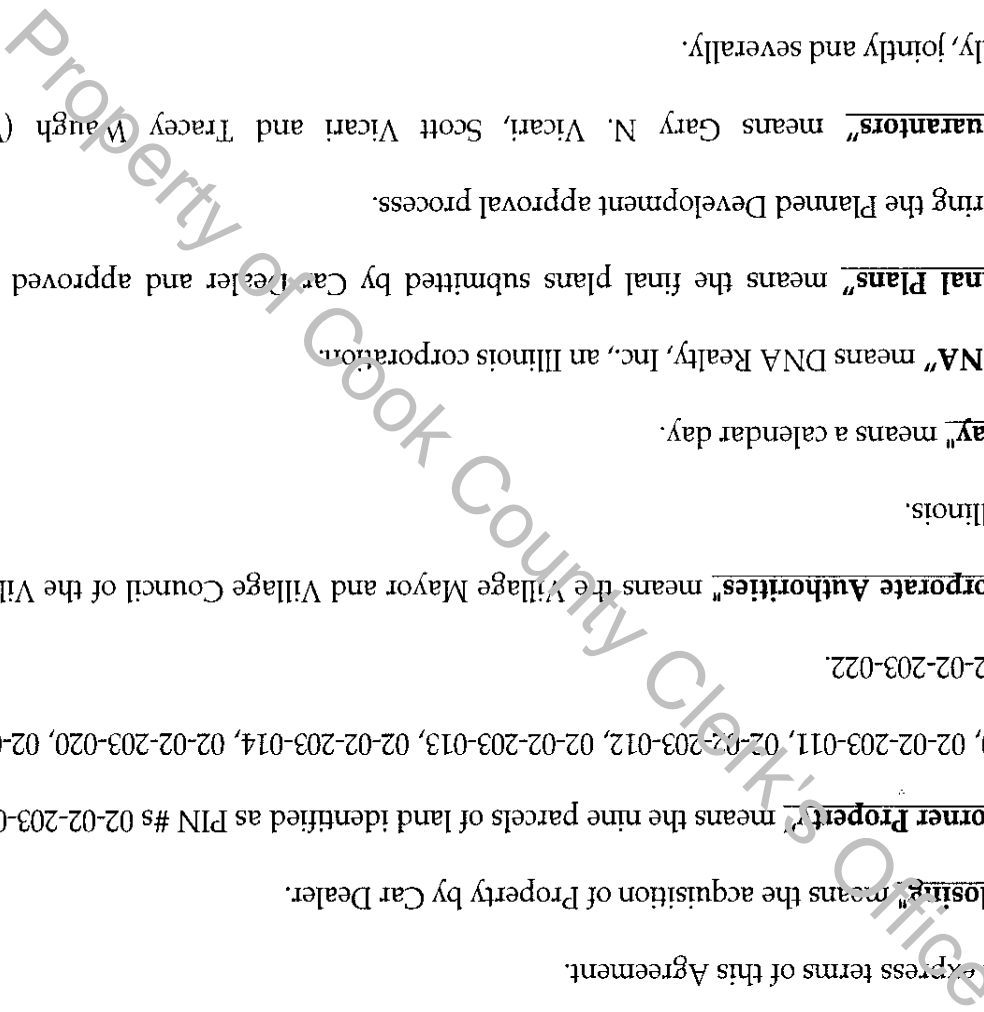
"DNA" means DNA Realty, Inc., an Illinois corporation.

"Final Plans" means the final plans submitted by Car Dealer and approved by the Village during the Planned Development approval process.

"Guarantors" means Gary N. Vicari, Scott Vicari and Tracey Vaughn (Vicari), individually, jointly, and severally.

"Guaranty" means a guaranty of payment in form acceptable to the Village consistent with the requirements of Section 7.7.

"Off-Site Improvements" means those certain off-site improvements to be constructed by Car Dealer at its sole cost and expense, as set forth on final engineering plans to be approved as part of the Project.





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**"Party"** means the Village and/or Car Dealer and/or DNA and its successors and/or

assigns as permitted herein, as the context requires.

**"Person"** means any individual, corporation, partnership, limited liability company,

joint venture, association, trust, or government or any agency or political subdivision thereof, or

any agency or entity created or existing under the compact clause of the United States

Constitution.

**"Preliminary Plans"** means the preliminary version of the Final Plans which are

attached hereto as Exhibit "A".

**"Project"** means the development, construction, financing, completion and operation of

an automotive dealership consisting initially of the new car Toyota dealership building with

approximately 82,000 square feet of interior space, together with the Off-Site Improvements and

on-site improvements, all in accordance with the Final Plans if approved by the Village in the

Planned Development ordinance. The dealership will be a state of the art facility designed and

constructed to be compliant with the Toyota 2012 Facility Standards and Toyota Image II

Facility Design Guidelines, attached hereto as Exhibit "D";

**"Property"** means the parcel of land as that parcel is legally described on Exhibit "B",

upon which the Project will be constructed. The Property shall include, at a minimum, the

Village Property, consisting of approximately 215,800 square feet. At such time as the Village

acquires the Corner Property, consisting of approximately 289,500 square feet, which is

anticipated to occur on May 31, 2007, the Corner Property shall be deemed to be a part of the

Property. At such time as DNA purchases Car Wash Property, or Village acquires Car Wash

Property by eminent domain under the terms of Section 7.2, subject to the terms of this

Agreement, the Car Wash Property, consisting of approximately 99,400 square feet, shall be

deemed to be a part of the Property.

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- (iv) governmental condemnation or taking other than by the Village; or
- flood, other extraordinary weather conditions or other similar Act of God;
- (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, nuclear incident, war or naval blockade;
- (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion,
- (i) a Change in Law;

(b) is one or more of the following events:

(a) is beyond the reasonable control of and without the fault of the Party relying thereon;

Project, which:

"Uncontrollable Circumstance" means any event impacting the construction of the

authorized to be reimbursed by the Act.

"TIF Eligible Expenses" means land acquisition and other eligible expenses as

the Village on January 27, 2003, as described in the Recitals to this Agreement.

"TIF Ordinances" means Ordinances Nos. O-23-03, O-24-03, and O-25-03 all adopted by

"State" means the State of Illinois.

pursuant to the provisions of Section 7.7.

"Repurchase Closing Date" means the date the Village takes title to the Property

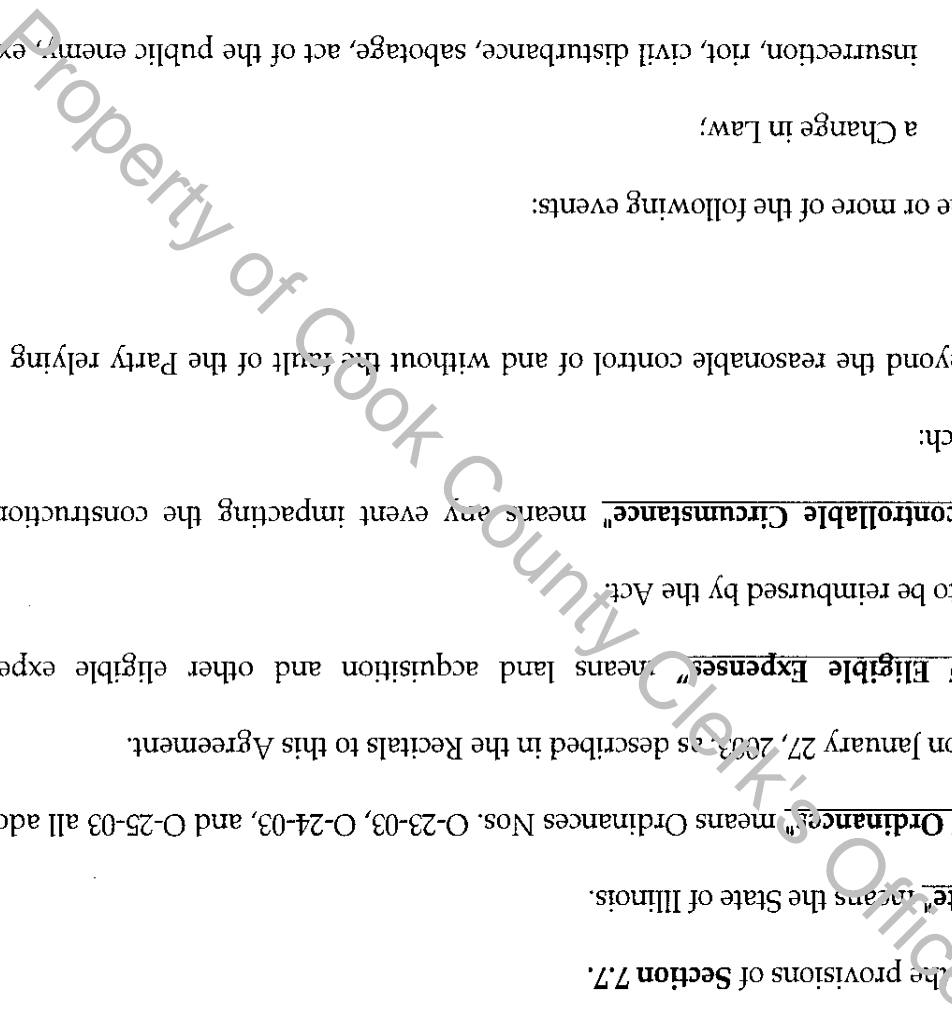
the Village Ordinance No. O-23-03.

"Redevelopment Plan" means the "Redevelopment Plan" for Rand Road as defined in

"Real Estate Sale Provisions" means those provisions set forth in Article Fifteen herein.

created by the Ordinances adopted by the Village in 2003.

"Rand Road Redevelopment Project Area" means the entire Rand Road TIF district



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hereof.

constitute a part hereof and shall not affect the meaning, construction or effect

(d) Headings of sections herein are solely for convenience of reference and do not

by the phrase "without limitation".

(c) The word "include", "includes" and "including" shall be deemed to be followed

(b) Pronouns include both singular and plural and cover all genders.

(a) Definitions include both singular and plural.

shall be construed and applied as follows:

This Agreement, except where the context by clear implication shall otherwise require,

## CONSTRUCTION

### ARTICLE THREE

number: 02-02-205-018, Palatine, Illinois.

known as Lot 1 in the Palatine Assentilage Subdivision designated with property tax index

"Village Property" means the parcel of property located north of the Corner Property

"Village" means the Village of Palatine, Illinois, an Illinois municipal corporation.

Circumstances hereunder, as to such contractor).

performance by a contractor (except as caused by events which are otherwise Uncontrollable

of materials, strikes or labor disputes caused by the acts of Car Dealer or DNA; (4) a failure of

economic frustration of purpose, (except as described under Change of Law); (3) unavailability

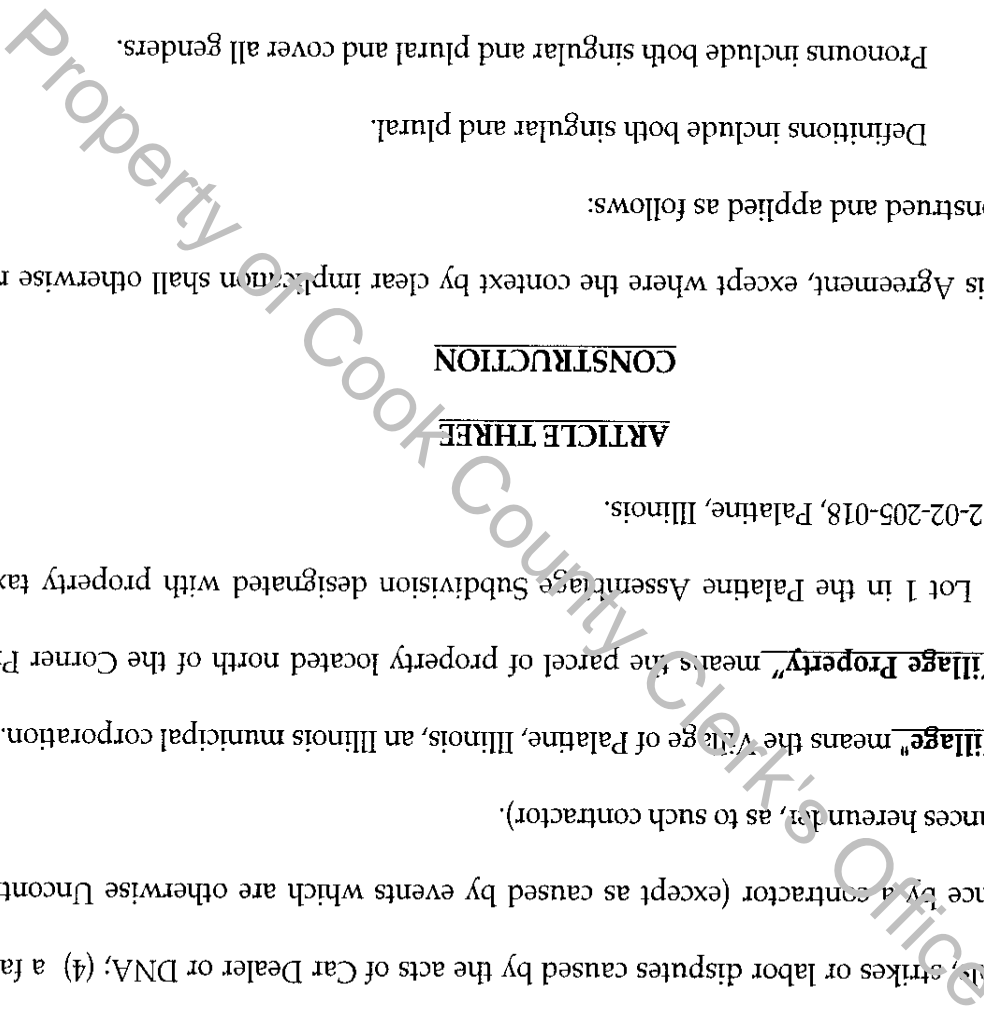
impracticability of performance (except as described under Change of Law); (2) commercial or

(c) Uncontrollable Circumstance shall not include: (1) economic hardship or

(vi) shortage of materials not attributable to Car Dealer or DNA;

DNA.

(v) strikes or labor disputes, other than those caused by the acts of Car Dealer or



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- (e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (g) In connection herewith concerning written directions or authorization in respect of the investment of any funds, notwithstanding any provision hereof to the contrary, such direction or authorization in writing, including by telecopier/facsimile transmission, shall be appropriate and is hereby approved.
- (h) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Car Dealer and DNA are entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

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The Village hereby designates Car Dealer as the exclusive developer for the Property, subject to the Village adopting a Planned Development ordinance authorizing the construction

## DESIGNATION OF CAR DEALER

### ARTICLE FIVE

approval for the Project.

The Village, DNA, and Car Dealer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement. This Agreement and all of its terms are subject to the Village adopting an ordinance granting Planned Development approval for the Project. The Car Dealer shall have no right to develop the Project unless and until the Village adopts an ordinance granting Planned Development

## IMPLEMENTATION OF PROJECT

### ARTICLE FOUR

(i) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Car Dealer or DNA in a different manner, Car Dealer and DNA hereby designates Gary N. Vicari as their authorized representative who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Car Dealer and DNA and with the effect of binding Car Dealer and DNA in that connection (individual being "Authorized Car Dealer Representative"). Car Dealer and DNA shall have the right to change its Authorized Car Dealer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with section 18.2.

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7.1 Acquisition of Village Property by DNA. DNA shall purchase the Village Property, and, if the Village acquires the Car Wash under the terms of Section 7.2 and the Corner Property under the terms of Section 7.3, the Car Wash Property and the Corner Property pursuant to Article Fifteen. The purchase price to be paid by DNA to the Village for the Village Property and Corner Property, exclusive of the Car Wash Property, shall be Two Million Dollars (\$2,000,000.00). Said payment shall be made according to Section 15.2 hereof.

## ACQUISITION OF THE PROPERTY

### ARTICLE SEVEN

DNA's and Car Dealer's rights to access any parcels of the Property owned by the Village from time to time for the performance of DNA's and Car Dealer's desired due diligence, soil tests, land survey, and topographical survey, and other required site preparation work has been set forth in a separate document entitled "License Agreement" by and between the Village, DNA and Car Dealer (the "License Agreement"). The License Agreement shall be fully executed prior to DNA's and Car Dealer's entry on the any land owned by the Village, a copy of which is attached as Exhibit "C".

## DNA'S AND CAR DEALER'S ACCESS TO THE PROPERTY

### ARTICLE SIX

of the Project in accordance with the Final Plans, subject to Car Dealer's and DNA's continued compliance with the terms of this Agreement, and only for so long as neither Car Dealer nor DNA is in default under this Agreement. The Village hereby represents and warrants to Car Dealer and DNA that the Village has taken all necessary actions and has complied with all requirements imposed by law including, but not limited to, the requirements of Section 5/11-74.4-4 (c) of the Act, required to be taken and met prior to the designation of Car Dealer as the exclusive developer for the Property.

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Car Wash Property.

**B.** In the event that DNA is unsuccessful in obtaining a contract to purchase the Car Wash Property or in securing an option to purchase the Car Wash Property by July 1, 2007, and if requested by DNA in writing within thirty (30) days thereafter, the Village agrees, at Village sole cost and expense, to take steps required to file a quick take condemnation action as provided in the Quick Take statute. The Village acknowledges and agrees that all timing obligations of the Car Dealer and DNA under Exhibit "F" of this Agreement, except the date in Exhibit "F" regarding "Occupancy Building, First C of O", shall be tolled by one (1) day for each one (1) day after October 31, 2007 that the Village does not hold title to the Car Wash Property before conveying the same to DNA. As a condition to the Village filing a quick take condemnation action, DNA agrees to place in escrow one-half of the amount of funds that the Village offers in its quick take court complaint as the fair market value of the land and such escrow deposit shall consist of cash or an irrevocable letter of credit. At such time as the Court determines the amount of the preliminary just compensation for the fair market value of the Car Wash Property, DNA shall either deposit funds into the escrow account sufficient to amount to one-half of the amount of the preliminary just compensation, or, if applicable, the Village shall reimburse DNA sufficient funds from the escrow so that the amount of the escrow equals one half the amount of the preliminary just compensation as ordered by the Court at the hearing vesting title in the Village. The Village further agrees to convey the

**A.** DNA shall use its best efforts to purchase the Car Wash Property or to secure an option to purchase the Car Wash Property with closing to occur within three (3) years from the date hereof. The Village and DNA agree to share equally in the acquisition cost of the

**7.2 Acquisition of Car Wash Property.**

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7.3

## Acquisition of Corner Property by Village.

Car Wash Property acquired by Village hereunder to DNA and DNA agrees to purchase and accept legal title to the Car Wash Property from the Village by special warranty deed upon the Closing, subject to **Article 15**, simultaneous with the payment to the Village of the amount deposited by DNA in escrow for such purpose. In the event that DNA fails to acquire the Car Wash Property after Village has approved the Planned Development and acquired the Car Wash Property by quick take condemnation action, then DNA and/or Car Dealer shall pay all Village costs incurred in filing and pursuing the quick take condemnation action including all attorneys fees. In the event that the Village has acquired the Car Wash Property by quick take condemnation action and, through no fault of DNA, the Village does not convey the Car Wash Property to DNA at the Closing under the terms of **Article 15**, the escrow amount held hereunder shall be released to DNA within five (5) business days. The balance of such escrow amount shall be released to DNA upon the Village's disposition of the Car Wash Property, subject to reduction by an amount equal to one-half of any loss incurred by the Village as a result of such disposition, exclusive of the Village's condemnation costs. In the event that DNA fails to acquire the Car Wash Property after Village has approved the Planned Development and acquired the Car Wash Property by quick take condemnation action, then DNA and/or Car Dealer shall pay all Village costs incurred in filing and pursuing the quick take condemnation action including all attorneys fees. In the event that the Village has acquired the Car Wash Property by quick take condemnation action and, through no fault of DNA, the Village does not convey the Car Wash Property to DNA at the Closing under the terms of **Article 15**, the escrow amount held hereunder shall be released to DNA within five (5) business days. DNA acknowledges that the Village's quick take condemnation authority expires on November 18, 2008. Thereafter the Village will not have the authority to use quick take authority in the event condemnation is necessary to obtain title to the Car Wash Property.



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The Village represents that it has entered into a contract to purchase the Corner Property which calls for a closing on May 31, 2007. Car Dealer and DNA acknowledge and agree that the existing restaurant facility known as Tore and Luke's Restaurant ("Restaurant"), shall have a right to remain on a portion of the Corner Property. Pursuant to a Real Estate Sale Contract between the Village and Rand Ridge LLC as sole beneficiary of Harris NA as Trustee under trust # HTB1547 and dated August 7, 2004, the Restaurant has a contractual duty to vacate the Corner Property no later than September 1, 2008 or the two hundred fifty thousand (\$250,000.00) dollar letter of credit held in escrow pursuant to Section 16 of said Real Estate Sale Contract will be forfeited. All deeds to the Corner Property from the Village to DNA shall be subject to said Real Estate Sale Contract and the Village will assign to DNA all rights to the two hundred fifty thousand (\$250,000.00) dollar letter of credit escrow. In the event the Village is not able to buy the Corner Property on contract, the Village shall commence a condemnation action to gain title to the Corner Property at its sole cost and expense. The Village acknowledges and agrees that all timing obligations of the Car Dealer and DNA under Exhibit "F" of this Agreement shall be tolled by one (1) day for each one (1) day after October 31, 2007 that the Village does not hold title to the Corner Property before conveying the same to DNA. Notwithstanding the foregoing, the Parties agree, however, that the date in Exhibit "F" regarding "Occupy Building, First C of O" shall not be tolled.

