

**FEE REIMBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF TEMECULA AND OREMOR OF TEMECULA LX, LLC**

**THIS AGREEMENT** is made and effective as of December 10, 2019 by and between the City of Temecula, a municipal corporation, and Oremor of Temecula LX, LLC, a California limited liability company (“Developer”). In consideration of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. **Recitals.** This Agreement is made with respect to the follow facts and for the following purposes, which each of the parties acknowledge and agree to be true and correct:

A. Developer is a California limited liability company authorized and licensed to do business in the State of California.

B. Developer is the owner of real property located at 42081 DLR Drive, Temecula, CA 92591, as more fully described on Exhibit A (“Property”).

C. Developer is developing a new motor vehicle dealership on the Property for the retail sales and service of Lexus vehicles (“Dealership”).

D. Developer expects to employ approximately 56 persons at the Dealership within five (5) years from the date of this Agreement.

E. Developer and the City desire to provide for the Developer’s operation of the Dealership within the City.

F. The City Council finds and determines that performance of the City’s obligations under this Agreement, the economic development subsidy to be provided to Developer under this Agreement and the undertakings of the Dealership required by this Agreement will promote the public health, safety, and welfare of the citizens of the City and will be of substantial economic benefit to the City as the Agreement will: (1) generate new short term and long term quality employment opportunities within the City; (2) generate new tax revenues that will assist the City in funding public services for the residents and businesses within the City, including public safety; (3) preserve and enhance the job/housing balance described in the City’s General Plan and various regional plans; (4) develop new and expanded commercial and business facilities; (5) expand and enhance the City’s tax base through increased property values and consumer purchasing; and (6) promote the stability and diversification of the City’s economy.

G. On December 10, 2019, the City Council held a duly noticed public hearing on the proposed terms of this Agreement and the economic development subsidy in accordance with the requirements of Government Code Section 53083. The information described in Government Code Section 53083 was posted on the City’s website at least ten days prior to the public hearing.

H. This Agreement is a contract within the meaning of Section 53511(a) of the California Government Code and therefore subject to a validation action pursuant to Section 860 of the California Code of Civil Procedure.

## **2. Reimbursement of Certain City Development Fees.**

A. Pursuant to the Temecula Municipal Code, certain fees will be due the City for the development of the Dealership on the Property. The fees and the approximate amounts thereof are described on Exhibit B attached hereto (“Development Fees”). The final amount of the Development Fees shall be determined upon the filing of an application for approval of the land use entitlements for the Dealership.

B. Developer shall pay to the City all Development Fees at the time they are due pursuant to the Temecula Municipal Code and City’s development policies.

C. City shall reimburse the Developer for the Development Fees actually paid to the City in an amount not to exceed the lessor of:

- 1) 75% of the verified annual sales tax revenue, net of adjustments (excluding any Temecula Transactions and Use Tax) for the first four full quarters of operation; or
- 2) 1.75% of the actual construction cost of the facility; or
- 3) \$250,000.

Reimbursement will be made within thirty (30) days of receipt of adjusted sales tax revenue reports for the first four (4) full quarters following Certificate of Occupancy. Note if the reimbursement amount is based on paragraph 2.C.1) above, and the new annual sales tax revenue, net of adjustments (excluding any Temecula Transactions and Use Tax) for the first four (4) full quarters following Certificate of Occupancy falls below the amount reflected in the application the Developer’s DIF reimbursement will be reduced by a corresponding percentage.

D. City’s obligation to reimburse Developer for the Development Fees shall terminate on December 31, 2022 unless such period is extended in writing by the City Manager, provided that any such extension shall not extend past June 30, 2023.

## **3. Findings Concerning Inapplicability of Prevailing Wages.**

A. The City finds and determines that the amount of fees being reimbursed for the development of the Property pursuant to this Agreement when compared to the Developer's investment in the Total Project Costs in the development of the Dealership is de minimus, comprising less than one and seventy-five one hundredths percent (1.75%) of the total project cost.

B. Therefore, based on the above finding, the City and Developer have determined that prevailing wages are not required to be paid on the private improvements and development of Property in accordance with Labor Code Sections 1720, et seq.

