Council Meeting of
June 24, 2008

SUPPLEMENTAL

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

Members of the Council:

SUBJECT: City Manager - Supplemental Information to Item 12B

Attached is a replacement Fifth Amendment to Peyton Cramer Jaguar Lease. There is one modification to the Amendment that was sent with the original Council Item.

Changed under Item 5.
Percentage Rent - the commencement date for the start of the percentage rent has been changed from January 1, 2009 to January 1, 2010. The change was requested by the Master Tenant to take into consideration the construction period for the improvements as well as concluding their negotiation with the Master Tenant at 3131 Pacific Coast Highway to allow for the development of the parking structure and Lot Tie Agreement.

The percentage rent clause was added to this Lease to match the rent structure of the Mercedes Dealership when they relocate. The January 2009 date would allow for this rent to commence when they were under construction. This was not a goal of the negotiation, the new date will allow for the City to remain whole financially without penalizing the Tenant while working to upgrade the dealership.

Staff recommends this change to the Fifth Amendment to Lease.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By _____
Brian K. Sunshine
Assistant to the City Manager

CONCUR:

_____
LeRoy J. Jackson
City Manager

Attachments:
A. Redline - Fifth Amendment to Peyton Cramer Jaguar Lease
B. Final - Fifth Amendment to Peyton Cramer Jaguar Lease

FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease (this "Amendment") is made and entered into on the __ day of __ _____, 2008 by and between the CITY OF TORRANCE ("CITY"), and Peyton Cramer Infiniti successor by merger to the interest of RI/PCI MERGER CORP., a California corporation ("LESSEE").

WITNESSETH

A. Landlord and Tenant's predecessor entered into that certain Lease dated November 27, 1972 (as subsequently amended and assigned, the "Lease"), pursuant to which Landlord leases to Tenant certain improved real property identified as 3035 and 3111 Pacific Coast Highway in Torrance, California (the "Leased Premises").

B. Tenant and Subtenant entered into that certain Net/Net/Net Sublease Agreement dated as of August 13, 1998 (the "Sublease"), pursuant to which Tenant subleases to Subtenant a portion of the Leased Premises.

C. Landlord and Tenant desire to modify certain terms and provisions of the Lease.

D. Subtenant acknowledges the modification of such terms and executes this amendment to confirm its agreement to the modification of the Lease.

Now, therefore, in consideration of the premises and the mutual covenants and agreements herein contained, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Defined Terms. All capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Lease unless the context clearly indicates otherwise.

3. Modification of Term.

(a) Base Term. Section 3.1 Base Term (as set forth in the original Ground Lease dated November 27, 1972) is hereby repealed and a new Section 3.1 is added to read in its entirety as follows:

"3.1 Base Term. The term of this Lease commences on November 27, 1972 and shall end at midnight on December 31, 2034."

(b) Options. Section 3.4 Option to Extend (as set forth in the Fourth Amendment to Lease dated November 4, 2003) is hereby repealed in its entirety.

4. Rent Adjustment. Section 4.3 Property Value Adjustment To Minimum Rent (as set forth in the Fourth Amendment to Lease dated November 4, 2003) is hereby repealed and a new Section 4.3 is added to read in its entirety as follows:

"4.3 Property Value Adjustment To Minimum Rent. On June 1, 2013 and again on June 11, 2024, the minimum monthly net rent shall be adjusted to correspond to a seven percent (7%) return on the then fair market value of the premises then subject to this Lease, exclusive of improvements. Lessee shall continue to pay rent at the rate applicable to the preceding period until the adjusted rate is determined. If the parties cannot agree on the then fair market value of the premises, it shall be determined in accordance with Section 3.5 of the Lease (as set forth in the Third Amendment to Lease dated July 23, 1993) utilizing the rate of return set forth therein."

