

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A  
DEED OF CONSERVATION EASEMENT RELATED TO PROPERTY AT OR  
ABOUT 5715 AND 5735 DARROW ROAD, HUDSON.

WHEREAS, Bernie Moreno Companies, dba Collection Auto Group, intends to develop and operate an auto dealership(s) on a portion of the property located at or about 5715 and 5735 Darrow Road in Hudson (the "Property") and, also, the owner of the property, M7 Realty, LLC, intends to dedicate a portion of the Property as open space for aesthetic and conservation purposes (the "Conservation Easement Area"); and

WHEREAS, the City of Hudson Planning Commission granted conditional use approval to Bernie Moreno Companies, dba Collection Auto Group, for the intended use of the Property for an auto dealership(s) at its regularly scheduled meeting on October 8, 2012 and mandated that as one of the conditions of granting such approval, Grantor execute and record a conservation easement to conserve the Conservation Easement Area in perpetuity for the benefit of the City of Hudson and the public in general.

NOW, THEREFORE, BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio:

Section 1. That the City Manager is authorized and directed to execute a Deed of Conservation Easement with M7 Realty, LLC, a copy of which Deed is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

Section 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
William A. Currin, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

First Reading: November 7, 2012

Second Reading: November 19, 2012

## **EXHIBIT A**

### **DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between M7 REALTY, LLC, an Ohio limited liability company, having an address of 28450 Lorain Road, North Olmsted, Ohio 44070 ("Grantor"), its successors and assigns, and the CITY OF HUDSON, an Ohio municipal corporation, having an address c/o City Manager, 27 East Main Street, Hudson, Ohio 44236-3099 ("Grantee").

WHEREAS, the Grantor is the owner in fee simple of certain real property known as 5715 and 5735 Darrow Road in the City of Hudson, County of Summit, State of Ohio, and described in Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Bernie Moreno Companies dba Collection Auto Group intends to develop and operate auto dealership(s) on a portion of the Property and, also, Grantor or its assigns intends to dedicate a portion of the Property as open space for aesthetic and conservation purposes ("Conservation Easement Area"), said Conservation Easement Area being described in Exhibit B attached hereto and made a part hereof;

WHEREAS, the City of Hudson Planning Commission granted conditional use approval to Bernie Moreno Companies dba Collection Auto Group for the intended use of the Property for auto dealership(s) at its regularly scheduled meeting held on October 8, 2012 and mandated that as one of the conditions of granting such approval, Grantor execute and record a conservation easement to conserve the Conservation Easement Area in perpetuity for the benefit of the City of Hudson and the public in general;

WHEREAS, Grantor recognizes that the Conservation Easement Area has substantial value in its present state as a natural, scenic, open and/or wooded area, constituting a natural habitat for plants and wildlife;

WHEREAS, the Grantor intends, as owner of the Property, to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity for the public's benefit; and

WHEREAS, the Grantee is qualified to receive the Deed of Conservation Easement.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Grant of Easement. The Grantor hereby grants and conveys to the Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Conservation Easement Area of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Conservation Easement Area, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Conservation Easement Area by the Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of itself, its heirs, successors and assigns with the Grantee, to do (only to the extent set forth in Paragraph 9 hereof) and refrain from doing, severally and collectively, upon the Conservation Easement Area, the various acts hereinafter described, it being hereby agreed and expressed that the doing (only to the extent set forth in Paragraph 9 hereof) and the refraining from doing said acts, and each thereof, is and will be for the benefit of the Grantee.

2. Term of Easement. The Easement granted hereunder shall be perpetual and shall have no expiration date.

3. Conservation Values. The Conservation Easement Area possesses substantial value in conserving and protecting the physical, biological, chemical and overall ecological integrity of the Conservation Easement Area.

4. Prohibited Actions. Any activity on or use of the Conservation Easement Area inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

- a. Commercial Activities. Commercial, residential development or industrial activity is prohibited, as well as oil, gas and other mineral exploration and extraction are prohibited.
- b. Construction. The placement or construction of any man-made modifications such as buildings, structures, roads and parking lots is prohibited. The construction of storm water facilities as required by the City of Hudson or any other governmental entity (including, but not limited to storm water retention or detention basins, and associated culverts, pipes, and bulkheads, the “Storm Water Facilities”) shall be permitted. Any such Storm Water Facilities shall be located and designed to minimize disturbance of the Conservation Easement Area to the maximum extent feasible. Fences shall also be permitted as approved by the City of Hudson. Grantee acknowledges that Grantor may further develop the Property with additional improvements in the future (the “Phase 2 Improvements”) and agrees that: (i) a portion of asphalt paving that presently exists within the Conservation Easement Area may remain in the Conservation Easement Area, however Grantor may remove it at any time, and Grantor shall remove it as part of the Phase 2 Improvements, and (ii) Grantor may install an additional landscaping buffer within the Conservation Easement Area (as approved by Grantee) as a part of the Phase 2 Improvements, or as may be otherwise required by Grantee to conform to Grantee’s Land Development Code regulating visual shielding of

residential uses if the Phase 2 Improvements are not completed within five (5) years from the date of recording this easement.

