

PARKING PERMIT AGREEMENT

(City Owned Parking Garage, Convention Center Garage)

This Parking Agreement (the "Agreement") is dated as of the 8 day of July, 2016, by and between City of Fresno, a California municipal corporation, ("City") and Haron Motor Sales, Inc., a California corporation ("Licensee"). Licensee together with City shall be referred to herein as the "Parties."

RECITALS

- A. City owns in fee all rights, title, and interest in and has rate making authority over the Convention Center Garage located at 731-799 O St, Fresno, California 93721 (the "Garage").
- B. Licensee operates a motor sales business and is investing in a new and expanded sales facilities at its location in Downtown Fresno and desires to obtain exclusive use of the entire fifth floor of the Garage, consisting of 337 parking stalls, ("Parking Spaces") for storage of its vehicle inventory during the construction of its new facilities; and
- C. City finds and determines that providing Licensee with parking upon the terms and conditions herein is in furtherance of the public interest and contributes to revitalization/reinvigoration of Downtown Fresno and environs through increased workforce, customer and visitor activity and interest, reduction of physical blight/economic deterioration, an increase in private sector investment and related tax based expansion, all in furtherance of Downtown revitalization.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and for good and valuable consideration, the City and Licensee do hereby agree as follows:

- 1. Effective Date of Agreement. For purposes of this Agreement, "Effective Date" shall mean the date first set forth above which shall be the date City signs this Agreement, which shall be after Licensee signs this Agreement.
- 2. Commencement Date. This Agreement shall commence upon the City's issuance of a building permit to Licensee for the construction of its new sales facilities ("Commencement Date") and end one month after the issuance of a Certificate of Occupancy for the same by City ("Term"), subject to earlier termination in accordance with this Agreement. Notwithstanding the foregoing, the Term of this Agreement shall not exceed one year and shall expire no later than one year from the issuance of building permits.
- 3. Purpose of Agreement. The purpose of this Agreement is to allow Licensee exclusive licensed use of the Parking Spaces solely for the specific public purpose described in Section 4 of this Agreement, and for no other purpose whatsoever, subject to the terms, conditions, and restrictions set forth in this Agreement.

4. Definitions and Terms of Use.

Parking Spaces. For purposes of this Agreement, Licensee is granted exclusive use of the Parking Spaces comprised of the fifth floor of the Garage, consisting of 337 parking spaces, "as-is", for up to one year, during Licensee's construction of sales facilities at its current location.

Hours of Use. Parking will be available to Licensee twenty-four (24) hours a day and seven (7) days a week, including Holidays.

Parking Pass. Entry and parking in the Garage shall be pursuant to special passes or access cards issued by City or City's designated Parking Facilities operator to Licensee solely for use in accordance with this Agreement.

Compliance. Licensee shall handle parking passes or access cards, and cause its staff to use the Parking Spaces for parking of vehicles in accordance with all applicable laws, ordinances, rules and regulations applicable to the Garage, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Garage, as may be amended from time to time ("Rules and Regulations"). Such Rules and Regulations are incorporated as if set forth in full herein. Licensee acknowledges receipt of a copy of the Rules and Regulations. Any change in the above Rules or Regulations shall be provided to Licensee in writing.

Closure. City reserves the right to temporarily close the Garage, or certain areas therein, in order to perform necessary repairs, maintenance, or improvements. City will provide Licensee 10 days' prior notice of such closure and post a notice in the Garage of the same. City may conduct emergency closures without prior notification.

Security. City shall not be responsible for the security of Licensee's vehicles. Licensee shall be solely responsible for any and all damages occasioned from Licensee's use of the Garage under this Agreement. Subject to City's discretionary written approval, Licensee may, at its own expense, take additional security measures to secure its inventory in the Parking Spaces.

5. Improvements. Licensee shall not make any alterations, additions, or improvements in or to the Garage.

6. Termination.

(a) This Agreement shall automatically terminate at the earlier of the following: (1) one year after City's issuance of building permits to Licensee for its new facilities; or (2) 30 days after the issuance of a Certificate of Occupancy by City for occupancy of said new facilities.

