

When recorded, return to:

Debbie Barber, Town Clerk
and Bill Lee, Town Manager
The Town of Camp Verde
P.O. Box 710
473 S. Main St.
Camp Verde, AZ

ANNEXATION AND DEVELOPMENT AGREEMENT

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 26 day of February, 2005 (the "Effective Date"), by and between the **Town of Camp Verde**, an Arizona municipal corporation (the "Town"), **Steven C. Coury**, a married man dealing with his sole and separate property and **Julie Ann Coury**, a married woman dealing with her sole and separate property (Steven C. Coury and Julie Ann Coury shall be referred to herein as the "Owner"). The Town and Owner are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

A. WHEREAS, **Steven C. Coury and Julie Ann Coury** separately own two parcels of real property comprising a total acreage of 25 acres (the "Property") located in an unincorporated area of Yavapai County, which is legally described in **Exhibit A**, which is attached hereto and incorporated herein by reference. Steven C. Coury owns and operates an automobile dealership under the name of "Steve Coury Buick/Pontiac/GMC Truck" (the "Dealership") on seven (7) acres of the Property; and

B. WHEREAS, The Dealership has made a significant investment on advertising over the past several years to create an image with the consumer that one of the key advantages to purchasing a vehicle at the Dealership is that the purchaser will not pay city sales tax. By agreeing to be annexed into the Town, the Dealership will lose the investment the Dealership has made in advertising the sales tax advantages of purchasing a vehicle at the Dealership and will lose the competitive advantage with the Dealership's customers and competitors that the lack of a city sales tax gives the Dealership. Owner is willing to forego the economic advantage that the lack of a city sales tax gives the Owner by agreeing to permit the Property to be annexed into the Town, in consideration of, and in return for the Town providing Owner certain Economic Incentives for the existing Dealership, as well as for any new development opportunities Owner may bring to the Property and the Town during the term of this Agreement. It is the intent of the Town that the Economic Incentives compensate Owner for a portion of the losses they will incur upon the annexation of the Property into the Town; and

C. **WHEREAS**, the Parties agree that the current and future development of the Property, as well as the annexation of the Property into the municipal boundaries of the Town, will provide for orderly, controlled and quality growth in the area, will improve and enhance the economic welfare of the residents of the Town, as well as increase the tax revenues to the Town, which revenues would not be generated without such annexation and development or which revenues will likely exceed those which would be generated by alternative uses of the Property; and

D. **WHEREAS**, the Parties intend that this annexation, the current development of the Property and the proposed future development of the Property will be consistent with and complementary to the Camp Verde General Plan (the "**General Plan**"); and

E. **WHEREAS**, the Parties desire that the Property be annexed into the corporate limits of the Town and be developed as an integral part of the Town; and

F. **WHEREAS**, an annexation proposal has been filed with Yavapai County and meetings and hearing have been held and are being scheduled in connection with the annexation of the Property into the Town; and

G. **WHEREAS**, the current zoning of the Property under the Yavapai County zoning ordinance is M1-10A. The Owner has requested C3-2A zoning on the property. The Town agrees that C3-2A zoning is appropriate for the Property and that current development is consistent with C3-2A zoning. The Parties further agree that C3-2A zoning is the most appropriate land use designation for the future development of this Property under the terms of this Agreement because it establishes proper land use regulations and sets forth densities and intensities appropriate to support commercial and automotive based retail uses, in context to the location and topography of the Property. Prior to the execution of this Agreement, the Town has held public hearings and received public comment and has otherwise duly considered all such matters; and

H. **WHEREAS**, one of the Owners has already developed a portion of the Property for automotive based retail uses and the Town is desirous of annexing the Property to increase the tax revenues to the Town arising from and related to the current automotive related uses; and

I. **WHEREAS**, the Owner intends to develop the Property on the remainder of the Property for additional commercial and automotive based retail uses but desires to develop the Property within the Town in order to ensure adequate and dependable public services to the Property. The Town wishes to annex the Property to exercise proper oversight of the Property as well as the future development of the public infrastructure and municipal services in the Town's long range planning area; and

J. **WHEREAS**, in the event Owner pursues any future development of the Property and the Owner needs to construct or cause to be constructed certain additional public and private improvements in and around the Property in order to properly serve the Property, including without limitation certain Public Improvements, which Public Improvements the Parties agree may be financed and constructed pursuant to the terms of this Agreement; and,

K. **WHEREAS**, the Town also has determined that encouraging the development of the Property pursuant to this Agreement will result in significant planning, economic and other public purpose benefits to the Town and its residents by, among other things: (i) possibly providing for the construction of the Public Improvements; (ii) providing for development of the Property consistent with the Town's General Plan; (iii) increasing tax revenues to the Town arising from or relating to the existing and future improvements to be developed on the Property; (iv) creating new jobs and otherwise enhancing the economic welfare of the residents of the Town; and,

L. **WHEREAS**, the Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05, in order to facilitate the annexation, proper municipal zoning designation and development of the Property by providing for, among other things: (i) conditions, terms restrictions and requirements for the annexation of the Property by the Town; (ii) the permitted uses for the Property; (iii) the density and intensity of such uses; and (iv) other matters related to the development of the Property; and the terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement; and,

M. **WHEREAS**, the Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S § 9-500.11. The actions taken by the Town pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will otherwise improve or enhance the economic welfare of the residents of the Town.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereto agree as follows:

ARTICLE I PURPOSE AND SCOPE OF AGREEMENT

1.1 **Recitals.** The Parties represent to one another that the recitals set forth above, which are incorporated herein by reference, are true and correct, and acknowledge that the Parties may rely thereon.

1.2 **Purpose.** This Agreement is intended to encourage the use and development of the Property for commercial and automotive based retail uses. The Agreement is intended to create incentives to the Owner to bring commercial opportunities to the Property, which might result in its full development as an integrated commercial development, through the construction of private structures and the placement of Public Infrastructure and the location of viable businesses and employment opportunities on the Property. The Parties realize that without the benefits offered to the Owner through this Agreement that the development of this Property to its full potential will take longer and be less successful than with these benefits. The Parties further

understand and agree that in order for the Owner to receive the benefits associated with a particular phase of development under the terms of this Agreement, the Owner must first develop that particular phase of the Property.

1.3 Property. On the date this Agreement is entered into by the Parties, the Property consists of two parcels of real property; (i) the existing developed parcel, which is approximately seven (7) acres in size (the "**Developed Parcel**"), on which the existing auto dealership is located; and (ii) undeveloped parcels, which collectively are approximately eighteen (18) acres in size (the "**Undeveloped Parcel**"), along with rights-of-way and streets appurtenant thereto. See Map of Property attached hereto as **Exhibit B-1**. The Parties intend, and the objective of this Agreement is to achieve, the annexation and future development of the Property in furtherance of the goals of the Town's General Plan. The purpose of this Agreement is to create an economic tax incentive to the Owner: (A) to preserve and enhance the existing automobile dealership, (B) to encourage the future and full development of the Property, and (C) to facilitate the construction of new commercial development and Public Infrastructure on and around the Property, within the corporate boundaries of the Town. The Parties understand and expect at some time during the Term of this Agreement that the Arizona Department of Transportation ("**ADOT**") may elect to widen Highway 260, and in the process, ADOT may take or condemn a portion of the Property. The Owner may acquire a similar amount of acreage adjacent to or in the vicinity of the Property ("**New Property**") if such an ADOT taking or condemnation were to occur. Therefore, the Parties agree that if the Owner were to lose part of the Property to ADOT, and subsequent adjacent parcels are acquired by Owner, Owner is entitled to request annexation of any New Property acquired by Owner. The New Property, up to the amount acquired by ADOT, will be made a part of this Agreement if annexation is successful. The legal description of the New Property will be appended as **Exhibit A** of this Agreement.

1.4 Economic Incentives. To carryout the objective of this Agreement, **Section 7.1** and the Schedule of Performance attached hereto as **Exhibit B** of this Agreement establish time periods in which: (1) the Owner may actively pursue new commercial and automotive retail based development opportunities for the Property, and (2) the Owner will receive the Economic Incentives from the Town as consideration for Owner agreeing to be annexed into the Town and to reimburse Owner for the risk and investment made in the new commercial and automotive based retail development and any private and Public Improvements.