- c. Cutting Vegetation. Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides is prohibited, except in the management of those plant species deemed by the State to be invasive species, or as required to maintain the functionality of, and access to, the Storm Water Facilities. Any control of these species shall be done in consultation with the Grantee.
  - d. Utility Easement. In the event a utility easement currently exists on or through the property covered under this easement, vegetation may be cut or managed in accordance with the terms of the utility easement.
  - e. Land Surface Alteration. Except as required to construct and maintain the Storm Water Facilities, the removal of soil, sand, gravel, rock, minerals or other materials from the Conservation Easement Area, or doing any act that would alter the topography of the Conservation Easement Area, shall be prohibited.
  - f. Dumping. Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Conservation Easement Area.
  - g. Water Courses. Except as required to construct and maintain the Storm Water Facilities, water courses, streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered. Grantee shall be permitted to remove sediment from the Storm Water Facilities as required to maintain its functionality.
  - h. Utilities. New transmission lines for electric power, natural gas or petroleum products on the Conservation Easement Area shall be prohibited; however, the property may be bored to install utilities. The boring site shall be outside the Conservation Easement Area.
  - i. Limitation of Motor Vehicles. There shall be no operation of motorized vehicles on the Conservation Easement Area, including but not limited to, automobiles, trucks, snowmobiles, ATVs, motorcycles, except for the purpose of maintaining the property, constructing or maintaining the Storm Water Facilities, or for emergency purposes.
  - j. Other Activities. Each and every other activity or construction project, which endangers the natural, scenic, biological, ecological integrity of the Conservation Easement Area shall be prohibited.
5. Rights of Grantee. The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Conservation Easement Area:

- a. Right to Enter. The Grantee and its officers, employees and authorized agents have the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior reasonable notice to the Grantor. The Grantee may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Conservation Easement Area or the Property. The Grantee has no right to permit others not listed in this Paragraph 5a to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area under this Conservation Easement.
- b. Right to Preserve. The Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of this Conservation Easement.
- c. Right to Require Restoration. The Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area, which are damaged by any activity inconsistent with this Conservation Easement.
- d. Signs. The Grantee shall have the right to place signs on the Conservation Easement Area, which identify the land as being protected by the Conservation Easement.

6. Permitted Uses. The Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. Right to Convey. The Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. Right to Access. The Grantor shall retain the right to unimpeded access to the Conservation Easement Area.

7 Grantee's Remedies. In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

- a. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the terms of this Conservation Easement.
- b. Acts Beyond Grantor's Control. The Grantee may not bring an action against the Grantor for modifications occurring to the Conservation Easement Area, which result from causes beyond the Grantor's control. Examples include, without

limitation: unintentional fires, storms, natural earth movement, or trespassers. The Grantor has no responsibility under this Conservation Easement for such unintended modifications. The Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Conservation Easement.

- c. Notice and Demand. If the Grantee determines that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide written notice to the Grantor. The written notice shall identify the violation and request corrective action to cure the violation or restore the property. The Grantor shall advise the Grantee in writing in the event of any change in the business address of the Grantor at any time subsequent to the execution hereof.
- d. Failure to Act. If, for a thirty (30)-day period after the date of written notice provided pursuant to subparagraph c., above, the Grantor continues violating this Conservation Easement, or, if the Grantor does not abate the violation or begin to implement corrective measures within the foregoing thirty (30)-day period requested by the Grantee, or fails to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the Grantor has failed to comply with this Conservation Easement, then the Grantor also agrees to reimburse all reasonable costs and attorney fees incurred by the Grantee in compelling such compliance.
- e. Unreasonable Litigation. If either party, the Grantee or the Grantor, initiates litigation against the other party to enforce the terms of this Easement, and if the court determines that the litigation was in bad faith, then the initiating party is to reimburse the other party for reasonable costs and attorney fees incurred in defending the action.
- f. Grantor's Absence. If the Grantee determines that this Conservation Easement is, or is expected to be, violated, the Grantee will make a good faith effort to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then the Grantee may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure.
- g. Cumulative Remedies. The preceding remedies of the Grantee are cumulative. Any, or all, of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement.

8. Ownership Costs and Liabilities. In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Conservation Easement Area. The Grantee and its officers, employees and authorized agents have no liability arising from injury or death to any person or from physical damage to any other property located on the Conservation Easement Area or otherwise. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation and maintenance of the Conservation Easement Area, but reserves the right to seek contribution, indemnification and any other form of payment from any third party for such liabilities.

9. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Conservation Easement Area of any substance not existing within the Conservation Easement Area on the date hereof, now or hereafter defined, listed, or otherwise classified and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirements as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Grantor agrees to take all steps necessary to assure its containment and remediation as required to meet the requirements of the applicable federal, state, or local law, regulation, or requirements, including any cleanup that may be required, unless the release was caused by the Grantee or any third party not under the control of the Grantor.

10. Recordation. The Grantee shall record this instrument in a timely fashion in the official records of Summit County, Ohio, and may re-record it at any time as may be required to preserve its rights in this Easement.

