

## FIRST AMENDMENT TO OPERATING COVENANTS

This First Amendment to Operating Covenants ("First Amendment") is hereby entered into this 14th day of June, 2017, by and between the City of Cathedral City, a charter city and California municipal corporation (the "**City**"), and Palm Springs Motors, Inc., a California corporation (the "**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 document entitled "Operating Covenants" dated September 12, 2012, which was recorded in the official records of the Riverside County Recorder's Office as Instrument No. \_\_\_\_\_ ("**Operating Covenants**"). The Operating covenants were recorded in accordance with that certain Sales Tax Sharing Agreement between the Parties dated September 12, 2012 ("**Agreement**"). All terms used in this First Amendment shall have the meaning ascribed in the Operating Covenants or if not defined therein, then in the Agreement, as amended, unless specifically defined herein.

B. The Parties subsequently entered into that First Amendment to the Sales Tax Sharing Agreement dated June 14, 2017, which amends the Agreement to provide for the addition of the Mazda Improvements on the Property, to increase Owner's maximum aggregate share of the Sales Tax Sharing, and to extend the term over which the Sales Tax Sharing is payable.

C. This First Amendment amends the Operating Covenants as intended to reflect the addition of the Mazda Improvements, the increase in Owner's maximum aggregate share of the Sales Tax Sharing, and to extend the term for which the Operating Covenants shall remain legally binding.

### 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 Operating Covenants as follows:

1. **AMENDMENT.** The Operating Covenants are hereby modified and amended as follows:

1.1 **Section 4.** Section 4 of the Operating Covenants is hereby amended to reflect that the term "Work of Improvement" now includes the "Mazda Improvements," as defined in the First Amendment to the Agreement. Section 4 of the Operating Covenants is also amended to provide that the Owner shall cause the Property to be used as an automobile dealership for the sale of new vehicles manufactured by Lincoln, Ford, and Mazda, together with incidental used car sales and related service and repair work (together "**Intended Use**").

1.2 **Sections 4 & 9.** Sections 4 and 9 of the Operating Covenants are hereby amended to provide that the covenant made by Owner in the Operating Covenants, devoting use of the Property to the Intended Use for ten (10) years following the issuance by the City of a Certificate of Occupancy, or similar document with respect to the Work of Improvements, shall be extended to run for ten (10) years from and after the issuance by the City of a Certificate of Occupancy or similar document with respect to the Mazda Improvements.

**2. GENERAL PROVISIONS.**

2.1 **Covenants Run with the Land.** These covenants shall run with the land legally described in Exhibit "A," attached hereto and incorporated herein by reference (the "Property"), and shall constitute equitable servitude thereon, and shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City.

2.2 **Remainder Unchanged.** Except as specifically modified and amended in this First Amendment, the Operating Covenants remain in full force and effect and binding upon the Parties.

2.3 **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.

2.4 **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.

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

2.6 **References.** All references to the Operating Covenants and the Agreement include all their respective terms and provisions.

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

**OWNER:**

**Palm Springs Motors, Inc.**

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

Name: Paul Thiel \_\_\_\_\_

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

**NOTE: OWNER'S SIGNATURE 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"

Legal Description

Those portions of the North half of the Southwest quarter of Section 34, Township 4 South, Range 5 East, San Bernardino Meridian, in the City of Cathedral City, County of Riverside, State of California, described as follows:

Parcel A:

Those portions of Parcel 1 and Parcel 2 of Parcel Map No. 15375, recorded in Book 82, at Pages 13 to 15, inclusive, of Parcel Maps, Records of Riverside County, described as "Parcel 2" in the Certificate of Compliance for Lot Line Adjustment No. 5-155, recorded on April 14, 1990, as Instrument No. 136398, in Official Records of Riverside County, California.

(APN 674-500-032)

Parcel B:

Parcel 2 of Amended Parcel Map No. 15274, recorded in Book 81, at Pages 41 through 43, inclusive, of Parcel Maps, Records of Riverside County.

(APN 674-500-013)

Parcel C:

Parcel 4 of Parcel Map No. 15375, recorded in Book 82, at Pages 13 to 15, inclusive, of Parcel Maps, Records of Riverside County;

Excepting therefrom all that portion thereof lying Southwesterly of the Northwesterly line of State Highway 111, as shown on said Parcel Map No. 15275.

(APN 674-500-012)