

UNION DODGE COMMERCIAL REHABILITATION AGREEMENT AMENDMENT

January 13, 2009

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Due to current economic conditions, Union Dodge has requested that the Agency consider and amend the Original Agreement which will provide that Agency forgive repayment of disbursements of the Agency Rehabilitation Loan made during the first six (6) Sales and Use Tax Periods.

The proposed Terms and Conditions of the Amendment to the May 8, 2001 Commercial Rehabilitation Agreement are as follows:

- Agency will forgive repayment of disbursements of the Agency Rehabilitation Loan made during the first six (6) Sales and Use Tax Periods provided during such first six (6) Sales and Use Tax Periods:
 - (1) all requirements of the Original Agreement are satisfied by Union Dodge and
 - (2) the average annual Sales and Use Tax Revenues generated at the Site equals or exceeds the Minimum Sales Tax Amount of Two Hundred Eighty Thousand Dollars (\$280,000).
- Provided that Union Dodge has met the average annual Sales and Use Tax Revenues generated during the first six (6) Sales and Use Tax Periods, the Agency will disburse the Original Agreement payments for the first six (6) Sales and Use Tax Periods and forgive repayment of such disbursement by Union Dodge.
- Agency hereby agrees to disburse the fifth and sixth installments of the Agency Rehabilitation Loan to Participant (in the aggregate amount of \$270,000 and to forgive repayment of such fifth and sixth installments of the Agency Rehabilitation Loan.
- In consideration of Agency's agreement to forgive repayment of the fifth and sixth installments, Union Dodge agrees to extend by 5 years each the Option Term and the First Refusal Period.

FINANCIAL IMPACT

- The Agency will pay Union Dodge \$270,000, monies not taken for year five, 2006, \$135,000 and year six, 2007, \$135,000.

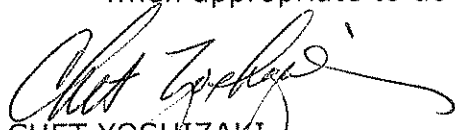
COMMUNITY VISION IMPLEMENTATION

- Seek to improve the shopping, dining, and entertainment opportunities available to the Garden Grove community

RECOMMENDATION

Staff recommends that the Agency:

- Approve the attached First Amendment to Commercial Rehabilitation Agreement and First Amendment to Option Agreement and Right of First Refusal;
- Authorize the Director and Secretary to execute the pertinent documents on behalf of the Agency, and
- Authorize the Finance Officer to draw a warrant in the amount of \$270,000 when appropriate to do so.


CHET YOSHIZAKI
Economic Development Director


By: Greg Blodgett
Senior Project Manager

Recommended for Approval


Matthew Fertal
Director

Attachment 1: First Amendment to Commercial Rehabilitation Agreement
Attachment 2: First Amendment To Option Agreement And Right Of First Refusal

**FIRST AMENDMENT TO
COMMERCIAL REHABILITATION AGREEMENT**

By and Between the

**GARDEN GROVE AGENCY
FOR COMMUNITY DEVELOPMENT**

and

UNION DODGE, INC.

**FIRST AMENDMENT TO
COMMERCIAL REHABILITATION AGREEMENT**

This **FIRST AMENDMENT TO COMMERCIAL REHABILITATION AGREEMENT** ("Amendment") is entered into as of _____, 200__, by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Agency"), and **UNION DODGE, INC.**, a California corporation ("Participant").

RECITALS

The following recitals are a substantive part of this Amendment:

A. Agency and Participant entered into that certain Commercial Rehabilitation Agreement dated as of April 24, 2001 ("Original Agreement"). The Original Agreement required Participant to perform the Rehabilitation of certain Improvements and required Agency to make the Agency Rehabilitation Loan to Participant of an amount of up to \$2,200,000, disbursed according to the terms, conditions, and restrictions set forth in the Original Agreement. All initially capitalized terms not expressly otherwise defined herein shall have the meanings set forth in the Original Agreement.

B. Participant performed the Rehabilitation in accordance with the Original Agreement and Agency executed a Release of Construction Covenants dated as of November 5, 2001 in favor of Participant to acknowledge the satisfactory completion of the Rehabilitation of the Improvements.