1.5 Scope. This Agreement is intended to encourage and incentivize the Owner to agree to be annexed into the Town and once annexed, to develop the undeveloped portions of the Property for the benefit of the Owner and the Town. This Agreement and the Schedule of Performance, set forth in **Exhibit B**, are intended to establish goals and incentives for Owner to attempt to achieve in return for the Economic Incentive benefits offered by the Town. The Agreement and Schedule of benefits are not intended to: (i) mandate any additional performance or future development of the Property by the Owner; (ii) penalize Owner for failure to develop within the timelines set forth on the Schedule of Performance, except to authorize the Town to withhold the applicable economic benefit if the Owner fails to bring development to the Property within the timelines set forth on the Schedule of Performance; (iii) limit the Owner's ability to

receive an Economic Incentive vested pursuant to the terms of this Agreement; or (iv) mandate or limit the number of developments that may be placed on the Property.

ARTICLE II DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

- 2.1 **"Agreement"** means this Annexation and Development Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The **Recitals A through M**, inclusive, are incorporated herein by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of the Parties' obligations beyond those expressly set forth in the numbered Articles and Sections of this Agreement.
- 2.2 **"Annexation and Zoning Ordinance"** is defined in Section 3.1.
- 2.3 **"Annexation Date"** is the date the Town Council adopts the ordinance annexing the Property, but only if the ordinance becomes final after the annexation of thirty days from the adoption of said ordinance pursuant to A.R.S. § 9-471(D).
- 2.4 **"Applicable Laws"** is defined in Section 3.8.
- 2.5 **"A.R.S."** means the Arizona Revised Statutes as now or hereafter enacted or amended.
- 2.6 **"Certificate of Occupancy"** means a final written acceptance of the completed and inspected development, issued by the Town Council or appropriate administrative staff member of the Town. A Certificate of Occupancy will not be issued until the entire Property or phase thereof is completed in conformance with this Agreement and accepted by the Town.
- 2.7 **"Commencement of Construction"** means the obtaining of a building, excavation, grading or similar permit by Owner for the construction of the subject Improvement.
- 2.8 **"Completion of Construction"** means: (i) the date on which final Certificate of Occupancy has been issued by the Town for any commercial development on the Property; and (ii) for the Public Improvements, acceptance of dedication by the Town Council or appropriate administrative staff member of the Town of the completed Public Improvements for maintenance in accordance with the policies, standards and specifications contained in the applicable Town ordinances, which acceptance shall not be unreasonably withheld, conditioned or delayed.

- 2.9 **“Conceptual Plan”** is defined in Section 3.4.
- 2.10 **“Current”** as it exists as of the Effective Date of the Agreement.
- 2.11 **“Default”** is defined in Section 9.1.
- 2.12 **“Developed Parcel”** is defined in Section 1.3.
- 2.13 **“Development”** means and refers to the development of a multi-phased commercial development the Parties envision being developed and constructed on the Property. The different phases of the Property envisioned by the Parties at the time this Agreement is executed are divided into the following phases:
- (i) The existing Steve Coury Buick/Pontiac Dealership facility (the **“Existing Dealership Phase”**).
 - (ii) The development of future additional commercial and automobile related retail facilities with related site development (the **“Future Commercial Development Phase”**).
- 2.14 **“Economic Incentive”** is defined in Section 7.1
- 2.15 **“Effective Date”** means the date on which the last Party executes this Agreement, as set forth above. The Effective Date shall be no less than thirty (30) days from the date upon which this Agreement has been adopted and approved by ordinance by the Town Council, and shall not occur before the annexation of the Property by the Town has been completed.
- 2.16 **“Improvements”** means any and all improvements that may be constructed within or adjacent to the Property.
- 2.17 **“Improvement District”** means and refers to the district created to finance the design and construction of the public road improvements, public utilities and other onsite and offsite public infrastructure development.
- 2.18 **“Monthly ADR Tax Report”** is defined in Section 7.2.2.
- 2.19 **“New Property”** is defined in Section 1.3.
- 2.20 **“Owner”** is defined in the Introductory Paragraph on page 1 and includes any successor thereto.
- 2.21 **“Owner’s Representative”** is defined in Section 5.3.

- 2.22 **“Party”** or **“Parties”** is designated on the first page of this Agreement.
- 2.23 **“Property”** is defined in **Recital A**.
- 2.24 **“Public Improvements”** is defined in **Article VI**.
- 2.25 **“Public Use Assessment”** is defined in **Section 6.8** of this Agreement.
- 2.26 **“Sales Taxes”** means for the purposes of this Agreement the two percent (2.0%) general transaction privilege tax imposed under the Tax Code of the Town of Camp Verde and any increase or decrease of such tax during the term of this Agreement imposed on and actually received by the Town during the Rebate Period.
- 2.27 **“Sales Tax Rebate”** is defined in **Section 7.1.1**.
- 2.28 **“Special Fund”** is defined in **Section 7.2.2**.
- 2.29 **“Schedule of Performance”** means and refers to that schedule of performance agreed to by the Parties as set forth in **Exhibit B** attached hereto and incorporated herein by reference.
- 2.30 **“Specific Plan of Development”** is defined in **Section 3.4**.
- 2.31 **“Taxable Activities”** is defined in **Section 7.1.1**.
- 2.32 **“Term”** is defined in **Section 7.4**.
- 2.33 **“Undeveloped Parcel”** is defined in **Section 1.3**.

ARTICLE III ANNEXATION AND DEVELOPMENT PLANNING

3.1 **Annexation**. The Owner hereby agrees to execute the Town’s annexation petition for the Property within one month of the Effective Date of this Agreement. Upon receipt of the Annexation Petition, the Town agrees to comply with the provisions of A.R.S. § 9-471 *et seq.* and, if determined to be in the best interest of the Town, adopt the final ordinance annexing the Property into the corporate limits of the Town. The Town’s annexation ordinance (**“Annexation and Zoning Ordinance”**) shall adopt a zoning classification pursuant to **Section 3.2**, below. The final annexation ordinance shall contain a provision providing to the Owner the unilateral right, but not the obligation to call for the immediate rescission of the annexation ordinance by the Town if: (i) a referendum against the Town challenging the validity of the annexation, the C3-2A zoning designation or this Agreement passes the voters of the Town; (ii) the Town does not grant C3-2A zoning to the Property at the time of the adoption of

the annexation ordinance; or (iii) any Party succeeds in litigation challenging the annexation, the C3-2A zoning designation or this Agreement. The Town expressly acknowledges and agrees that the annexation petition and this Agreement will have been executed and delivered to the Town contingent on the Town's adoption of the ordinance described in the preceding sentence, including the rescission provisions. In addition to the foregoing, in the event the Town has not adopted an ordinance annexing and zoning the Property, as provided herein, on or before June 12, 2005, the Owner may elect to terminate this Agreement by withdrawing any petition(s) for annexation of the Property that may be pending by giving written notice thereof to the Town.

