

Council Meeting of
January 8, 2008

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: City Manager – Authorize Assignment, Assumption and Consent to Assign Lease

RECOMMENDATION

Recommendation of the City Manager that City Council authorize the Mayor to Execute and City Clerk to Attest to an Assignment, Assumption and Consent to Deemed Assignment of Lease through a stock purchase from RAAMCO Motors Inc., to DCH TL Holding, LLC for a Lease on City-owned property located at 2955 Pacific Coast Highway in the City of Torrance doing business as Torrance Toyota and Torrance Scion.

FUNDING

Funding is not required for this item.

BACKGROUND/ANALYSIS

The subject Lease was entered into in 1970. The parcel size is 2.74 acres with an initial term expiring in the year 2020.

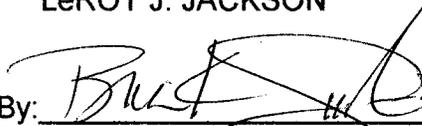
The current entity, RAAMCO Motors, Inc., wishes to sell the Lease and improvements through a stock purchase to DCH TL Holding, LLC to own and operate the dealership known as Torrance Toyota and Torrance Scion.

DCH Auto Group operates several dealerships in California, Connecticut, New Jersey and New York. Staff has met with representatives of DCH Auto Group and is comfortable with the transaction.

The current rent is \$32,093.58 per month and the tenant is current on this rent.

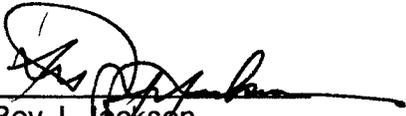
Respectfully submitted,

LeROY J. JACKSON

By: 

Brian K. Sunshine
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachment: Assignment, Assumption and Consent Agreement

RECORDING REQUESTED BY

Schröder Comis Nelson & Kahn LLP

And When Recorded, Mail To:

DCH TL HOLDINGS LLC
 c/o Schröder Comis Nelson & Kahn LLP
 300 Esplanade Drive, Suite 1170
 Oxnard, California 93036-0238

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEEMED ASSIGNMENT, ASSUMPTION AND CONSENT
 TO DEEMED ASSIGNMENT OF THE JULY 1, 1970 CITY LEASE
 RE: 2955 PACIFIC COAST HIGHWAY, TORRANCE, CALIFORNIA 90505**

THIS DEEMED ASSIGNMENT, ASSUMPTION AND CONSENT TO DEEMED ASSIGNMENT OF THE JULY 1, 1970 CITY LEASE RE: 2955 PACIFIC COAST HIGHWAY, TORRANCE, CALIFORNIA 90505 ("Agreement") is made and entered into as of this 8th day of January, 2008, by and among **RAAMCO MOTORS, INC.**, a California Corporation, dba Torrance Toyota and Torrance Scion ("RAAMCO" or "Assignor"), as Successor Lessee under the terms of a specific written lease dated July 1, 1970, more particularly described in Recital A, below, **DCH TL HOLDINGS LLC**, a Delaware Limited Liability Company, as the purchaser of all outstanding shares of stock of RAAMCO ("DCH TL" or "Assignee") and the **CITY OF TORRANCE**, a Municipal Corporation ("City" or "Torrance"), as Lessor under the terms of a specific written lease dated July 1, 1970, more particularly described in Recital A, below. RAAMCO, DCH TL and City are collectively sometimes referred to herein as the "Parties."

RECITALS

A. The City and George H. Whittlesey executed a lease ("Lease") dated July 1, 1970, covering certain real property commonly known as 2955 Pacific Coast Highway, Torrance, California ("Leased Premises") at the Torrance Municipal Airport. The parties to the Lease amended in writing some of its terms on four (4) occasions, including the Assignment thereof dated October 7, 1991, whereby the Lease, as previously amended, was assigned to David R. Whittlesey and Kathleen H. Whittlesey, Trustees of the Kathleen and David Whittlesey Living Trust. On or about October 21, 1992, the Kathleen H. Whittlesey and David Whittlesey Living Trust duly assigned the Lease to RAAMCO which was duly consented to by the City. Consistent with the terms of the Lease, RAAMCO is currently engaged in the ownership and operation of a franchised Toyota and Scion brand vehicle dealership and related business operations located at and on the Leased Premises.