5. Percentage Rent. A new Subsection 4.5 is added to read in its entirety as follows:

"4.5. Percentage Rent

A. Amount

Commencing January 1, 2010, in addition to the Minimum Rent payable by Lessee, and as part of the total rent to be paid for each "Lease Year" (as hereinafter defined) or partial Lease Year, throughout the remaining term of this Lease, including Option Periods, if any, Lessee shall pay to the City a sum equal to one percent (1%) of "Gross Profit" (as hereinafter defined) from the motor vehicle dealership operations conducted at the Leased Premises (the "Percentage Rent"). For purposes of this Lease, the term "Lease Year" shall mean each calendar year commencing with the 2009 calendar year.

Deleted: 2009

B. Payment

Lessee shall pay the amount of Percentage Rent due to the City in one (1) installment on or before the thirtieth (30th) day of April after the close of the Lease Year to which such Percentage Rent applies.

C. Definition of Gross Profit

"Gross Profit" shall mean the profit derived from the new motor vehicle dealership business conducted at the Leased Premises after the "Cost of Goods Sold" is subtracted from the "Gross Sales" or "Receipts From All Sources," as stated on the Federal Income Tax forms submitted to the Internal Revenue Service by the person or entity conducting such business at the Leased Premises (the "Operator"). The City acknowledges that it is the intention of Lessee to sublease the Leased Premises to a Sublessee which will be the Operator of a new motor vehicle dealership at the Leased Premises, but that it is possible that during the term of this Lease, the Operator may be the Lessee hereunder or a sub-sublessee of the Leased Premises. It is understood and agreed that Gross Profit shall not include, and shall not be construed or interpreted to include, any rent which Lessee may receive from any Sublessee in respect of the Leased Premises, so long as Lessee is not the Operator of the Leased Premises.

D. Subtenants and Concessions

For purposes of this Paragraph 5, the term "Gross Profit" shall be deemed to include the Gross Profit of the Operator and all other persons and entities conducting business operations at the Leased Premises, including, without limitation, Operator's subtenants, concessionaires, licensees or any other occupant of the Leased Premises, whether or not affiliated with Lessee, such that their Gross Profits shall be calculated pursuant to this Lease so as to be included in Gross Profit, notwithstanding any different or inconsistent provisions in the sublease or other agreement or understanding pursuant to which such person or entity occupies all or a portion of the Leased Premises; provided, however, any rent which Lessee may receive from a Sublessee in respect of the Leased Premises shall not be encompassed or included in the term "Gross Profit," so long as Lessee is not the Operator of the Leased Premises.

E. Audit Provisions

1) Within ninety (90) days after the close of each calendar year during the term of this Lease, Lessee agrees to cause the Operator of the Leased Premises to submit to the City a written statement, signed and certified to be correct by such Operator (or by an authorized officer, if such Operator is a corporation, or general partner if such Operator is a partnership), showing the amount of Gross Profit derived from the dealership business conducted at, upon, or from the Leased Premises by such Operator (and all of its sub-subtenants, concessionaires, licensees, or any other occupant or person doing business on, the Leased Premises) and showing an itemization of all Gross Profit for the preceding calendar year.

2) On or before April 30th of each year during the term of this Lease, Lessee agrees to cause the Operator of the Leased Premises to submit a signed and certified written statement indicating the amount of Gross Profit for the immediately preceding calendar year (an "Annual Statement"), which statement shall also be audited by and duly certified to be true and correct and in compliance with the definition of Gross Profit contained in Paragraph 5C by an independent Certified Public Accountant in accordance with generally accepted accounting principles, consistently applied. The statements referred to in this paragraph shall be in such form and style and shall contain such further details and information as the City may reasonably require. If an Annual Statement is not received by the City on or prior to the tenth (10th) day after such Annual Statement was due hereunder, the Lessee shall pay as Additional Rent, together with the next succeeding installment of Basic Rent, the sum of (i) One Thousand Dollars ($1,000) for the delinquent Annual Statement, and (ii) One Hundred Dollars ($100) for each day in excess of eleven (11) days that the Annual Statement is not received by the City. If the date on which an Annual Statement is required to be submitted to the City falls on a Saturday, Sunday or holiday on which the City's offices are closed for business, such report shall be due on the immediately succeeding day on which the City's offices shall be open for business. The obligations of the Lessee set forth in this paragraph shall survive the expiration or sooner termination of the term of the Lease. The acceptance by the City of payments of Percentage Rent or reports thereof shall be without prejudice to, and shall in no event constitute a waiver of, the City's right to claim a deficiency in the payment of Percentage Rent or to audit the Operator's books and records, as hereafter set forth.