- 3.2 **Zoning.** Concurrently with the approval of the final ordinance annexing the Property into the corporate limits of the Town, pursuant to A.R.S. § 9-471(L), the Town shall adopt zoning classifications which permit densities and uses no greater than those permitted by Yavapai County immediately preceding the annexation. The current zoning of the Property under the Yavapai County zoning ordinance is M1-10A. The Town has previously held public meetings on a Zoning Amendment and has fully complied with all other requirements of A.R.S. § 9-462.04 necessary to adopt municipal zoning upon annexation of the Property, as provided in the Annexation and Zoning Ordinance. After the Annexation and Zoning Ordinance have become final under A.R.S. § 9-471(D), the Property shall be zoned C3-2A, the equivalent Town zoning to the current County zoning.
- 3.3 **General Plan Amendment.** The Town has complied with the provisions of A.R.S. § 9-461.06 regarding an amendment to the General Plan ("General Plan Amendment") that includes the Property and zoning for C3-2A. Should the Town fail to adopt the General Plan Amendment concurrently or prior to the adoption of the Annexation and Zoning Ordinance, this Agreement shall not become effective and neither Party shall have any obligations under this Agreement. Nothing in this Section is intended to limit the discretion of the Town in reviewing, adopting or declining to adopt the General Plan Amendment.
- 3.4 **Conceptual Plan.** The Owner's conceptual plan for the development of the Property includes continuing the existing automobile based retail use located on the Developed Parcel and developing additional commercial opportunities on the Undeveloped Parcels, and in return the Owner will receive Economic Incentives from the Town based on the Schedule of Performance for additional development.
- 3.5 **Specific Plan of Development.** Upon the Owner's procurement of appropriate commercial development opportunities for all or any portion of the Property, the Owner shall submit to the Town a proposed "Specific Plan of Development" for the Property, in accordance with normally applicable Town submission requirements for such applications. The Specific Plan of Development shall guide development of that portion of the Property upon approval of by the Town.

3.6 **Commercial Subdivision.** Upon the Owner's procurement of an appropriate commercial development opportunity for the Property, the Owner shall submit to the Town a preliminary plat and supplemental materials for the subdivision of the Property in accordance with normally applicable Town submission requirements for such applications. The Owner diligently shall pursue to completion, subject to the Town's customary review and approval process, the preparation and approval by the Town of a final plat for the subdivision of the Property, such final plat to be recorded in the official records of Yavapai County, Arizona, prior to the Commencement of Construction of the Property or any phase thereof.

3.7 **Amendments.** The Parties acknowledge that when and if Owner submits any Specific Plan of Development, that it constitute the vision of the Parties for the future commercial development of the Property but that it shall not mandate that Owner actually bring the commercial development to the Property or to otherwise perform in a particular manner. Therefore, the Parties recognize that it may be necessary from time to time to amend any Specific Plan of Development the Owner may submit to the Town, in order to reflect changes in market conditions and development financing and/or to meet the new requirements of one or more of the potential users of any part of the Property. If after the Town Council has accomplished the necessary review and approvals of the Specific Plan of Development and the Parties find that changes or adjustments are necessary or appropriate, any such changes or amendments shall be subject to review and approval by the Town Council in accordance with the customary review and approval process.

3.8 **Applicable Laws.** For the purposes of this Agreement, the term "Applicable Laws" means the federal, state, county and Town laws (statutory and common law), rules, regulations, permit requirements, development fees (adopted in accordance with A.R.S. § 9-463.05), and ordinances of the Town which apply to the development of the Property or any phase thereof, at the time of construction. The development of the Property will be subject to the 2003 International Building Codes as adopted by the Town, with local amendments.

3.8.1 **Permissible Additions to the Applicable Rules.** Notwithstanding the provisions of Section 3.8 above, the Town may enact the following provisions, and take the following actions, which shall be applicable to and binding on the development of the Property.

3.8.1.1 Future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the town, excluding development fees or exactions, which are applicable to all similarly-zoned property in the Town and not contrary to the existing land use regulations established in Section 3.8, provided such land use ordinances, rules,

regulations, permit requirements, and other requirements and official policies shall not impair the Owner's ability to develop the Property in the manner provided in this Agreement.

- 3.8.1.2** Future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the Town enacted as necessary to comply with mandatory requirements imposed on the Town by the county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the Town, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.
- 3.8.1.3** Future generally applicable ordinances, rules, regulations and permit requirements (but excluding new development fees or exactions) of the Town reasonably necessary to alleviate legitimate severe threats to public health and safety, in which event any ordinance, rule, regulation, permit requirement or other requirement or official policy imposed in an effort to contain or alleviate such a legitimate severe threat to public health and safety shall be the most minimal and least intrusive alternative practicable and , except in a bona fide emergency, may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily or in a discriminatory fashion.
- 3.8.1.4** Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage and similar construction and safety-related codes, such as the Uniform Building Code, which updates and amendments are generally by a nationally recognized construction/safety organization, such as the International Conference of Building Officials ("ICBO"), or by the county, state or federal governments, provided such code updates and amendments shall be applied in the most minimal and least intrusive manner which is practicable under the circumstances.
- 3.8.1.5** Amendments to such construction and safety codes generated by the Town for the purposes of conforming such codes to the conditions generally existing in the Town, provided that such code amendments shall be applied in the most minimal and least intrusive manner which is practicable under the circumstances.

**ARTICLE IV
FUTURE AND EXISTING LAND USE**

4.1. Non-Conforming Uses. As of the Effective Date of this Agreement, all legally commenced uses, all existing buildings, and all other structures existing on the Property shall be deemed to be legally nonconforming uses (sometimes referred to as "grandfathered uses") and shall be entitled to all rights granted to nonconforming uses under all Applicable Laws. The current and future owners of the Property shall be fully entitled to and shall enjoy said nonconforming rights as to all such zoning, structures, buildings, uses, parking, and all other relevant regulations set forth in Applicable Law. All structures and improvements built after annexation and significant expansions of existing structures as defined in the Town Code must be built to Town Zoning and Code requirements.

4.2 Rezoning. At any time during the Term of this Agreement, if a Town approved Specific Plan of Development demonstrates that the Property, or any portion thereof, requires different zoning than is designated for the Property at that time, the Town agrees to initiate procedures to change the zoning to an appropriate designation(s) consistent with the Specific Plan of Development in a manner then set forth in the Town's zoning ordinance for amendments. Following the redesignation of the Property to C3-2A pursuant to the terms of the Town's annexation ordinance, the Town shall not initiate any changes or modifications to the zoning of the Property during the Term of this Agreement, except at the request of the Owner and upon filing of the proper paperwork and fees or as required by Applicable Laws.

4.3 Fee Waivers. The Town hereby agrees to waive any and all application and processing fees related to the rezoning or land entitlement processes applicable to the Property. In addition, the Town agrees to waive any building or permit fees for any new buildings constructed on the Property within forty-eight (48) months of the Effective Date of this Agreement, provided this Agreement remains in effect at the time.

**ARTICLE V
OWNER'S DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION OF
IMPROVEMENTS**

5.1. Approvals. The Town hereby agrees that, in connection with any requests for approval relating to the development of the Property and the construction of any Public Improvements that only the standard plan or review requirements will be imposed on the Owner.

5.2 Review and Inspection Process. The Town acknowledges and agrees that in the event that Owner proposes any development of the Property, that the Town will provide an expedited review and construction inspection process, as may be necessary for that particular proposed development, in accordance with the terms in Section 5.4. Accordingly, the Parties agree that if at any time Owner believes an impasse has been reached with the Town staff on any

issue affecting the Property, Owner shall have the right to immediately appeal to the Town Manager for an expedited decision pursuant to this Section 5.

5.3 Appointment of Representative. In order to help expedite decisions by the Town relating to the development of the Property, the Town agrees to designate a representative ("Town Representative") of the Town to act as a liaison between the Town and the Owner and between the various departments of the Town and the Owner. The Town Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this Section 5.3 to provide the Owner with one individual as the Town's principal representative with respect to the development of the Property. The Owner shall also designate a representative ("Owner's Representative") who shall serve as a liaison between the Property and the Town. The initial Town Representative shall be Will Wright, Community Development Director, and the initial Owner Representative shall be Steve Coury. The Parties may change their respective representatives at any time, by giving notice to the other Party as provided in Section 10.4.

5.4 Owner Assistance. Notwithstanding anything contained herein to the contrary, the Owner acknowledges that the Town may not have sufficient number of personnel to implement an expedited development review and/or expedited construction inspection process. In the event the Owner gives notice to the Town electing to have the Town implement an expedited development review and/or construction inspection process, and the Town responds in writing stating that it does not have the personnel or resources to provide the expedited review or inspection, then the Owner shall engage at its cost such private independent consultants and advisors as are approved by the Town to assist it in the review and/or inspection process; provided, however, that such consultants and advisors shall take instruction from, be controlled by, and be responsible to the Town rather than the Owner and provided further that, to the extent the Town elects to use its own personnel and the Town incurs overtime and similar charges, the Owner shall be responsible only for incremental overtime costs incurred above the Town's ordinary operation expenses for such personnel.