(b) Either party may terminate this Agreement where the other party substantially fails to observe, fulfill, or perform any obligation, term, or condition of this Agreement. This failure shall constitute a material breach. The breaching party shall receive written notice of breach, and shall be given thirty (30) calendar days to cure the breach from the date notice is

received. If breaching party does not correct the failure within thirty (30) calendar days, then the non-breaching party may terminate the Agreement upon written notice.

(c) Notwithstanding the foregoing, the City may terminate this Agreement, at any time after the Commencement Date, in the public interest, by giving prior written notice to the Licensee.

(d) Upon termination, Licensee shall return the Parking Stalls to the condition in which they were at the time of the commencement of this Agreement. Licensee shall be solely responsible for any maintenance, repairs, or restoration to the Garage, occasioned by its use of the Garage.

7. Invoicing and Payment.

(a) Licensee shall not pay for use of the Garage during construction of its new facilities, as provided herein.

(b) In the event of Termination, Licensee agrees to pay City for use of the Parking Spaces after the Termination Date in accordance with City's Master Fee Schedule, beginning on the day following the Termination Date. Payment shall be due in advance pursuant to the Master Fee Schedule. Licensee will be issued all applicable parking passes and or access cards through the City Contracted parking Operator.

- a. All payments shall be made to the following City Contracted Parking Operator or at such other location as City may designate by written notice.

SP Plus
2115 Kern Street, Suite 101
Fresno, CA 93721

- b. Licensee shall make all payments in full. Any payment of less than the amount stated in the Agreement shall be deemed a partial payment. Under no circumstances shall City's acceptance of a partial payment constitute accord and satisfaction, nor will City's acceptance of a partial payment forfeit City's right to collect the balance due on the account. City may accept any partial payment check with any conditional or restrictive endorsement or memorandum without prejudice to City's right to recover the balance remaining due or to pursue any other remedy available under this Agreement.
- c. Licensee hereby acknowledges that any late payment to City of sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges, which may be imposed upon City by terms of any mortgage or trust deed or financing arrangement covering the Garage. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of twenty-five dollars (\$25.00), and thereafter, City may require Licensee to pay all future payments of the Monthly Rate Per Space or other sums due by money order or cashier's check.

8. Assignment.

(a) Licensee shall not assign, subcontract, or otherwise transfer its rights or obligations under this Agreement. Any assignment, subletting, occupation, or use without the consent of City shall be void and, at the option of City, shall terminate this Agreement. No interest of Licensee in this Agreement shall be assignable by involuntary assignment through operation of law. Each of the following acts shall be considered an involuntary assignment: (i) if Licensee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Licensee is the bankrupt; or (ii) if a writ of attachment or execution is levied on this Agreement; or (iii) if in any proceeding or action to which Licensee is a party, a receiver is appointed with authority to take possession of the Parking Spaces. An involuntary assignment shall constitute a default by Licensee and City shall have the right to elect to terminate this Agreement, in which case this Agreement shall not be treated as an asset of Licensee.

(b) City may assign this Agreement, and/or sell the Garage, in whole or in part, to any other party, without providing Licensee with prior written notice. Licensee agrees to attorn to any assignee/purchaser.

9. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by the Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

10. Property Tax. Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by City is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Licensee under this Agreement, Licensee, by its signature hereunto affixed, agrees to pay any property taxes levied upon such interest, or thereby warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Agreement, Licensee either took a copy of this Agreement to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined that Licensee will not be taxed on its possessory interest hereunder.

11. Indemnification, Exemption of Licensee, and Insurance

(a) Indemnification and Release. To the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen

directly or indirectly out of Licensee's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of the Parking Spaces, including use of any public facilities and improvements, upon which the Premises is located; or (iii) performance of, or failure to perform, this Agreement. Licensee's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City.

If Licensee should contract any work on the Premises or subcontract any of its obligations under this Agreement, Licensee shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Licensee's occupancy, maintenance and use of the Premises, and any part of the Parking Spaces, including any public facilities and improvements, upon which the Premises is located, shall be at Licensee's sole risk and expense. Licensee accepts all risk relating to Licensee's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of the Parking Spaces, including use of any public facilities and improvements, upon which the Premises is located; and (iii) the performance of, or failure to perform, this Agreement. City shall not be liable to Licensee or Licensee's insurer(s) for, and Licensee and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises, or any part of the Parking Spaces, including any public facilities and improvements, upon which the Premises is located, in any way related to the Licensee's operations and activities. Licensee shall immediately notify City of any occurrence on the Premises, or any part of the Parking Spaces including any public facilities and improvements, upon which the Premises is located, resulting in injury or death to any person or damage to property of any person.