3) If any governmental authority shall increase the Gross Profit reported by the Operator on any federal income tax return, after audit for any Lease Year for which such sales have been reported, then Lessee shall cause the Operator to notify the City promptly of such increase, supply to the City a true copy of such audit and pay at that time any additional

Percentage Rent due. Lessee shall cause the Operator to provide the City with a true and correct copy of all federal, state or local sales tax returns, report and schedules filed with any governmental authorities within ten (10) days following such filing with such authority.

4) For each calendar year, Lessee shall cause the Operator to keep in the State of California for a period of at least twenty four (24) months (which period shall commence only when the City has received a complete Annual Statement pertaining to a calendar year and all Percentage Rent payable hereunder for such calendar year based upon the amount of Gross Profit reflected on such Annual Statement (the "Financial Reports Submission Date"), complete and accurate books and records in accordance with generally-accepted accounting principles, consistently applied, sufficient to show all sales and other transactions from which Gross Profit during such calendar year thereof can be determined.

5) The City shall have the right to cause a complete audit of any one or more statements of Gross Profit submitted to the City by the Operator at any reasonable time, and from time to time, within a period of twenty-four (24) months after each Financial Reports Submission Date. In connection with such audit, the City shall have the right, at the City's sole cost and expense (except as hereinafter provided), to examine the Operator's books of accounts and records (including all supporting data and any other records from which Gross Profit may be tested or determined) of Gross Profit disclosed in any statement given to the City by the Operator; and Lessee shall cause the Operator to make all such books of accounts and records available for such examination at the office where the same are regularly maintained. The City shall have the option of having such audit performed either by its own personnel or by an independent Certified Public Accountant or firm of accountants. The City shall have the right to copy and duplicate such information as the City may require. If any such audit discloses that the actual amount of Gross Profit exceeds the amount reported, then Lessee shall pay the City all additional Percentage Rent due to the City; and if the excess of Gross Profit so disclosed shall be more than ten percent (10%) of that originally paid, Lessee shall also pay, or shall cause the Operator to pay, the cost of such audit and examination. Any failure to pay such amounts shall constitute a breach of this Lease, entitling the City to all the rights and remedies provided for hereunder.

6) If any audit shall be commenced by the City, of if there shall arise a difference or dispute concerning Gross Profit, then and in any such event, the Operator's books of accounts (including all supporting data and any other records) shall be retained by the Operator until such audit has been completed or a final resolution or final determination of the difference or dispute has been obtained. Any information obtained by the City as a result of such audit shall be treated as confidential, except in any litigation or proceeding between the parties or pursuant to any subpoena or judicial process or where otherwise required by law.

F. Effect of Sublease Termination

Notwithstanding any provision to the contrary which may be contained in this Lease, if during any Lease Year, an Operator's sublease of the Leased Premises should be terminated as the result of the Operator's default thereunder, and the terminated Operator does not comply with the provisions of this Paragraph 5, Lessee shall not be in default of its obligations under this Lease if Lessee is unable to determine the amount of Percentage Rent in respect of the Gross Profit of the terminated Operator for the Lease Year in which the termination of the Operator's sublease occurs,