B. On or about July 19, 2007, RAAMCO entered into a Stock Purchase Agreement with DCH TL, whereby subject to specific conditions RAAMCO agreed to sell and DCH TL agreed to purchase one hundred percent (100%) of the issued and outstanding shares of RAAMCO (the "Stock Purchase Agreement"). The Close of Escrow on the Stock Purchase Agreement has now been scheduled to occur on January 9, 2008.

C. RAAMCO and DCH TL recognize that Section 25(A)(2) and (3) of the Lease expressly identifies a completed transaction such as the proposed stock sale between RAAMCO and DCH TL to be a "deemed" assignment of the Lease ("Deemed Assignment"), requiring the City's prior written consent.

D. In recognition of the requirements of Section 25(A)(2) and (3) of the Lease, RAAMCO and DCH TL have each expressly conditioned the Close of Escrow on the Stock Purchase Agreement on the City providing its written consent to the Deemed Assignment of the Lease to DCH TL prior to January 9, 2008.

E. Finally, and in recognition of the requirements of Section 25(B) of the Lease setting forth specific information and commitments of DCH TL associated with the City consenting to the Deemed Assignment, and with the good faith belief that it is in the public's best interest that the Stock Purchase Agreement be consummated and that the City consent to the Deemed Assignment, the Parties have entered into the within Agreement.

NOW, THEREFORE, the Parties agree to each of the above Recitals, which are hereby incorporated herein, and each of the following terms as the same expressly relate or pertain to the respective parties hereto.

1. **AUTHORITY TO ASSIGN.** RAAMCO represents that it is the lawful Successor Lessee by means of a written assignment from its predecessor Lessee in and to the Lease which was duly consented to by the City in accordance with the requirements of the Lease.

2. **RAAMCO'S DESIRE TO SELL ITS SHARES.** RAAMCO and DCH TL desire to consummate their Stock Purchase Agreement on or about January 9, 2008 whereby RAAMCO shall remain the Lessee of the Leased Premises under the terms of the Lease, but with DCH TL owning all outstanding shares of RAAMCO and RAAMCO electing new officers and directors to hold office immediately after the Close of Escrow.

3. **REPRESENTATIONS OF RAAMCO.** RAAMCO represents to DCH TL as follows:

- a. RAAMCO is the sole and current Successor Lessee under the Lease pursuant to a written Assignment.
- b. RAAMCO is not in default of any of its obligations under the Lease.
- c. The Lease, as amended and identified above, constitutes the complete agreement between the City, as Lessor, and RAAMCO, as Lessee.
- d. RAAMCO is authorized to issue 1,000,000 shares of stock (common shares with no par value) of which 34,000 is the total issued and outstanding shares and all 34,000 shares are being sold to DCH TL under the terms of the Stock Purchase Agreement.

4. **REPRESENTATIONS OF DCH TL.** DCH TL represents to RAAMCO and the City the following:

a. DCH TL is a Delaware Limited Liability Company, and upon the consummation of the Stock Purchase Agreement it will own all of the issued and outstanding shares of RAAMCO, which shall remain the Lessee.

b. The Directors of DCH TL are and will be upon the Close of Escrow:

Shau-wai Lam
Billy F.B. Wong
Susan Scarola

- c. The Officers of DCH TL are and will be upon the Close of Escrow:
- | | |
|---------------|--|
| Shau-wai Lam | Chairman of the Board |
| Susan Scarola | President and Chief Executive Officer |
| George Liang | Senior Vice President |
| Tze-Yin Lai | Vice President and Assistant Secretary |
| Phil Landever | Secretary |
| John Bruther | Director, Accounting & Finance |
- d. Upon the Close of Escrow of the Stock Purchase Agreement, the Directors of RAAMCO will be:
- | |
|-----------------|
| Shau-wai Lam |
| Billy F.B. Wong |
| Susan Scarola |
- e. Upon the Close of Escrow of the Stock Purchase Agreement, the Officers of RAAMCO will be:
- | | |
|---------------|--|
| Shau-wai Lam | Chairman of the Board |
| Susan Scarola | President and Chief Executive Officer |
| George Liang | Senior Vice President |
| Tze-Yin Lai | Vice President and Assistant Secretary |
| Phil Landever | Secretary |
| John Bruther | Director, Accounting & Finance |
- f. DCH TL acknowledges and agrees that upon consummation of the Stock Purchase Agreement, whereby DCH TL becomes the vested owner of all issued and outstanding shares of stock of RAAMCO, RAAMCO shall remain bound by all the terms, covenants and conditions of the Lease to be performed by RAAMCO and its predecessor Lessee, as described above.
- g. DCH TL's address is 955 Route 9 North, South Amboy, New Jersey 08879.
- h. Notices shall be served upon RAAMCO at RAAMCO Motors, Inc., c/o Torrance Toyota, 2955 Pacific Coast Highway, Torrance, California 90505, unless the City is otherwise notified in writing in the manner provided in the Lease.