5.5 Certificate of Occupancy. Promptly after final Completion of Construction of any Improvements on the Property approved by the Town, following the inspection and approval of the Improvements, the Town shall furnish to the Owner a Certificate of Occupancy certifying that the construction of the Improvements has been completed. Upon issuance of the Certificate of Occupancy, the Owner may record the Certificate of Occupancy in the Office of the Yavapai County, Arizona Recorder. In the event that the Town refuses or fails to provide the Certificate of Occupancy, the Town shall, within five (5) business days after written request by the Owner issue a written statement indicating in adequate detail why the Certificate of Occupancy was not issued by the Town and what measures or acts the Town requires of Owner before the Town will issue the Certificate of Occupancy.

ARTICLE VI PUBLIC IMPROVEMENTS

6.1 Public Improvements. If the Owner proposes to develop the Property, pursuant to A.R.S. §34-201(L), the Town may impose additional conditions to the development, as authorized by A.R.S. § 9-463.01, and the Owner shall design, construct or cause to be constructed and dedicated to the Town the Public Improvements subject to the terms and conditions of this Agreement.

6.2 Construction and Phasing. Any Public Improvements required to support the development of all or any portion of the Property may be constructed in phases in accordance with the Specific Plan of Development and Schedule of Performance.

6.3 Design, Bidding, Construction and Dedication. Any Public Improvements that are financed by the Parties pursuant to an Improvement District shall be designed, publicly bid, constructed and dedicated in accordance with Applicable Laws, including without limitation all Town procurement and bidding procedures.

6.4 Town Review and Approval of Plans; Financial Assurances. The Owner recognizes that its development and construction of the Public Improvements pursuant to this Agreement is subject to the Town's normal plan submittal, review and approval processes, day-to-day inspection services, and the financial assurance requirements. The Town will use its best efforts to expedite its regulatory processes, including but not limited to zoning, plat, use permit, variance, design review and building permit processes, subject to the terms of Article 5 of this Agreement.

6.5 Payment of Public Improvement Costs. The Owner shall pay all Public Improvement Costs as the same become due, subject to Section 6.7 of this Agreement, if applicable, as a partial consideration for the Economic Incentive payments described in Section 7.1 of this Agreement.

6.6 Dedication, Acceptance and Maintenance of Public Improvements. Public Improvements are defined herein as streets, utilities, parking facilities, drainage facilities, storm water retention facilities and other on-site and off-site infrastructure including but not limited to water and sewer delivery and treatment facilities, that are or will be owned and/or operated by the Town or an Improvement District appropriately formed to conduct or provide such services (the "Public Improvements"). At such time as any Public Improvements are completed, then upon written request of Owner, the Town or Improvement District shall accept dedication of such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as the Town or Improvement District may impose, including without limitation a two (2) year workmanship and materials contractor's warranty. Upon acceptance, the Public Improvements shall become public facilities and property of the Town or Improvement District and the Town or Improvement District shall be solely responsible for all subsequent maintenance, replacement or repairs; and (except for matters covered by express warranties provided to the Town or Improvement District), the Town or Improvement District shall bear all risk of loss, damage or failure to such Public Improvements, and shall indemnify the Owner and its affiliates, members, managers, agents and representatives, against any claims arising after the Town or Improvement District's acceptance of the Public

Improvements. Until accepted by the Town or Improvement District, Owner shall bear all risk of loss, damage, or failure to the Public Improvements constructed by the Owner and shall indemnify the Town or Improvement District and its officials, employees and Town Council members or Improvement District Board members, from and against any third party claim for bodily injury or loss or damage to tangible or intangible property caused, in whole or in part by negligent or willful acts or omissions of Owner or any of Owner's contractors agents or employees arising out of the design, construction, maintenance and repair of the Public Improvements which may occur, exist or arise prior to acceptance of the Public Improvements by the Town or Improvement District, but shall not include any negligent or willful acts or omissions of the Town or the Improvement District.

6.7 **Creation of Improvement District.** When and if the Owner decides to develop all or a portion of the Property, the Owner shall submit or cause to be submitted to the Town preliminary plans and specifications for the Public Improvements necessary to serve the Property for review and approval. Once the requisite Public Improvement Plans have been prepared by the Owner and approved by the Town, the Parties may agree to use their reasonable efforts to form one or more improvement districts (the "**Improvement District**"), or such other infrastructure financing mechanism the Parties may subsequently agree to, to finance the design and construction of on-site and off-site Public Improvements to serve the Property. The Parties understand and agree that the purpose of any Improvement District or other financing mechanism that the Parties may subsequently agree to, is to raise funds through the issuance of bonds to finance the construction of the required Public Improvements, and that the bonds will be repaid through assessments imposed against parcels, or any leasehold interests therein, within the Improvement District boundaries. The Owner herein agrees to pay its pro-rata share of the assessments levied by any Improvement Districts that are formed.

6.8 **Public Use Assessment.** In addition to the foregoing and in consideration for the initial imposition the Property will have at annexation on Town services, the Owner hereby agrees to pay the Town an annual assessment fee of no less than ten thousand dollars (\$10,000.00) ("**Public Use Assessment**"). This Public Use Assessment shall be made annually, prior to the end of the calendar year, through the Term of this Agreement.

ARTICLE VII ECONOMIC INCENTIVES

7.1 **Incentives to Owner.** The Town has determined that the future development of the Property: (i) will substantially enhance the economic health of the Town; (ii) will result in a net increase or retention of jobs in the Town; (iii) will add to the Town's tax base; (iv) will otherwise improve or enhance the economic welfare of the residents or businesses of the Town; (v) would not otherwise occur in this portion of the Town without these incentives; and (vi) demonstrates the potential to generate revenues and other benefits to the Town, which outweigh or are not disproportionate to the cost associated with these incentives. The Sales Tax Rebates are being offered by the Town as an inducement to Owner to consent to the annexation of the Property into the Town and for the purpose of offsetting Owner's future development and

Public Improvement costs to develop future phases of the Property and in partial consideration of the undertaking of the Owner's obligations under this Agreement. The Developed Parcel Sales Tax Rebate, the Second Dealership Sales Tax Rebate the Undeveloped Parcel Sales Tax Rebate, and the lease or rental of real property sales tax rebate are collectively referred to herein as the "Sales Tax Rebate" (also referred to herein as the "Economic Incentives"). The Developed Parcel Sales Tax Rebate Period, the Second Dealership Sales Tax Rebate Period and the Undeveloped Parcel Sales Tax Rebate Period are collectively referred to herein as the "Sales Tax Rebate Period". Therefore, in recognition of these benefits to the citizens of the Town of Camp Verde as set forth in this Section, the Town shall make the following payments and rebates to and on behalf Owner:

7.1.1 Sales Tax Rebate. The Town shall rebate and pay to Owner fifty percent (50%) of the current two percent (2%) ("Excise Sales Taxes") and any increase or decrease of such tax during the term of this Agreement imposed on and actually received by the Town for retail sales activities occurring within the Property (the "Taxable Activities") during the Rebate Period, and one hundred percent (100%) of the current two percent (2%) sales tax on the lease or rental of real property imposed on the Property (or any part thereof) and any increase or decrease of such tax during the Rebate Period term of this Agreement, provided that the Owner (as defined herein) has at least a fifty percent (50%) interest in the tenant entity. These rebates shall include:

- **Developed Parcel Sales Tax Rebate.** Fifty Percent (50%) of the current two percent (2%) of any and all Excise Sales Taxes and any increase or decrease of such tax during the term of this Agreement generated on the Developed Parcel and collected by the Town in any fiscal year (July 1st through June 30th), or portion thereof, so long as an auto dealership is operated thereon (the "Developed Parcel Sales Tax Rebate"), commencing upon the Town Council's adoption of the annexation ordinance for this Property and continuing for a period of two hundred and forty (240) months thereafter (the "Developed Parcel Sales Tax Rebate Period").
- **Second Auto Dealership Sales Tax Rebate.** If, in accordance with the Schedule of Performance, the Owner develops a second auto dealership (the "Second Dealership") on all or portion of the Undeveloped Parcel within forty-eight (48) months of the Effective Date of this Agreement, then fifty percent (50%) of the current two percent (2%) of any and all Excise Sales Taxes and any increase or decrease of such tax generated by the Second Dealership and collected by the Town in any fiscal year (July 1st through June 30th) or portion thereof (the "Second Dealership Sales Tax Rebate"), commencing upon the Town's issuance of a certificate of occupancy for the Second Dealership and continuing for a period of two hundred and forty (240) months thereafter, so long as an auto dealership is operated thereon (the "Second Dealership Sales Tax Rebate Period").