C. The Original Agreement provided for disbursement of the Agency Rehabilitation Loan in fifteen (15) annual payments, subject to satisfaction of certain conditions precedent set forth in Section 204 of the Original Agreement. The Original Agreement further provided that Participant's obligation to repay each annual disbursement of the Agency Rehabilitation Loan would be forgiven if, during the Sales and Use Tax Period corresponding to such disbursement: (1) all requirements of the Original Agreement were satisfied by Participant and (2) Sales and Use Tax Revenues equaled or exceeded the Minimum Sales Tax Amount of Two Hundred Eighty Thousand Dollars (\$280,000).

D. During the first six (6) Sales and Use Tax Periods following issuance of the Release of Construction Covenants by Agency, the Sales and Use Tax Revenue generated from transactions at the Site was as follows:

2002:	\$356,098
2003:	\$334,067
2004:	\$395,140
2005:	\$321,322
2006:	\$238,333
2007:	\$197,286

E. The average annual Sales and Use Tax Revenue generated during the first six (6) Sales and Use Tax Periods was \$307,041.

F. Due to current economic conditions, Participant has requested that Agency agree to amend the Original Agreement to provide that Agency will forgive repayment of disbursements of

the Agency Rehabilitation Loan made during the first six (6) Sales and Use Tax Periods if during such first six (6) Sales and Use Tax Periods: (1) all requirements of the Original Agreement are satisfied by Participant and (2) the average annual Sales and Use Tax Revenues generated at the Site equals or exceeds the Minimum Sales Tax Amount of Two Hundred Eighty Thousand Dollars (\$280,000).

G. Because the average Sales and Use Tax Revenue generated during the first six (6) Sales and Use Tax Periods exceeded \$280,000 per year and Participant has satisfied all requirements of this Agreement during each of the corresponding Sales and Use Tax Periods, Agency will disburse the Agency Rehabilitation Loan payments for such first six (6) Sales and Use Tax Periods and forgive repayment of such disbursements by Participant.

H. In consideration of Agency's agreement to forgive repayment of the fifth and sixth installments of the Agency Rehabilitation Loan (for years 2006 and 2007) pursuant to this Amendment, Participant agrees to extend by five (5) years each the Option Term and the First Refusal Period set forth in that certain Option Agreement and Right of First Refusal executed by Participant and Agency and recorded against the Site in the Official Records of Orange County, California on June 30, 2000 as Instrument No. 20000346831 ("Option Agreement").

I. This Amendment and the implementation hereof are in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Redevelopment Project has been undertaken.

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

1. Disbursement of Agency Rehabilitation Loan proceeds. The parties acknowledge that Agency disbursed the first four (4) installments (for years 2002 through 2005) of the Agency Rehabilitation Loan (in the aggregate amount of \$440,000) according to the terms of the Original Agreement. Agency hereby agrees to disburse the fifth and sixth installments (for years 2006 and 2007) of the Agency Rehabilitation Loan to Participant (in the aggregate amount of \$270,000) and to forgive repayment of such fifth and sixth installments of the Agency Rehabilitation Loan in accordance with the terms, conditions, and restrictions set forth herein. The remaining installments of the Agency Rehabilitation Loan (installment numbers 7 through 15, as set forth in Section 202 of the Original Agreement) shall be made by Agency and repaid by Participant according to the terms, conditions, and restrictions set forth in the Original Agreement, without modification.

2. Amendment of Option Agreement. Participant hereby agrees to execute and cause to be recorded against the Site the First Amendment to Option Agreement and Right of First Refusal in substantially the form set forth as Exhibit A attached hereto and incorporated herein in order to extend the Option Term and First Refusal Period (as those terms are defined in the Option Agreement) for an additional five years.

3. Representations and Warranties of Participant. Participant hereby represents and warrants to Agency as follows:

(a) Participant was, during the entire first six (6) Sales and Use Tax Periods, and remains in compliance with all terms, covenants, and restrictions set forth in the Original Agreement,

the Option Agreement, and the Disposition and Development Agreement between Participant and Agency dated as of December 17, 1998.

(b) Throughout the first six (6) Sales and Use Tax Periods and continuing as of the date of this Amendment, Participant has satisfied each of the conditions precedent set forth in Section 204 of the Original Agreement.

