Council Meeting of
November 18, 2008

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

Members of the Council:

SUBJECT: City Manager – Adopt First Amendment to Forbearance Agreement between the City of Torrance and Argonaut Holdings, Inc.

RECOMMENDATION

Recommendation of the City Manager that the City Council authorize the Mayor to Execute and the City Clerk to Attest to a First Amendment to Forbearance Agreement by and between the CITY OF TORRANCE, a Municipal Corporation (hereinafter referred to as the "City"), and ARGONAUT HOLDINGS, INC., a Delaware corporation (hereinafter referred to as "Lessee") concerning a Lease for City-owned property located at 2909 Pacific Coast Highway.

FUNDING

No funding is required for the requested action.

BACKGROUND

The subject Lease became effective in November of 2003. The Lease is for 3.4 acres of City-owned land and has been operated as a General Motors franchise until approximately March 14, 2008. The dealership was closed on that date and is currently not operating.

The Master Tenant, Argonaut Holdings, is a real estate subsidiary of General Motors Corporation. Until March 14, 2008, Argonaut Holdings sub-leased the property to Good Pontiac Buick GMC. The sub-tenant is no longer operating and the dealership is vacant and not operating.

ANALYSIS

The Lease with Argonaut Holdings requires that the site be operated as a General Motors dealership unless written consent is given by the City of Torrance. The Lease also includes an operational clause that would cause the Master Tenant to go into default if the facility is not operating for greater than an aggregate of seven (7) consecutive business days.

In order to stay out of default, the Master Tenant entered into a Forbearance Agreement with the City of Torrance that would keep the Lease in full effect except for the operational clause for a period of 180 days with a right to extend for an additional 180 days if all other obligations of the Lease were met. The Agreement is to allow the Master Tenant the ability to locate another Sub-Lessee or an entity interested in taking over the Master Lease without going into default. The Agreement ensures that

all other aspects of the Lease are intact and that the rent will continue to be paid.

The original term of the Forbearance Agreement is about to expire. The Master Tenant is working with a prospective tenant but needs more time to work the details and bring the tenant forward for City review. The First Amendment to the Agreement requests a total of 450 days from the initial agreement date of April 8, 2008. This extends the overall Agreement by 90 days (180 days, 180 day extension).

Staff recommends approval to allow the Master Tenant to secure a new tenant for the property. The City will continue to receive full rent and has approval rights over the transfer of Lease or sub-leasing to a new tenant.

Respectfully submitted,

LeROY J. JACKSON
City Manager

By: Brian K. Sunshine
Assistant to the City Manager

CONCUR:

LeRoy J. Jackson
City Manager

Attachments:
A) First Amendment to Forbearance Agreement
B) Council Item dated April 8, 2008

FIRST AMENDMENT
TO
FORBEARANCE AGREEMENT

THIS FIRST AMENDMENT TO FORBEARANCE AGREEMENT (this "Amendment") is made and entered into as of the 18 day of November, 2008, by and between the **CITY OF TORRANCE**, a Municipal Corporation (hereinafter referred to as the "City"), and **ARGONAUT HOLDINGS, INC.**, a Delaware corporation (hereinafter referred to as "Lessee"). The City and Lessee are sometimes hereinafter referred to jointly as the "Parties" or individually as a "Party."

Recitals

This Agreement is being executed and delivered with reference to and in reliance upon the following facts:

A. The Parties have entered into a Forbearance Agreement, dated as of April 8, 2008 (the "Agreement"), pertaining to that certain Lease, dated as of November 1, 2003, between Lessee and the City, pursuant to which Lessee is currently leasing approximately 3.40 acres of land owned by the City and commonly known as "2909 Pacific Coast Highway, Torrance, California."

B. The Agreement established a "Forbearance Period," expiring on October 5, 2008. The Parties wish to amend the Agreement so as to extend the Forbearance Period for an additional period of one hundred eighty (180) days.

THEREFORE, the Parties hereby agree as follows:

1. **Extension of Forbearance Period**. Section 1 of the Agreement is hereby amended so as to read in its entirety as follows:

> "1. **Forbearance by the City**. The Parties acknowledge and agree that it would be beneficial for Lessee and the City for Lessee to obtain a new Operator, or a new lessee or sublessee of the Leased Premises. To facilitate Lessee's efforts to obtain a new Operator of the Leased Premises, or a new lessee or sublessee of the Leased Premises, the City hereby agrees that, so long as Lessee remains in compliance with its duties and obligations under the Lease, and no "Event of Default" (as defined in the Lease) under the Lease has occurred and is continuing, other than Lessee's failure to comply with the Operating Covenants as