- **Undeveloped Parcel Sales Tax Rebate.** Fifty percent (50%) of the current two percent (2%) of any and all Excise Sales Taxes and any increase or decrease of such tax generated on all or a portion, except as to any portion of the Undeveloped Parcel developed as a Second Dealership, if any, and collected by the Town in any fiscal year (July 1st through June 30th), or portion thereof (the “**Undeveloped Parcel Sales Tax Rebate**”), commencing upon the Town’s issuance of a Certificate of Occupancy on any development commenced on all or a portion of the Undeveloped Parcel in accordance with the Schedule of Performance, but no later than one hundred twenty (120) months after the Effective Date of this Agreement and continuing for a period not to exceed two hundred and forty (240) months thereafter (the “**Undeveloped Parcel Sales Tax Rebate Period**”).
- **Sale or Lease of Real Property Tax Rebate.** One hundred percent (100%) of the current two percent (2%) sales tax on the lease or rental of real property within the Property and any increase or decrease of such tax (the “**Sale or Lease of Real Property Tax Rebate**”), commencing upon the Town Council’s adoption of the annexation ordinance and continuing for a period of two hundred forty (240) months thereafter (the “**Sale or Lease of Real Property Tax Rebate Period**”).

7.1.2 Independence of Economic Incentives. Owner may independently choose to develop none, all or portions of the Undeveloped Parcel pursuant to the **Exhibit B** Schedule of Performance in order to obtain the economic incentives related thereto. Failure to bring a Second Dealership or to develop any portion does not preclude development of any other portion, nor does it preclude Owner from gaining the benefit of the Economic Incentives set forth herein, except as specifically stated herein. Owner’s failure, inability or decision not to develop all or any portion of the Property shall not constitute a breach or default under this Agreement.

7.1.3 Identification Change Incentive. The Owner will incur as the result of annexation of the Property into the Town of Camp Verde certain expenses associated with changing the locational identity of the existing businesses currently occupying the Property. The Town, upon the annexation ordinance for this Property becoming final, pursuant to the provisions of A.R.S. § 9-471(D), will make a one-time incentive payment to the Owner in the amount of ten thousand dollars (\$10,000) to help defray the cost associated with this identification change within ninety (90) days of passage of the Annexation Ordinance.

7.2 Incentive Obligation of the Town.

7.2.1 Incentive Amounts. The Town hereby agrees to pay the monies generated by the Sales Tax Rebates to Owner in accordance with the terms of this Section 7 as an Economic Incentive under this Agreement in connection with the annexation of the Property and the future development of the Property. The Town shall make such payments pursuant to periodic economic incentive payments (the "**Economic Incentive Payments**") to the Owner under Section 7.2.3 of this Agreement.

7.2.2 Allocation and Deposit of Revenues. The Town shall create a special account (the "**Special Fund**") that is segregated from other Town accounts and funds and shall deposit the Sales Tax Rebate monies in the Special Fund and hold them in constructive trust for the benefit of the Owner for the purposes of paying Owner the payment obligations of this Agreement. The monies held in the Special Fund shall be deposited in an interest bearing account.

- (a) **Deposit of Sales Taxes.** The first deposit of Sales Tax Rebate monies into the Special Fund shall be made after the annexation ordinance for the Property becomes final and within thirty (30) days following the Town's receipt of its first monthly transaction privilege tax report from the Arizona Department of Revenue (the "**Monthly ADR Tax Report**") listing Excise Sales Taxes actually received by the Town from any Taxable Activities on the Property. Subsequent deposits of the Sales Tax Rebate monies shall be made within thirty (30) days following the Town's receipt of each subsequent Monthly ADR Tax Report until the expiration of the applicable Sales Tax Rebate Period.
- (b) **Vesting of the Economic Incentive.** The Economic Incentive for the Developed Parcel shall be deemed to vest to the benefit of the Owner after the annexation ordinance for the Property becomes final and the Owner's right to receive the Economic Incentive shall accrue when the Excise Sales Taxes are actually received by the Town from any Taxable Activities on the Developed Parcel. The Economic Incentive for that portion or portions of the Undeveloped Parcel that have received a timely Certificate of Occupancy from the Town shall be deemed to vest to the benefit of the Owner on the date the Owner receives a Certificate of Occupancy from the Town and the Owner's right to receive the Economic Incentive shall accrue when the Excise Sales Taxes are actually received by the Town from any Taxable Activities on that corresponding portion of the Undeveloped Parcel.
- (c) **Payment of Allocated Revenues Received by the Town.** The Town Administrator (or his designee) shall pay the Economic Incentive Payment for each quarter (or partial quarter if applicable) with respect to the Property.

- (d) **Computation and Report of Revenues.** Within forty-five (45) days following the end of each Town fiscal year, the Town will deliver to the Owner a statistical report of all Excise Sales Taxes generated from Taxable Activities within the Property ("**Computation and Report of Revenues**"). Such report shall specifically identify any offsets, credits, exclusions or other deductions from the Excise Sales Taxes generated by or attributable to the Property, which have been utilized by the Town in computing the Economic Incentive Payments for the purposes of this Agreement.
- (e) **Audit and Contest.** Owner shall have the right to audit and contest the Town Administrator's (or his designee's) determination of the Economic Incentive Payment amount owed to Owner for each quarter (or partial quarter if applicable) with respect to the Property, and of the Town's Computation and Report of Revenues, as determined pursuant to **Section 7.3.2(c) and (d)**, above .

7.2.3 Monthly Economic Incentive Payments. The Economic Incentive Payments shall be paid by the Town to Owner from the Special Fund on a monthly basis (the "**Allocated Revenues**"). The first Economic Incentive Payment shall be made by the Town to the Owner within fifteen (15) days after the Town's receipt of its first Monthly ADR Tax Report after the date the annexation ordinance for the Property becomes final. Thereafter, Economic Incentive Payments shall be made by the Town to the Owner within fifteen (15) days after the end of the preceding month until the end of the applicable Sale Tax Rebate Period.

7.2.4 Limitations on Payments to Owner. The Town shall in no event be required to pay to or on behalf of Owner, with respect to any period, any amount greater than the Allocated Revenues actually received by the Town in or prior to such period and credited (or which properly should have been credited) to the Special Fund.

7.3 Assignment. The Town agrees that Owner shall have the right to separately assign from time to time all or portions of the Economic Incentives that the Owner has the right to receive from the Town (or Owner's right to receive all or portions of the Economic Incentive Payments) to the Owner's heirs, devisees, assignees, transferees and successors, with respect to the all or portions of the Property to which the applicable Economic Incentives are attributable, provided that any such assignee shall own all or a portion of the Property. Owner shall provide the Town with copies of all such assignments, and the Town thereupon shall make such Economic Incentive Payments to such assignees in accordance with the terms of the assignments, and such assignees shall have the right to enforce their respective rights to receive such Economic Incentive Payments to the same extent as Owner. Nothing contained in this **Section 7.3** shall be deemed to relieve Owner from making all required applications to or with the Town, or from obtaining all required permits and approvals, in connection with any proposed construction on or development of the Property, subject to the terms and conditions of this Agreement.

7.4 **Term.** Unless terminated earlier pursuant to the terms of this Agreement, the Term of this Agreement shall expire on the thirtieth (30th) anniversary of the Effective Date (the "Term").

