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March 16, 1990

DiGiulio Pontiac, GMC, Inc.
Attention: RICH DIGIULIO
4411 Peralta Boulevard
Fremont, California 94536

Tasha Incorporated
Attention: HANK TORIAN
4074 Eggers Drive, #G
Fremont, California 94536

Moran Properties
Attention: JIM MORAN
4343 Peralta Boulevard
Fremont, California 94536

Don Signer Buick, Inc.
Attention: DON SIGNER
38623 Fremont Boulevard
Fremont, California 94536

Claridges Limited
Attention: TOM CLARIDGE
4300 Peralta Boulevard
Fremont, California 94536

Fremont Mazda
Attention: FRANK MEADS
4450 Peralta Boulevard
Fremont, California 94536

Pierotti Motors, Inc.
Attention: HANK PIEROTTI
35018 Fremont Boulevard
Fremont, California 94536

Fremont Lincoln-Mercury
Attention: MARK HAMILTON
36761 Fremont Boulevard
Fremont, California 94536

RE: Auto Mall

Gentlemen:

Enclosed is a draft of the Tri-Party Auto Mart Improvement Agreement. Although the cover says it is draft number two, I think it is actually draft three or four but it is draft number two done by the City. This is the document by which you will be entitled to receive sales tax monies from the City that will be applied to the assessments that will be levied against your properties. It is obviously a very important document. Jim Salter and I have both reviewed it. There are a number of issues that we raised with the City which are going to be modified and some which are not going to be modified but of which you should be aware. Some of the major issues that are not going to be modified and that you are going to have to live with are the following:

1. Under the formula, sales tax that exceeds a threshold level will be paid by the City into a fund. That fund will be used to pay assessments levied against your property. However,

Bond Counsel has advised the City that there is no legal way for the City to reimburse the Auto Dealers for assessment payments that are already made. Therefore, if in year three there is not sufficient money in the fund to pay the assessments, the Auto Dealers will have to pay the balance of the assessment owed for that year. If in year four there is a surplus, you cannot get reimbursed for the prior year's payments. Although obviously the amount owed in year four would be paid. To try to assist as much as possible, we are going to attempt to delay the first payment so that you will have as long as possible to build up sales tax into a fund to cover the first payment. Bond Counsel advises us that the first payment could be delayed for 30 months following the formation of the District and the sale of the bonds. The sale of the bonds will not occur for approximately 12 to 14 months so that first payment could become due in approximately 40 months. If we are successful in getting this scenario incorporated, it should give you enough time to build stores and start operating in an effort to build up the necessary reserve for the first payment.

2. The drop dead date for close of escrow is going to be July 16, 1990. If escrows have not closed by that date, the City is going to reserve the right to withdraw from participation in the Tri-Party Agreement.
3. Although minor, there is some risk that somebody would challenge the legality of the procedure that has been established for getting to the Dealers their share of the rebate. The Dealers are going to have to assume that responsibility and if they receive payments from the City under the rebate provisions and those payments are later declared to be illegal, you will be required to repay the money to the City. At the present time, the City's Bond Counsel and the attorney handling the Tri-Party Agreement for the City as well as the undersigned believe that the Agreement is legal. However, there is no guarantee of this fact and there is a potential exposure should litigation be brought and the agreement be declared illegal.
4. There is also a chance that somebody could bring a lawsuit and claim that the construction work for the improvements had to be done by public bid and pursuant to prevailing wage. This appears to be an open issue in law with no definitive answer. If such a lawsuit is brought and the cost of the project is increased because prevailing wages have to be paid, the Dealers will have to absorb the cost of paying those wages and any damages associated with that breach of law.
5. Another provision of the agreement provides that if there is a breach of the agreement after the 11 year period during which the City is rebating sales tax to the Dealers, that the City will have the right to collect damages from the partners. Those damages will be determined by taking the square footage of the defaulting dealership and multiplying that by the per gross square foot average City sale's tax revenues received from the non-defaulting dealers. Each of you will then be jointly and severally liable for that payment to the City. The City's concern is that after they have made all of the payments to the Dealers, they will have no hammer to make sure the Dealers continue to perform pursuant to the Tri-Party Agreement thereby insuring that the City gets the benefit of its bargain. There is an inherent inequity in this procedure because the non-defaulting partners will be responsible for a defaulting partner. It may be possible to address some of these inequities in the Partnership Agreement, but you should be aware of this issue.
6. This Agreement does not guarantee that you will receive any money whatsoever. If you do not hit the threshold levels set forth in Exhibit "D" there will be no rebates from the City and you will be responsible for paying the entire assessment levied against your property.

March 16, 1990
Page #3

7. The \$4.3+/- million dollars in bond sales will be levied against the properties that close escrow on or before the July 16th date. Any property acquired after that date will not be entitled to any of the subsidy. If more than 65 acres are acquired on or before that date, the assessment will be levied equally across all of the properties and they will all participate in the sales tax rebate.
8. All auto related sales occurring inside the 88+/- auto mall will count toward the formula. It doesn't matter whether the parcel is acquired before or after July 16, 1990.
9. The timing is that any Dealer who wants to participate must make a commitment by May 1, 1990. The contract to acquire the property must be signed with Santa Fe by May 10, 1990. Upon execution of the contract, Santa Fe will start Durham which will take approximately 12-14 months. Escrows will close around July 16, 1990. Jim Salter tells me that the construction of dealerships could then start approximately September 1990.
10. The contract requires that a minimum number of new car franchises commence retail sales within three years from the date of purchase of the property. Jim Salter is to talk with each of the Dealers and determine a number which will be provided to the City.

This is a very complex document. I urge you to have each of your respective attorneys review the document along with any other advisors that you think are appropriate. I will be happy to discuss the contents of the Agreement with you or any of them at any convenient time. This document is presently undergoing a revision as a result of a 4 hour review that Jim Salter and I attended on March 15th. When I have received the revised Draft, I will forward it to you so you can see the changes. If you have any questions, give me a call.

Yours truly,

JAMES W. McKEEHAN

JWM/yml

cc: Jim Salter