

**FIRST AMENDMENT TO
AGREEMENT RE CONSOLIDATION
AND AMENDMENT OF TRANSACTIONS**

THIS FIRST AMENDMENT TO AGREEMENT RE CONSOLIDATION AND AMENDMENT OF TRANSACTIONS (this “First Amendment”) is entered into as of January 10, 2017, by and between the **CITY OF LANCASTER**, a California charter city and municipal corporation (the “City”), and **CLUTTER MOTORS, INC.**, a California corporation (the “Dealer”). The City and Dealer are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. The City and Dealer entered into that certain “Agreement Re Consolidation and Amendment of Transactions” dated as of May 27, 2014 (the “Agreement”).

B. Section 7.1 of the Agreement provides that the City agrees to and shall expend not more than Four Hundred Thousand Dollars (\$400,000.00) to construct certain public improvements described in the City Scope of Development that is attached as Exhibit “H” to the Agreement.

C. The Parties desire by this First Amendment to amend Section 7.1 of the Agreement to (i) replace the City Scope of Development that is attached as Exhibit “H” to the Agreement with the Public Improvements Scope of Development that is attached as Attachment No. 1 to this First Amendment and (ii) provide that the Dealer shall be responsible for constructing the public improvements described in the Public Improvements Scope of Development and the City shall reimburse the Dealer the actual cost of such construction not to exceed Four Hundred Thousand Dollars (\$400,000.00).

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions set forth herein the City and Dealer hereby agree as follows:

1. Obligation to Construct Public Improvements. Section 7.1 of the Agreement is amended and replaced in its entirety by the following:

“7.1 Dealer Obligation to Construct Public Improvements. The Dealer shall construct certain public improvements as described in the Public Improvements Scope of Development attached hereto as Exhibit “H” and incorporated herein (“Public Improvements”). Such construction shall be completed within the time set forth in the Schedule of Performance. Upon completion and City’s acceptance of the Public Improvements, the City shall reimburse the Dealer up to Four Hundred Thousand Dollars (\$400,000.00) of the actual cost of construction; provided, however, that the City shall only be obligated to reimburse the Dealer to the extent the Dealer provides documentary evidence

satisfactory to the City showing that the amount requested was incurred as a cost of constructing the Public Improvements (including, planning, design and hard and soft construction costs) and actually paid by the Dealer. The provisions of Section 3.4 of this Agreement shall also apply to the Dealer's construction of the Public Improvements pursuant to this Section 7.1; provided, however, that the Dealer expressly acknowledges that construction of the Public Improvements constitutes a public work and is subject to the payment of prevailing wage and other requirements set forth in Sections 1720, *et seq.* of the Labor Code. Under no circumstances shall the City's reimbursement obligation under this Section 7.1 exceed the aggregate amount of Four Hundred Thousand Dollars (\$400,000.00)."

2. Issuance of Public Improvements Contract. Section 7.2 of the Agreement is added as follows:

"7.2 Issuance of Public Improvements Contract. Subject to applicable laws, the Dealer shall select all companies to bid on the construction of the Public Improvements, determine which bids qualify and select the lowest, qualified bid. The Dealer shall present the bid it has selected to the City for review and approval. The scope of work to be constructed and bid on, as well as all other documents the Dealer uses in soliciting and/or advertising for bids shall be reviewed and approved by the City prior to the Dealer commencing such solicitation and/or advertising. "

3. Public Improvements Scope of Development. The City Scope of Development that is attached to the Agreement as Exhibit "H" shall be and hereby is replaced in its entirety by the Public Improvements Scope of Development attached hereto as Attachment No. 1.

4. No Further Changes. Except as expressly provided to the contrary in this First Amendment, the terms of the Agreement shall remain in full force and effect as written. All terms used herein and not defined herein but defined in the Agreement shall have the meaning given to such terms therein.

5. Effectiveness. This First Amendment shall become effective immediately upon execution by City and Dealer.

[Signatures begin on next page.]

IN WITNESS WHEREOF, City and Dealer have executed this First Amendment as of the date set forth above.

CITY:

CITY OF LANCASTER, a California charter city and municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEALER:

CLUTTER MOTORS, INC., a California corporation

By: _____

Its: _____

ATTACHMENT NO. 1

PUBLIC IMPROVEMENTS SCOPE OF DEVELOPMENT

The proposed project encompasses the street improvements and parkway along 10th Street West and Avenue K bordering the development site. Improvements will include new curb, gutter, sidewalk and driveway aprons along 10th Street West and Avenue K, as well as reconstruction of the intersection corner and curb ramps, pavement section improvements and lane restriping on 10th Street West and on Avenue K. In addition, a median will be installed along Avenue K. The fire hydrant and traffic signal pole located at the intersection of Avenue K and 10th Street West will be relocated. A 10-foot buffer of water-efficient landscaping will also be installed along the 10th Street West and Avenue K perimeters of the site.

These improvements will improve accessibility for both pedestrian and vehicular patrons of the proposed shopping center, while also facilitating construction of a retail center that will serve as a new source of sales tax revenue, jobs, and retail options for the Lancaster community. In addition, the improvements will substantially enhance the aesthetic of one of Lancaster's most prominent intersections.