**7.4 Sale of Village Property and Corner Property.** Subject to the Village acquiring title to the Corner Property and adopting a Planned Development ordinance for the Project, and Car Dealer closing on all of Car Dealer and/or DNA financing necessary for the construction of the Project, but prior to issuance of any land development permit of any kind or any building permit, the Village agrees and covenants to convey title to DNA, and DNA agrees to purchase and accept legal title to the Village Property and Corner Property from the Village by special

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and/or Car Dealer does not develop, along with the express written consent to such assignment of its right, title and interest in the Preliminary and Final Plans for the Property which DNA and Car Dealer shall, at the Closing, assign to the Village, or as the Village shall direct, all

**7.6 Use of Plans.** In the event of exercise by the Village of its rights under **Section 7.7** hereof,

as to the amount of damages that would be incurred by the Village in such event.

LC represents the reasonable estimate of the Parties at the time of execution of this Agreement damages in such event would be difficult or impossible to ascertain and that the amount of the liquidated damages and not as a penalty, the Parties acknowledging and agreeing that actual (provided under **Section 9.6**) to the face amount thereof and retain the proceeds as and for or the Corner Property, whichever is the last to occur, the Village may draw on the LC if later, within thirty (30) after the date that the Village acquires title to the Car Wash Property Property, Corner Property or Car Wash Property, if applicable, on or before March 31, 2008, or, Property and Car Wash Property, in the event DNA fails to or refuses to Close on the Village environmental remediation and payment therefor required for the Village Property, Corner (ii) does not cure title defects as required under **Section 15**, or (iii) does not agree to 2012 Facility Standards and Toyota Image II Facility Design Guidelines attached as Exhibit "D", substantial conformance with the Preliminary Plans attached as Exhibit "A" and the Toyota the event the Village (i) does not approve a Planned Development ordinance that is in

**7.5 Failure of DNA to Close.** Subject to DNA being permitted to terminate this Agreement in

the Project, but in no event shall the second payment be made later than September 1, 2009.

Certificate of Occupancy; or 2) the issuance of the Final Certificate of Occupancy for any part of Dollars (\$1,000,000.00) at the first to occur of: 1) the issuance of the first Temporary of One Million Dollars (\$1,000,000.00), DNA shall pay the Village an additional One Million warranty deed, subject to **Article 15**, simultaneous with the payment to the Village by DNA

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by all parties who created or generated any such Preliminary or Final Plans. At the Closing, DNA and Car Dealer shall deliver to the Village letters from the architect, engineer and all other consultants that have provided development services to DNA or Car Dealer that prepared the Preliminary and Final Plans permitting the Village or its assignee to use them, in accordance with this Section 7.6, without further charge. The Village shall be responsible for any payments due the architect, engineer or other consultants for any of their respective services requested in writing by the Village and provided to the Village following the date the Village exercises its rights under Section 7.7.

**7.7 Repurchase by the Village.** If (a) Car Dealer or DNA falls more than ninety (90) days behind any "Target Date" as set forth in Exhibit "F", at such time as Exhibit "F" is finalized pursuant to Section 9.7, or (b) if no substantial work is proceeding on the proposed buildings for the Project for a period of ninety (90) consecutive days, and provided that the cause of the delay is not due to Uncontrollable Circumstances, then Car Dealer and/or DNA shall be deemed to have incurred the corresponding Penalty Amount and Village may draw upon the LC to collect the Penalty Amount. If such failure or delay shall occur prior to issuance of a temporary or final certificate of occupancy for the Project ("Repurchase Period"), then such failure or delay shall constitute an Event of Default of this Agreement and, in addition to the payment of any Penalty Amount, thereafter the Village Manager may notify DNA in writing (the "Return Notice") that the Village demands return (the "Return") of the Property. If DNA and/or Car Dealer does not cure such default within thirty (30) business days of receipt of the Return Notice ("Return Closing Date"), then DNA shall immediately convey the Property then owned by DNA to the Village subject only to such exceptions that encumbered such Property when the Property was conveyed to DNA ("Return Permitted Exceptions") and subject to any acquisition and construction mortgage placed on the Property by DNA in conformance with

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8.2 TIF Funding. This Agreement shall not constitute a debt of the Village within the meaning of any constitutions, statutory provision or limitation. TIF funds shall be disbursed to any constitutional statutory provision or limitation.

8.1 Village's Redevelopment Obligations. The Village shall have the obligations set forth in this Article Eight in connection with the Project. Notwithstanding the obligations of this Article Eight, this Agreement shall not constitute a debt of the Village within the meaning of

## VILLAGE COVENANTS AND AGREEMENTS

### ARTICLE EIGHT

metropolitan area. documents as are commonly used in similar commercial transactions in the Chicago, Illinois by the Village for the Property, and DNA and Village shall execute such other customary title Village by special warranty deed, shall assume any costs for title insurance in the amount paid all available legal remedies in order to be made whole. DNA shall convey the Property to the demolishing any improvements constructed on the Property by Car Dealer. Village may pursue the Lender and all amounts incurred by the Village after reacquiring the Property in the Car Dealer and/or the Guarantors under the Guaranty, all amounts paid by the Village to to such Lender and Village shall have the right to recover, jointly and severally, from the DNA, on the Return Closing Date upon payment by Village of the outstanding balance then payable provision permitting such Return to Village and an agreement of the Lender to release its lien Repurchase Period expires. Any mortgage encumbering the Property shall contain an express a Construction Management fee with regard to the Project until after the corresponding of such return ("Mortgage Repayment"). DNA and Car Dealer warrant that they will not collect of the Project ("Return Closing Date"), which loan shall be repaid in full by Village at the time the provisions of this Agreement, to fund costs of acquisition of the Property and construction

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8.4 Agreement to Remain Open and Operating. Car Dealer agrees to keep the Toyota automobile dealership open, operating, and selling Toyota automobiles for a period of the earlier of (i) twenty (20) years from the date of issuance of the Final Occupancy Certificate for the Toyota dealership, or (ii) such date that the Village has received incremental property tax revenue generated by the Property sufficient to retire all debt service incurred by the Village for the Project. In the event that Car Dealer fails to remain open for business in satisfaction of the

65 ILCS 5/11-74.4-3(q-13).

8.3 Funding for Future Car Dealerships. During the life of the TIF District, the Village agrees to consider providing TIF assistance to a suitable new car dealership in the event that Car Dealer is successful in bringing to the Village one or more suitable new car dealerships that are under the direct control of Car Dealer and which are located within the Kand Road Redevelopment Project Area. The amount of such TIF assistance shall be negotiated at such time as a suitable new car dealership commits to locate within the Kand Road Redevelopment Project Area. This section is subject to all provisions of the TIF Act, including but not limited to Section

having spent sufficient TIF Eligible Expenses to justify said amount.

Car Dealer in accordance with the terms of this Agreement. The Village shall provide TIF assistance to Car Dealer in an amount not to exceed three (\$3,000,000.00) million dollars in cash in reimbursement of TIF Eligible Expenses incurred by Car Dealer for the Project. Said payment by the Village to Car Dealer shall be made annually on a "pay as you go" basis. The amount of the annual payments made by the Village to Car Dealer shall be equal to fifty (50%) percent of the annual sales taxes received by the Village from the Project during the preceding year. No later than May 31<sup>st</sup> of each year, the Village shall reimburse Car Dealer on the basis of fifty (50%) percent of the sales tax received by the Village in the preceding year, until Car Dealer has received not more than Three Million Dollars (\$3,000,000.00) in cash, subject to Car Dealer

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foregoing requirement of this **Section 8.4**, Car Dealer agrees that it shall not seek to reduce its real estate tax assessment based on vacancy in the building. Notwithstanding the foregoing, Car Dealer will be discharged of its obligations under this **Section 8.4** if it shall replace the Toyota dealership with an automobile dealership of at least equivalent economic stability and sales tax generation (which new dealership shall undertake the covenant to remain open pursuant to an Assumption and Assignment Agreement) such that the Village receives the same sales tax return as it would have prospectively received if the Toyota dealership were to have remained open and operating, subject to the Village's written approval which shall not be unreasonably withheld.

**8.5 Development Signage for the Property.** Subsequent to execution of this Agreement and subsequent to adoption of the Planned Development ordinance, upon proper and complete permit application, Car Dealer shall have the right to install "Coming Soon" signage on the Village Property, designed, located and installed in a manner acceptable to the Village in conformance with the Village Zoning Ordinance.

**8.6 Defense of TIF District.** In the event that any court or governmental agency, having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement, shall determine that this Agreement is contrary to law, or in the event that the legitimacy of the Rand Road Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the Village will, at its sole cost and expense, defend the integrity of the Rand Road Redevelopment Project Area and this Agreement. Car Dealer will fully cooperate with the Village in connection with the foregoing, and will be entitled to reimbursement by the Village for TIF Eligible Expenses incurred in connection with such cooperation and approved in writing by the Village prior to being incurred.

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8.7 **Cooperation with Other Permits.** The Village agrees to cooperate with Car Dealer in Car Dealer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. During the time that the Village is owner of any part of the Property at the time an application is filed, the Village shall execute and promptly process and consider to the extent allowable under applicable law, any reasonable request of Car Dealer for zoning and planned development approvals and for relief or variances from Village Zoning and Subdivision ordinances necessary for the construction of the Project.

8.8 **Certificate of Completion.** Within thirty (30) days after written request from Car Dealer and after Car Dealer has provided all required waivers of liens, sworn statements necessary to comply with the Illinois Mechanics Lien Act, and a date-down endorsement to an owner's policy of title insurance showing no outstanding mechanics' or other liens and Car Dealer has complied with all Village codes and with the obligations of this Agreement with respect to the completion of construction of the Project, including obtaining final certificates of occupancy, the Village shall deliver a Certificate of Completion or, if not complete or satisfied, a written statement of any deficiencies. Upon correction of any noted deficiencies, the Village shall within ten (10) days thereafter deliver the Certificate of Completion.

8.9 **Cash Payment.** Based on Car Dealer incurring expenses that are eligible under the Act, and Car Dealer providing proof of payment and paid receipts for said TIF Eligible Expenses, the Village shall reimburse Car Dealer a sum not to exceed Three Million Dollars (\$3,000,000.00), not including any Village write-down of Property acquired by Car Dealer. Said amount shall be paid pursuant to **Section 8.2** of this Agreement subject to the condition that Car Dealer and/or the operator of the car dealership facility complete, execute and deliver to the Village an "Authorization to Release Sales Tax Information", upon receipt of the Illinois Business Tax Number for the car dealership.

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9.4 Construction Financing Deadline. Not more than thirty (30) days after execution of this Agreement, Car Dealer and DNA shall demonstrate to the Village's satisfaction through signed letters of intent or otherwise that Car Dealer and DNA have sufficient funds to pay the cost of the Project and any other obligations of DNA and Car Dealer hereunder relating to the

pursuant to Section 7.2.

and void at the election of Car Dealer, provided that all escrow funds shall be released to DNA Pursuant to Section 9.7. In the event that the Village does not adopt an ordinance granting a Planned Development for the Project on or before March 31, 2008, this Agreement shall be null the schedule to be set forth in Exhibit "F" which Exhibit shall be agreed to among the Parties the application for permits and construction of the Project on the Property in accordance with the construction of the Project in accordance with the Final Plans. Car Dealer shall proceed with (and made all submittal requirements in conformance with Village codes) a building permit for days after Planned Development approval, whichever is later, Car Dealer shall have applied for application the Village shall execute as land owner, if applicable. By June 30, 2008, or thirty (30) preliminary Planned Development approval and final Planned Development approval, which 9.3 Permit Application Deadlines. By November 1, 2007, Car Dealer shall have applied for

Article Fifteen.

9.2 Accept Title to the Property. DNA hereby agrees to accept legal title to the Village Property, Car Wash Property, and Corner Property, at the Closing subject to the provisions of

completion and furtherance of the Project.

9.1 Car Dealer's and DNA's Redevelopment Obligations. Car Dealer and DNA shall have the obligations set forth in this Article Nine for the development, construction, financing,

## CAR DEALER'S AND DNA'S COVENANTS AND AGREEMENTS

### ARTICLE NINE



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Property. DNA and Car Dealer shall obtain a binding financing commitment in form and content that is typical in the industry, for construction financing for the Project ("Construction Loan") to be constructed and shall provide to the Village evidence of such commitment not later than thirty (30) days after the Village adopts a final ordinance granting Planned Development approval for the Project. Car Dealer may at any time and from time to time assign to any construction lender or other mortgagee ("Mortgagee") its rights and interests hereunder as collateral for the Construction Loan or other financing in connection with the Project permitted in accordance with the terms of this Agreement ("Collateral Assignment"), and Village shall consent to such Collateral Assignment, subject to the following: In the event that any Mortgagee or successor to a Mortgagee shall succeed to the interests of Car Dealer in the Project or in any portion thereof pursuant to or as result of remedies under the Construction Loan documents or other mortgage and/or under any related documents, including the Collateral Assignment ("Mortgage Documents"), whether by foreclosure, deed-in-lieu of foreclosure or other rights granted under such Mortgage Documents, the Village shall affirm to and recognize Mortgagee or such successor, so long as such Mortgagee or successor shall accept, in writing, an assignment of the rights and obligations of Car Dealer hereunder, effective from and after the date of such acceptance. Mortgagee or such successor, as the case may be, shall have no liability or obligation to Village hereunder for matters arising prior to such acceptance or for the prior defaults of Car Dealer. In the event that Mortgagee or such other successor, as the case may be, shall not accept an assignment of the rights and obligations of Car Dealer hereunder, then such party shall be entitled to no rights or benefits hereunder.

**9.5 Project Development Budget.** Car Dealer shall submit to the Village the project development budget approved by the construction lender when available but not later than thirty (30) days after the Village adopts a final ordinance granting Planned Development

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9.7 **Timing of Car Dealer's Obligations.** At the time of execution of this Agreement, Village and Car Dealer agree that Car Dealer is not in a position to provide a complete Exhibit "F" hereto. Village and Car Dealer agree that prior to Car Dealer's submission of a Planned Development application, Car Dealer shall, in good faith, submit a proposed Exhibit "F" hereto for agreement by the Village Manager, which shall not be unreasonably withheld. Such completion of Exhibit "F" hereto shall be a minor amendment to this Agreement which shall not require Village Council approval unless so determined by the Village Manager. In the event that failure of the Car Dealer and Village to agree on a final form of Exhibit "F" hereto this

Code.  
 released upon the completion of the one-year maintenance period as required under the Village balance of the LC in the amount of One Hundred Thousand Dollars (\$100,000.00) shall be Project and upon acceptance of all public improvements and Off-Site Improvements. The at such time as the Village issues a Final Certificate of Occupancy for the last building at the sales building. The LC shall be reduced by One Hundred Fifty Thousand (\$150,000.00) Dollars first to issue of a temporary occupancy certificate or final occupancy certificate of the new car building. The LC shall be reduced by Five Hundred Thousand (\$500,000.00) Dollars upon the (\$750,000.00) Dollars upon Car Dealer's completion of shell and core of the new car sales Village a Letter of Credit (LC) with the Village, in the amount of One Million Five Hundred Thousand (\$1,500,000.00) Dollars. The LC shall be reduced by Seven Hundred Fifty Thousand original of the Guaranty executed by the Guarantors and Car Dealer shall place with the Village an Within thirty (30) days of execution of this Agreement, Car Dealer shall provide to Village an

9.6 **Letters of Credit, Permits and Other Security.**

approval for the Project. The Car Dealer agrees that the Village will be provided a reasonable opportunity to meet with the construction lender if requested by the Village.

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Agreement shall be null and void with no further action required and with both Parties to otherwise cover their own costs, provided that, if such failure is on account of Car Dealer's unreasonable insistence upon timing obligations which cannot result in issuance of a certificate of occupancy for the Project on or before September 1, 2009, the Village shall have the right to draw on the LC in its full amount. Car Dealer covenants and agrees to construct, or cause to be constructed, the Project on the Property in compliance with **Exhibit "F"** hereto and otherwise as required herein, subject to Uncontrollable Circumstances. Notwithstanding anything herein to the contrary, the Parties agree, however, that the dates in Exhibit "F" regarding "Occupy Building, First C of O" shall not be tolled.

**9.8 Compliance with Applicable Laws.** DNA and Car Dealer warrant that they shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, state and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision, planner, development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village as more specifically set forth in **Article Eleven**, Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Car Dealer's obligations hereunder, including an increase in the cost of the Project, unless said law, ordinance, rule or regulation is one of general applicability to all property in the Village.

**9.9 No Default.** The DNA and/or Car Dealer shall not be in default under this Agreement or be in default under any agreement with the Village of Buffalo Grove or the Toyota Motor Sales USA, Inc. or any other party in connection with the development of the Property, which default has not been cured after the giving of proper notice thereunder and all rights to cure

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have lapsed. Failure to comply with this term renders DNA and Car Dealer in default of this Agreement, subject to DNA's and Car Dealer's right to cure under this Agreement.

**9.10 Progress Meetings.** Car Dealer shall meet with the Village Council and Village staff and make presentations to the Village Council and Village staff as reasonably requested by the Village Manager in order to keep the Village apprised of the progress of the development.

**9.11 Authorized Representative.** Subject to the provisions thereof, Car Dealer has designated in Article Three (i) a representative with full power and authority to meet with Village staff for purposes of coordinating and implementing obligations of the Parties under this Agreement; provided, however, that all agreements of the Parties shall be in writing and fully authorized by all necessary action of such Parties.

**9.12 Real Estate Tax Payments.** DNA, Car Dealer and successor owners agree to pay all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Project on or prior to the date same is due and said taxes shall not become delinquent. DNA, Car Dealer and successor owners shall deliver evidence of payment of such taxes to the Village upon request.

**9.13 Tax Exempt Status.** Consistent with its covenant in Section 10.7, DNA, Car Dealer and successor owners shall not assert a tax-exempt status during their respective period of ownership. This prohibition shall run with the land and shall expire on the date the Rand Road Redevelopment Project Area expires or an earlier date if agreed by the Village, DNA and Car Dealer.

**9.14 Reserved.**

**9.15 Sale Contracts.** All sales contracts and leases shall be made specifically subject to the terms of this Agreement.

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Property and construction of the Project;

than loans the proceeds of which will be applied to the acquisition of the

(b) in no event shall the Property serve as security or collateral for any loan other

foundation inspection for the new vehicle sales building;

the new vehicle sales building, until such time as the Village approves the

construction budget provided under **Section 9.5** to construct the foundation for

(\$1,000,000.00) or, if greater, the amount required under the approved

regard to matters other than land acquisition that exceed One Million Dollars

(a) in no event shall disbursements be made under DNA's or Car Dealer's Loan with

thereunder has committed in writing to the Village that, without Village's consent:

connection with DNA's or Car Dealer's Loan may encumber the Property unless the Lender

Notwithstanding anything to the contrary contained herein, no mortgage executed in

automobiles, other than the cost of acquiring the Property and constructing the Project.

neither DNA nor Car Dealer shall use the Property as collateral for anything, including

**9.17 Loan Agreement.** Prior to issuance of the Certificate of Completion by the Village,

extent they are TIF Eligible Expenses.

its rights against Car Dealer, the Village may be reimbursed for said fees and expenses to the

elsewhere in this Agreement, shall constitute an Event of Default hereunder. Without waiving

Car Dealer's failure to pay the fees and expenses described in this **Section 9.16** or

applicable Village code or policy.

applicability to all other property in the Village. Said payments shall be made as directed by the

drainage fees that are assessed on a uniform basis throughout the Village and are of a general

imposed fees, including but not limited to permit, inspection, review, tap-on, and storm water

**9.16 Fees and Expenses.** Car Dealer shall pay all Village and other governmental entity-

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13) of the Act.

specifically contingent on such written evidence as required by Section 65 ILCS 5/11-74.4-3(q)-Agreement and the Village's agreement to reimburse Car Dealer TIF Eligible Expenses is become economically obsolete, or is no longer a viable location for the car dealership. This Village to make a reasonable finding that the current location contains inadequate space, has economically obsolete, or is no longer a viable location for the dealership, sufficient to allow the requirements are such that Car Dealer's present location contains inadequate space, has become Dealer's dealership to the Property; and 2) Toyota Motor Sales USA, Inc. existing facility Sales USA, Inc. and any other applicable corporate entity approves the relocation of Car Motor Sales USA, Inc. in form and substance acceptable to the Village that: 1) Toyota Motor condition precedent to the Village's execution of this Agreement, written evidence from Toyota

**9.18 Toyota Motor Sales USA, Inc. Approvals.** Car Dealer has provided to the Village, as a

- exceeds the as completed appraised value of the Property and Project:
- (e) may not be increased without the consent of the Village to an amount that except for protective advances by the Lender, the amount of Car Dealer's Loan Car Dealer under the loan documents to cure any such default noted therein; and thereof and afforded to the Village the same cure period afforded to DNA and disbursements, until such time as Lender has tendered to Village written notice DNA's or Car Dealer's Loan, other than the right to withhold further (d) in no event may Lender exercise any remedies with regard to any default under repayment by the Village of all amounts due and owing such Lender;
- (c) in the event the Village exercises the repurchase option described in Section 7.7, such Lender will release the lien of its mortgage against the Property upon

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9.21 Environmental Remediation of the Property. At the time, or upon completion, of demolition, DNA shall undertake, as agent for Village and at Village's sole cost and expense, further environmental investigation and remediation of the Property as Village and DNA agree is sufficient and necessary to obtain a Focused No Further Remediation Letter from the IEPA to the TACO industrial/commercial standards, which shall be sufficient to allow Car Dealer's Project to be constructed, in accordance with the Final Plans; which remediation may be as prescribed by one or more remediation plans to be agreed upon between Village and DNA, if applicable. Village shall obtain a Focused No Further Remediation Letter from the IEPA in

9.20 Demolition of the Restaurant Building. DNA or Car Dealer shall undertake the demolition of all surface and subsurface structures existing on the Property and restoration of suitable soils sufficient to support the Project in accordance with the Final Plans. Subject to Village approval of DNA's or Car Dealer's proposal for demolition and restoration, Village, upon complete submittal of materials and an application for demolition and restoration by DNA or Car Dealer, shall issue the applicable permits. DNA or Car Dealer shall obtain the required demolition permit from Cook County. Demolition and restoration may occur at any time after the restaurant operator closes his business on the Property, pursuant to the license Agreement attached hereto as Exhibit "C" hereto. Demolition and restoration shall be part of the TIF Eligible Expenses.