so long as Lessee pays to the City as Percentage Rent in respect of the Gross Profit of such terminated Operator for the Lease Year in which the termination of such Operator's sublease occurs, an amount which is equal to (i) the amount of the Percentage Rent paid by Lessee to the City in respect of such terminated Operator's Gross Profit for the immediately preceding Lease Year, (ii) divided by twelve (12), and (iii) then multiplied by the number of months (including partial months) that the terminated Operator was in possession of the Leased Premises during the Lease Year in which the termination of such Operator's sublease occurs. Such payment is in addition to any Percentage Rent which may be payable to the City in respect of the Gross Profit of a replacement Operator during the balance of such Lease Year. For example, if the Operator's sublease is terminated, and such Operator's possession of the Leased Premises ends on June 15 of a Lease Year, and the Percentage Rent paid by Lessee in respect of such Operator's Gross Profit in the immediately preceding Lease Year was Fifty Thousand Dollars ($50,000.00), then the amount which Lessee would be obligated to pay to the City pursuant to the preceding provisions of this Subparagraph F would be Twenty-two Thousand Nine Hundred Sixteen Dollars and Sixty-seven Cents ($22,916.67), determined as follows: $50,000.00 ÷ 12 x 5.5 months = $22,916.67. Notwithstanding the foregoing, if Lessee is able to obtain information from the terminated Operator which shows such Operator's Gross Profit as of either the date upon which such Operator's possession of the Leased Premises was terminated, or the end of the calendar month preceding such date of termination, then such information shall be used as the basis for any Percentage Rent payment due to the City in respect of the Gross Profit of such Operator for the portion of the Lease Year in which such Operator's sublease was terminated."

5. No Further Modification of Lease. Except as expressly set forth herein, the terms and conditions of the Lease remain unchanged and are in full force and effect. Landlord and Tenant hereby ratify and confirm the terms and conditions of the Lease as modified herein.

6. Entire Agreement. This Amendment contains the entire agreement between the parties with respect to the subject matter contained herein. There are no representations, warranties, covenants or agreements concerning the subject matter contained herein except as set forth herein and in the Lease.

7. Conflicts. In the event of any conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

8. Counterparts / Electronic Signatures. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one (1) instrument. Electronic signatures (facsimile or email) appearing on this Amendment shall be deemed original signatures.

[The remainder of this page is intentionally left blank.
Signatures are on the following page.]

In witness whereof, on the day and year first above written, Landlord, Tenant and Subtenant have duly executed this Amendment.

Witnesses

LANDLORD:

CITY OF TORRANCE, a municipal corporation

_____

By:_____
Name:_____
Title:_____

_____

TENANT:

PEYTON CRAMER INFINITI, a California corporation

_____

By:_____
Name:_____
Title:_____

_____

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Attachment B

FIFTH AMENDMENT TO LEASE

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D. Subtenant acknowledges the modification of such terms and executes this amendment to confirm its agreement to the modification of the Lease.

Now, therefore, in consideration of the premises and the mutual covenants and agreements herein contained, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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"4.3 Property Value Adjustment To Minimum Rent. On June 1, 2013 and again on June 11, 2024, the minimum monthly net rent shall be adjusted to correspond to a seven percent (7%) return on the then fair market value of the premises then subject to this Lease, exclusive of improvements. Lessee shall continue to pay rent at the rate applicable to the preceding period until the adjusted rate is determined. If the parties cannot agree on the then fair market value of the premises, it shall be determined in accordance with Section 3.5 of the Lease (as set forth in the Third Amendment to Lease dated July 23, 1993) utilizing the rate of return set forth therein."

5. Percentage Rent. A new Subsection 4.5 is added to read in its entirety as follows:

"4.5. Percentage Rent

A. Amount

Commencing January 1, 2010, in addition to the Minimum Rent payable by Lessee, and as part of the total rent to be paid for each "Lease Year" (as hereinafter defined) or partial Lease Year, throughout the remaining term of this Lease, including Option Periods, if any, Lessee shall pay to the City a sum equal to one percent (1%) of "Gross Profit" (as hereinafter defined) from the motor vehicle dealership operations conducted at the Leased Premises (the "Percentage Rent"). For purposes of this Lease, the term "Lease Year" shall mean each calendar year commencing with the 2009 calendar year.

B. Payment

Lessee shall pay the amount of Percentage Rent due to the City in one (1) installment on or before the thirtieth (30th) day of April after the close of the Lease Year to which such Percentage Rent applies.

