

FIRST AMENDMENT TO SALES TAX SHARING AGREEMENT

This First Amendment to Sales Tax Sharing Agreement ("**First Amendment**") is hereby entered into this 14th day of June, 2017, by and between the City of Cathedral City, a charter city and municipal corporation within the State of California (the "**City**"), and Palm Springs Motors, Inc., a California corporation, ("**Owner**"). Each of the foregoing parties may be referred to individually herein as "**Party**" or jointly as the "**Parties**."

RECITALS

A. City and Owner entered into that certain Sales Tax Sharing Agreement on September 12, 2012 ("Agreement"). Terms not specifically defined herein shall have the meaning ascribed to them in the Agreement.

B. The purpose of the Agreement was to encourage Owner's improvement, expansion and operation of a Lincoln automobile dealership on the Property and for the City to derive the benefits set forth in the Agreement in accordance with Chapter 3.46 of Title 3 of the Cathedral City Municipal Code. In consideration of the foregoing, Owner was and remains eligible to receive economic incentive payments from City equal to 50% of the annual sales tax receipts generated from the Property and received by City, over the established Sales Tax Base, in an amount not to exceed \$400,000 over the term of the Agreement. As of the Effective Date of this First Amendment, Owner has received \$103,357.00 in economic incentive payments from the City, with a remaining eligible amount of \$296,643.00.

C. The purpose of this First Amendment is to encourage Owner's improvement, expansion and operation of a Mazda automobile dealership on the Property, for City to derive the benefits therefrom as set forth in the Agreement in accordance with Chapter 3.46 of Title 3 of the Cathedral City Municipal Code, for Owner to be eligible to receive economic incentive payments from City equal to 50% of the annual sales tax receipts generated from the Property and received by the City over the established Sales Tax Base in an amount not to exceed \$1,300,000 (inclusive of the original incentive payments received and for which Owner remains eligible) over an extended term as provided herein.

D. After a duly noticed public hearing, as required by the Program, and consideration by the City Council of the Tax Sharing Report, attached hereto as Exhibit "A", prepared in accordance with the Program, and consideration of such other matters as may have been presented during said public hearing, the City Council found the Existing Retail Business to be an Approved Business with which the City would enter into this First Amendment to Sales Tax Sharing Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the Parties do hereby enter into this First Amendment which modifies and amends the Agreement as follows:

1.0 FINDINGS.

1.1 The City Council determines that its findings originally made and as memorialized in the Agreement remain true and accurate with regard to the Property and the Mazda Improvements described herein and hereby renew those findings as is set forth in full in this First Amendment, with the exception that the City Council finds the benefit to the City of Sales Tax Sharing of the Sales Tax Increment, calculated using the Sales Tax Base determined in the Tax Sharing Reports, using a Sales Tax Sharing percentage of fifty percent (50%) for an extended period, as described in this First Amendment or until Owner's share of the Sales Tax Sharing reaches a maximum Sales Tax Increment paid to Owner of One Million Three Hundred Thousand Dollars (\$1,300,000), whichever occurs first, is consistent with the intent and purpose and requirements of the Program.

2.0 AMENDMENTS. The Agreement is hereby modified and amended as follows:

1.2 **New Section 3.a.1.** A new subdivision "a.1" is hereby added to Section "3" of the Agreement as follows:

"a.1 Owner is obligated to (1) renovate and expand the existing Mazda building showroom and customer service areas on the Property, and (2) upgrade and improve the Mazda building façade ("**Mazda Improvements**"). The Mazda Improvements to the Property are indicated on Exhibit "B" to this First Amendment and incorporated herein by this reference. The Mazda Improvements shall be considered to be part of the Work of Improvement and Improved Dealership, as set forth in subdivision "a" of Section 3 above. The representations of Owner and all agreements made by and obligations imposed upon Owner, as set forth in subdivision "a" of Section 3 above, remain binding and applicable to the Work of Improvement described herein."

1.3 **Amended Section 3.d.** Subdivision "d" of Section 3 of the Agreement is hereby amended to read as follows:

"d. The Parties acknowledge that the Ordinance approving the Program was duly adopted by the City Council and took effect on October 12, 2012 and subsequently amended and took effect on January 11, 2014."

1.4 **New Section 4.e.** New subdivision "e" is hereby added to Section 4 of the Agreement as follows:

"e. All of the terms and conditions set forth in subdivisions "a" through "d," inclusive of Section 4, shall remain in full force and effect except that: (i) the period over which the Sales Tax Sharing shall remain payable is extended to a date seven (7) years after the issuance of a Certificate of Occupancy by City for the Mazda Improvements; (ii) the total cumulative

amount of Sales Tax Sharing received by Owner shall not exceed \$1,300,000, and (iii) Owner's satisfaction of the terms and conditions of subdivision "f" below are a precondition upon Owner's receipt of any Sale Tax Sharing over and above \$400,000."

