

**SALES TAX SHARING
AND OPERATING COVENANT AGREEMENT**

This SALES TAX SHARING AND OPERATING COVENANT AGREEMENT (the “Agreement”) is made and entered into as of _____, 2024 (“Effective Date”), by and between the CITY of INDIO, a municipal corporation (the “City”), and Unicars Inc., a California corporation (together with its successors, assigns and all successors in interest to the Property, as hereinafter defined, collectively, and jointly, and severally, the “Business”).

RECITALS:

- A. Business has purchased real property within the City of Indio, California located at 79300 Varner Road Indio, California (“Property”) and desires to establish a new automobile dealership, including sales and service departments (collectively, the “Honda Dealership”).
- B. The City desires to purchase a 15 year continuous operation covenant from Business by providing limited, contingent (conditional) assistance to Business on the terms and subject to the conditions hereinafter set forth.
- C. The City has found that the use and operation of the Property and Qualified Business (as defined in Section 1a below) proposed by Business: (i) promotes the long-term employment of residents of the City and will significantly contribute to the maintenance, growth, and expansion of the economic base of the City; (ii) constitutes a valid exercise of the police powers of the City and serves public purposes in which the City has peculiar and unique interests; (iii) will promote the generation of sales tax revenue payable to City; (iv) will increase the traffic to the existing I-10 Auto Mall dealerships; and (iv) otherwise substantially relates to the municipal affairs of the City.
- D. The purpose and intention of the City in bargaining for and agreeing to pay the consideration for the covenants is solely to induce Business to operate, or cause to be operated, a new (not relocated) auto dealership on the Property so as to further the well-being of the citizens at large, enhance local employment, and expand the City’s tax revenue base.

COVENANTS:

Based upon the foregoing Recitals and for good and valuable consideration, the sufficiency of which is acknowledged by both parties, the City and Business hereby agree as follows:

- 1. Certain Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

- a. Qualified Business. “Qualified Business” shall mean the opening and operation on the Property by Business of a new point (not relocated) Honda auto dealership.
- b. Quarter. “Quarter” shall mean a three (3) month period ending March 31, June 30, September 30 or December 31.
- c. Sales Tax. “Sales Tax” means, for each Quarter during the term of the City’s payment obligations hereunder, that portion of taxes received by the City from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the California Revenue & Taxation Code) from the operation of the Qualified Business on the Property and retained by City, prorated in the first and last Quarters during the term of this Agreement based upon the number of days in such partial Quarters. For purposes of this Agreement, the term “Sales Tax” shall not include; (i) any portion of such taxes received by the City from the Property or operation of the Qualified Business that the City may be required to pay, transfer, assign, or allocate to any other entity or entities by virtue of any law now or hereafter existing, or by virtue of any agreement entered into between City and any other governmental entity under California Government Code Section 53804; (ii) the State Board of Equalization’s administrative processing fee attributable to the City’s portion of such taxes (calculated at the same percentage of such taxes as applies city-wide); (iii) the sum of one thousand dollars (\$1,000.00) per Quarter (representing a stipulated payment for the City’s estimated Quarterly direct and indirect costs of administering this Agreement); and (iv) any such taxes the payment, rebate or diversion of which by the City would violate Government Code Section 53084 or 53084.5, as amended or restated from time to time. In addition, “Sales Tax” shall not be considered to have been received by the City until the City is able to confirm receipt of such taxes from the State Board of Equalization. If California state law changes during the term of this Agreement so as to alter the method by which sales tax revenues are allocated among jurisdictions, then the parties shall negotiate in good faith, modifications to this Agreement to carry out its intended economic costs and benefits to each party.

2. Insurance. Business shall deliver to City reasonable evidence (such as certificate of insurance, copy of policy, and/or copy of endorsements) that Business has obtained and maintains for the Qualified Business and Property, both reasonable liability insurance and an additional insured endorsement naming City as additional insured for the liability insurance.

3. Contingent Payments by City. In consideration of, and contingent upon, Business’s compliance with Section 6 below, from and after the date of the opening of the Qualified Business on the Property (the “Opening”), the City shall make quarterly payments to Business in an amount equal to fifty percent (50%) of the Sales Tax generated by the Qualified Business after the Qualified Business opens to the public and which is actually received by the

City and allocable to each such quarter or portion thereof, until the payments made by City under this Section total Three Million Five Hundred Thousand Dollars (\$3,500,000.00.).