C. Definition of Gross Profit

"Gross Profit" shall mean the profit derived from the new motor vehicle dealership business conducted at the Leased Premises after the "Cost of Goods Sold" is subtracted from the "Gross Sales" or "Receipts From All Sources," as stated on the Federal Income Tax forms submitted to the Internal Revenue Service by the person or entity conducting such business at the Leased Premises (the "Operator"). The City acknowledges that it is the intention of Lessee to sublease the Leased Premises to a Sublessee which will be the Operator of a new motor vehicle dealership at the Leased Premises, but that it is possible that during the term of this Lease, the Operator may be the Lessee hereunder or a sub-sublessee of the Leased Premises. It is understood and agreed that Gross Profit shall not include, and shall not be construed or interpreted to include, any rent which Lessee may receive from any Sublessee in respect of the Leased Premises, so long as Lessee is not the Operator of the Leased Premises.

D. Subtenants and Concessions

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For purposes of this Paragraph 5, the term "Gross Profit" shall be deemed to include the Gross Profit of the Operator and all other persons and entities conducting business operations at the Leased Premises, including, without limitation, Operator's subtenants, concessionaires, licensees or any other occupant of the Leased Premises, whether or not affiliated with Lessee, such that their Gross Profits shall be calculated pursuant to this Lease so as to be included in Gross Profit, notwithstanding any different or inconsistent provisions in the sublease or other agreement or understanding pursuant to which such person or entity occupies all or a portion of the Leased Premises; provided, however, any rent which Lessee may receive from a Sublessee in respect of the Leased Premises shall not be encompassed or included in the term "Gross Profit," so long as Lessee is not the Operator of the Leased Premises.

E. Audit Provisions

1) Within ninety (90) days after the close of each calendar year during the term of this Lease, Lessee agrees to cause the Operator of the Leased Premises to submit to the City a written statement, signed and certified to be correct by such Operator (or by an authorized officer, if such Operator is a corporation, or general partner if such Operator is a partnership), showing the amount of Gross Profit derived from the dealership business conducted at, upon, or from the Leased Premises by such Operator (and all of its sub-subtenants, concessionaires, licensees, or any other occupant or person doing business on, the Leased Premises) and showing an itemization of all Gross Profit for the preceding calendar year.

2) On or before April 30th of each year during the term of this Lease, Lessee agrees to cause the Operator of the Leased Premises to submit a signed and certified written statement indicating the amount of Gross Profit for the immediately preceding calendar year (an "Annual Statement"), which statement shall also be audited by and duly certified to be true and correct and in compliance with the definition of Gross Profit contained in Paragraph 5C by an independent Certified Public Accountant in accordance with generally accepted accounting principles, consistently applied. The statements referred to in this paragraph shall be in such form and style and shall contain such further details and information as the City may reasonably require. If an Annual Statement is not received by the City on or prior to the tenth (10th) day after such Annual Statement was due hereunder, the Lessee shall pay as Additional Rent, together with the next succeeding installment of Basic Rent, the sum of (i) One Thousand Dollars ($1,000) for the delinquent Annual Statement, and (ii) One Hundred Dollars ($100) for each day in excess of eleven (11) days that the Annual Statement is not received by the City. If the date on which an Annual Statement is required to be submitted to the City falls on a Saturday, Sunday or holiday on which the City's offices are closed for business, such report shall be due on the immediately succeeding day on which the City's offices shall be open for business. The obligations of the Lessee set forth in this paragraph shall survive the expiration or sooner termination of the term of the Lease. The acceptance by the City of payments of Percentage Rent or reports thereof shall be without prejudice to, and shall in no event constitute a waiver of, the City's right to claim a deficiency in the payment of Percentage Rent or to audit the Operator's books and records, as hereafter set forth.

3) If any governmental authority shall increase the Gross Profit reported by the Operator on any federal income tax return, after audit for any Lease Year for which such sales have been reported, then Lessee shall cause the Operator to notify the City promptly of such increase, supply to the City a true copy of such audit and pay at that time any additional

Percentage Rent due. Lessee shall cause the Operator to provide the City with a true and correct copy of all federal, state or local sales tax returns, report and schedules filed with any governmental authorities within ten (10) days following such filing with such authority.