The provisions of this Section A shall survive termination or expiration of this Agreement.

(b) Insurance. Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Agreement) with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$1,000,000 per occurrence for fire or damage to the

premises, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.

COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(ii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iii) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

Licensee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the Agreement, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits. Any Workers' Compensation

insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Licensee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of this Agreement.**

Upon request of City, Licensee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(c) Failure to Maintain Insurance. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve City of its responsibilities under this Agreement.

(d) Licensee Liable. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee.

(e) Waiver. Licensee and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Licensee or its officers, employees, agents, consultants, contractors, subcontractors, invitees and volunteers, or its property or the property of others under its care, custody and control. Licensee shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive termination or expiration of this Agreement.

(f) Contracting and Subcontracting. If Licensee should contract any work on the Premises or subcontract any of its obligations under this Agreement, Licensee shall require each consultant, contractor and subcontractor to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' or subcontractors' certificates and endorsements shall be on file with Licensee and City prior to the commencement of any work by the subcontractor.

12. Governing Laws and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

13. Condemnation. If the Garage or any portion thereof are taken under the power of eminent domain, or sold to a public authority under the threat of the exercise of said power (all

of which is herein referred to as "Condemnation"), this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. All awards for the taking any payment made under the threat of the exercise of condemnation shall be payable to the City, and Licensee shall not claim any portion of such award by virtue of any interests created by this Agreement or otherwise.

14. Severability. If any term, provision, covenant, or restriction in this Agreement is determined to be invalid, void, unenforceable, or otherwise inconsistent with applicable law, the remainder of the terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of City and the Licensee that they would have executed the remaining terms, provisions, covenants, and restrictions set forth in this Agreement without including any of such terms, provisions, covenants, or restrictions that may be hereafter declared invalid, void, or unenforceable.

15. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

16. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

17. Interpretation. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall be resolved by construing the terms of this Agreement in accordance with their generally accepted meaning.

18. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Licensee.

19. Binding. Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

20. Compliance with Law. Licensee shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

21. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

22. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific Parties hereto as identified in the preamble of this

Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

23. Bond and Indenture Requirements and Subordination. Notwithstanding any other terms or provisions of this Agreement, the Parties acknowledge and agree that the Garage is encumbered by certain The 2004 Lease Revenue Bonds and Indenture and covenants/conditions therein. This Agreement shall be deemed modified to any extent required, at any time in the opinion of City's bond counsel for compliance with the Bonds and Indenture. Without limiting the foregoing, the Parties acknowledge and agree that, the terms, covenants, provisions and conditions herein are and shall be subject and subordinate to the Bond and Indenture and any and all City bond and other financings and refinancings of the Garage. Licensee agrees to provide a written subordination upon City's reasonable request.

24. Notices. Any notices required or permitted to be given under the terms of this Agreement must be in writing and may be: (a) personally delivered; (b) mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) sent by reputable overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the Licensee:

Haron Motor Sales, Inc.
Attention:
James Haron, President/CEO
2222 Ventura Avenue
Fresno, CA 93721
Phone: (559) 237-5533

If to the City:

City of Fresno
Development and Resource Management Department
Attention: Parking Manager
2600 Fresno Street Room 4019
Fresno, CA 93721-3623
Phone: 559-621-7275
Fax: 559-457-1265

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IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY:

CITY OF FRESNO,
a California municipal corporation

By: _____
Bruce Rudd Date
City Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  7/13/16
Raj Singh Badhesha Date
Deputy City Attorney

Addresses:

CITY:

City of Fresno
Attention:
Del Estabrooke
2600 Fresno Street, Room 4019
Fresno, CA 93721
Phone: (559) 621-7275

LICENSEE:

HARON MOTOR SALES, INC.,
a California corporation

By:  7-8-16
James Haron Date
President

By: _____

Name: JAMES S HARON

Title: Pres
(If corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

LICENSEE:

Haron Motor Sales, Inc.
Attention:
James Haron, President/CEO
2222 Ventura Avenue
Fresno, CA 93721
Phone: (559) 237-5533