9.19 Village of Buffalo Grove Agreement. Prior to the Village executing this Agreement, Car Dealer shall provide to Village a written legal opinion from Car Dealer's attorney that Car Dealer's execution of and performance under this Agreement will not result in a breach of or default under any other agreement to which Car Dealer is a party with the Village of Buffalo Grove, Illinois.

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contractors, subcontractors or materialmen in connection with the Project; or

b. the failure of DNA and/or Car Dealer or any of Car Dealer's contractors to pay

comply; or

covenants or conditions of this Agreement with which DNA and/or Car Dealer is obligated to

a. the failure of DNA and/or Car Dealer to comply with any of the terms,

tax revenues), which are caused as a result of:

Parties (which shall not include any claim related to the loss of sales tax or incremental property

limitation, reasonable attorneys' fees and court costs) suffered or incurred by the Indemnified

damages, liabilities, claims, suits, actions, causes of action and expenses (including, without

employees (hereinafter "Indemnified Parties") harmless from and against any losses costs,

hold the Village, Mayor, Village Council Members, Village Manager, officers, agents and

includes permitted successors and assigns), agrees to and does hereby indemnify, defend and

**10.4 Indemnification.** DNA and Car Dealer (use of the term "DNA" and "Car Dealer" herein

Project.

Property until issuance of a Temporary or Final Certificate of Occupancy for any part of the

construction management fee or other fees from the proceeds of the Construction Loan for the

Neither Car Dealer, nor any entity in which Car Dealer has an interest, shall be paid any

delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

and completed pursuant to the schedule set forth on Exhibit "F", in good faith and without

permits and Car Dealer shall cause construction of the Project on the Property to be prosecuted

**10.3 Construction of Project.** Car Dealer shall diligently pursue obtaining all required

entity.

standing its franchise with the Toyota Motor Sales USA, Inc. and any other applicable corporate

done all things necessary to preserve and keep in full force and effect its existence and good



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c. material misrepresentations or omissions of DNA and/or Car Dealer relating to

the Project, financials or this Agreement which are the result of information supplied or omitted by DNA and/or Car Dealer or by its agents, employees, contractors or persons acting under the control or at the request of DNA and/or Car Dealer; or

d. the failure of DNA and/or Car Dealer to cure any material misrepresentations or omissions of DNA and/or Car Dealer in this Agreement relating to the Project within the applicable cure provisions of this Agreement; or

e. any claim or cause of action for injury or damage brought by a third party arising out of the construction or operation of the Project by Car Dealer; or

f. any violation by DNA and/or Car Dealer of local ordinance, state or federal laws, in connection with the offer and sale of interests in DNA and/or Car Dealer or any part of the Project; or

g. the occurrence of an Event of Default by DNA and/or Car Dealer; or  
h. the failure of DNA and/or Car Dealer to comply with any of the terms, covenants or conditions of its franchise agreement with Toyota Motor Sales USA, Inc.

The provisions of this Section 10.3 shall not apply to any loss which arises out of (in whole or in part) the intentional conduct on the part of any Indemnified Party providing this information, but only to the extent that such Indemnified Parties' misconduct or misinformation contributed to the loss, or that the loss is attributable to such Indemnified Parties' misconduct or negligence or misinformation.

10.4 Insurance. Seven (7) days prior to DNA Closing on the Village Property, Corner Property, or Car Wash Property, Car Dealer (or Car Dealer's contractor) shall deliver to the Village, at Car Dealer's cost and expense, insurance required to be carried by Car Dealer pursuant to Article Fourteen. Village and the company retained by Village (or Car Dealer as

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10.7 Conveyance. In recognition of the nature of the Project and the Village's projections of the need for incremental tax revenues to finance TIF Eligible Expenses, in accordance with the Act, during the life of the TIF consistent with its covenants in **Sections 9.13**, DNA shall not knowingly undertake to convey the Property to persons whose ownership and use of such

influencing his or her action in his or her capacity with the Village.  
 connected with the Village, any money or anything of value as a gift or bribe or other means of Council member, or any officer, employee or agent of the Village, or any other person DNA or Car Dealer, has made, offered or given, either directly or indirectly, to the Mayor, any stockholder, employee or agent of DNA or Car Dealer, or any other person connected with DNA and Car Dealer covenant that no officer, member, manager, **10.6 No Gifts**. discretion.

of this Agreement to the extent legally permitted and within the Village's sound legal as may be reasonably required for carrying out the intention of or facilitating the performance executed, acknowledged and delivered, such supplements hereto and such further instruments agree that they will, from time to time, execute, acknowledge and deliver, or cause to be **10.5 Further Assistance and Corrective Instruments**. The Village, DNA and Car Dealer

an additional insured are subordinate to the priority of the construction lender as a loss payee. Completion is issued; provided that, Village hereby agrees and acknowledges that its rights as additional insured party on Car Dealer's insurance policies until such time as a Certificate of the priority of the construction lender as a loss payee. The Village shall be named as an agrees and acknowledges that the rights of Village as an additional insured are subordinate to policies until such time as a Certificate of Completion is issued; provided that Village hereby work on the Property shall be named as additional insured parties on Car Dealer's insurance Village's agent in connection with environmental remediation) to perform the remediation

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Property will cause it to be exempt from payment of property taxes. To facilitate this provision, the Village will impose in the deed conveying all or any portion of the Property to DNA and DNA shall impose in its deed conveying all or any portion of the Property a prohibition against granting such conveyance consistent with the covenants in **Sections 9.13**.

**10.8 Disclosure.** Concurrently with execution of this Agreement, DNA and Car Dealer shall disclose to the Village the names, addresses and ownership interests of all Persons that comprise DNA and Car Dealer, including all shareholders of the corporation. The DNA and Car Dealer shall disclose the same information to the Village at Closing of the Village Property, Corner Property and Car Wash Property. At the time of execution of this Agreement and prior to Closing of the last of the Village Property, Corner Property and Car Wash Property, no change shall be made in the persons comprising DNA and/or Car Dealer or in their ownership interests without the consent of the Village. All changes made in the persons comprising DNA and Car Dealer or in their ownership interests shall be disclosed to the Village during the term of this Agreement.

**10.9 Open Book Project.** Car Dealer's Project shall be an "open book" project meaning that Car Dealer and the general contractor (or contractors, if more than one) will assure continuing access to the Village's agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of the Project. The foregoing Village review rights shall terminate one (1) year after the issuance of the final certificate of occupancy with respect to costs for the Project, unless Car Dealer has failed to make available any such books and/or records requested in writing by the Village. Car Dealer shall provide to the Village copies of any corporate, partnership, limited liability operating agreements or joint venture agreements pertaining to the Property to which Car Dealer is a party; provided that Car Dealer may, (if Car Dealer has previously provided the Village not less than thirty (30) days to

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review such confidential financial information previously disclosed to the Village and not since changed in form or substance and the Village shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within fifteen (15) days after request by the Village shall be an Event of Default. Car Dealer shall exercise prudence and good faith in attempting to contract with persons or entities who are reputable and experienced in their respective areas for the provision of services or material for the design and construction of the Project at costs not in excess of market rates. The Village agrees that Car Dealer may designate within its discretion the general contractor (or general contractors) for the Project. The general contractor (or general contractors) designated by Car Dealer shall be experienced and reputable.

**10.10 Assignment of Agreement.** This Agreement is not assignable except to an assignee of a Mortgagee for collateral purposes only, as set forth in Section 9.4, or for Permitted Transfers (as hereinafter defined), until a Certificate of Completion for the entire Project including Off-Site Improvements is issued by the Village. Notwithstanding anything in this Section 10.10, no part of this Section 10.10 and Section 10.11 shall require the Village's consent to the collateral assignment hereof to DNA's lender or Car Dealer's construction lender or permanent lender, if required thereby, or to a Permitted Transferee. Subsequent to completion of the Project, as evidenced by a Certificate of Completion, DNA and Car Dealer shall give notice to Village of any proposed transfer and Village shall have thirty (30) days to accept or reject such assignee in its sole discretion.

**10.11 No Transfer without Village's Consent.** Prior to issuance of a Certificate of Completion for the entire Project including Off-Site Improvements, no portion of Car Dealer's Project shall be transferred or conveyed (other than to Permitted Transferees). Car Dealer shall notify the

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All development and construction of the Project shall comply in all respects with the provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane codes and ordinances of the Village in effect from time to time, unless otherwise mandated by State law or permissible under a variance or exemption granted to DNA or Car Dealer by a governmental body authorized to grant such variance or exemption. DNA and Car Dealer have examined and is familiar with and agrees that its development of the Project shall be performed in accordance with all the covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental regulations and land use regulations, codes, ordinances, federal, state and local ordinances affecting the

## ADHERENCE TO VILLAGE CODES AND ORDINANCES

### ARTICLE ELEVEN

Village of any transfer of any interest in the Project other than to an Affiliate of Car Dealer, as used herein, an "Affiliate of Car Dealer" shall mean an entity which controls, is controlled by, or is under common control with Car Dealer and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Car Dealer owning more than fifty percent (50%) of the ownership interests in said Affiliate; and as used herein "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise. The foregoing transfers shall herein be referred to as the "Permitted Transfers". Car Dealer shall not be required to obtain Village review, approval or consent to any Permitted Transfer. The Village shall have no duty to return the LC or any other security posted in connection with the portion of the Project so transferred until substitute security acceptable to Village is received.

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12.5 **Financial Resources.** DNA and Car Dealer, respectively, and any Affiliate to which portions of this Agreement are assigned, have sufficient financial and economic resources to the Off-Site Improvements.

12.4 **Location of Project.** The Project will be located entirely within the Property, except for adverse effect upon the Project.

12.3 **Non-Conflict or Breach.** Neither the execution and delivery of this Agreement by either the DNA or Car Dealer, the consummation of the transactions contemplated hereby by DNA or Car Dealer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by DNA or Car Dealer conflict with or result in a breach of any of the terms, conditions or provisions of any franchise agreement, offerings or disclosure statement made or to be made on behalf of DNA or Car Dealer (with DNA's or Car Dealer's prior written approval), any organizational documents, any restrictions, agreement or instrument to which DNA or Car Dealer or any of its partners or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of DNA or Car Dealer, any related party or any of its venturers under the terms of any instrument or agreement to which DNA or Car Dealer, any related party or any of its partners or venturers is now a party or by which DNA or Car Dealer, any related party or any of its partners or venturers is bound, the effect of which would have a material and

adversely affect the ability of Car Dealer to proceed with the construction and development of dealership on the Property. To Car Dealer's knowledge, there are no actions which are pending or threatened against Car Dealer by Toyota Motor Sales USA, Inc. which would materially and

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adversely affecting the ability of the Village to perform its obligations under this Agreement. court or before any governmental authority which involves the possibility of materially or threatened against or affecting the Village or the Rand Road Redevelopment Project Area in any

**13.3 Litigation.** To the best of the Village's knowledge, there are no proceedings pending or

or other instrument to which the Village is subject.

otherwise result in any breach of any term, condition or provision of any indenture, agreement execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or consents, approvals or authorizations on the part of the Village in connection with the Village's authorized by all necessary corporate action on the part of the Village, (ii) require no other the provisions of this Agreement (except with regard to condemnation); (i) have been duly consummation by the Village of the transactions provided for herein and the compliance with

**13.2 Authorization.** The execution, delivery and the performance of this Agreement and the

all requisite corporate power and authority to enter into this Agreement.

validly existing under the law of the State of Illinois, is a home rule unit of government, and has

**13.1 Organization and Authority.** The Village is a municipal corporation duly organized and

herein contained that

The Village represents, warrants and agrees as the basis for the undertakings on its part

**REPRESENTATIONS AND WARRANTIES OF THE VILLAGE.**

**ARTICLE THIRTEEN**

Violation of this covenant shall constitute an Event of Default.

security for financing purposes shall be subject to the restrictions contained in this Agreement.

**12.6 Limit on Use of Land as Security.** DNA's and Car Dealer's right to use the land as

Agreement

implement and complete DNA's and/or Car Dealer's respective obligations contained in this

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14.1 **Liability Insurance Prior to Completion.** Seven (7) days prior to Closing, Car Dealer (or Car Dealer's contractor) shall procure and deliver to the Village, at Car Dealer's (or such contractor's) cost and expense, and shall maintain in full force and effect until each and every obligation of Car Dealer contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and, during any period of construction, contractor's liability insurance and worker's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than Two Million Dollars (\$2,000,000.00) each

## LIABILITY AND RISK INSURANCE

### ARTICLE FOURTEEN

13.4 **Connections.** The Village shall permit the connection to Village utility systems of all water lines, sanitary and storm sewer lines or Village utility lines existing or constructed in the Property or near the perimeter of the Property as set forth on the Final Plans, provided that DNA and Car Dealer comply with all requirements of general applicability promulgated by the Village for such connections. Village shall grant utility easements over Village owned land and public rights of way as may be necessary or appropriate to accommodate the utilities shown on the Final Plans.

13.5 **Information.** The Village shall deliver to DNA all documents and instruments in its possession or control relating to the physical condition and development of the Property on or prior to the date of the delivery of the Title Commitment and Survey (as set forth below).

13.5 **Best Efforts.** Village agrees to cooperate with Car Dealer in Car Dealer's efforts to obtain necessary licenses, permits and approvals from other governmental and quasi-governmental bodies for the Project, including, the state and local Departments of Transportation, Metropolitan Water Reclamation District, state and federal Environmental Protection Agencies, and FEMA.



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15.1 As Is Purchase. EXCEPT AS EXPRESSLY PROVIDED HEREIN TO THE

## REAL ESTATE SALE PROVISIONS

### ARTICLE FIFTEEN

modified without prior thirty (30) day written notice to the Village. Village. All such policies shall contain a provision that the same will not be canceled or work by Car Dealer. Such insurance policies shall be issued by companies satisfactory to the supplies and materials furnished for the Project (including on-site stored materials), all as to physical loss, including collapse, covering the total value of work performed and equipment, builders risk insurance on a completed value basis, in non-reporting form, against all risks of Project on the Property, as certified by the Village, Car Dealer shall keep in force at all times

#### 14.2 Builder's Risk Prior to Completion. Prior to completion of the construction of the

less than thirty (30) days prior to expiration of any policy. Dollars (\$10,000,000.00). Car Dealer shall provide to the Village a replacement certificate not liabilities, properties and locations having a general policy aggregate of at least Ten Million obligations in this Article Fifteen by way of a blanket policy or policies which includes other to the priority of the construction lender as a loss payee. Car Dealer may satisfy its insurance Village hereby agrees and acknowledges that its rights as an additional insured are subordinate at least thirty (30) days prior to any cancellation or amendment of its policy; provided that, shall contain an affirmative statement by the issuer that it will give written notice to the Village thereof by Car Dealer. Each such policy shall name the Village as an additional insured and damage occurring in or about the Project on the Property, or the construction and improvement Dealer against any liability incidental to the use of or resulting from any claim for injury or and issued by such companies as shall be acceptable to the Village to protect the Village and Car occurrence and Five Million Dollars (\$5,000,000.00) total. All such policies shall be in such form

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a. The Village shall transfer to DNA title to the Village Property and Corner Property at the price of Two Million Dollars (\$2,000,000.00), and if applicable, DNA's escrow deposit under Section 7.2 in connection with the Village's acquisition cost of the Car Wash Property, to be paid as follows: (i) at the Closing, One Million Dollars (\$1,000,000.00) and, if applicable, one hundred percent (100%) of DNA's escrow deposit under Section 7.2 in connection with the Village's acquisition cost of the Car Wash Property; and (ii) an additional One Million Dollars (\$1,000,000.00) at the first to occur of: 1) the issuance of the first Temporary Certificate of Occupancy; or 2) the issuance of the Final Certificate of Occupancy for any part of the Project, but in no event shall the second payment be made

## 15.2 Purchase Price.

CONTRACT. HEREIN, DNA, CAR DEALER AND VILLAGE AGREE THAT THE PROVISIONS OF THIS SECTION SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS REPRESENT VILLAGE, EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH EMPLOYEE, SERVANT OR OTHER PERSON REPRESENTING OR PURPORTING TO PROPERTY MADE OR FURNISHED BY ANY REAL ESTATE AGENT, BROKER, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE THAT VILLAGE IS NOT LIABLE OR BOUND BY ANY GUARANTEES, PROMISES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DNA AGREES AGREED THAT VILLAGE MAKES NO WARRANTY OF HABITABILITY, SUITABILITY, REGULATIONS. WITHOUT LIMITING THE FOREGOING, IT IS UNDERSTOOD AND PROPERTY WITH APPLICABLE BUILDING OR FIRE CODES OR OTHER LAWS OR CONDITION OR VALUE OF THE PROPERTY OR THE COMPLIANCE OF THE OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THE QUALITY, PHYSICAL "AS IS" AND "WHERE IS," AND WITH ALL FAULTS AND THAT VILLAGE IS MAKING NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY AGREED BY DNA AND CAR DEALER THAT DNA IS PURCHASING THE PROPERTY ANYTHING TO THE CONTRARY HEREIN, IT IS EXPRESSLY UNDERSTOOD AND FOR DNA'S REVIEW) IN PURCHASING THE PROPERTY. NOTWITHSTANDING DOCUMENTS PROVIDED TO DNA BY VILLAGE (OR MADE AVAILABLE BY VILLAGE SUCH EXAMINATIONS AND INVESTIGATIONS, ALONG WITH ANY AND ALL THE PROPERTY, AND THAT DNA AND CAR DEALER WILL RELY SOLELY UPON DEFINED BY APPLICABLE FEDERAL OR STATE LAW, RULE OR REGULATION) ON HAZARDOUS SUBSTANCES, MATERIALS OR WASTES (AS THOSE TERMS MAY BE AND INVESTIGATIONS FOR THE PRESENCE OF ASBESTOS, PCB EMISSIONS AND NECESSARY, INCLUDING SPECIFICALLY, WITHOUT LIMITATION, EXAMINATIONS EXAMINATIONS AND INVESTIGATIONS OF THE PROPERTY THEY DEEM CONTRARY, DNA AND CAR DEALER AGREE THAT THEY WILL PERFORM ALL

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later than September 1, 2009. Village and DNA shall pay the closing costs which arise in connection with their respective obligations hereunder. Any applicable county, state and local transfer taxes shall be paid by DNA.

**15.3 Title.**

a. **Title Commitment; Title Policy and Survey.** At least thirty (30) days prior to the Closing, Village shall cause to be furnished to DNA a (i) title commitment ("Commitment") issued by Chicago Title Insurance Company ("Title Company"), covering the respective Property, together with true and legible copies of all documents creating or establishing easements, restrictions and other items referred to as exceptions in Schedule "B" and Schedule "C" of the Commitment ("Title Documents") and an ALTA/ACSM Land Title Survey, including Table A - Optional Survey Responsibilities and Specifications Nos. 1, 3, 4, 7(a), 8, 10 and 11(a), prepared and certified to DNA, Title Company and DNA's construction lender or other identified third parties in accordance with the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association and National Society of Professional Surveyors ("Survey").

b. **Objections.** DNA shall have ten (10) days following receipt of the Commitment, Title Documents and Survey received under paragraph a of this Section 15.3 to review the Commitment, Title Documents and Survey and to provide to Village in writing a specific list of DNA's objections to any of them other than the Agreed Exceptions, as defined below, and Consensual Liens ("Title Objections"). Any item constituting an encumbrance upon or adversely affecting title to the Property (except for Agreed Exceptions and Consensual Liens) which is not objected to by DNA in writing by such time shall be deemed approved by DNA and shall constitute a Permitted Exception (as hereinafter defined). All title exceptions listed on the attached Exhibit "G", are collectively referred to as "Agreed Exceptions" and shall

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constitute Permitted Exceptions. Said Agreed Exceptions shall include, but not be limited to the rights of possession of the Restaurant on the Property. Any mortgages, security interests, financing statements, special assessments, taxes or any lien recorded against the Property following the Agreement Date with the consent or acquiescence of Village are collectively referred to as the "Consensual Liens" and none of such Consensual Liens shall constitute, be or become Permitted Exceptions. Village shall cause all Consensual Liens to be paid and discharged in full on the Closing and, in the event Village fails to do so, DNA shall have the right to deduct and apply so much of the Purchase Price as is reasonably required to do so; which application, to the extent insufficient to remove such Consensual Liens, shall not relieve Village of the obligation to remit such additional amounts as may be necessary to consummate full removal of such Consensual Liens. The phrase "Permitted Exceptions" shall mean the Agreed Exceptions and those exceptions to the set forth in the Commitment, Title Documents and Survey and accepted or deemed approved by DNA pursuant to the terms hereof, except Consensual Liens as provided above, which shall not constitute Permitted Exceptions.

c. **Agreed Exceptions.** The Parties acknowledge and agree that upon execution of this Agreement, the Parties are not in position to complete Exhibit "G". Accordingly, Village shall provide Commitments and Title Documents to DNA for the Village Property, the Corner Property and the Car Wash Property within thirty (30) days after the execution of this Agreement. DNA shall have ten (10) days following receipt of such Commitment and Title Documents to review the Commitment and Title Documents and to provide to Village in writing a specific list of DNA's Title Objections which materially affect the proposed use and ownership of the Project or otherwise materially affect the underlying value of the same. The provisions of paragraph d of this Section 15.3 shall apply to Title Objections under this paragraph c.