4) For each calendar year, Lessee shall cause the Operator to keep in the State of California for a period of at least twenty four (24) months (which period shall commence only when the City has received a complete Annual Statement pertaining to a calendar year and all Percentage Rent payable hereunder for such calendar year based upon the amount of Gross Profit reflected on such Annual Statement (the "Financial Reports Submission Date"), complete and accurate books and records in accordance with generally-accepted accounting principles, consistently applied, sufficient to show all sales and other transactions from which Gross Profit during such calendar year thereof can be determined.

5) The City shall have the right to cause a complete audit of any one or more statements of Gross Profit submitted to the City by the Operator at any reasonable time, and from time to time, within a period of twenty-four (24) months after each Financial Reports Submission Date. In connection with such audit, the City shall have the right, at the City's sole cost and expense (except as hereinafter provided), to examine the Operator's books of accounts and records (including all supporting data and any other records from which Gross Profit may be tested or determined) of Gross Profit disclosed in any statement given to the City by the Operator; and Lessee shall cause the Operator to make all such books of accounts and records available for such examination at the office where the same are regularly maintained. The City shall have the option of having such audit performed either by its own personnel or by an independent Certified Public Accountant or firm of accountants. The City shall have the right to copy and duplicate such information as the City may require. If any such audit discloses that the actual amount of Gross Profit exceeds the amount reported, then Lessee shall pay the City all additional Percentage Rent due to the City; and if the excess of Gross Profit so disclosed shall be more than ten percent (10%) of that originally paid, Lessee shall also pay, or shall cause the Operator to pay, the cost of such audit and examination. Any failure to pay such amounts shall constitute a breach of this Lease, entitling the City to all the rights and remedies provided for hereunder.

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Notwithstanding any provision to the contrary which may be contained in this Lease, if during any Lease Year, an Operator's sublease of the Leased Premises should be terminated as the result of the Operator's default thereunder, and the terminated Operator does not comply with the provisions of this Paragraph 5, Lessee shall not be in default of its obligations under this Lease if Lessee is unable to determine the amount of Percentage Rent in respect of the Gross Profit of the terminated Operator for the Lease Year in which the termination of the Operator's sublease occurs,

[

so long as Lessee pays to the City as Percentage Rent in respect of the Gross Profit of such terminated Operator for the Lease Year in which the termination of such Operator's sublease occurs, an amount which is equal to (i) the amount of the Percentage Rent paid by Lessee to the City in respect of such terminated Operator's Gross Profit for the immediately preceding Lease Year, (ii) divided by twelve (12), and (iii) then multiplied by the number of months (including partial months) that the terminated Operator was in possession of the Leased Premises during the Lease Year in which the termination of such Operator's sublease occurs. Such payment is in addition to any Percentage Rent which may be payable to the City in respect of the Gross Profit of a replacement Operator during the balance of such Lease Year. For example, if the Operator's sublease is terminated, and such Operator's possession of the Leased Premises ends on June 15 of a Lease Year, and the Percentage Rent paid by Lessee in respect of such Operator's Gross Profit in the immediately preceding Lease Year was Fifty Thousand Dollars ($50,000.00), then the amount which Lessee would be obligated to pay to the City pursuant to the preceding provisions of this Subparagraph F would be Twenty-two Thousand Nine Hundred Sixteen Dollars and Sixty-seven Cents ($22,916.67), determined as follows: $50,000.00 ÷ 12 x 5.5 months = $22,916.67. Notwithstanding the foregoing, if Lessee is able to obtain information from the terminated Operator which shows such Operator's Gross Profit as of either the date upon which such Operator's possession of the Leased Premises was terminated, or the end of the calendar month preceding such date of termination, then such information shall be used as the basis for any Percentage Rent payment due to the City in respect of the Gross Profit of such Operator for the portion of the Lease Year in which such Operator's sublease was terminated."

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Signatures are on the following page.]

[

In witness whereof, on the day and year first above written, Landlord, Tenant and Subtenant have duly executed this Amendment.

Witnesses

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CITY OF TORRANCE, a municipal corporation

_____

By:_____
Name:_____
Title:_____

_____

TENANT:

PEYTON CRAMER INFINITI, a California corporation

_____

By:_____
Name:_____
Title:_____

_____

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