1.5 **New Section 4.f.** New subdivision "f" is hereby added to Section 4 of the Agreement as follows:

"f. Owner agrees to provide to City documentation reasonably acceptable to City, including without limitation, invoices, lien releases, and other evidences of Owner's actual payment, confirming payments to contractors, subcontractors, and vendors regarding the Mazda Improvements totaling not less than One Million Six Hundred Twenty-Eight Thousand Four Hundred Thirty-One Dollars (\$1,628,431) ("**Total Minimum Expense**"). If the accepted documentation evidences payments by Owner of less than the Total Minimum Expense, then City shall have the right to recalculate and reduce the amount of Sales Tax Sharing to be received by Owner in proportion to the amount by which the actual amount paid is less than the Total Minimum Expense.

3.0 **RECORDATION OF AMENDED OPERATING COVENANT.**

In accordance with Sections 3.46.030 and 3.46.050 of the Code, Owner agrees to record against the Property the First Amendment to the Operating Covenants attached hereto as Exhibit "C". Said covenants shall be recorded immediately after the Effective Date, shall survive termination for any reason of the Agreement or this First Amendment and shall run with the Property for the duration of the term set forth in said Operating Covenants.

4.0 **GENERAL PROVISIONS.**

4.1 **Remainder Unchanged.** Except as specifically modified and amended in this First Amendment, the Agreement remains in full force and effect and binding upon the Parties.

4.2 **Integration.** This First Amendment consists of pages 1 through 4 inclusive, which constitutes the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the transaction discussed in this First Amendment.

4.3 **Effective Date.** This First Amendment shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Owner.

4.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this First Amendment.

4.5 References. All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this First Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this First Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the Agreement on the date and year first written above.

CITY:

City of Cathedral City

By: _____
Charles McClendon, City Manager

ATTEST:

By: _____
Gary Howell, City Clerk

APPROVED AS TO FORM

Eric S. Vail, General Counsel

OWNER:

Palm Springs Motors, Inc.

By: _____

Name: __Paul Thiel _____

Title: __President _____

NOTE: OWNER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO SERVICE PROVIDER'S BUSINESS ENTITY.

EXHIBIT "A"

Tax Sharing Report

EXHIBIT "B"

Mazda Improvements

EXHIBIT "B"

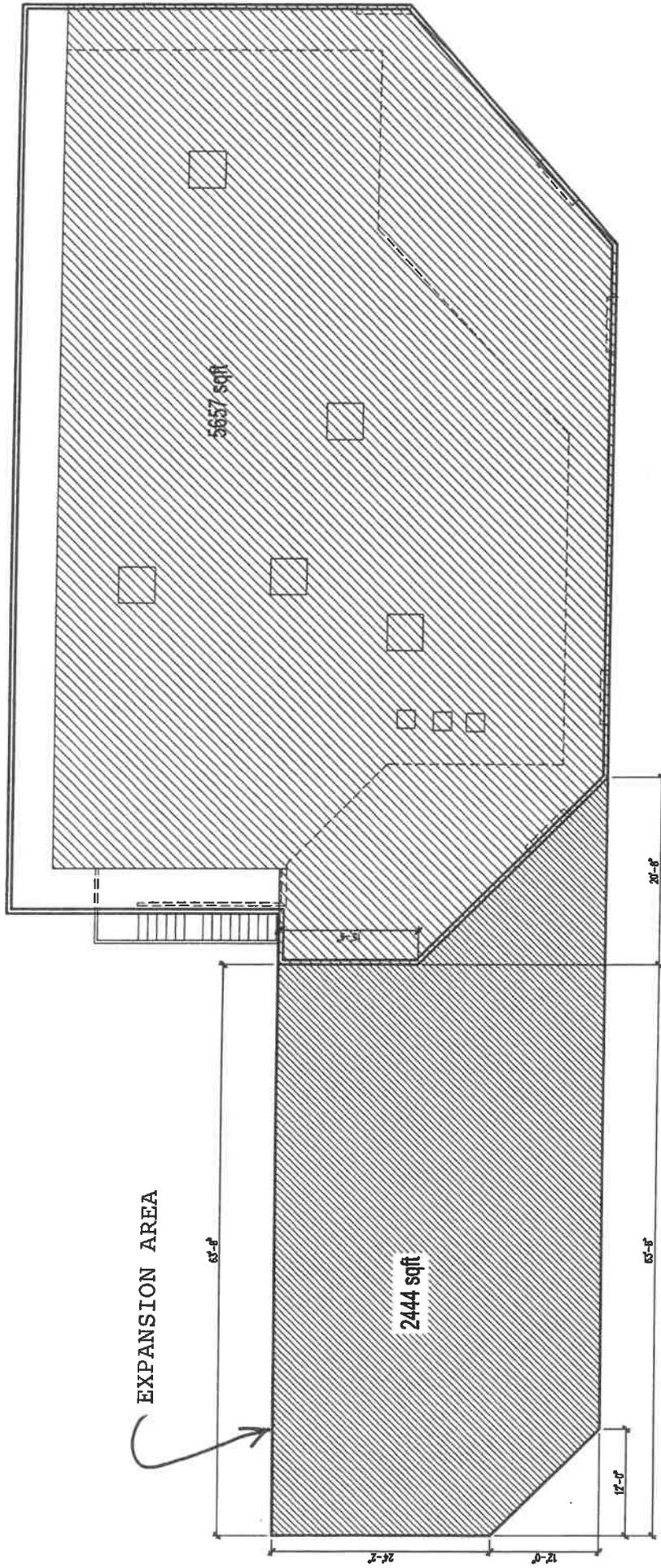


EXHIBIT "B"