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Village agrees to consider a request of DNA that it be allowed to close on the Village Property Development Ordinance, and compliance with all applicable provisions of this Agreement. title to the Property, full execution of this Agreement, adoption of the Final Planned described in this Agreement have been satisfied, including but not limited to: Village obtaining Property shall occur on or before March 31, 2008, provided all the conditions precedent

a. Village. The Closing on the Village Property, Corner Property and Car Wash

## 15.4 Closing Deliveries.

shall include repurchase of the Property then owned by DNA.

hereunder (except any obligations, which this Agreement provides survive termination, which automatically terminate, and neither Party shall have any further obligations to the other Agreement in accordance with the foregoing, this Agreement shall immediately and Liens, which shall not constitute Permitted Exceptions hereunder. If DNA terminates this its obligations and all uncured Title Objections shall be Permitted Exceptions (except Consensual not deliver such written notice within the above period, DNA shall be deemed to have waived objections shall become Permitted Exceptions); or (ii) to terminate this Agreement. If DNA does that DNA elects either: (i) to waive all such uncured objections (in which case the uncured five (5) days after the receipt of such written notice within which to give Village written notice written notice to DNA, DNA shall have until the earlier of the expiration of the Cure Period or Closing) within the Cure Period, or if Village sooner elects not to cure such Title Objection by if reasonably capable of being cured, Village has not committed to cure same at or prior to or all Title Objections contained in DNA's notices. If any such Title Objections are not cured (or, at or prior to Closing) by delivery of written notice thereof to DNA within the Cure Period any (14) days after receipt of DNA's Title Objections (the "Cure Period"), to cure (or commit to cure d. Cure. Village shall have the right, but not the obligation for a period of fourteen

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and Corner Property earlier than March 31, 2008, provided all the conditions precedent described in this Agreement have been satisfied. Upon the Closing, Village shall deliver or cause to be delivered to DNA, the following with respect to the portion of the Property being conveyed:

- i. **Deed.** Special Warranty Deed, in form and substance reasonably acceptable to DNA, conveying such portion of the Property to DNA (or DNA's Permitted Assignee) free and clear of all liens, claims and encumbrances except for the Permitted Exceptions.
- ii. **Possession.** Exclusive possession of the Property, subject to possessory rights of Restaurant pursuant to **Section 7.3**.
- iii. **Title Policy.** An ALTA Form B Owner's Policy of Title Insurance for the Property, dated as of the Closing, in the amount of the applicable Purchase Price, insuring title in DNA (or DNA's Permitted Assignee) in indefeasible fee simple, subject to no exceptions other than Permitted Exceptions with extended coverage (the "Title Policy"). Village shall pay the additional premium charged for extended coverage, however, DNA shall pay for any endorsements required by DNA or its Lender.
- iv. **Closing Statement.** A Closing Statement conforming to the provisions and other relevant provisions of this Agreement.
- v. **Entity Transfer Certificate.** An Entity Transfer Certification confirming that Village is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

Property Clerk's Office

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Company; the costs to prepare the Deed; the costs to obtain, deliver, and record releases of all extended coverage; one-half of the escrow fee and New York closing fee charged by the Title Village will pay the basic premium for the Title Policy and any premiums for

Village and DNA at the Closing, except as otherwise specified:

## 15.5 Prorations and Adjustments. The following shall be prorated and adjusted between

inconsistent with the terms of this Agreement. and to otherwise effect the agreement of the parties hereo and not required by the Title Company to consummate this transaction

iii. Other. Such other documents and instruments as may be conveyance of the Property, pursuant to this Agreement.

and consummate this transaction and the acceptance of the to the Title Company evidencing DNA's authority to enter into company or corporate resolutions and authorizations satisfactory

ii. Corporate Resolutions/Authorizations. Such limited liability proration and other relevant provisions of this Agreement.

i. Closing Statement. A Closing Statement conforming to the

following:

b. DNA. Upon Closing, DNA shall deliver or cause to be delivered to Village the

A.L.T.A. Statement.

including but not limited to: (1) an Affidavit of Title, and (2) an hereto and not inconsistent with the terms of this Agreement, transaction and to otherwise effect the agreement of the parties required by the Title Company as necessary to consummate this

vi. Other. Such other documents and instruments as may be

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liens to be released at Closing; the costs to record all documents to cure Title Objections agreed to be cured by Village; the costs to obtain the Survey; the cost of state and county transfer stamps, if any, and Village's expenses and attorney's fees. DNA will pay one-half of the escrow fee and New York closing fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Village's expense; the costs of any work required by DNA to have the Survey reflect matters other than those required under this Agreement; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by DNA or DNA's lender; and DNA's expenses and attorney's fees. All general taxes and assessments, which are due and payable in arrears after any Closing Date, and assessments for improvements completed prior to but payable after such Closing Date, shall be prorated at such Closing based on each Party's period of ownership. Ad valorem real estate taxes for the Property will be prorated at 105% of most current available assessed value, equalization factor and tax rate between DNA and Village as of the Closing. Village's portion of the prorated taxes will be credited to DNA at closing as an adjustment to the Purchase Price. If the assessment(s) for the year of closing and/or prior years are not known as of any Closing Date, the prorations will be based on taxes for the previous tax year. Village will promptly notify DNA of all notices of proposed or final tax valuations and assessments that Village receives after the Contract Date and prior to such Closing. If this sale or DNA's use of the Premises after such Closing results in the assessment of additional taxes for periods prior to Closing, DNA will pay the additional taxes. All taxes due as of such Closing will be paid at such Closing. Such other items that are customarily prorated in transactions of this nature, if any, shall be ratably prorated. For purposes of calculating prorations, DNA shall be deemed to be in title to the applicable portion of the Property on the corresponding Closing Date. All such prorations shall



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value, TIF Increment Projection or completion of the Project.

event that permitting a longer period for cure would materially threaten or jeopardize the however, that such additional period will be limited to an additional thirty (30) days in the initiates and diligently pursues appropriate measures to remedy the default; provided further, within said thirty (30) days and DNA or Car Dealer, respectively, within said thirty (30) days, such default or breach shall not constitute an Event of Default if such default cannot be cured the existence, structure or financial condition of DNA or Car Dealer; provided, however, that thereof in the performance or breach of any covenant contained in this Agreement concerning

b. Default by DNA or Car Dealer for a period of thirty (30) days after written notice default, within thirty (30) days after written notice from the Village.  
constitute an Event of Default only if DNA or Car Dealer, respectively, does not remedy the incorrect in any material respect as of the date made; provided, however, that such default shall Village pursuant to or in connection with any of said documents, shall prove to be untrue or certificate, notice, demand or request made by a Party hereto, in writing and delivered to the a. If any representation made by DNA or Car Dealer in this Agreement, or in any respect to this Agreement;

16.1 DNA and Car Dealer Events of Default. The following shall be Events of Default with

## EVENTS OF DEFAULT AND REMEDIES.

### ARTICLE SIXTEEN

adjustments no later than thirty (30) days after such information becomes available.  
Village and DNA agree to cooperate and use their diligent and good faith efforts to make such cash after such Closing as and when the final tax bill for such period(s) becomes available. such Closing Date. The amount of the ad valorem real estate tax proration shall be adjusted in be made on the basis of the actual number of days of the year which shall have elapsed as of

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e. The commencement (i) by DNA or Car Dealer, respectively, of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; (ii) by any third party or parties of

confirmed within one hundred twenty (120) days after such order or decree.

(90) consecutive days, or where a plan of reorganization reasonably acceptable to Village is not and the continuance of any such decree or order unstayed and in effect for a period of ninety substantial part of its property, and either ordering the winding-up or liquidation of its affairs custodian, trustee, sequester (or similar official) of DNA or Car Dealer, respectively, for any bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, bankruptcy laws, as now or hereafter constituted or any other applicable federal or state premises in respect of DNA or Car Dealer, respectively, in an involuntary case under the federal

d. The entry of a decree or order for relief by a court having jurisdiction in the

or jeopardize the value, TIF Increment Projection or completion of the Project.

additional sixty (60) days unless permitting a longer period for cure would materially threaten remedy the default; provided further, however, that such additional period will be limited to an within said initial period for cure initiates and diligently pursues appropriate measures to days (or longer period under the franchise agreement) and the DNA or Car Dealer, respectively, shall not constitute an Event of Default if such default cannot be cured within said thirty (30) franchise agreement) after written notice of such breach; provided, however, that such default which is not cured within thirty (30) days (or such longer period permitted for cure under such USA, Inc. franchise agreement, or Car Dealer's agreement with the Village of Buffalo Grove, warranty, representation, or obligation contained in this Agreement or in its Toyota Motor Sales

c. Default by DNA or Car Dealer in the performance or breach of any covenant,

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an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, which is not dismissed within ninety (90) days after filing or with respect to which a plan of reorganization reasonably acceptable to Village has not been confirmed within one hundred twenty (120) days after commencement, or the consent by DNA or Car Dealer, respectively, to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of DNA or Car Dealer, respectively, or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of DNA or Car Dealer, respectively, generally to pay such entity's debts as such debts become due or the taking of any action by DNA or Car Dealer, respectively, in furtherance of any of the foregoing.

f. Failure to have funds to meet DNA or Car Dealer's respective obligations under this Agreement.

g. Failure to renew or extend the LC referenced in Section 9.6, thirty (30) or more days prior to its expiry (in which event the Village may draw the full amount of the LC).

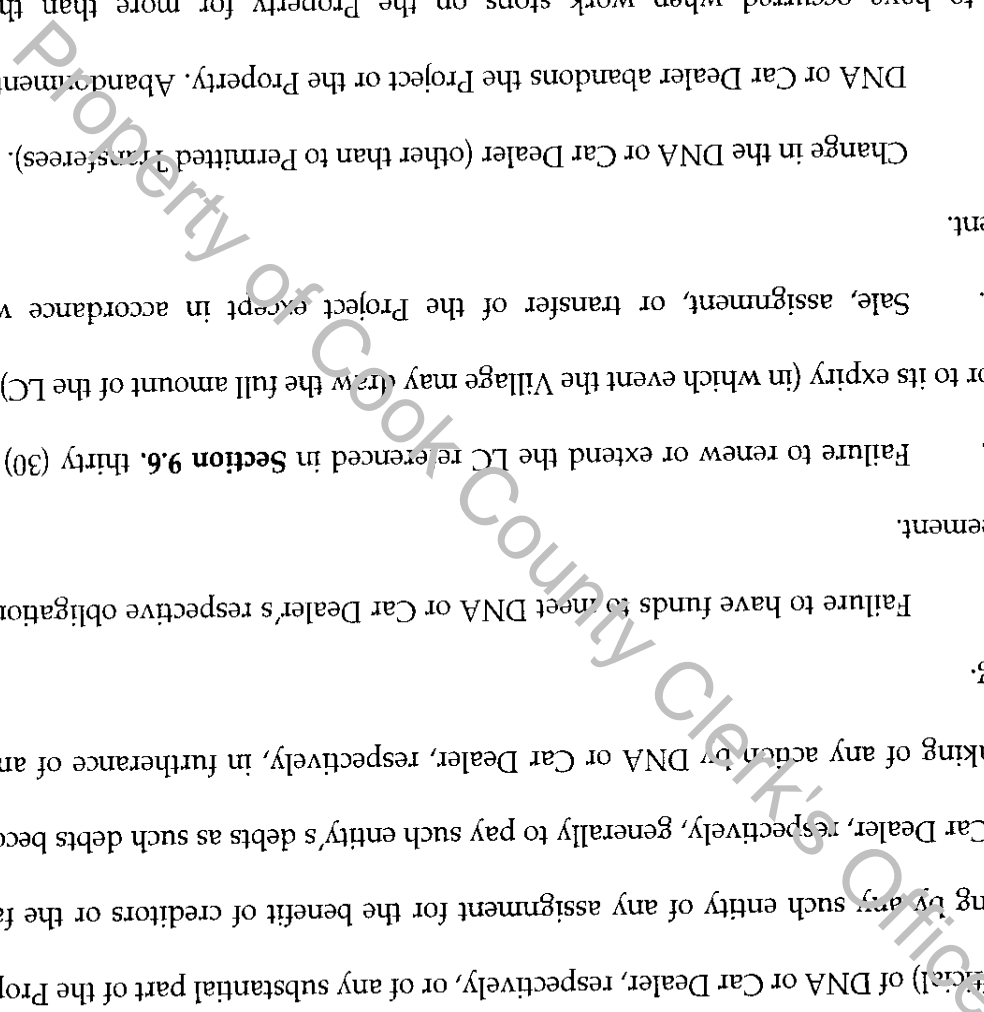
h. Sale, assignment, or transfer of the Project except in accordance with this Agreement.

i. Change in the DNA or Car Dealer (other than to Permitted Transferees).

j. DNA or Car Dealer abandons the Project or the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) consecutive days for any reason other than Uncontrollable Circumstances.

k. DNA or Car Dealer, respectively, fails to comply with applicable governmental

codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement. The maintenance requirement of this provision shall not be



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enforcement of performance or observance of any obligation or agreement herein contained, the incur other expenses for the collection of the payments due under this Agreement or the not cured within the applicable cure periods and the Parties employ an attorney or attorneys or

**16.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default is

- draw on the LC, without rights of DNA or Car Dealer to cure.
- D. In the event a "Default Date" as defined in Exhibit "F" exists, Village may immediately obligations to accord Car Dealer "exclusive" developer status as set forth in **Article Five**. relieved of its obligations under this Agreement, including but not limited to its the LC and Guarantees and any other remedies at law or in equity, the Village shall be
- C. In the case of an Event of Default by DNA or Car Dealer, in addition to recourse under Dealer and the Village shall continue as though no such proceedings had been taken. several positions and rights hereunder, and all rights, remedies and powers of DNA, Car in each such case, DNA, Car Dealer and Village shall be restored respectively to their such proceedings shall have been discontinued or abandoned for any reason, then, and
- B. In the event Village shall have proceeded to enforce its rights under this Agreement and performance of the defaulting party's obligations under this Agreement.
- A. In the event of an Event of Default hereunder, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific

## **16.3 Remedies for Default.**

- d. failure to have funds to meet the Village's obligations.
- within sixty (60) days after such notice, subject to Uncontrollable Circumstances; or written notice from DNA or Car Dealer, respectively, and in any event cures such default not constitute an Event of Default if the Village, commences cure within thirty (30) days after

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17.1 No Discrimination. DNA and Car Dealer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. To the fullest extent permitted by law, DNA and Car Dealer will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color,

## EQUAL EMPLOYMENT OPPORTUNITY

### ARTICLE SEVENTEEN

16.6 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

16.5 No Waiver by Delay or Otherwise. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

non-prevailing party shall pay, on demand, the prevailing party's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. The Village's duty to pay shall be subject to the Illinois Local Government Prompt Payment Act.

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the Village is unsuccessful in any eminent domain or Quick Take Condemnation proceedings the covenants and agreements or rights and privileges of DNA, Car Dealer or the Village, or if the competent jurisdiction and such declaration shall materially affect the Redevelopment Plan or shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of or any part of the Act or any ordinance adopted by the Village in connection with the Project Dealer's duty to build the Project, by any Uncontrollable Circumstance, or in the event that all rights and privileges herein contained, or contained in the Redevelopment Plan, including Car prohibited, in any material respect, from performing covenants and agreements or enjoying the

**18.1 Cancellation.** In the event prior to Closing, DNA, Car Dealer or the Village shall be

## MISCELLANEOUS PROVISIONS.

### ARTICLE EIGHTEEN

Project shall contain language similar to that recited in Sections 17.1 and 17.2 above.

contractor, agent, employee, independent contractor or any other Person in connection with

**17.3 Contractors.** Any contracts made by DNA and/or Car Dealer with any general

origin.

will receive consideration for employment without regard to race, color, religion, sex or national

employees placed by or on behalf of DNA and/or Car Dealer, state that all qualified applicants

**17.2 Advertisements.** DNA and Car Dealer will, in all solicitations or advertisements for

the provisions of this nondiscrimination clause.

employees and applicants for employment, notices to be provided by the Village setting forth

apprenticeship. DNA and Car Dealer agree to post in conspicuous places, available to

termination, rate of pay or other forms of compensation and selection for training, including

employment, upgrading, demotion, transfer, recruitment, layoff, recruitment advertising, layoff,

religion, sex or national origin. Such action shall include, but not be limited to, the following:

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initiated pursuant to this Agreement, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole or in part (with respect to that portion of the Project materially affected) by giving written notice thereof to the other prior to Closing. If the Village terminates this Agreement pursuant to this Section 18.1, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements. In the event of any termination/cancellation, the LC shall be released to Car Dealer subject to the terms of this Agreement.

**18.2 Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) overnight courier, or (c) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village:

Village of Palatine  
200 E Wood Street  
Palatine, IL 60067  
Attn: Village Clerk

With a copy to:

Village of Palatine  
200 E Wood Street  
Palatine, IL 60067  
Attn: Village Manager

With a copy to:

Schain, Burney, Ross & Citron, Ltd.  
222 N. LaSalle Street, Suite 1910  
Chicago, IL 60601  
Attn: Robert C. Kenny

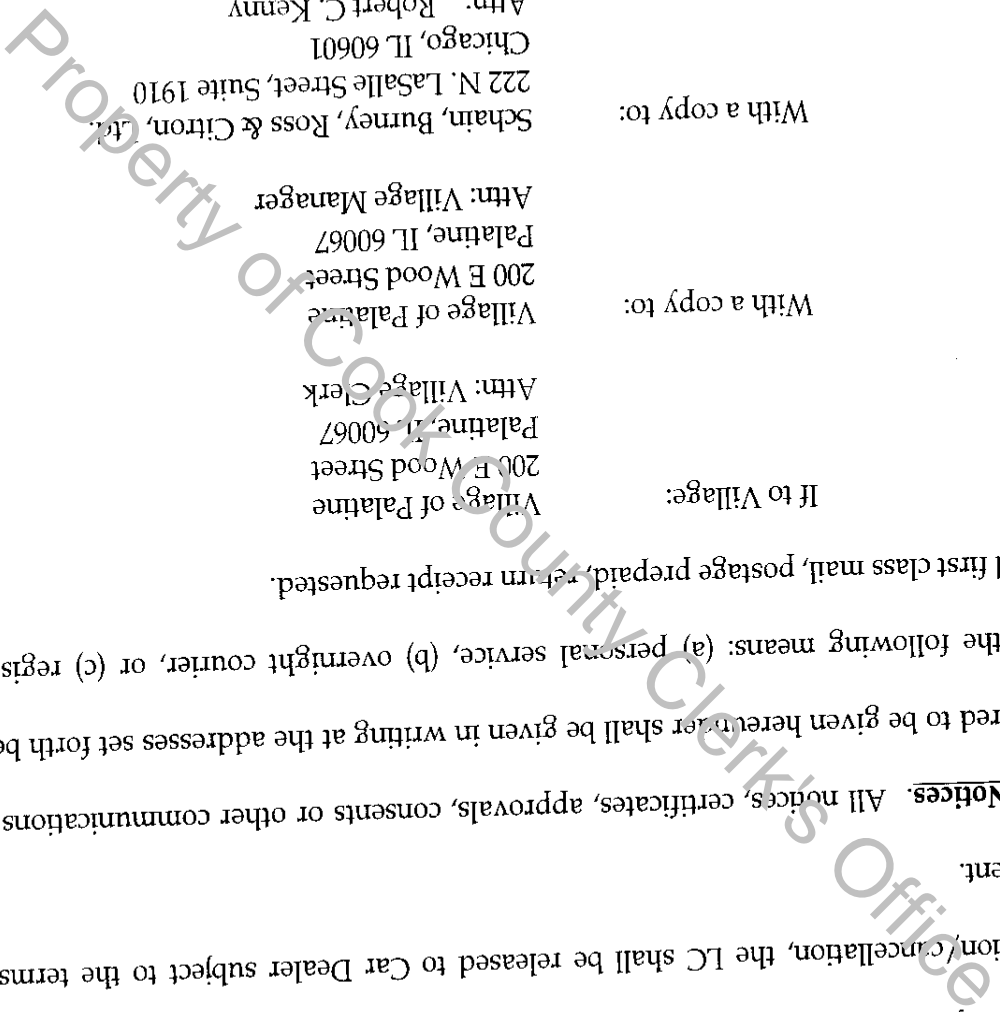
If to DNA or

Car Dealer:

Arlington Automotive Group, Inc.  
935 West Dundee Road  
Buffalo Grove, IL 60089  
Attn: Gary N. Vicari

With a copy to:

Steven M. Sack, Esq.  
110 East 59th Street, 19th Floor



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the laws of the State of Illinois.