ARTICLE VIII INDEMNITY AND RISK OF LOSS

8.1 **Indemnity by the Owner.** The Owner shall pay, defend, indemnify and hold harmless the Town and its Town Council members, officers, employees and agents from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, experts' fees and court costs associated) which arise from or relate in any way to any negligent or willful acts or omissions by the Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Owner's obligations under this Agreement; provided however, that the provisions of this Section 8.1 shall not apply to any loss or to any instance in which a claim is asserted based, in whole or in part, upon an act or omission of the Town, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the Owner shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

8.2 **Indemnity by the Town.** The Town shall pay, defend, indemnify and hold harmless the Owner and their respective partners, shareholders, officers, managers, members, agents and representatives from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including reasonable attorneys' and experts' fees and court costs associated) which arise from or which relate in any way to any negligent or willful act or omission by the Town, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Town's obligations under this Agreement; provided however, that the provisions of this Section 8.2 shall not apply to any loss or to any instance in which a claim is asserted based, in whole or in part, upon an act or omission of the Owner and/or its Affiliates, or the respective agents, employees, contractors, subcontractors or representatives. The foregoing indemnity obligations of the Town shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

8.3 **Risk of Loss.** The Owner assumes the risk of any and all loss, damage or claims to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to the Town. At the time title to the Public Improvements is transferred to the Town by dedication deed, plat recordation, or otherwise, the Owner will, to the extent allowed by law, assign to the Town any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements shall be conditioned on the Town's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the Town, provided however that such warranty or warranties may be provided by the Owner's contractor or contractors directly to the Town and (in that instance) are not required from the Owner, and that any such warranties shall

extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

8.4 Town Representations. The Town represents and warrants to the Owner that:

8.4.1 The Town has the full right, power and authorization to enter into and perform this Agreement and each of Town's obligations and undertakings under this Agreement, and the Town's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Town Code.

8.4.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.4.3 The Town will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4.4 The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement, which has not been disclosed in writing to the Owner.

8.4.5 This Agreement (and each undertaking of the Town contained herein), constitutes a valid, binding and enforceable obligation of the Town, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The Town will use reasonable efforts to defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the Town as a party or which challenges the authority of the Town to enter into or perform any of its obligations hereunder. The severability and reformation provisions of Section 10.9 shall apply in the event of any successful challenge to this Agreement.

8.4.6 The execution, delivery and performance of this Agreement by the Town is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the Town is a party or is otherwise subject.

8.4.7 The Town has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8.5 Owner Representations. The Owner represents and warrants to the Town that:

8.5.1 The Owner has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of the Owner this Agreement, and the execution, delivery and performance of this Agreement by the Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

8.5.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.5.3 The Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.5.4 As of the date of this Agreement, the Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting the Owner, which could have a material adverse affect on the Owner's performance under this Agreement, which has not been disclosed in writing to the Town.

8.5.5 This Agreement (and each undertaking of the Owner contained herein) constitutes a valid, binding and enforceable obligation of the Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The Owner will use reasonable efforts to defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the Owner as a party or which challenges the authority of the Owner to enter into or perform any of its obligations hereunder. The severability and reformation provisions of Section 10.9 shall apply in the event of any successful challenge to this Agreement.

8.5.6 The execution, delivery and performance of this Agreement by the Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the Owner is a party or to which the Owner is otherwise subject.

8.5.7 The Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.5.8 The Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

**ARTICLE IX
DEFAULT; REMEDIES; TERMINATION**

9.1 Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party breaches any obligation required to be performed by the respective Party hereunder within any time period required for such performance, and such breach continues for a period of ninety (90) days after written notice thereof from the nondefaulting Party ("**Default**"); provided, however, if the breach cannot reasonably be cured within such ninety (90) day period, then the Party shall be in default if it fails to commence the cure of such breach within the ninety (90) day period and diligently pursue the same to completion. Absent written agreement to the contrary, if such breach is not cured within the additional ninety (90) day period, this Agreement may be terminated, at the sole and absolute discretion of the non-breaching Party.

9.2 Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Yavapai County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

9.3 No Personal Liability. No member, official, employee or agent of the Town shall be personally liable to the Owner, or any successor or assignee, (a) in the event of any default or breach by the Town, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the Town under the terms of this Agreement.

9.4 Owner's Remedies. In the event the Town is in breach under this Agreement and fails to cure any such breach within the time period required as set forth in Section 9.1 above, then, in that event, in addition to pursuing any and all other legal and equitable remedies which the Owner may have against the Town, the Owner may elect to terminate this Agreement by written notice delivered to the Town; provided, however, that any such termination shall not affect, and this Agreement and any Economic Incentives granted pursuant to this Agreement, shall continue in full force and effect with respect to those portions of the Property that have been previously developed by Owner and/or upon which Improvements have been constructed or substantial construction has commenced and upon which the applicable Economic Incentives have vested, and the Owner shall continue to make payments pursuant to Section 6.8 of this Agreement. In the event the Town defaults in its obligation to timely pay the Economic Incentive Payments to the Owner, the Town shall pay a default interest rate at the statutory ten percent (10%) rate of interest on the unpaid amounts, until Owner is paid in full.

9.5 Town's Remedies. In the event that the Owner is in breach under this Agreement and the Owner thereafter fails to cure any such breach within the time period described in Section 9.1 above, then the Town shall have the right to automatically terminate this Agreement

immediately upon written notice to the Owner; provided, however, that any such termination shall not affect, and this Agreement and any Economic Incentives granted pursuant to this Agreement, shall continue in full force and effect with respect to those portions of the Property that have been previously developed by Owner and/or upon which Improvements have been constructed or substantial construction has commenced and upon which the applicable Economic Incentives have vested.

**ARTICLE X
GENERAL PROVISIONS**

10.1 Cooperation. The Town and the Owner hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.

10.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

10.3 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

10.4 Notices. All notices, approvals, and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, and delivered personally or sent by nationally recognized courier (e.g., Federal Express, Airborne, UPS), or by United States mail, certified with return receipt requested, to:

If to the Town: Bill Lee, Town Manager
The Town of Camp Verde
P.O. Box 710, 473 S. Main Street
Camp Verde, AZ 86322

With a copy to: Camp Verde Town Attorney
The Town of Camp Verde
P.O. Box 710, 473 S. Main Street
Camp Verde, AZ 86322

If to Owner:

Steve Coury Buick Pontiac and GMC Trucks, Inc.
Attn: Steven C. Coury and Julie Ann Coury
P.O. Box 1889
6101 E Coury Drive
Hwy 260 & Coury Drive
Cottonwood, AZ 86326

With copies to:

Michael J. Phalen
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

Or to such other addresses as any Party hereto may from time to time designate in writing and deliver in a like manner. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, within twenty-four (24) hours following deposit with a nationally recognized overnight courier, or within forty-eight (48) hours following deposit with the United States mail, certified with return receipt requested, as hereinabove provided, prepaid and addressed as set forth above.

10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Yavapai County, Arizona.

10.6 Successors and Assigns. Except as set forth in Section 7.3, this Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

10.7 Waiver. No waiver by either Party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

10.8 Attorneys' Fees. In the event of any actual litigation between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

10.9 Limited Severability. The Town and the Owner each believes that the execution, delivery and performance of this Agreement is in compliance with all Applicable Laws. However, in the unlikely event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is declared void or unenforceable (or is construed as requiring the Town to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, Town Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provide that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide

essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

10.10 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

10.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded.

10.12 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Yavapai County, Arizona, within ten (10) days after its approval and execution by the Town. However, the Agreement shall not become effective until thirty (30) days from the date after approval by Town Council.


10.13 Assignment or Notice of Conveyance. Subject and in addition to the provisions of this Agreement, Owner shall have the right to assign and to collaterally assign all or a portion of Owner's right under this Agreement, including but not limited to Owner's right to receive all or any portion of the Economic Incentives, provided that any such assignee shall be the owner of the Property or a lender that has advanced funds to improve the Property. The Owner must give notice to the Town of any sale of the entire Property or any portion thereof, at least ten (10) days prior to the effective date of the sale.