(c) The information set forth in Recital D regarding the Sales and Use Tax Revenue generated at the Site is true and correct in all material respects.

(d) Participant actually incurred Rehabilitation costs equal to or greater than \$2,200,000, as required by Section 202 of the Original Agreement to justify disbursement of the full amount of the Agency Rehabilitation Loan.

4. No Other Changes. Except as expressly otherwise provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Agency and Participant have executed this First Amendment to Commercial Rehabilitation Agreement as of the date first set forth above.

AGENCY:

**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,**
a public body, corporate and politic

By: _____
Matthew Fertal, Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Counsel

PARTICIPANT:

UNION DODGE, INC., a California corporation

By: _____
Its: *Dealing Principal President*
Printed Name: *CHARLES SEE*

By: _____

Its: _____

Printed Name: _____

IN WITNESS WHEREOF, Agency and Participant have executed this First Amendment to Commercial Rehabilitation Agreement as of the date first set forth above.

AGENCY:

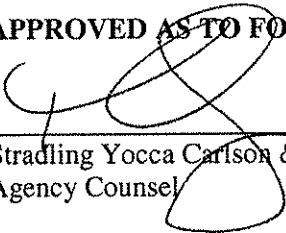
**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,**
a public body, corporate and politic

By: _____
Matthew Fertal, Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth,
Agency Counsel

PARTICIPANT:

UNION DODGE, INC., a California corporation

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT A**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Garden Grove Agency for
Community Development
11222 Acacia Parkway
Garden Grove, California 92842
Attn: Agency Director

This document is exempt from the payment of a
recording fee pursuant to Government Code
Sections 6103 and 27383.

**FIRST AMENDMENT TO
OPTION AGREEMENT AND RIGHT OF FIRST REFUSAL**

This **FIRST AMENDMENT TO OPTION AGREEMENT AND RIGHT OF FIRST REFUSAL** ("Amendment") is made as of _____, 20__, by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Agency"), and **UNION DODGE, INC.**, a California corporation ("Participant").

RECITALS

A. Agency and Participant entered into that certain Commercial Rehabilitation Agreement dated as of April 24, 2001, as amended by that certain First Amendment to Commercial Rehabilitation Agreement dated as of _____, 200__ (collectively, the "Agreement").

B. Agency and Participant previously entered into that certain Disposition and Development Agreement dated as of December 17, 1998 and that certain Option Agreement and Right of First Refusal ("Option Agreement") which was recorded against the Site in the Official Records of Orange County, California on June 30, 2000 as Instrument No. 20000346831. All initially capitalized terms not expressly otherwise defined herein shall have the meanings set forth in the Option Agreement.

C. Pursuant to the Agreement, Participant and Agency agreed to amend the Option Agreement to extend the Option Term and the First Refusal Period and to record this Amendment against the Site in the Official Records of Orange County, California.

D. The Site is legally described in Attachment No. 1 attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained herein, the parties hereto agree to amend the Option Agreement as follows:

1. Option Term. The Option Term is hereby amended to commence upon the date of the Option Agreement and end fifteen (15) years following the date of the Option Agreement.

EXHIBIT A-1

2. **First Refusal Period.** The First Refusal Period is hereby amended to commence upon the date of the Option agreement and end twenty (20) years following the date of the Option Agreement.

3. **No Other Changes.** Except as expressly otherwise provided herein, the Option Agreement shall remain in full force and effect in accordance with its terms.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Agency and Participant have executed this First Amendment to Option Agreement and Right of First Refusal as of the date first set forth above.

AGENCY:

**GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,**
a public body, corporate and politic

By: _____
Matthew Fertal, Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Counsel

PARTICIPANT:

UNION DODGE, INC., a California corporation

By: _____
Its: Principal / President
Printed Name: CHARLES LEE

By: _____

Its: _____

Printed Name: _____

ATTACHMENT NO. 1 TO EXHIBIT A

LEGAL DESCRIPTION OF SITE

That certain real property in the City of Garden Grove, County of Orange, State of California described as follows:

PARCEL 1 OF PARCEL MAP, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 17 PAGE 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

AND

PARCEL 2 OF PARCEL MAP, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 17, PAGE 28 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.