18.7 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. permitted by law.

herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law. remainder of this Agreement shall be construed as if such invalid part were never included phrase or word, or the application thereof, in any circumstance, is held to be invalid, the

18.6 **Severability.** If any provision of this Agreement, or any section, sentence, clause, shall be an original and all of which shall constitute but one and the same Agreement. Recorder's Office of Cook County.

18.5 **Recordation of Agreement.** The Parties agree to record this Agreement in the Recorder's Office of Cook County.

18.4 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement. 18.3 **Time of the Essence.** Time is of the essence of this Agreement.

mail. pursuant to clause (c) shall be deemed received forty-eight (48) hours following deposit in the following deposit with the overnight courier, and any notices, demands or requests sent demand or request sent pursuant to clause (b) shall be deemed received on the day immediately received upon such personal service or upon dispatch by electronic means. Any notice, sent. Any notice, demand or request sent pursuant to clause (a) hereof shall be deemed which subsequent notices, certificates, approvals, consents or other communications shall be The Parties, by notice hereunder, may designate any further or different addresses to

New York, New York 10022  
Meltzer, Pirtill & Stelle, LLC  
1515 East Woodfield Road, Second Floor  
Schaumburg, IL 60173  
Attn: Mark R. Raymond

With a copy to:



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confirming unto the Village, DNA or Car Dealer or other appropriate persons all and singular better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and such further acts, instruments, pledges and transfers as may be reasonably required for the executed and delivered, such agreements, instruments and documents supplemental hereto and covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done,

**18.11 Cooperation and Further Assurances.** The Village, DNA and Car Dealer each Agreement.

shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in

**18.10 Waiver.** Any party to this Agreement may elect to waive any right or remedy it may create any third party beneficiary rights whatsoever against either the Village, DNA or Car Dealer. This Agreement is not intended to and does not Dealer, nor shall any provision give any third parties any rights of subrogation or action over or discharge the obligation or liability of any third persons to either the Village, DNA or Car than the Village, DNA and Car Dealer, nor is anything in this Agreement intended to relieve or confer any rights or remedies under or by reason of this Agreement on any other persons other

**18.9 Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to instrument executed by the Parties hereto.

Village, DNA and Car Dealer, and may not be modified or amended except by a written contemporaneous negotiations, understandings and agreements, written or oral, between the Village, DNA and Car Dealer relating to the subject matter hereof, supersedes all prior and attached hereto) is the entire contract and a full integration of the Agreement between the

**18.8 Entire Contract and Amendments.** This Agreement (together with the exhibits

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pledged under or in respect of this Agreement.

the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and of the Parties hereto and their respective successors and assigns; provided, however, that, except as provided in **Section 10.10** and **Section 10.11** hereof, neither DNA nor Car Dealer may assign its rights under this Agreement without the express written approval of the Village.

Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or except as provided herein, transfer any interest in the Village Property without the express written approval of DNA and Car Dealer.

**18.12 Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that, except as provided in **Section 10.10** and **Section 10.11** hereof, neither DNA nor Car Dealer may assign its rights under this Agreement without the express written approval of the Village.

Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or except as provided herein, transfer any interest in the Village Property without the express written approval of DNA and Car Dealer.

**18.13 No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

**18.14 No Personal Liability of Officials of Village or Car Dealer.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village or Car Dealer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village, DNA or Car Dealer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

**18.15 Repealer.** To the extent that any ordinance, rule, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

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Car Dealer's agreements with contractors and subcontractors shall so comply. review, such records would not include an employee's address or social security number, and review through the Freedom of Information Act (FOIA), provided that for purposes of public the Village. These records shall be kept by the Village for three (3) years and are subject to reasonable request from the Village, but not more often than twice a year, certified payroll to Act, Car Dealer shall require that contractors and sub-contractors make available upon this Agreement requires compliance with the Prevailing Wage Law. Under the Prevailing Wage acknowledge that construction and installation for municipal infrastructure in connection with

**18.19 Prevailing Wage Act Compliance, Prevailing Wages, DNA and Car Dealer**

by law.

**18.18 Municipal Limitations.** All municipal commitments are limited to the extent required

the requesting party.

specifying each such claimed detail) and certifying such other matters reasonably requested by provision or condition of this Agreement beyond any applicable notice and cure provision (or specify the basis for such claim), that the requesting party is not in default of any term, this Agreement is in full force and effect (unless such is not the case, in which such parties shall less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that

**18.17 Estoppel Certificates.** Each of the parties hereto agrees to provide the other, upon not

Agreement:

Road Redevelopment Project Area or until otherwise terminated pursuant to the terms of this Redevelopment Plan with respect to the Project is extended or until termination of the Rand from the date the Rand Road Redevelopment Project Area was created, unless the

**18.16 Term.** This Agreement shall remain in full force and effect for twenty-three (23) years

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By: *[Signature]*  
 Name: Gregory V. Carter  
 Its: President  
 DNA REALTY, INC.

DNA:

By: *[Signature]*  
 Name: Gregory V. Carter  
 Its: President  
 ARLINGTON AUTOMOTIVE GROUP, INC.

CAR DEALER:

ATTEST:  
 By: *[Signature]*  
 Its: Village Clerk - Deputy

By: *[Signature]*  
 Its: Mayor  
 municipal corporation  
 VILLAGE OF PALATINE, an Illinois

on or as of the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed

Agreement will be deemed void.

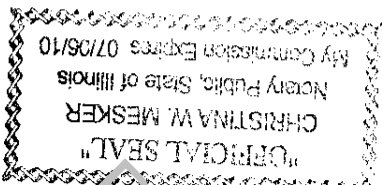
(21) days after Village Council authorization of execution of this Agreement or else this of this Agreement. DNA and Car Dealer shall execute this Agreement not later than twenty-one executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption The Effective Date for this Agreement shall be the day on which this Agreement is fully

EFFECTIVENESS

ARTICLE NINETEEN

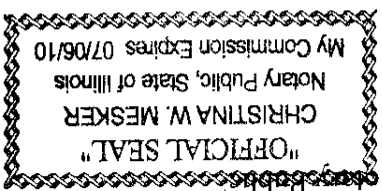
# UNOFFICIAL COPY

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My commission expires 7-6-2010  
Notary Public, Christina W. Mesker

I, Christina W. Mesker, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that GARY VICARI, President of DNA Realty Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act as said President and as the free and voluntary act of said corporation for the uses and purposes therein set forth.  
GIVEN under my hand and Notarial Seal this 11<sup>th</sup> day of MAY, 2007



My commission expires 7-6-2010  
Notary Public, Christina W. Mesker

I, Christina W. Mesker, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that GARY VICARI, President of Arlington Automotive Group, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act as said President and as the free and voluntary act of said corporation for the uses and purposes therein set forth.  
GIVEN under my hand and Notarial Seal this 11<sup>th</sup> day of MAY, 2007



My commission expires 7-6-2010  
Notary Public, Christina W. Mesker

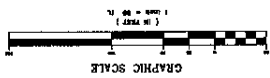
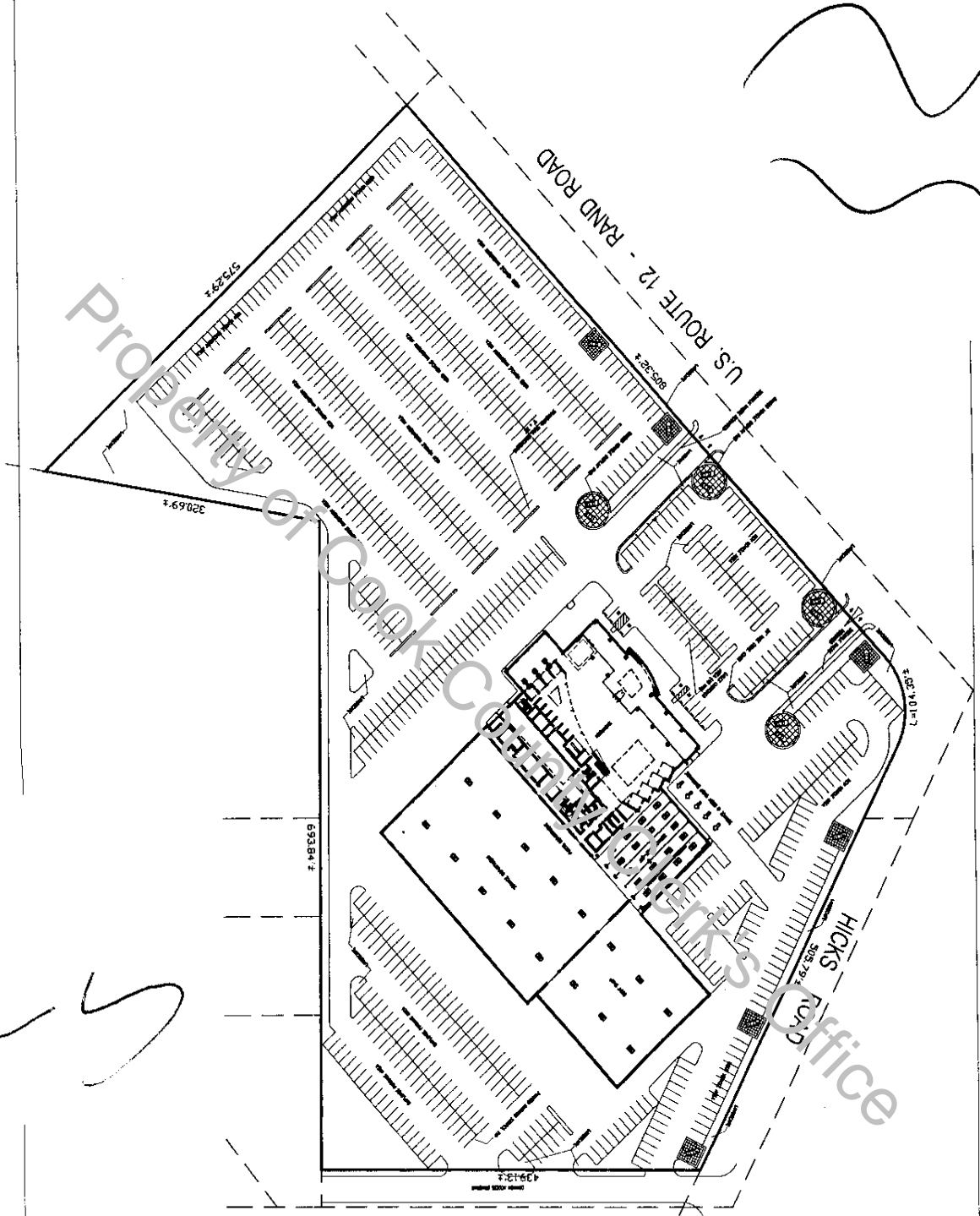
# UNOFFICIAL COPY

Property of Cook County Clerk's Office

- EXHIBIT A PRELIMINARY PLANS
- EXHIBIT B LEGAL DESCRIPTION OF PROPERTY
- EXHIBIT C LICENSE AGREEMENT
- EXHIBIT D TOYOTA GUIDELINES
- EXHIBIT E OFF-SITE IMPROVEMENTS
- EXHIBIT F DEVELOPMENT SCHEDULE
- EXHIBIT G PERMITTED EXCEPTIONS

# UNOFFICIAL COPY

MAY 1, 2007

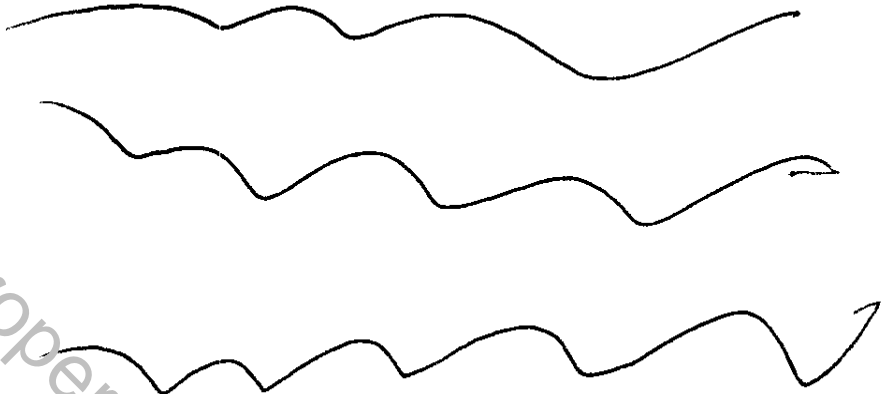


PALATINE TOYOTA

- CONCEPTUAL SITE PLAN -

EXHIBIT "A"

# UNOFFICIAL COPY



Property of County Clerk's Office

- 02-02-203-035
- 02-02-203-036
- 02-02-203-009
- 02-02-203-010
- 02-02-203-011
- 02-02-203-012
- 02-02-203-013
- 02-02-203-014
- 02-02-203-020
- 02-02-203-021
- 02-02-203-022
- 02-02-205-015

PLN #:

The Property consists of the following:



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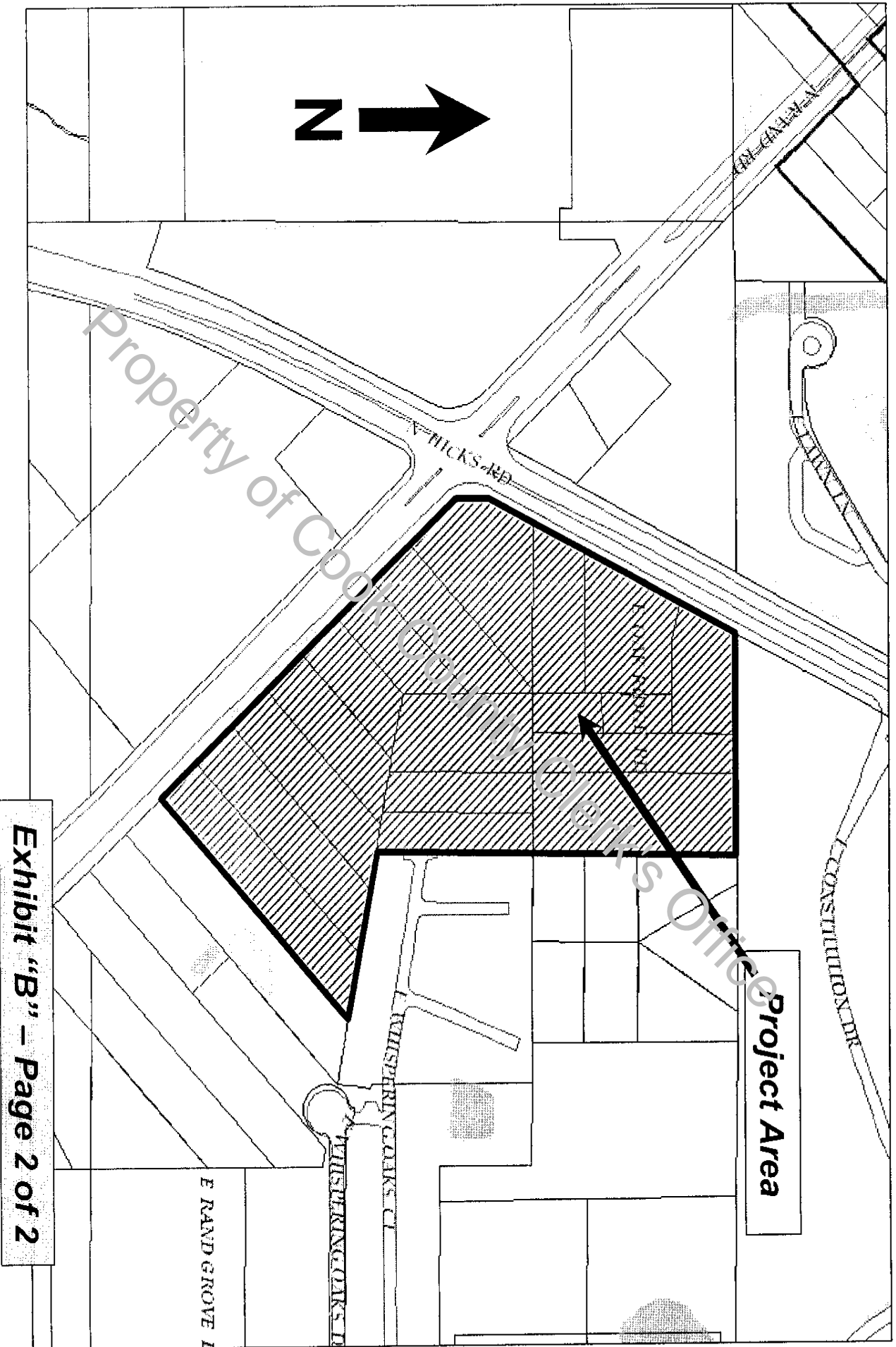


Exhibit "B" - Page 2 of 2

Project Area

E RAND GROVE

WHISPERING OAKS CT

CONSTITUTION BLVD

# UNOFFICIAL COPY

{32557:002:00187319.DOC:15 }

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

F. Village wishes to grant, and Licensees wishes to receive, a non-exclusive license to perform environmental remediation, soil testing and other due diligence all as set forth in the Redevelopment Agreement.

E. Pursuant to the Redevelopment Agreement, DNA Realty is the designated contract purchaser of the Property and shall acquire the Property pursuant to the terms of the Redevelopment Agreement.

D. Village, pursuant to the Redevelopment Agreement executed between Village and Licensees, has agreed to purchase the Car Wash Property (as defined in the Redevelopment Agreement). At such time as Village does take legal title to the Corner Property, the Corner Property shall be considered to be a part of the Property for purposes of this License Agreement.

C. Village, pursuant to a redevelopment agreement executed between Village and Licensees (the "Redevelopment Agreement"), has agreed to purchase the Corner Property (as defined in the Redevelopment Agreement). At such time as Village does take legal title to the Corner Property, the Corner Property shall be considered to be a part of the Property for purposes of this License Agreement, subject to the possessory rights of the Restaurant (as defined in the Redevelopment Agreement), which preclude Village granting a license hereunder with respect to the Restaurant site within the Corner Property.

B. Village is the owner of a certain parcel of land in the Village of Palatine, County of Cook and State of Illinois, graphically depicted on the Area Plan attached hereto and made a part hereof as Exhibit "A" ("the Property").

A. Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970;

The following recitals of fact are a material part of this Agreement.

This LICENSE AGREEMENT ("Agreement") is made as of this 11 day of May, 2007, by and between VILLAGE OF PALATINE, an Illinois municipal home rule corporation ("Village"), ARLINGTON AUTOMOTIVE GROUP, Inc., an Illinois Corporation ("Car Dealer") and DNA Realty, Inc., an Illinois corporation ("DNA Realty"). Hereinafter, Car Dealer and DNA Realty may be collectively referred to as "Licensees".

License Agreement

## UNOFFICIAL COPY

1. Grant of License for Due Diligence Work on the Property. Village hereby grants to Licensees, a non-exclusive license to perform environmental remediation, soil testing and other due diligence on that portion of the Property owned by the Village from time to time.
2. Term of License. The license granted hereunder shall commence on the date hereof and shall terminate upon the earlier of (a) the date that DNA Realty acquires fee title to the Property; (b) the date an Event of Default by DNA Realty or Car Dealer under the Redevelopment Agreement is not timely cured pursuant to the Redevelopment Agreement; or (c) upon a breach of the terms hereof. Upon the occurrence of any of the events described in the preceding sentence, this License shall immediately expire and Licensees shall restore the Property to the condition prior to Licensee performing any work on the Property under this Agreement. Upon termination of this License for any reason Licensee shall restore the Property to the condition prior to Licensees performing any work on the Property under this Agreement.
3. License Only. This Agreement creates a license only with respect to Paragraphs 1 and 2, hereof and Licensees acknowledge that Licensees do not and shall not claim at any time or any interest or estate of any kind or extent whatsoever in the Property by virtue of such license or Licensees' use of the Property pursuant hereto.
4. Reservation of Rights by Village. The right to use the Property is expressly reserved by Village, its successors, invitees and assigns subject to the rights of the Restaurant (as defined in the Redevelopment Agreement) over a portion of the Corner Property. In addition, and not by limitation but by way of example, Village, its successors, grantees, invitees and assigns, reserve the right from time to time to grant additional licenses upon the Property, provided that such licenses do not unreasonably interfere with Licensees' use of the Property pursuant to the terms hereof.
5. No Transfer by Licensee. Licensee shall not transfer any of its rights hereunder without the prior written consent of Village, except as contemplated in the Redevelopment Agreement. Any such assignment made without the prior written consent of Village shall be null and void and of no further force or effect and shall entitle Village to terminate this Agreement.
6. Indemnity. Except for damage caused by the negligence or intentional conduct of Village or its successors, Licensees for and on behalf of themselves and all of their respective successors, grantees, invitees and assigns, assume sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly by Licensees, their respective successors, grantees, invitees and assigns and all of their officers, directors, employees, representatives and agents. Further, and except for damage caused by Village or its successors, Licensees, for themselves and their respective successors, grantees, invitees and assigns, and for those claiming by, through or under any of them, hereby release Village, its members, agents and employees (collectively, the "Indemnitees") from any and all claims or demands for loss, liability, expense, cost or damage (whether to person or property), including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Indemnitees in connection therewith, that may arise from the work performed on the Property by Licensees, their respective successors and grantees, invitees and assigns, and all of their officers, directors, employees, representatives and agents.