4. Term. This Agreement shall commence upon execution by the City and Business and, unless sooner terminated pursuant to Section 8 herein, shall expire upon the later of (i) the completion of the payments under Section 3 above, or (ii) the date that is fifteen (15) years after the Opening.

5. Payment Procedures.

- a. Within thirty (30) days after the end of each calendar quarter, after the Opening, Business shall submit to the City's Finance Director, in writing, a payment request for Business's share of Sales Tax paid during the previous quarter. The request shall include copies of all reports which have been submitted by Business to the State Board of Equalization for such year, together with evidence available to Business regarding the sales taxes actually paid to the State Board of Equalization by or on behalf of the Qualified Business for such quarter (e.g., cancelled checks).
- b. Following submission by Business of its completed payment request, the City's Director of Finance (or designee) shall determine whether the payment request is complete and accurate, and if the determination of the Director (or designee) is that the request is complete and accurate, the Director (or designee) shall approve or disapprove (subject to the provisions below) such request. If the payment request contains the reports submitted by Business to the State Board of Equalization for the applicable quarter and cancelled checks evidencing payment of sales tax to the State Board of Equalization for the applicable quarter, and if all reports required from Business by the State Board of Equalization relating to sales tax for that quarter shall have been submitted to the State Board of Equalization (with a concurrent copy delivered to the City), then the payment request shall be deemed approved (unless there is an error in the payment request). Any disapproval shall state in writing the reasons for disapproval and the changes or additional information or documentation which the City deems necessary to comply with Business's request. In the event of a disapproval by the City, Business shall revise or supplement the request, and shall resubmit same to the City's Director of Finance as soon as is possible after receipt of the notice of disapproval. Thereafter, the City, through its Director of Finance, shall promptly review, confirm, and if determined to be complete and accurate, shall approve the amount of the Sales Tax, if any, due to be paid to Business for the applicable quarter. The review of the request for completeness of documentation and information shall be completed by the City within fifteen (15) business days following the receipt of the request. The review of the request for determination of accuracy may be based upon corroborating information provided to the City by either the State Board of Equalization and/or any sales tax consultant retained by the City.

- c. Nothing contained in this Agreement shall obligate or otherwise commit the City to pay the portion of the Sales Tax determined by the City to be due and payable to Business unless and until the City receives verification satisfactory to the City that it has received the Sales Tax attributable to sales from the Qualified Business for the quarter for which a request has been made and approved by the City.
- d. Payment of the amount determined by the City to be owing to Business under Section 3, for each quarter shall be made by the City within fifteen (15) days after the City has approved the payment request and has received verification satisfactory to it that it has received the Sales Tax attributable to sales from the Qualified Business for the quarter for which a request has been made and approved by the City.

6. Covenants and Representations of Business. During the Term of this Agreement, Business hereby covenants and agrees with the City as follows:

- a. Upon the Opening, Business shall: (i) subject to Section 11(i) below, thereafter continuously operate the Qualified Business on the Property, or cause the Qualified Business to be continuously operated until the date that is fifteen (15) calendar years after the Opening; and (ii) at all times comply with all applicable laws.
- b. Business shall maintain and repair or cause to be maintained and repaired the improvements on the Property in good order, and in the condition in accordance with all applicable laws. In this regard, Business shall use its best efforts to prevent the accumulation of any waste materials, rubbish, graffiti, weeds, or debris and shall not permit any unlawful use or public or private nuisance to occur on the Property.
- c. In its operation of the Qualified Business and leasing of the Property, Business agrees not to violate applicable laws regarding discrimination against any person or class of persons by reason of gender, marital status, race, color, creed, mental or physical disability, religion, age, ancestry, or national origin or otherwise.
- d. Business shall defend (with counsel reasonably acceptable to City), indemnify and hold City and its councilpersons, officers, agents and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from the City's entering into this Agreement and from the operation of the Qualified Business, and any other activities of Business, its members, officers, employees, agents, contractors, invitees and any third parties on or about the Property. The obligations of Business under this Section 6d

shall survive the expiration or any earlier termination, as applicable, of this Agreement.