10.14 No Third Party Beneficiaries. There are no third party beneficiaries to the Agreement, and no person or entity not a Party will have any right or cause of action.


10.15 No Agency Created. Nothing contained in the Agreement will create any partnership, joint venture, or agency relationship between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

OWNER:



Steven C. Coury



Julie Ann Coury

THE TOWN:

TOWN OF CAMP VERDE, an Arizona
municipal corporation

By: 

Mayor

ATTEST:

By: _____
Town Clerk

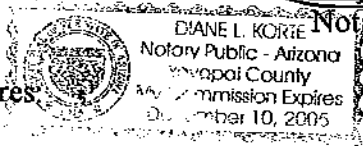
APPROVED AS TO FORM:

By: _____
Town Attorney

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 26 day of February, 2005, by Mitch Dickinson, Mayor of the Town of Camp Verde, who acknowledged that he/she signed the foregoing instrument on behalf of the Town.

Diane L. Korte
Notary Public

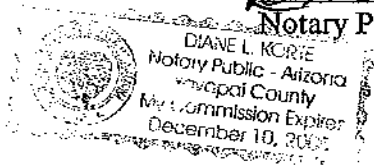


My commission expires:
12-10-05

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 26 day of February, 2005, by Steven C. Coury.

Diane L. Korte
Notary Public



My commission expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 26 day of February, 2005, by Julie Ann Coury.

Diane Korte

Notary Public

My commission expires:

12-10-05

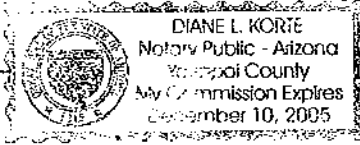


EXHIBIT A

PROPERTY LEGAL DESCRIPTION

PARCEL II: 407-09-043A

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID EAST 1/2, FROM WHICH AN ALUMINUM CAP MARKED "ABCOR ENGINEERING #15858", MARKING THE NORTHWEST

CORNER OF SAID EAST 1/2 BEARS NORTH 00 DEGREES, 05 MINUTES, 20 SECONDS EAST, A DISTANCE OF 5238.54 FEET;

THENCE NORTH 00 DEGREES, 05 MINUTES, 20 SECONDS EAST, ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 1623.03 FEET;

THENCE SOUTH 88 DEGREES, 43 MINUTES, 43 SECONDS EAST, ALONG A NORTH LINE OF THE PARCEL OF LAND DESCRIBED IN BOOK 2481 OF OFFICIAL RECORDS, PAGE 486, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 1269.07 FEET;

THENCE NORTH 00 DEGREES, 06 MINUTES, 36 SECONDS EAST, ALONG A WEST LINE OF SAID PARCEL, A DISTANCE OF 1038.67 FEET;


THENCE SOUTH 89 DEGREES, 02 MINUTES, 23 SECONDS EAST, ALONG A NORTH LINE OF LAST SAID PARCEL, A DISTANCE OF 334.63 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 78 DEGREES, 33 MINUTES, 53 SECONDS EAST, A DISTANCE OF 330.03 FEET;

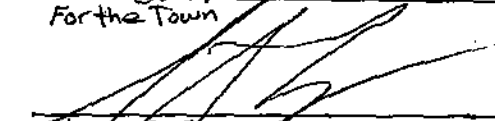
THENCE NORTH 89 DEGREES, 02 MINUTES, 23 SECONDS WEST, ALONG A NORTH LINE OF THE PARCEL DESCRIBED IN BOOK 2025 OF OFFICIAL RECORDS, PAGE 212, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 410.03 FEET;

THENCE NORTH 55 DEGREES, 54 MINUTES, 12 SECONDS EAST, ALONG THE CENTERLINE DESCRIBED IN EASEMENT RECORDED IN BOOK 2615 OF OFFICIAL RECORDS, PAGE 976, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 104.46 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit A Property legal description



Mitch Dalcuis
For the Town



Steven C. Coury



Julie A. Coury

PARCEL #: 407-090-43

A TRACT OF LAND IN THE EAST HALF OF SECTION 31, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 31 (A FOUND BLM BRASS CAP 1964) FROM WHICH THE NORTHEAST CORNER OF SECTION 31 (A FOUND BLM BRASS CAP 1964) BEARS NORTH 00 DEGREES, 07 MINUTES, 28 SECONDS EAST, 5294.76 FEET (RECORD NORTH 00 DEGREES, 07 MINUTES, 28 SECONDS EAST);

THENCE NORTH 00 DEGREES, 06 MINUTES, 24 SECONDS EAST, 1323.64 FEET (RECORD NORTH 00 DEGREES, 07 MINUTES, 28 SECONDS EAST, 1323.62 FEET) TO A FOUND 1/2 INCH REBAR WITH PLASTIC CAP (RLS 9076) AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 88 DEGREES, 27 MINUTES, 16 SECONDS WEST, 664.66 FEET (RECORD NORTH 88 DEGREES, 27 MINUTES, 14 SECONDS WEST, 664.65 FEET) TO A SET 1/2 INCH REBAR WITH PLASTIC CAP (LS 25354);

THENCE NORTH 00 DEGREES, 06 MINUTES, 50 SECONDS EAST, 658.62 FEET (RECORD NORTH 00 DEGREES, 06 MINUTES, 52 SECONDS EAST, 658.62 FEET) TO A SET 1/2 INCH REBAR WITH PLASTIC CAP (LS 25384);

THENCE NORTH 88 DEGREES, 43 MINUTES, 45 SECONDS WEST, 664.89 FEET (RECORD NORTH 88 DEGREES, 43 MINUTES, 43 SECONDS WEST, 664.85 FEET) TO A 1/2 INCH REBAR WITH PLASTIC CAP (LS 25384);

THENCE NORTH 00 DEGREES, 06 MINUTES, 17 SECONDS EAST, 655.45 FEET (RECORD NORTH 00 DEGREES, 06 MINUTES, 18 SECONDS EAST, 655.44 FEET) TO A FOUND 1/2 INCH REBAR WITH PLASTIC CAP (RLS 9078);

THENCE SOUTH 89 DEGREES, 02 MINUTES, 19 SECONDS EAST, 775.71 FEET (RECORD SOUTH 89 DEGREES, 02 MINUTES, 12 SECONDS EAST, 775.73 FEET) TO A SET 1/2 INCH REBAR WITH PLASTIC CAP (LS 25384);

THENCE ALONG THE WEST RIGHT OF WAY OF HIGHWAY 260 AND A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 02 DEGREES, 03 MINUTES, 48 SECONDS, A RADIUS OF 23018.32 FEET (RECORD 23018.32 FEET), A LENGTH OF 828.97 FEET AND A CHORD BEARING SOUTH 34 DEGREES, 39 MINUTES, 15 SECONDS EAST, 828.92 FEET TO A FOUND ARIZONA HIGHWAY DEPARTMENT BRASS CAP STAMPED P.O.C. STA. 478+51.26-1963;

THENCE CONTINUING ALONG THE RIGHT OF WAY AND A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 00 DEGREES, 20 MINUTES, 40 SECONDS, A RADIUS OF 23018.32 FEET (RECORD 23018.32 FEET) A LENGTH OF 138.37 FEET AND A CHORD BEARING SOUTH 35 DEGREES, 51 MINUTES, 29 SECONDS EAST, 138.37 FEET TO A SET 1/2 INCH REBAR WITH PLASTIC CAP (LS 25384);

THENCE SOUTH 00 DEGREES, 09 MINUTES, 59 SECONDS WEST, 539.71 FEET (RECORD SOUTH 00 DEGREES, 07 MINUTES, 28 SECONDS WEST, 539.69 FEET) TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 31, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID EAST 1/2, FROM WHICH AN ALUMINUM CAP MARKED "ABCOR ENGINEERING #15858", MARKING THE NORTHWEST CORNER OF SAID EAST 1/2 BEARS NORTH 00 DEGREES, 05 MINUTES, 20 SECONDS EAST, A DISTANCE OF 5238.54 FEET;