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9. Code Violation. Licensees shall not permit any code violation to be filed against the Property or any improvements as a result of Licensees' actions or activities.

In the event any such lien is filed against any portion of the Property or any improvements thereon, Licensees shall remove or cause to be removed such lien within thirty (30) days of written notice from Village. In the event Licensees do not remove or cause to be removed such lien within said thirty (30) day period, Village shall have the right, but not the obligation, to cause such lien to be released and Licensees shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 10 hereof, accruing from and after the date of such demand until Village's receipt of full payment therefor. This provision shall survive the termination of this License.

8. No Liens. Licensees shall not permit any lien to be filed against any portion of the Property or any improvements thereon for any labor or materials in connection with work of any character performed or claimed to have been performed on the Property at the direction or sufferance of Licensee.

Licensees, concurrently with execution hereof shall deposit with Village, insurance certificates evidencing the foregoing coverages, together with satisfactory evidence of payment of the premiums thereon. The deposits required by this Paragraph are conditions precedent to Licensees' rights under this license and this Agreement. All such insurance shall name the Indemnities as additional insureds. Licensees shall deliver said insurance certificates to the office of the Village Manager of the Village of Palatine, at 200 East Wood Street, Palatine, Illinois, 60067, or as otherwise directed by Village from time to time. Licensees shall not enter the Property under this Agreement until such insurance certificate is delivered to and determined to be acceptable to Village.

7. Insurance. Licensees, at their sole cost and expense, shall purchase and keep in full force and effect during the term hereof, Commercial General Public Liability Insurance (including, but not limited to, contractual liability insurance covering, without limitation, Licensee's indemnification obligations hereunder) in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of Five Million Dollars (\$2,000,000.00) and provided that same shall not be cancelled without thirty (30) days prior notice to Village.

Except for damage caused by Village or its successors, Licensees hereby agree to indemnify, defend and hold harmless the Indemnities from and against any and all liability, loss, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including without limitation, reasonable attorneys' fees and litigation costs) incurred by the Indemnities for injuries to persons (including, without limitation, loss of life) and for damage, destruction or theft of property which is directly or indirectly due to the activity, work or thing done, permitted or suffered by Licensees on or about the Property or for any act or omission of Licensees, their respective successors, grantees, invitees and assigns and any of their officers, directors, employees, representatives and agents. Licensees shall cooperate with Village in the defense of any such claims, demands or action, including, without limitation, the employment, at the sole expense of Licensees, of legal counsel satisfactory to Village.

# UNOFFICIAL COPY

In the event Licensees receives notice of such a code violation, either from Village or its successors, Licensees shall remove or cause to be removed such violation within the time specified in said code violation notice. In the event Licensees do not remove or cause to be removed such code violation within said time period, Village shall have the right, but not the obligation, to cause such violation removed and Licensees shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 10 hereof, accruing from and after the date of such demand until Village's receipt of full payment therefor.

10. Breach by Licensee. If Licensees breach any provision in this Agreement and fails to cure any such breach within ten (10) days after written notice thereof, in addition to any other right or remedy available at law or in equity, Village shall have the right, but not the obligation, to cure any such breach and Licensees agree to reimburse Village for the cost thereof upon demand, together with interest accruing thereon at an annual rate of interest equal to twelve percent (12%) from and after the date of Village's demand therefor until Village's receipt of full payment therefor.

11. No Warranty, Integration. Village hereby makes and has made no representations, statements, warranties or agreements to Licensees in or in connection with this Agreement or the Property (except as provided in the Redevelopment Agreement). This Agreement embodies the entire understanding of the parties hereto, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

12. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or on the third (3<sup>rd</sup>) day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid or sent by facsimile transmission, as follows:

If to Village:

Village of Palatine  
200 East Wood Street  
Palatine, Illinois 60067  
Attention: Village Manager  
Fax: (847) 359-9094

With copies to:

Schahn, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street, Suite 1910  
Chicago, Illinois 60601  
Attention: Robert C. Kenny  
And Robert C. Kenny  
Fax: (312) 332-4514

Property of County of Cook

# UNOFFICIAL COPY

VILLAGE OF PALATINE,  
 an Illinois municipal home rule corporation

By: [Signature]  
 Reid T. Ottesen, Manager

Attest: [Signature]  
 Deputy Village Clerk

VILLAGE:  
 year first above written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and

instrument.  
 shall be deemed to be an original and all of which shall together constitute one and the same

15. Counterparts. This Agreement may be executed in counterparts, each of which

no rights as a third party beneficiary or otherwise in any person not a party.  
 duplicate originals of this Agreement shall be provided to each party. This Agreement creates  
 assigns of each upon execution hereof by Village and the Licensees. Two (2) duly executed  
 inure to the benefit of Village and the Licensees and the respective successors and permitted  
 without the prior, written consent of the other. This Agreement shall be binding upon and shall  
 duties hereunder (including by the merger or consolidation of a party with any third person)  
 14. Assignment. No party shall delegate or assign this Agreement or any rights or

13. Litigation Fees. In the event either party shall use legal counsel to enforce this  
 Agreement, the non-prevailing party shall pay the legal fees of the prevailing party.

With copies to:

Meltzer, Purtil & Stelle, LLC  
 1515 East Woodfield Road, Second Floor  
 Schaumburg, IL 60173  
 Attn: Mark R. Raymond  
 And Mark R. Raymond  
 Fax: (847) 330-1231

If to Licensees:

DNA Realty, Inc.  
 Arlington Automotive Group, Inc.  
 935 W. Dundee Road  
 Buffalo Grove, IL 60089  
 Attention: Gary Vicari  
 Fax: (847) 394-5196

# UNOFFICIAL COPY

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Property of Cook County Clerk's Office

\_\_\_\_\_  
 Title: President  
 Printed Name: Gregg Veeva  
 By: \_\_\_\_\_  
 DNA Realty, Inc.,  
 an Illinois corporation

LICENSEE:

\_\_\_\_\_  
 Title: President  
 Printed Name: Gregg Veeva  
 By: \_\_\_\_\_  
 an Illinois corporation

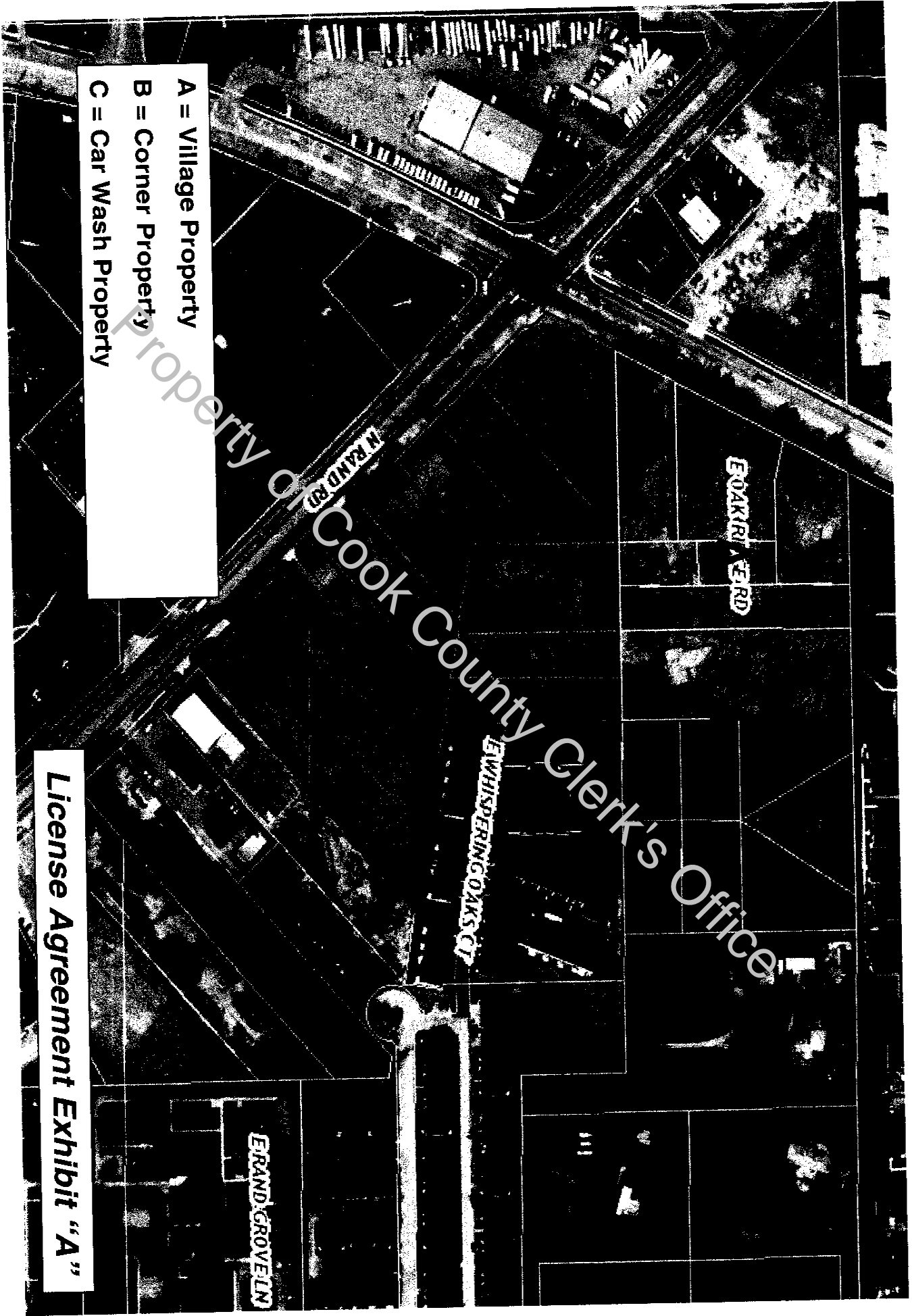
ARLINGTON AUTOMOTIVE GROUP, INC.

LICENSEE:

# UNOFFICIAL COPY

- A = Village Property
- B = Corner Property
- C = Car Wash Property

License Agreement Exhibit "A"





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Property of Cook County Clerk's Office

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Exhibit "D"

[Redacted content]

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## User Defined Facility Standards

Primary Locations	Use	Land	Building	Stalls	Minimum Required (1)	Total Adjusted Land	2012 Vision
ARLINGTON TOYOTA	Primary	n/a	n/a	n/a	368,256 sqft, 8.5 acre	Total Adjusted Land Total Building Service Stalls	417,596 sqft, 9.6 acre
Other Locations		n/a	n/a	n/a	73,945 sqft Toyota = 59		80,488 sqft Toyota = 64
None		n/a	n/a	n/a			

12102 Arlington Toyota Rand & Hicks Rd. Palatine IL, 60089 Exclusive Chicago	Sales/Administration Guidelines	Interior Vehicle Display Sales Office Other Office & Admin Total	Parts Department Guidelines	Parts Storage Retail Parts Other Parts Total	Service Department Guidelines	Required Service Stalls Enclosed Wash-up Area Customer Lounge Other Service Total	Parking Spaces Guidelines	New Vehicle Used Vehicle Customer(Sales/Service/Parts) Employee Total	MEMO: Building Parking (2)	Actual Facility *	Recommended Guideline	Variance	2012 Vision
	Data Grown to 2010												
	2006 Toyota Sales = 2,286												
	2006 100% Sales Eff = 2,424												
	Proj Toyota 7Yr UIO = 23,430												
	Toyota Sales PG = 2,807												
	<b>2012 Vision Inputs</b>												
	Data Grown to 2012												
	2006 Toyota Sales = 2,286												
	2006 100% Sales Eff = 2,424												
	Proj Toyota 7Yr UIO = 25,689												
	Toyota Sales PG = 3,234												

Total Building & Land Calculations	Total Building	Total Land	Total Building & Land
Image USA II Building Flow & Circulation	11,280 sqft	1.4 acre	12,278 sqft
Total Landscaping & Drive Way	73,945 sqft	1.6 acre	80,488 sqft
Total Usable Land (3)	61,376 sqft	1.4 acre	69,598 sqft
Total Adjusted Land (4)	368,256 sqft	8.5 acre	417,596 sqft

Reviewed By: (Dealer) \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed By: (Region/D) \_\_\_\_\_ Date: \_\_\_\_\_

**USER COMMENT:** Arlington relo to Palatine - Move 1 tract

(1) Minimum Required includes only Land, Building, and Stalls and are the only requirements used for Renewals, Buy/Sells and Facility Actions. These figures are estimates based on sales and UIO and are updated annually.

(2) Building Parking includes all rooftop, basement, and structure parking (Excluding ground level parking)

(3) Total Usable Land includes all properties and buildings, and assumes one story buildings.

(4) Total Adjusted Land includes Building Parking

\* Value was changed by user

Based on Scenario: Arhngtn Pauly Relocs



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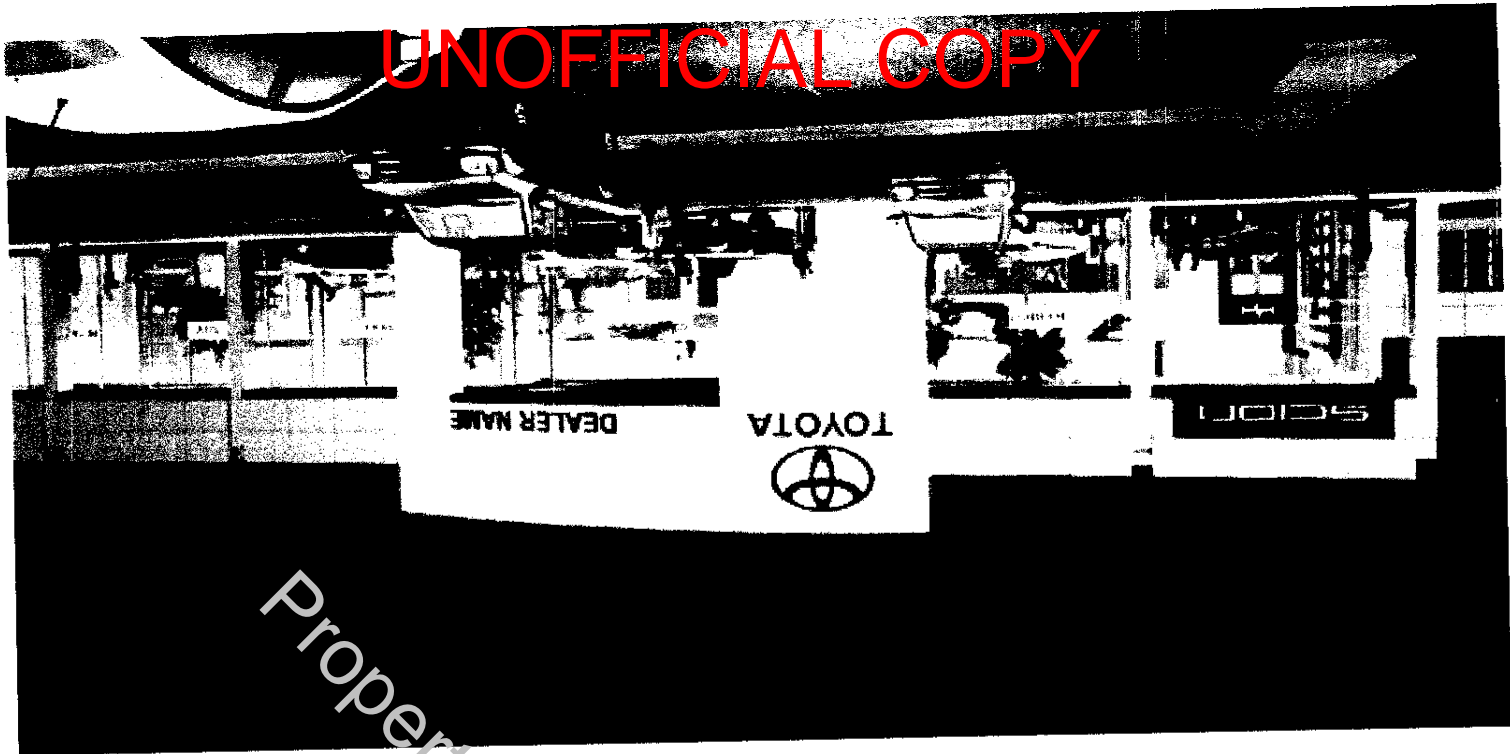
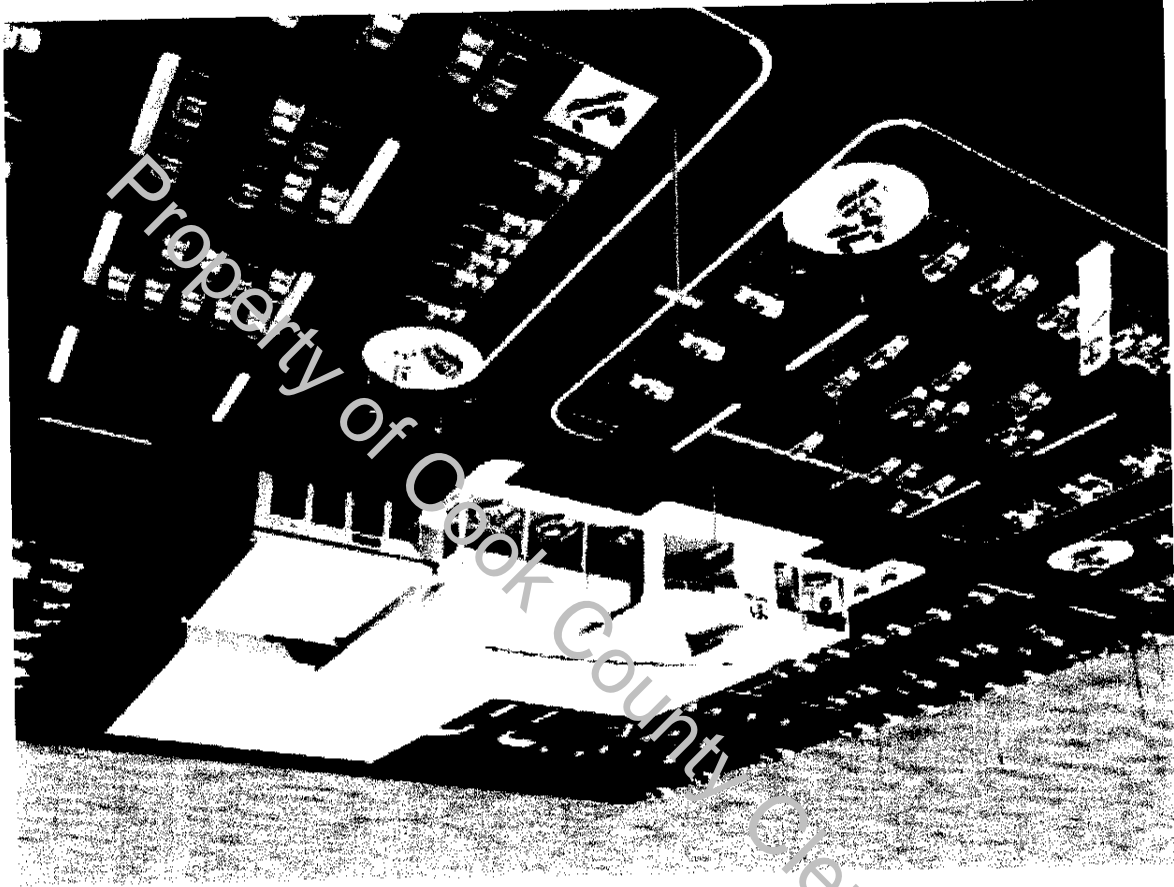


Image USA II



Property of Cook County Clerk's Office

# UNOFFICIAL COPY



## Program Overview

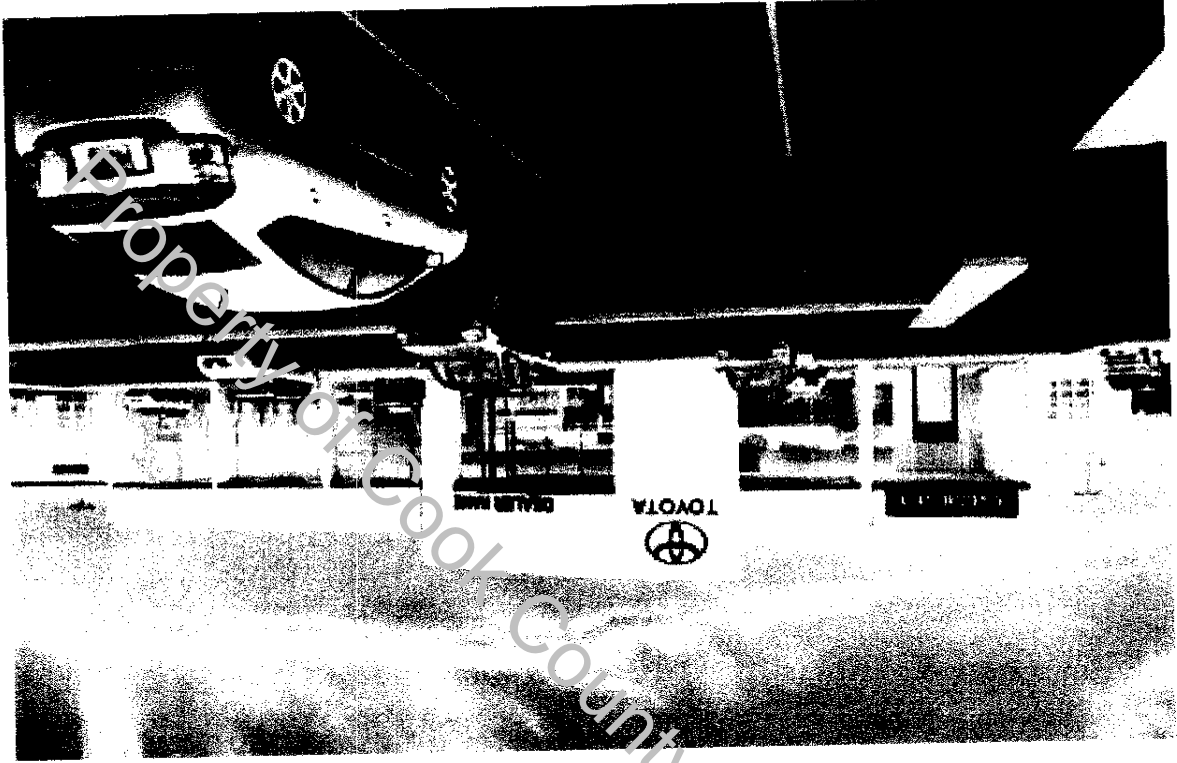
Toyota's Image USA II is an entirely new retail automotive experience. The program integrates Toyota's diverse product line under a brand umbrella, satisfying the needs of customers and dealers alike. The new design expresses Toyota's core values of Quality, Dependability and Reliability (QDR), and brings them to life throughout the showroom experience. QDR is expressed meaningfully and practically via environment, space, flow and the spectrum of customer services.