5. **REPRESENTATIONS OF CITY.** The City represents to DCH TL and RAAMCO as follows:

- a. City is the owner in fee of the described Premises and is the Lessor under the Lease.
- b. City is a municipal corporation organized in the State of California and was authorized by law to enter into the Lease and is authorized to enter into this Agreement.
- c. RAAMCO/Successor Lessee is not, as of the date of this Agreement, in default of any of its obligations under the Lease.
- d. The Lease, as amended, and this Agreement constitute the complete agreement between the City, as Lessor, and Assignor, as Lessee, regarding the Leased Premises.

6. **SURVIVAL OF REPRESENTATIONS.** All representations made by any of the Parties hereto shall be effective as of the effective date and time of this Agreement. Any party receiving information prior to the Close of Escrow that any representation and warranty is not as set forth in this Agreement shall give prompt written notice of such fact to the other parties to this Agreement.

7. **CITY'S CONSENT.** City consents to the Deemed Assignment on the conditions set forth herein and without waiving the Lease restriction concerning further assignment.

8. **EFFECTIVE DATE OF ASSIGNMENT.** The Deemed Assignment, with the City's consent, shall take effect on the 9th day of January, 2008, or on such other date of the Close of Escrow of the transaction between RAAMCO and DCH TL under the terms of the Stock Purchase Agreement and any amendments thereto, provided that upon the Close of Escrow all issued and outstanding shares of RAAMCO's stock shall be owned by DCH TL and RAAMCO shall remain the Lessee in possession of the Leased Premises, all as represented in this Agreement.

9. **CONDITIONS TO OBLIGATIONS OF THE PARTIES.** All obligations of the respective Parties, at the option of any party not responsible for a material failure or non-occurrence of any condition, including, but not limited to, the City's consent to the Deemed Assignment to RAAMCO, are subject to the following: (a) The Close of Escrow under the terms of the Stock Purchase Agreement, as amended, as summarized in Paragraph 8, above; and (b) Delivery of written notice to the City by RAAMCO that the Close of Escrow has occurred, with all of the issued and outstanding shares of RAAMCO acquired by DCH TL, plus confirmation that the representations of DCH TL contained in Paragraph 4 hereof remain true and correct.

10. **MISCELLANEOUS.**

a. **Attorneys' Fees.** If any party commences an action against any of the parties hereto arising out of or in connection with this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs of suit.

b. **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent in accordance with the terms of this Agreement and the Lease.

c. **Counterparts.** This Agreement may be signed in counterparts.

d. **Effective Date.** This Agreement shall be effective when signed by all the signatories hereto. The City Clerk of the City shall assign the date in the space provided below.

Dated: January 8, 2008.

TORRANCE:

CITY OF TORRANCE,
A Municipal Corporation

By _____
Frank Scotto, Mayor

ATTEST:

APPROVED AS TO FORM:

JOHN L. FELLOWS III, City Attorney

By _____
Sue Herbers, City Clerk

By _____
Ron Pohl, Assistant City Attorney

Signatures Continue

RAAMCO:

DCH TL:

RAAMCO MOTORS, INC.,
A California Corporation

DCH TL HOLDINGS LLC,
A Delaware Limited Liability Company

By _____
Alfredo S. Sheng, President

By _____
T.Y. Lai, Vice President

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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COUNTY OF _____)

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