THENCE NORTH 00 DEGREES, 06 MINUTES, 20 SECONDS EAST, ALONG THE WEST LINE OF SAID EAST 1/2, A DISTANCE OF 1623.03 FEET;

THENCE SOUTH 89 DEGREES, 43 MINUTES, 43 SECONDS EAST, ALONG A NORTH LINE OF THE PARCEL OF LAND DESCRIBED IN BOOK 2481 OF OFFICIAL RECORDS, PAGE 468, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 1269.07 FEET;

THENCE NORTH 00 DEGREES, 06 MINUTES, 36 SECONDS EAST, ALONG A WEST LINE OF SAID PARCEL, A DISTANCE OF 806.28 FEET;

THENCE NORTH 55 DEGREES, 54 MINUTES, 12 SECONDS EAST, ALONG THE CENTERLINE OF THE EASEMENT DESCRIBED IN BOOK 2615 OF OFFICIAL RECORDS, PAGE 978, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 72.55 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES, 08 MINUTES, 36 SECONDS EAST, ALONG THE WEST LINE OF THE PARCEL OF LAND DESCRIBED IN BOOK 2025 OF OFFICIAL RECORDS, PAGE 212, RECORDS OF YAVAPAI COUNTY, ARIZONA, A DISTANCE OF 130.73 FEET;

THENCE SOUTH 89 DEGREES, 02 MINUTES, 23 SECONDS EAST, ALONG THE NORTH LINE OF LAST SAID PARCEL, A DISTANCE OF 168.22 FEET;

THENCE SOUTH 55 DEGREES, 54 MINUTES, 12 SECONDS WEST, ALONG SAID CENTERLINE, A DISTANCE OF 227.57 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit A-1 Property legal description

Mitch D. Johnson
For the town

Steven R. Coory

Julie A. Coory

Exhibit B

PROPOSED SCHEDULE OF PERFORMANCE

If the Owner performs the listed Tasks within the specified timeframe.

Then the Town will provide the listed incentive for the specified incentive period.

Owner signs annexation petition within thirty (30) days of Effective Date of this Agreement.

Town provides Developed Parcel Sales Tax Rebate for Developed Parcel Sales Tax Rebate Period and Sale or Lease of Real Property Sales Tax Rebate for the Sale or Lease of Real Property Tax Rebate Period.

Owner develops Second Dealership on a portion of the Undeveloped Parcel (as depicted on Exhibit B-1) within forty-eight (48) months of the Effective Date of this Agreement.

Town provides Second Dealership Sales Tax Rebate for the Second Dealership Sales Tax Rebate Period and Sale or Lease of Real Property Sales Tax Rebate for the Sale or Lease of Real Property Tax Rebate Period.

Owner develops a portion or portions of the Undeveloped Parcel (as depicted on Exhibit B-1) within eighty-four (84) months of the Effective Date of this Agreement.

Town provides Undeveloped Parcel Sales Tax Rebate for the second portion of the Undeveloped Parcel for the Undeveloped Parcel Sales Tax Rebate Period and Sale or Lease of Real Property Sales Tax Rebate for the Sale or Lease of Real Property Tax Rebate Period.

Owner develops a portion or portions of the Undeveloped Parcel (as depicted on Exhibit B-1) within one hundred twenty (120) months of the Effective Date of this Agreement.

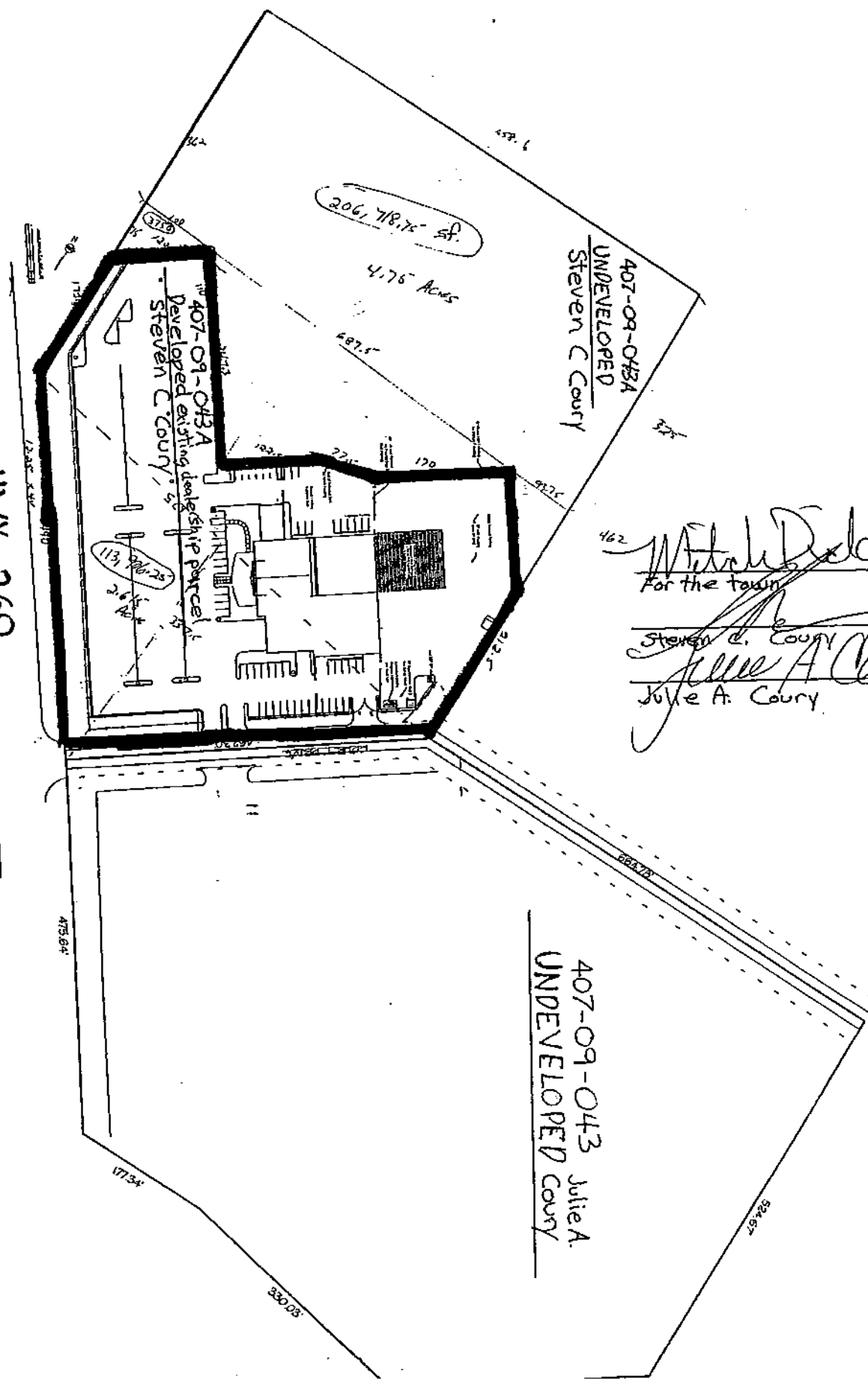
Town provides Undeveloped Parcel Sales Tax Rebate for the third portion of the Undeveloped Parcel for the Undeveloped Parcel Sales Tax Rebate Period and Sale or Lease of Real Property Sales Tax Rebate for the Sale or Lease of Real Property Tax Rebate Period.

Exhibit B-1

(Map of Property Depicting Developed Parcel and Undeveloped Parcel)

MAP OF PROPERTY DEPICTING DEVELOPED PARCEL AND UNDEVELOPED PARCEL

Total 25.125 Ac 1,094,456 sq ft
 Developed Steven C. Coury 4.16 Ac 181,210 ft² approx.
 undeveloped Steven C. Coury 6.12 Ac 266,587 ft² approx.
 undeveloped Julie A. Coury 14.84 Ac. 646,659 ft² approx.



- boundaries of existing dealership

HWY 260



462 Mitch Delcousin
 For the town
Steven C. Coury
Julie A. Coury

407-09-043 Julie A.
 UNDEVELOPED Coury