This new retail facility was created to demonstrate a clearer, more consistent picture of what the Toyota brand represents. The facility was developed through ongoing communication

with the Toyota Dealer Advisory Group, the Toyota National Dealer Council and individual dealers. Additionally it was evaluated by target customers to make sure it satisfied their needs and expectations. The result is a comprehensive design, which brings comfort, warmth, innovation and authenticity to the Toyota selling, buying and service experience. Image USA II is not just about a new exterior dress or new signage. It is more holistic, addressing every aspect of dealership design to redefine and improve the customer experience for the lot, showroom, and sales and service processes.

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VIEW FROM CUSTOMER PARKING



The exterior design of Toyota's Image USA II establishes a highly recognizable signature for the Toyota brand, the dealer and the Toyota product lines. The Toyota trademark in red creates a dominant, tasteful impression that is recognizable from a significant distance. The dealership is clad with light grey metal panels. The showroom entrance is clearly identified with a bold architectural form of illuminated glass. This entryway creates a courtyard, an appealing transition area for customers as well as a new product display zone. The courtyard facilitates clear sight lines into the showroom, offering an engaging preview for customers.

The exterior architecture provides a contemporary retail experience with clearly signed product showrooms. Scion is distinctively recognizable, offering a clear, separate entrance for that unique customer. Careful exterior material choices create a distinctive look, and offer see-through visibility to support the needs of dealership staff and customers. The exterior design approach for the Image USA II program is flexible enough to accommodate the needs of new builds, as well as dealership renovations.

## Dealership Exteriors

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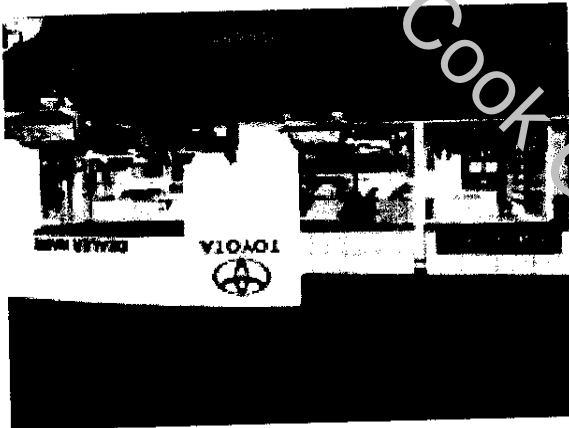
OUTDOOR VEHICLE DISPLAY ALONG COLONNADE



SERVICE ENTRY



EVENING VIEW



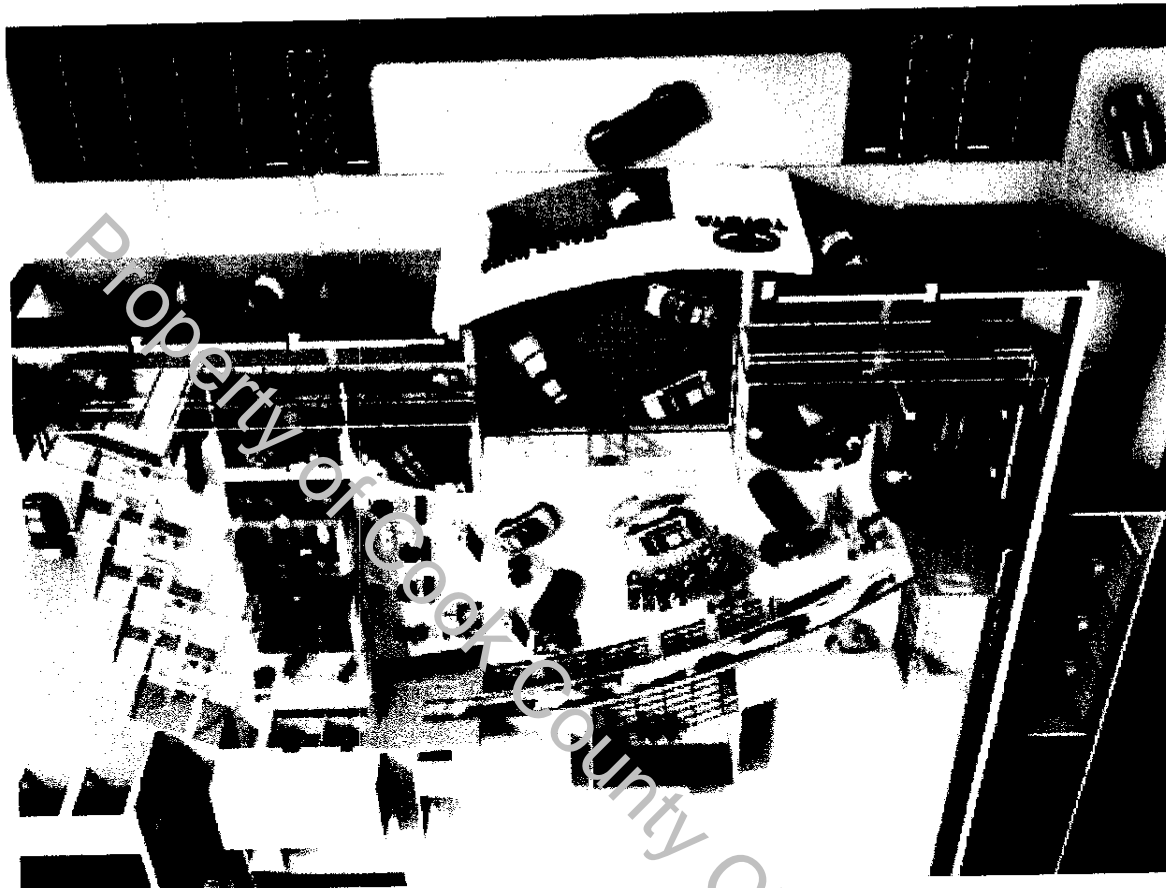
ENTRY COURTYARD



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# UNOFFICIAL COPY

SHOWROOM LAYOUT

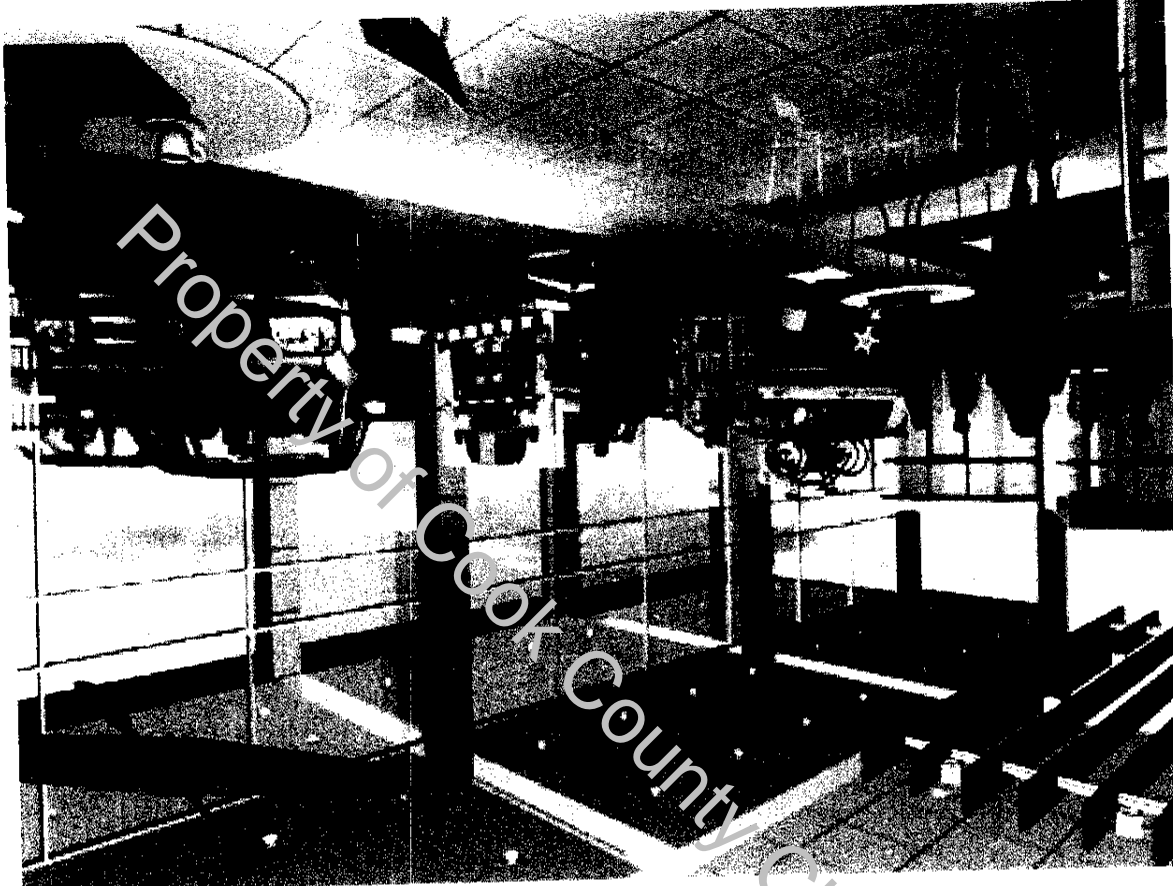


## Dealership Interiors

The showroom interior is designed to offer customers a series of logical, engaging and comfortable interaction areas within the dealership. Each area is designed to make spending time at the dealership satisfying and worthwhile. Dealer and consumer research was utilized to ensure that each of these areas has a relevant purpose in the design. Overall, the new interior approach demonstrates the breadth of Toyota's product line. Simultaneously, it allows for the display of and education about the unique family of products via individual showrooms. Waiting areas are shared for sales and service, offering a consistently comfortable experience for all customers. A new car delivery area brings an added level of depth and quality to the car-delivery experience. This dedicated delivery area enriches the potential for relationship-building between sales staff and customers. Drawing inspiration from residential design for interior materials, customers feel more comfortable and experience a warmer, more welcoming environment.

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BRAND SHOWROOMS



CUSTOMER RECEPTION/FEATURE VEHICLE DISPLAY



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CUSTOMER LOUNGE



**Dealership Interiors**

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NEW CAR DELIVERY



CHILDREN PLAY AREA



SERVICE WRITE-UP



SCION SHOWROOM



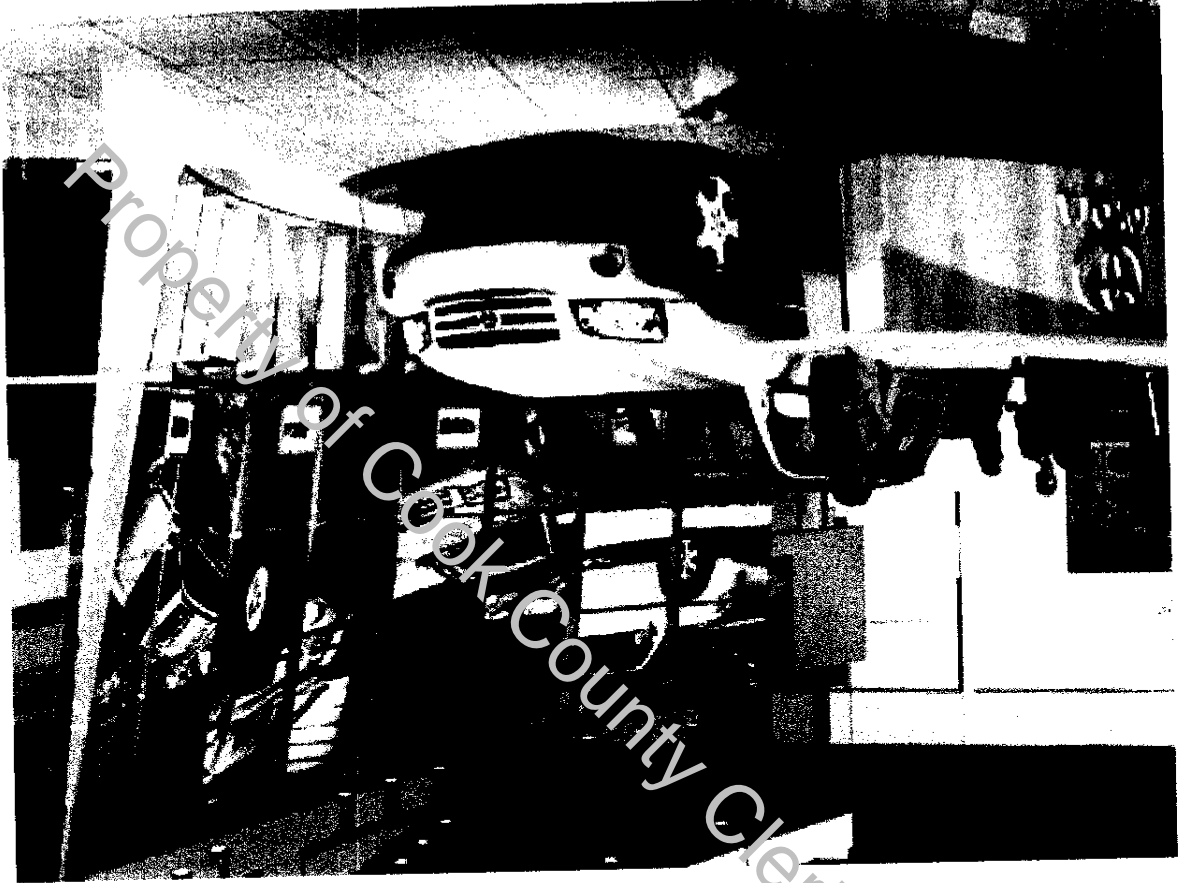
RETAIL CENTER



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CUSTOMER RECEPTION/FEATURE VEHICLE DISPLAY



Retail fixtures are designed to accommodate a broad range of product types, allowing dealers to sell items that are most appealing to their customers. The fixturing system is designed for mobility, allowing for flexibility and extendibility of the retail area. Fixturing materials were selected based on their compatibility with the Toyota brand aesthetic.

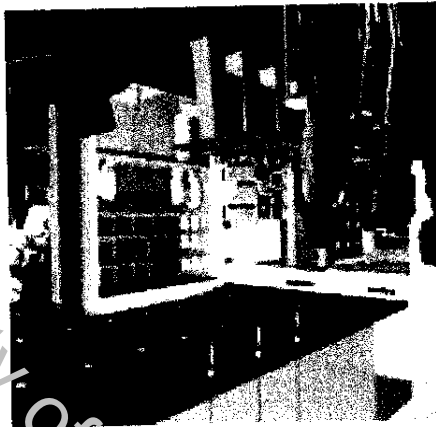
The new Toyota fixturing package has been expanded to offer a greater spectrum of selling and communication tools. This system, located throughout the entire showroom, allows for a deeper understanding of products, and extends the shopping experience. Product Feature Displays, for example, allow dealers to promote new vehicle launches and provide customers with product information that satisfies their most compelling needs. The displays can also stimulate additional sales by making products more visible and feature information more accessible.

## Interior Fixtures

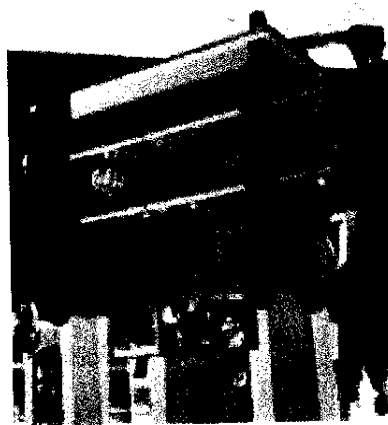
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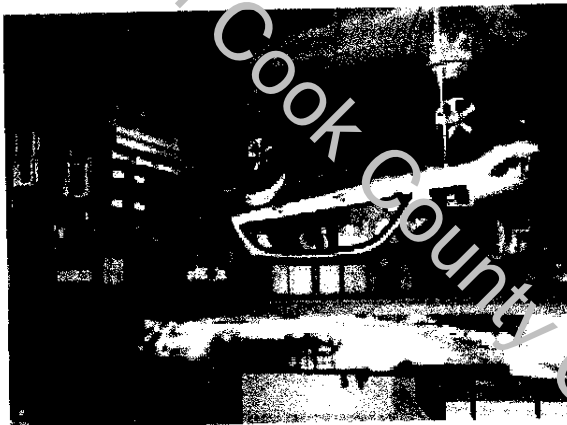
CAFE AREA



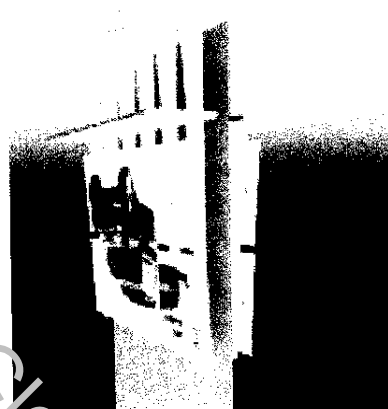
RETAIL FIXTURE



CAR DISPLAY FIXTURE



BRAND ROOM DISPLAY FIXTURE

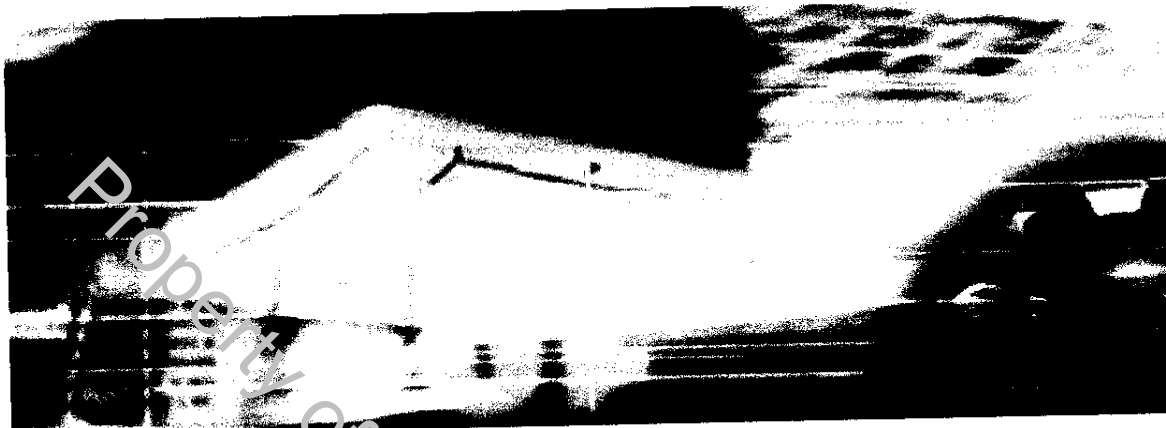


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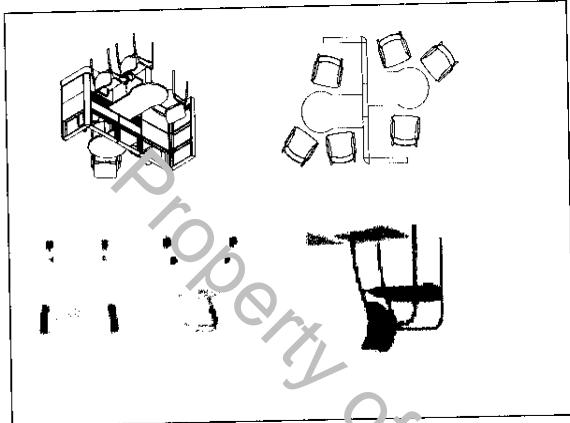
LIFESTYLE GRAPHICS