C. Developer hereby represent to City that it understands and acknowledges the relationship of the Development Fee reimbursement described in this Agreement and the potential impact on the application of prevailing wages to development on the Property. Accordingly, Developer on behalf of itself and its successors in interest, hereby expressly and knowingly waive their respective rights under Labor Code Sections 1726 and 1781 to seek recovery against the City of any prevailing wage liabilities they may incur based upon this Agreement. Developer hereby acknowledges that it has either consulted with legal counsel, or had an opportunity to consult with legal counsel, regarding the provisions of the California Civil Code section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor" Developer hereby acknowledges that it may have claims which are presently unknown and unsuspected, and such claims in the future. Nevertheless, Developer hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waive any and all rights which they may have under California Civil Code Section 1542, or under any statute or common law or equitable principal of similar effect.

**Developer's initials:** \_\_\_\_\_.

**4. Representations and Agreements Concerning Use of Property as a Motor Vehicle Dealership or Dealerships.**

A. In accordance with the requirements of Government Code Section 53084, the Developer hereby agrees on behalf of itself and its successors and assigns, that neither Developer nor its successors in interest, lessee or licensee on the Property shall be a Vehicle Dealer that is Relocating from the territorial jurisdiction of one Local Agency to the territorial jurisdiction of the City but within the same Market Area.

1) As used in this section, "Vehicle Dealer" is defined in Government Code Section 53084 and means a retailer that is also a dealer as defined by Section 285 of the Vehicle Code.

2) As used in this Section "Local Agency" is defined in Government Code Section 53084 and means a chartered or general law city, a chartered or general law county, or a city and county.

3) As used in this Section "Market Area" is defined in Government Code Section 53084 and means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific vehicle dealer that is relocating. With respect to a vehicle dealer, a "Market Area" shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the vehicle dealer is relocating and ending at the location to which the vehicle dealer is relocating.

4) As used in this Section "Relocating" is defined in Government Code Section 53084 and means the closing of a Vehicle Dealer in one location and the opening

of a Vehicle Dealer in another location within a 365-day period when a person or business entity has an ownership interest in both the Vehicle Dealer that has closed or will close and the one that is opening. "Relocating" does not mean and shall not include the closing of a Vehicle Dealer because the Vehicle Dealer or Big Box Retailer has been will be acquired or has been or will be closed as a result of the use of eminent domain.

B. In accordance with the requirements of Government Code Section 53084.5, Developer on behalf of itself and its successors and assigns warrants and represents to the City and agrees to the following:

1) This Agreement will not result, directly or indirectly, in the payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) to any person for any purpose when both of the following apply:

a) The agreement results in a reduction in the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency.

b) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

5. **Authorization to Release Information.** Developer, on behalf of itself and any affiliates or successors in interest, shall provide the City with such tax and employment information regarding the Dealership as may be required by applicable law, including, without limitation, Government Code Section 53083, or its successor statute, and consents to the City's review and use of such information, as may be necessary for the City to fulfill its obligations under law, including without limitation Government Code Section 53083.

6. **Operating Memorandum.** The parties acknowledge that refinements and further development of the Property may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the administration of the terms of this Agreement. If and when the parties mutually find that nonsubstantive changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, and such are not materially inconsistent with the terms of this Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved by the City Manager, or designee, on behalf of the City and by any corporate officer or other person designated for such purpose in a writing signed by a corporate officer on behalf of Developer, which, after execution, shall be attached hereto as addenda and become a part hereof.

## 7. **General.**

A. **Notices.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service with return receipt or affidavit of delivery, (ii) delivery by a reputable document delivery service,

such as, but not limited to, FedEx, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by a written notice provided in accordance with this Section. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Temecula  
41000 Main Street  
Temecula, California 92590  
Attention: City Manager

With a copy to: Peter M. Thorson, Esq.  
Richards, Watson & Gershon  
355 S. Grand Ave., 40<sup>th</sup> Floor  
Los Angeles, CA 90071

To: Developer: Oremor of Temecula LX, LLC  
1377 Kettering Drive  
Ontario, CA 91761  
Attention: General Manager

With a copy to:

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B. Entire Agreement, Modifications. This Agreement and the documents referenced herein contain the complete expression of the whole agreement between the parties with respect to the obligations set forth herein, and there are no promises, representations, agreements, warranties or inducements, either expressed verbally or implied, except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the parties. Except as provided in Paragraph 6, Operating Memorandum, no alteration, supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. The City Manager is authorized to enter into any amendments to this Agreement without any further action by the City Council.