- e. Business shall join the I-10 Auto Dealers Association (“Association”) prior to the Opening, or as soon thereafter as it is permitted to join the Association, and shall remain a member thereof for so long as the Qualified Business is operated on the Property or for so long as the Association exists.
- f. At or prior to the Effective Date, Business has obtained a construction loan sufficient to fund the entire development of the Honda Dealership.

7. Representations and Warranties of the City. The City represents and warrants to Business that, as of the Effective Date:

- a. City is a general law city duly organized and existing under the laws of the State of California.
- b. The individuals executing this Agreement on behalf of the City are duly authorized by appropriate action of the City Council to execute this Agreement on behalf of the City and that upon execution, the Agreement shall be a binding obligation of the City.
- c. To the City’s actual current knowledge, the City’s entry into this Agreement and the performance of the City’s obligations under this Agreement do not violate any law or contract or agreement to which the City is a party.
- d. To the City’s actual current knowledge, there are no pending claims or lawsuits against the City that will delay or prevent the performance of the City’s obligations under this Agreement.
- e. The representations and warranties of the City set forth in this Section 7 are material consideration to Business, and the City acknowledges that Business is relying upon the representations of the City set forth in this Section 7 in undertaking its obligations under this Agreement.

8. Defaults and Termination. Failure by City to make a payment to Business that is required to be made by City to Business under this Agreement shall constitute a default by City under this Agreement if it is not cured by City within fifteen (15) days after written notice by Business to City. Notwithstanding any other provision set forth in this Agreement to the contrary, this Agreement and any obligation of the City to make payments to Business hereunder shall terminate without further notice or demand, at the City’s option, upon the occurrence of the following events of default:

- a. Failure in the due, prompt, and complete observance or performance of any covenant or obligation set forth in Section 6 of this Agreement for a period of thirty (30) days after written notice to Business from the City

Manager specifying the nature thereof; provided that, except for a failure to operate the Qualified Business (which shall be subject to Section 11(i) below), Business shall not be in default under this subparagraph if the failure to observe or perform the covenant or obligation in question is curable but is of such a nature that it is incapable of being cured with reasonable diligence within that thirty (30) day period and Business commences such cure within that thirty (30) day period and diligently and continuously pursues the same to completion.

9. Remedies. Upon a default by Business under Section 8a: (i) City may terminate City's obligations under this Agreement by written notice to Business, (ii) upon written demand by City, Business shall repay to City, with interest at the maximum rate permitted by law from the date of payment by City, all payments made by City to Business hereunder, and (iii) City shall have any and all other remedies available to City at law and in equity. Upon a default by City, Business shall have all rights and remedies available to it at law and in equity. Notwithstanding anything herein to the contrary, the City shall only be able to exercise its rights under Section 9(ii) of this Agreement in the event Business is in default under Section 6(a)(i), which rights shall be subject to Section 11(i) below. City further agrees that it shall have no right to seek repayment from Business under Section 9(ii) of this Agreement in the event the Business fails to continuously operate the Qualified Business due to the unavailability of automobiles for Business to sell due to a bankruptcy of Honda or any successor entity to Honda. Under no other circumstances will Business be required to repay the City any monies upon default as provided in this Section 9.

10. Payment of Prevailing Wages.

- a. Business acknowledges that the City has made no representations, expressed or implied, to Business or any person associated with Business regarding whether or not laborer employed relative to the construction of the Honda Dealership must be paid the prevailing wage per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* Business agrees with the City that Business shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction pertaining to the Qualified Business must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to the Labor Code Sections 1720, *et seq.*
- b. The parties hereto agree that the payments from the City to Business under Section 3 of this Agreement are being made solely for the reasons set forth in Recitals C and D. In the event there is a determination made by the Department of Industrial Relations that there is a violation of Labor Code Sections 1720 *et seq.*, the parties hereto agree that Business shall have the right to immediately terminate this Agreement and return any monies received from the City under the terms of this Agreement.