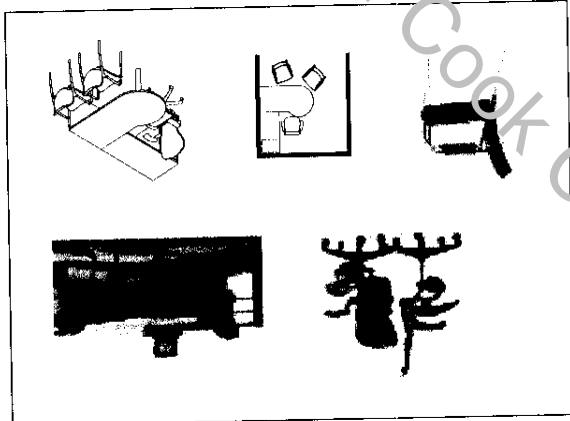
**Interior Graphics and Furniture**

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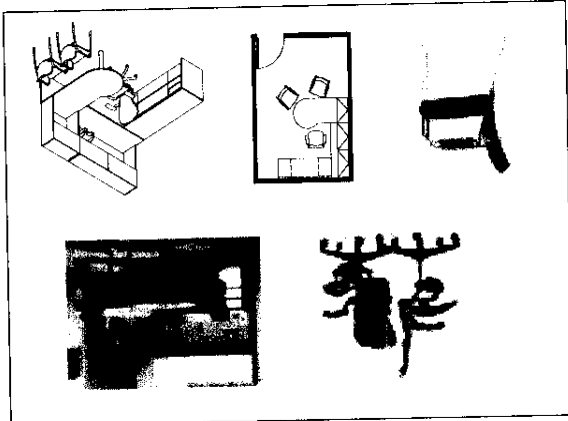
SALES STATIONS



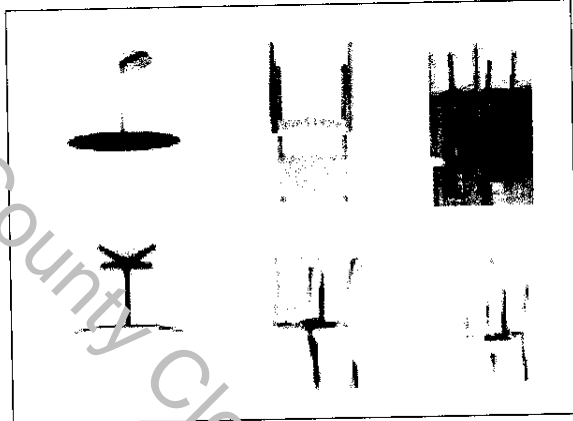
SALES OFFICE



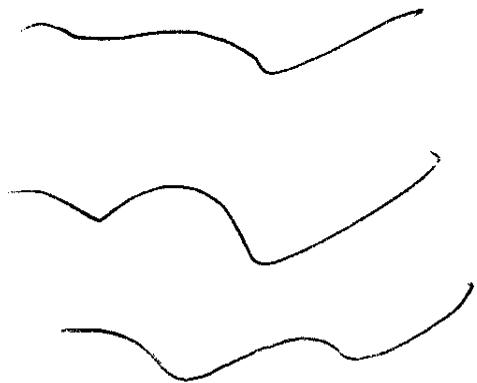
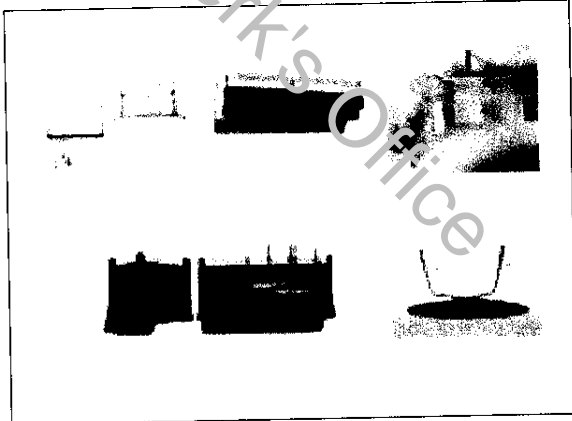
GENERAL MANAGER'S OFFICE



CAFE AREA FURNITURE

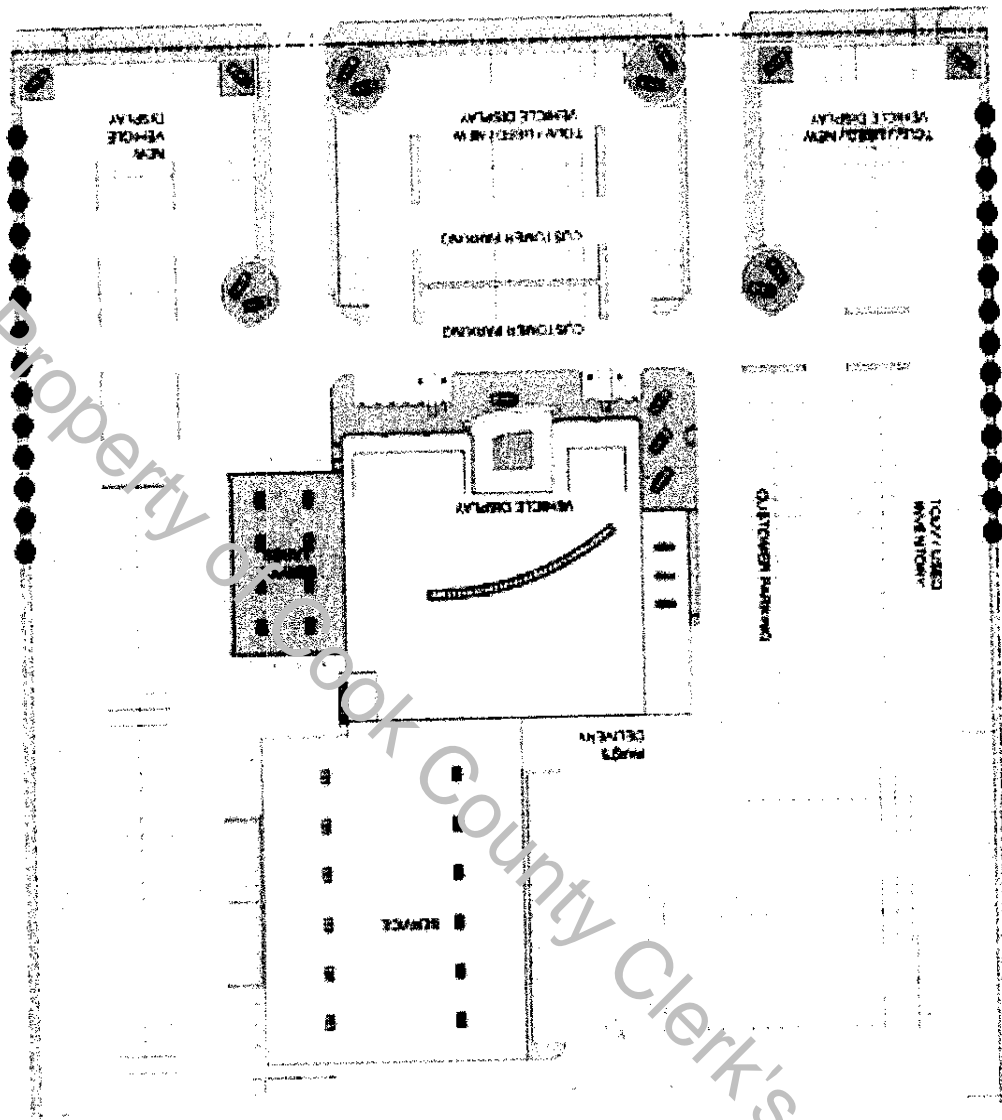


LOUNGE AREA FURNITURE



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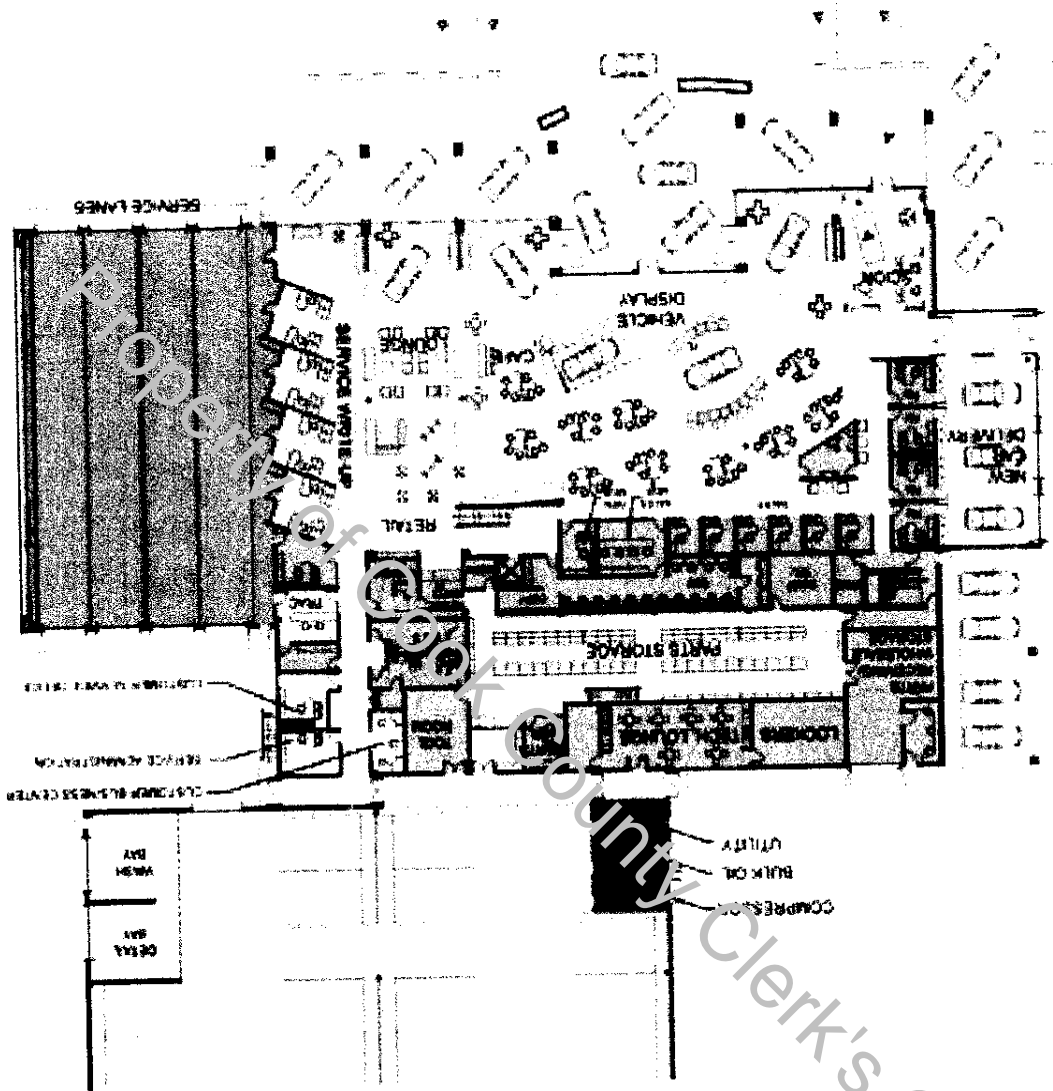
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The Toyota Image USA II program includes a holistic site design. The new approach enriches the shopping experience on the lot by providing highly visible display areas. These displays are included at the front of the lot to offer drive-by visibility, and at other logical lot locations with easy access for sales and service customers. Customer parking is provided with adjacency to the showroom entrance. The design of the lot offers a clean, organized presentation of Toyota's broad product line, and creates a positive, welcoming impression for the dealer.

## Site Plan

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The floor plan allows a feeling of open space. Subtle elements such as the architectural drop ceilings in warm, natural materials help to delineate specific customer zones with a sense of openness.

The Service Area has a logical flow that helps busy customers navigate through it. Its adjacency to the showroom enables service customers to experience Toyota's latest product offering.

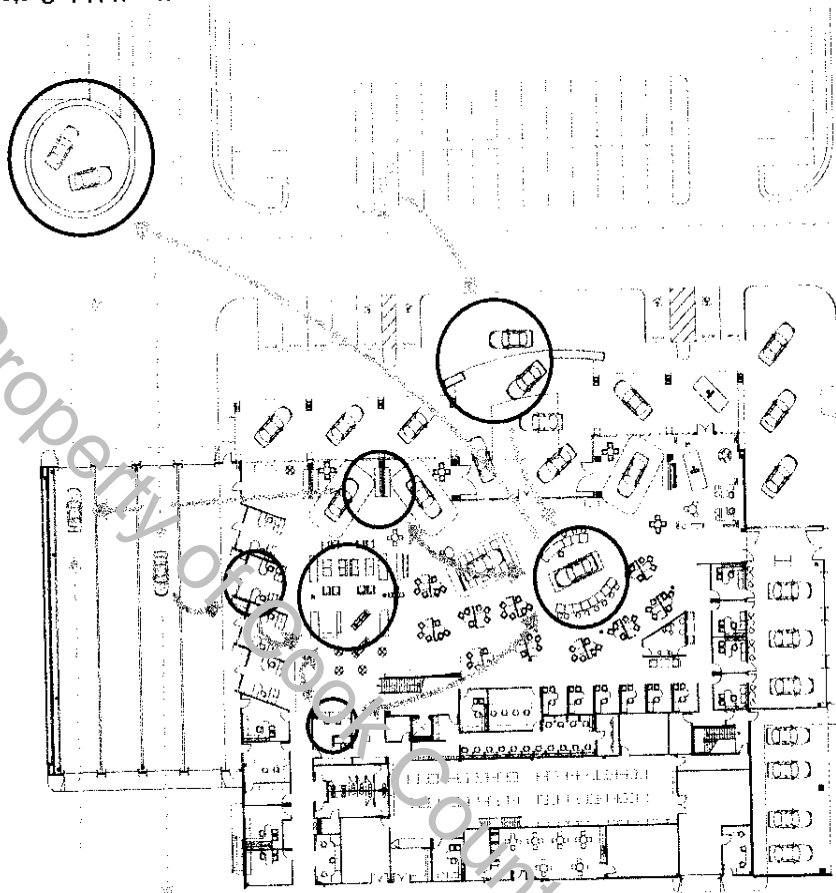
The floor plan for Toyota's Image USA II is designed to create logical and recognizable customer zones, and to achieve optimal adjacencies. Product showrooms sit across the front of the dealership interior and correspond directly to the exterior display zones and signage. A greeting area is the first point of interaction inside the showroom. The customer lounge is positioned to link the public areas, service write-up, cafe and showroom. Children's areas are situated immediately adjacent to parent waiting areas and offer clear visibility to allow family members to stay connected and comfortable.

## Floor Plan



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New Vehicle Customer  
Service Customer



## Lot and Service Experience

### Site Visit

Even a tentative customer will be comfortable approaching the new dealership lot. The various car display areas are clearly defined, with easy access to customer parking in front of the showroom. This customer visits and "shops" the exterior courtyard the same as an interior retail space, having the ability to view the vehicle information seen through the brand showroom's display windows. The courtyard allows a natural transition into the showroom and straight to the reception/feature vehicle display area. Detailed information is available via online access and display graphics. With preliminary knowledge in hand, the customer is ready for a more leisurely purchase transaction.

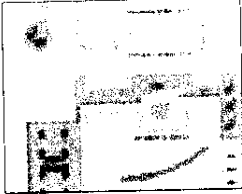
### Service

Customers visiting the site for service have clear visibility to the service lanes. The lanes are clearly marked as they approach the covered area. Staff are clearly visible and approach the customers in their car to greet them and review their service needs while in their car. Customers are accompanied into the Service Write-Up offices adjacent to the lanes. From these offices, they are attracted by the comfortable, well-lit lounge, parts and accessory retail area, and product showroom. Purchases may be made from the convenient cashier. A feature display attracts the service customer interested in learning more about Toyota's new product line. The display fixtures near the product showrooms offer more new, exciting items. After service is completed, customers can pick up their cars by walking directly from the showroom, then driving off the lot.

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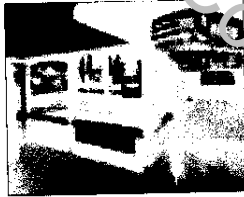
Directional Signage (New Brand Image)



Appropriately Identified Dedicated Customer Parking



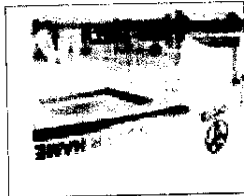
Materials Palette



Scion Fascia Sign (if Scion Dealer)



Light Grey Fascia with Red Band



Entry Portal with Toyota Logo, Letters and Dealer Name



Building Fascia Signs and Brand Signs

## EXTERIOR ELEMENTS

## Core Design Elements

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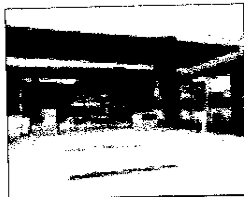
## Core Design Elements

### INTERIOR ELEMENTS

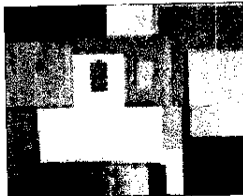
Differentiated Showrooms



Dedicated Delivery Area (enclosed preferred)



Finish and Color Palette - walls/floors/ceilings



Covered and appropriately enclosed Service Lanes



Minimum service stall dimension:  
14'-0" x 40'-0" (include 1/2 aisle width)

Full-size truck capability in Service  
with appropriate # of stalls

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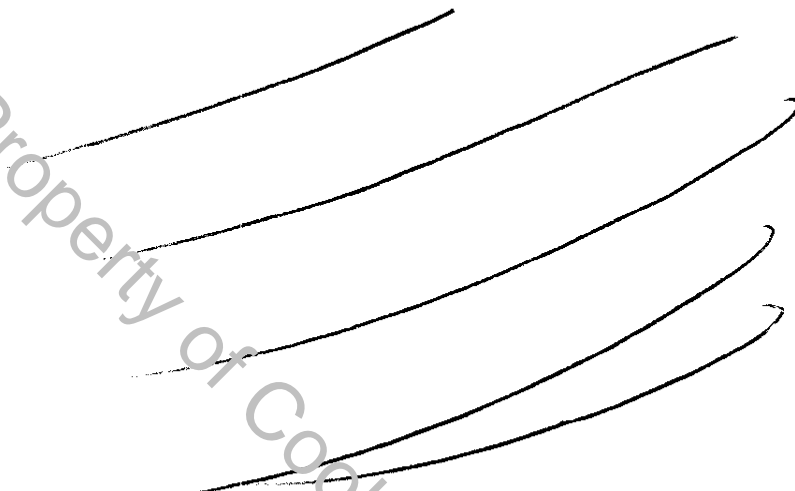
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Contact your region for additional details about the Toyota Comprehensive Facility Initiative.

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**Exhibit "E"**  
**To be Determined**

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Action	Target Date	Default Date	Penalty Amount
Apply for Planned Development Approval	11-01-2007	02-01-2008	
Apply for a building permit	06-30-2008	09-30-2008	25,000
Commence demolition			
Submit construction financing commitment and development budget			
Commence environmental remediation (if necessary)			10,000
Complete Demolition			
Close on the Property	03-31-2008	06-30-2008	
Obtain Foundation Permit and Commence Site Work			
Obtain Building Permit			25,000
Commence Foundation Construction			100,000
Complete Environmental Remediation (if necessary)			
Complete Foundation Installation			
Commence vertical construction			
Complete shell and core			100,000
Occupy Building, First C of O	09-01-2009	12-01-2009	300,000

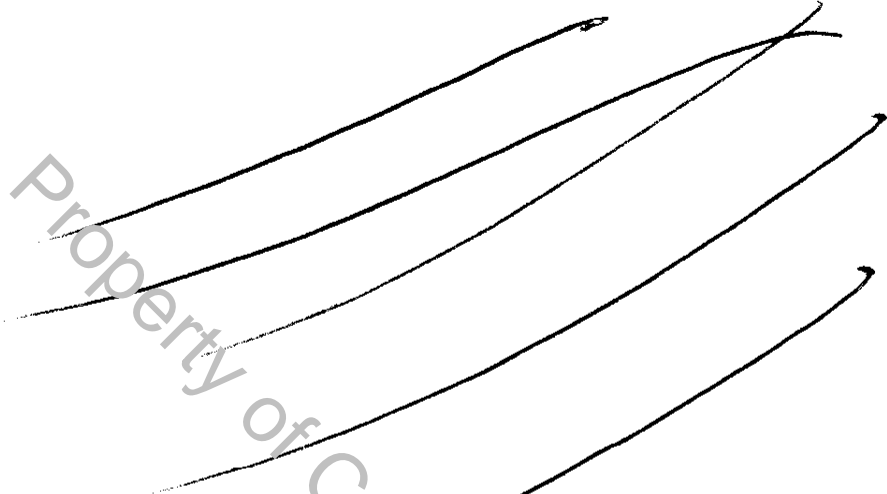
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Development Schedule

EXHIBIT F

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To be Determined

Exhibit "G"