11. Assignment. This Conservation Easement is transferable, but the Grantee may assign its rights and obligations hereunder only to an organization agreed to by the Grantor and authorized to acquire and hold conservation easements under Ohio law. As a condition of such transfer, the Grantee shall require that the assignee organization must agree in writing to assume all of the Grantee's obligations and duties hereunder and to carry out the conservation purposes that this grant is intended to advance. The Grantee agrees to give written notice to the Grantor of an assignment at least thirty (30) days prior to the date of such assignment and to furnish promptly to the Grantor an executed copy of the assignment and assumption agreement to be recorded in the official records of Summit County, Ohio. The failure of the Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Liberal Construction. This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the property. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

13. Notices. For purposes of this Conservation Easement, notices may be provided to either party, by personal delivery or by delivery by a nationally-known commercial carrier service to that party at the address shown at the outset of this agreement, or at the last known address of a party. Notice is deemed given upon delivery.

14. Severability. If any portion of this Deed Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this Deed of Conservation Easement will remain in full force and effect.

15. Successors. This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Conservation Easement Area and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Conservation Easement Area shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor, its successors, and assigns, shall reference in the deed or transfer instrument for any future transfers of title to the Property that the Property is encumbered by and subject to the Deed of Conservation Easement and shall indicate therein the county filing instrument number for this Deed of Conservation Easement.

16. Termination of Rights and Obligations. A party's future rights and obligations under this Conservation Easement shall terminate upon the transfer of that party's interest in the Conservation Easement Area. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

17. Termination/Amendment. This Deed of Conservation Easement and the Conservation Easement Area shall only be terminated or amended by the written consent of both the Grantor and the Grantee. Any proposed termination or amendment of this Deed of Conservation Easement and/or the Conservation Easement Area shall not go into effect if the fee title owners of four (4) of the following six (6) parcels that abut the Conservation Easement Area identified by their current Summit County tax parcel identification numbers as: 3003939 (1431 Winchell), 3003940 (1439 Winchell), 3003459 (1510 Barlow), 3003942 (5640 Gibson), 3003835 (5652 Gibson), and 3003632 (no address on Barlow Road), (collectively, the "Abutting Parcels"), object in writing to the proposed termination or amendment. There shall be only one objection for each of the Abutting Parcels for a total of six objections regardless of the number of fee title owners there may be for each Abutting Parcel. In the event the fee title owners of an Abutting Parcel cannot agree upon whether to object to the proposed amendment or termination, the subject Abutting Parcel of those owners shall be deemed to have not objected to the proposed termination or amendment.

When a termination or amendment has been proposed by the Grantor and/or Grantee, the Grantee shall make written notification to the owners of the Abutting Parcels of the proposal and of their right to deliver to the Grantee their written objection to the proposed termination or amendment. Said owners shall have twenty (20) days from receipt of such notification to deliver to the Grantee a written objection to the proposed termination or amendment. A written notification to an owner of an Abutting Parcel and to the Grantee shall be delivered by hand-delivery to the owner or Grantee, or representative thereof, or by delivery by a nationally-recognized commercial carrier service. Delivery shall be to the actual premises of the Abutting Parcel or to the last tax mailing address for the Abutting Parcel as set forth in the records of the Summit County Fiscal Officer.

18. Applicable Law. This Deed of Conservation Easement shall be governed by and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.



19. Entire Agreement. This Deed of Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

20. “As Is” Condition. The Grantee shall conduct an initial baseline inventory of the Conservation Easement Area. The inventory shall include: a description of the general vegetative cover and ecosystems existing on the property, existence and location of any state and federal endangered species or other significant occurrences as indicated by the Natural Heritage Database or other sources, structures, disturbed areas, mineral extraction, roadways, utility easements and any other data relevant to the current “as is” condition of the property. The Grantee has examined the Conservation Easement Area and agrees to accept the “as is” condition of the Conservation Easement Area for purposes of this Conservation Easement.

21. Site Monitoring. The Grantee shall develop a site-monitoring program to ensure the terms of this Conservation Easement are being upheld. The site shall be inspected a minimum of one (1) time annually.

IN WITNESS WHEREOF, the Grantor and the Grantee have set their hands on the day and year first above written.

M7 REALTY, LLC, an Ohio limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED:

CITY OF HUDSON, OHIO, an Ohio municipal corporation

By: \_\_\_\_\_

Anthony J. Bales, City Manager

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF SUMMIT            )

BEFORE ME, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, \_\_\_\_\_ of M7 Realty, LLC, an Ohio limited liability company, who acknowledged that he/she did sign the foregoing instrument and that the same was his/her free act and deed as an authorized representative of M7 Realty, LLC and the free act and deed of M7 Realty, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF SUMMIT            )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the City of Hudson, Ohio by Anthony J. Bales, its City Manager, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed as a City official and the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT PREPARED BY:**

Walter & Haverfield LLP  
The Tower at Erieview  
1301 E. Ninth Street, Suite 3500  
Cleveland, OH 44114  
(216) 781-1212

**EXHIBIT A**

Legal Description of the Property

**EXHIBIT B**

Legal Description of the Conservation Easement Area