C. Applicable Law/Venue. This Agreement shall be deemed to have been entered into and shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of California. The venue of any legal action relating to this Agreement shall be in the Superior Court of California or U.S. District Court, as applicable, with jurisdiction over the City of Temecula.

D. Independent Advice of Legal Counsel. Each party acknowledges that it had retained independent legal counsel and financial consultants of its own choice to review this

Agreement and that prior to the execution hereof each party has had the opportunity to review the terms of this Agreement with its counsel and financial consultants and is entering into this Agreement after such review.

E. Validity of Agreement. All parties agree that this Agreement is legal, valid and binding on each party and enforceable in accordance with its terms.

F. Binding on Successors. Except as further provided in this paragraph, this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns, executors and administrators.

G. Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in that action or proceeding in addition to any other relief to which it or they may be entitled.

H. Time. Time is of the essence of this Agreement.

I. Force Majeure Delays. Nonperformance of any of the conditions or covenants herein by any party hereto shall be excused when performance is prevented or delayed by reason of any of the following forces reasonably beyond the control of such party: acts of God, strike, war, lockout, labor trouble, reasonable inability to secure materials or labor, unreasonable delay by a governmental entity in the issuance of any required governmental permit, license or approval, act of nature (including but not limited to earthquake, windstorm, flood, wildfire, or other severe weather or environmental condition) insurrection, riot, casualty, acts of public enemy, governmental restrictions, litigation initiated by a party other than a party hereto or its affiliate, unreasonable acts or failures to act of any governmental agency or entity or unreasonable delays of any contractor, subcontractor or supplier. In such event, nonperformance shall be excused and the time of performance shall be extended only by the number of days the performance is delayed or prevented.

J. Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference as though set forth in full:

Exhibit A	Description of Property
Exhibit B	Development Fees To Be Reimbursed Pursuant to Paragraph 2

K. Authority to Execute this Agreement. The person or persons executing this Agreement on behalf of a party warrants and represents that he or she has the authority to execute this Agreement on behalf of the party and has the authority to bind that party to the performance of its obligations hereunder.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF TEMECULA,  
a municipal corporation**

\_\_\_\_\_  
Mike Naggar  
Mayor

Attest:

\_\_\_\_\_  
Randi Johl, JD, MMC  
City Clerk

Approved As to Form:

\_\_\_\_\_  
Peter M. Thorson  
City Attorney

**OREMOR OF TEMECULA XL LLC,  
a California limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its Manager



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The land referred to herein is situated in the State of California, County of Riverside, City of TEMECULA, described as follows:

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF TEMECULA, BEING THOSE PORTIONS OF PARCELS 12 AND 13 OF PARCEL MAP NO. 23496 FILED IN BOOK 168 PAGES 41 THROUGH 45, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 12; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCELS SOUTH 20°21'29" EAST 568.83 FEET; THENCE NORTH 67°38'32" EAST 460.51 FEET TO A POINT ON A NON-TANGENT CURVE IN THE SOUTHWESTERLY LINE OF PARK PLAZA LANE AS SHOWN ON SAID PARCEL MAP CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 589 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 35°35'38" EAST; THENCE ALONG SAID SOUTHWESTERLY LINE THROUGH THE FOLLOWING COURSES, ALONG SAID CURVE NORTHWESTERLY 329.56 FEET THROUGH A CENTRAL ANGLE OF 32°03'31"; THENCE TANGENT FROM SAID CURVE NORTH 22°20'51" WEST 143.79 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 100 FEET; THENCE ALONG SAID CURVE NORTHWESTERLY 17.42 FEET THROUGH A CENTRAL ANGLE OF 09°58'50"; THENCE TANGENT FROM SAID CURVE NORTH 32°19'41" WEST 41.26 FEET TO THE NORTHWESTERLY TERMINUS OF SAID COURSE; THENCE LEAVING SAID SOUTHWESTERLY LINE SOUTH 78°41'12" WEST 282.46 FEET TO THE NORTHWESTERLY LINE OF SAID PARCEL 12; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 67°36'49" WEST 65.04 FEET TO THE POINT OF BEGINNING.