11. General Provisions.

- a. General Provisions. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof. This Agreement may not be modified, amended, supplemented, or otherwise changed, except by a writing executed by both parties hereto.
- b. Waiver. No failure or delay by any party in the exercise of any right hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or any other right.
- c. Captions. Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.
- d. Assignment. Business shall not assign any of the rights under this Agreement without the prior written consent of City in its sole and absolute discretion.
- e. Time. Time is of the essence in every provision hereof in which time is a factor. Except as may otherwise be provided, wherever this Agreement states a period of time and number of days, it shall be construed to mean calendar days; provided, however, that when any period of time so stated would end upon a Saturday, Sunday, or legal holiday, such period shall be construed to end upon the next day following which is not a Saturday, Sunday or legal holiday.
- f. Counterparts. This Agreement may be executed in two or more counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- g. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be governed by and construed in accordance with the laws of the State of California.
- h. Authority. Each individual executing this Agreement on behalf of Business represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of Business.
- i. Inability to Perform (Force Majeure). Except as may be otherwise provided herein, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this

Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party (financial inability excepted) such as but not limited to war; insurrection; acts of terrorism; riots; floods; earthquakes; fires; casualties; acts of nature; epidemics; pandemics; government shutdowns of businesses; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; litigation that directly prevents performance by the Business or the City; weather; and other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform that are not excluded above (collectively, “Enforced Delays”); provided, however, that the party claiming the extension notify the other party in writing of the nature of the matter constituting the Enforced Delay within thirty (30) days after the party claiming the extension has notice of the occurrence of the Enforced Delay. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of time reasonable in light of the Enforced Delay and shall commence to run from the time of the commencement of the cause.

- j. Notices. Any notice, communication, request, reply or advice (collectively, “Notice”) provided for or permitted by this Agreement to be made or accepted by either party must be in writing. Unless otherwise provided herein, Notice may be given or served (i) by depositing the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (ii) by delivering the same to such party, or an agent of such party, in person or by commercial courier, (iii) by electronic mail prior to 5:00 P.M. Pacific Time on any business day (or such notice will be considered to have been received the next business day), or (iv) by depositing the same into custody of a nationally recognized overnight delivery service such as Federal Express or Overnight Express. Upon request, each party shall confirm receipt of any notice sent by electronic mail. Notice deposited in the United States mail in the manner hereinabove described shall be effective on the date of receipt (or rejection) as evidenced by the return receipt. Notice given in any other manner shall be effective only if and when received by the party on or before 5:00 p.m. Pacific Time of any business day with delivery made after such hours to be deemed received the following business day. Notices shall be sent to:

To City:

City Clerk's Office
100 Civic Center Mall
Indio, California 92201
Attn:
Email:

To Business:

Unicars Honda
78970 Varner Road
Indio, CA 92203
Attn: Andreas Mozoras
UNICARS@msn.com

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least three (3) days written notice to the other party.

k. Attorneys' Fees and Costs. If a dispute arises under or in connection with this Agreement (including, without limitation, the enforcement or interpretation of this Agreement) that results in litigation, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such litigation from the other party.

l. Alternative Dispute Resolution. If a dispute arises regarding the making, formation, interpretation, or performance of this Agreement, City and Business agree to adhere to the dispute resolution protocol as delineated and explained herein.

(i) NEGOTIATION: City and Business will make a good faith effort to resolve any claim or issues as to this Agreement, through negotiation. The parties shall meet at the offices of the City to negotiate within ten (10) days after any party sends a notice to the other referring to this Section.

(ii) MEDIATION: If City and Business cannot resolve such a claim or issue as to this Agreement, through negotiation by the date that is fifteen (15) business days after the date of the notice described in clause (a) above, then that claim or issue shall be the subject of mediation, administered by a mediator.

(iii) LITIGATION: Should mediation fail to resolve such a claim or issue as to this Agreement, then City and/or Business may pursue an action at law or in equity, with respect to a claim or issue as to this Agreement, that has been subject to mediation.

- m. Indemnity. Business shall indemnify, protect, defend and hold harmless the City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the auto dealership, results or arises in any way from any of the following: (1) the noncompliance by Business of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781, et. seq., of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Business to provide any required disclosure or identification as required by Labor Code Section 1781 et. seq., as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Honda Dealership, Business shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, et. seq., as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, et. seq., as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

-signatures on the following page-

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

“BUSINESS”:

Unicars Inc.
a California corporation

By: _____

Print Name: _____

Title: _____

“CITY”:

CITY OF INDIO,
a municipal corporation

By: _____

Bryan Montgomery, City Manager

ATTEST:

City Clerk Administrator

APPROVED AS TO FORM:

By: _____

Steven Graham Pacifico
City Attorney