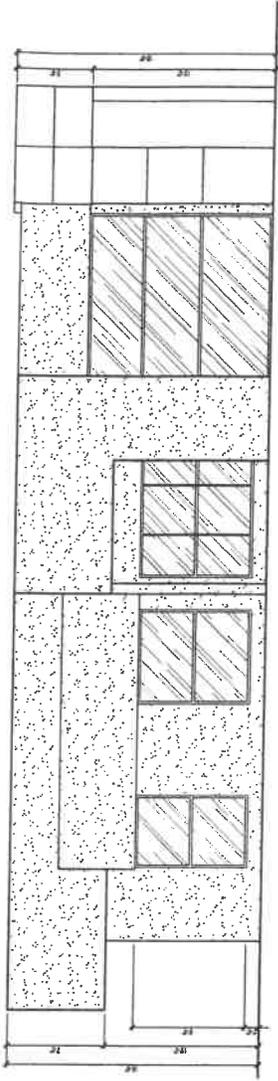
NO.	DESCRIPTION	DATE

EXTERIOR ELEVATIONS

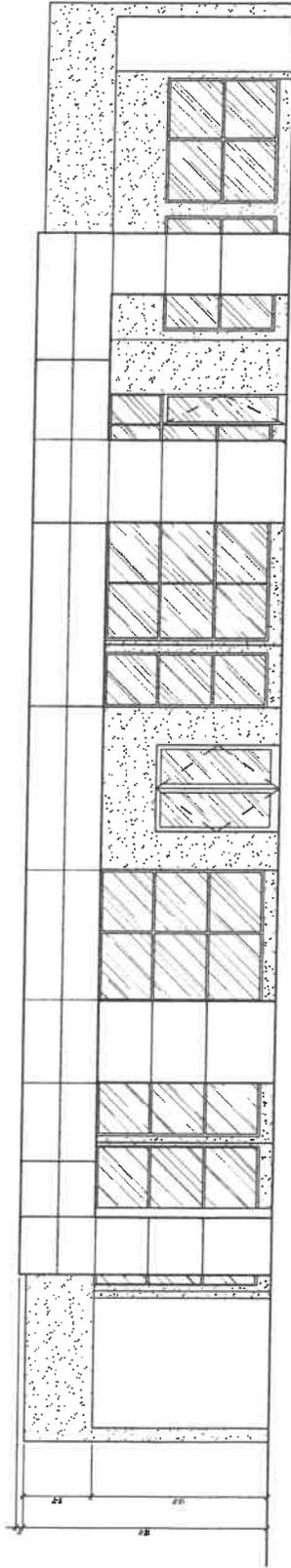
OFFICE REMODEL
 MAZDA DEALERSHIP
 CATHEDRAL CITY, CA 92224

Date: 08-10-18
 Drawn: J.S/NOTED
 Project: LRM
 Job:

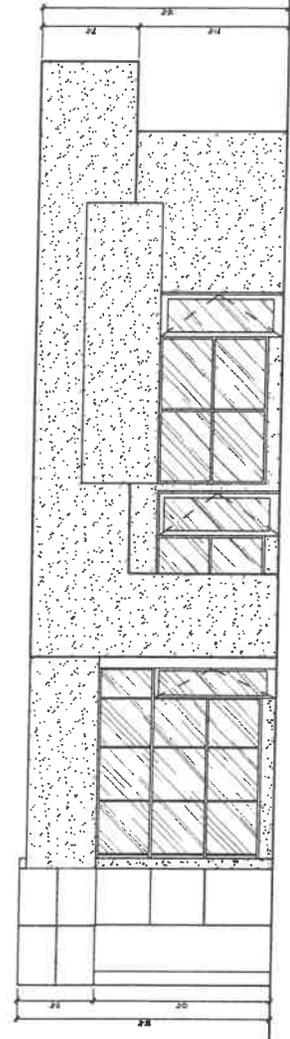
Sheet: A3.0



WEST ELEVATION
 SCALE: 1/4" = 1'-0"



SOUTH ELEVATION
 SCALE: 1/4" = 1'-0"



EAST ELEVATION
 SCALE: 1/4" = 1'-0"

NOTE: The expansion of the Mazda facility by 2,444 sf for a total of 8,101 sf. The facade will match that of the Ford facility.

EXHIBIT "C"

First Amendment Operating Covenants