NOTE: SAID LAND IS DESCRIBED AND DELINEATED AS PARCEL C IN THAT CERTAIN LOT LINE ADJUSTMENT NO. PA 03-0656 RECORDED AUGUST 20, 2004 AS INSTRUMENT NO. 04-660740 OF OFFICIAL RECORDS.

End of Legal Description

**EXHIBIT B**

**DEVELOPMENT FEES TO BE REIMBURSED PURSUANT TO PARAGRAPH 2**

**Lexus Dealership - DLR Drive Location**

**Analysis does not include utility connections**

Last revised: 11/13/19

\*\* fees are based on the current Fee Schedule and are subject to change

**Assumptions:**

- 1.) Project will be constructed on a legal lot
- 2.) Project site has an improved street system
- 3.) Project site has been rough graded
- 4.) Some fees are calculated by project square footage, therefore minor fee adjustments may be necessary

NOTE: If any of the above assumptions are not accurate, the estimated fee analyses will be adjusted.

Site acreage:		4.77 acres
Building: 54,383 sf Showroom/admin/service and parts department		54,383 square footage
Estimated Earthwork quantity:		5,380 CY
	<b>User Fees</b>	<b>Development Impact Fees</b>
<b>Planning fees</b>		
Development Plan	\$ 12,611.00	
Architectural Review	\$ 2,719.15	
Environmental Determination	\$ 307.00	
Conceptual Landscape Plan Review	\$ 360.00	
Construction Landscape fees - plan check, inspections and bond release	\$ 4,388.00	
Building DRC and COA Review	\$ 138.00	
Conditional Use Permit	\$ 1,228.00	
<b>Public Works fees</b>		
Onsite fees (Plan check & Inspection) (estimated Engineer's Cost estimate = \$790,000) includes Support departments	\$ 58,265.00	
WQMP review (plan check & Inspection)	\$ 2,010.00	
Drainage Study	\$ 2,427.00	
<b>Building and Safety fees</b>		
Permit fees	\$ 11,166.60	
Plan check	\$ 7,444.40	
Strong Motion & SB1473 (Pass through fees for the State of California) (valuation based)	\$ 1,626.74	
Building plans for Fire review (Plan check and inspection)	\$ 4,081.00	
Planning Fee	\$ 127.33	
On Site Sewer and Water	\$ 550.00	
Trash Enclosure	\$ 500.00	
Parking Lot Lights	\$ 775.00	
<b>Fire fees</b>		
Sprinkler 300-700 (Plan check & Inspection)	\$ 2,331.00	
Alarm greater than 100 (Plan check and inspection)	\$ 4,283.00	
Underground Combo System (Plan check & inspection)	\$ 1,806.00	
Hazardous Materials (Plan check & inspection)	\$ 1,723.00	
High Piled Storage (Plan check & inspections)	\$ 1,499.00	
Above Ground Storage Tanks (Plan check and inspections)	\$ 1,767.00	
Spray booth (Plan check & inspection)	\$ 1,150.00	
<b>Development Impact Fees at \$10.58 (retail) per square foot</b>		\$ 575,372.14
<b>Art Public Places Fee at 1/10 of 1% of building valuation</b>		\$ 4,981.20
<b>Transportation Uniform Mitigation Fee at \$7.50 (retail) per square foot</b>		\$ 407,872.50
<b>Stephen's Kangaroo Rat Fee (K-Rat) at \$500 per acre</b>		\$ 2,385.00
<b>Multispecies Habitat Conservation Fee at \$7,382 per acre</b>		\$ 35,212.14
<b>Totals</b>	\$ 125,283.22	\$ 1,025,822.98
<b>Grand Total</b>	\$ 1,151,106.20	