described herein and the occurrence of the Dealer Agreement Default, the City will forbear enforcement of its remedies in respect of Lessee's failure to comply with the Operating Covenants and the occurrence of the Dealer Agreement Default (whether such remedies are available to the City pursuant to the Lease, by law or in equity) for the period of four hundred fifty (450) calendar days following April 8, 2008, which is the date upon which this Agreement was approved by the City Council of the City (the "Forbearance Period"). If any Event of Default under the Lease (other than Lessee's non-compliance with the Operating Covenants and the occurrence of the Dealer Agreement Default) shall occur and be continuing, or Lessee shall fail to comply with Lessee's obligations under this Agreement for a period of ten (10) calendar days after receipt of a written notice thereof from the City, the City shall have the right, but not the obligation, to terminate the Forbearance Period upon the delivery of written notice of such termination and to thereupon pursue its remedies in respect of Lessee's failure to comply with the Operating Covenants, the occurrence of the Dealer Agreement Default, or the occurrence of such other Event of Default. It is expressly understood and agreed that the City's agreement to forbear enforcement of its remedies, as provided herein, is not intended to, and shall not be interpreted or construed so as to, constitute any waiver of the City's rights or remedies in respect of Lessee's non-compliance with the Operating Covenants or the occurrence of the Dealer Agreement Default, and all such rights and remedies are hereby expressly reserved and retained by the City."

2. **Effect of Amendment**. Except as and to the extent expressly amended hereby, the Agreement remains in full force and effect without other amendment or modification.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first written above.

CITY OF TORRANCE
A Municipal Corporation

By:_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By:_____
Ronald Pohl
Assistant City Attorney

ARGONAUT HOLDINGS, INC.
A Delaware Corporation

By:_____
Jay A. Malott, President

Execution Recommended
Worldwide Real Estate

By:_____
David W. Frederickson

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Attachment B

Council Meeting of
April 8, 2008

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

Members of the Council:

SUBJECT: City Manager – Adopt Forbearance Agreement between the City of Torrance and Argonaut Holdings, Inc.

RECOMMENDATION

Recommendation of the City Manager that the City Council authorize the Mayor to Execute and the City Clerk to Attest to a Forbearance Agreement by and between the CITY OF TORRANCE, a Municipal Corporation (hereinafter referred to as the "City"), and ARGONAUT HOLDINGS, INC., a Delaware corporation (hereinafter referred to as "Lessee") concerning a Lease for City-owned property located at 2909 Pacific Coast Highway.

FUNDING

No funding is required for the requested action.

BACKGROUND

The subject Lease became effective in November of 2003. The Lease is for 3.4 acres of City-owned land and has been operated as a General Motors franchise until approximately March 14, 2008. The dealership was closed on that date and is currently not operating.

The Master Tenant, Argonaut Holdings, is a real estate subsidiary of General Motors Corporation. Until March 14, 2008, Argonaut Holdings sub-leased the property to Good Pontiac Buick GMC. The sub-tenant is no longer operating and the dealership is vacant and not operating.

ANALYSIS

The Lease with Argonaut Holdings requires that the site be operated as a General Motors dealership unless written consent is given by the City of Torrance. The Lease also includes an operational clause that would cause the Master Tenant to go into default if the facility is not operating for greater than an aggregate of seven (7) consecutive business days.

In order to stay out of default, the Master Tenant has requested the approval of a Forbearance Agreement that would keep the Lease in full effect except for the operational clause for a period of 180 days with a right to extend for an additional 180 days if all other obligations of the Lease are met. The request for the Forbearance is to allow the Master Tenant the ability to locate another Sub-Lessee or an entity interested in taking over the Master Lease without going into default. This Agreement ensures that

all other aspects of the Lease are intact and that the rent will continue to be paid. The current rent for this Lease is $39,782 per month or $477,384 annually.

Respectfully submitted,

LeROY J. JACKSON
City Manager

By: Brian K. Sunshine
Assistant to the City Manager

CONCUR:

LeRoy J. Jackson
City Manager

Attachment:
A) Forbearance Agreement

Attachment A

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this "Agreement") is made and entered into as of the 8th day of April, 2008, by and between the **CITY OF TORRANCE**, a Municipal Corporation (hereinafter referred to as the "City"), and **ARGONAUT HOLDINGS, INC.**, a Delaware corporation (hereinafter referred to as "Lessee"). The City and Lessee are sometimes hereinafter referred to jointly as the "Parties" or individually as a "Party."

Recitals

This Agreement is being executed and delivered with reference to and in reliance upon the following facts:

A. Pursuant to the terms and conditions contained in that certain Lease, dated as of November 1, 2003, between Lessee and the City, Lessee is currently leasing approximately 3.40 acres of land owned by the City and commonly known as "2909 Pacific Coast Highway, Torrance, California" (the "Leased Premises").

B. The Lease provides that during its term, the Leased Premises are to be used solely as an authorized dealership for the sale or lease of new General Motors Corporation motor vehicles and other new motor vehicles of comparable value, and for other related purposes, as more particularly described in the Lease.

C. Paragraph 7(1) of the Lease provides that Lessee shall cause the person or entity conducting the new motor vehicle dealership business at the Leased Premises (referred to in the Lease as the "Operator") to "[c]ontinuously and uninterruptedly occupy and use during the entire Lease term the entire Leased Premises for the uses permitted hereunder during business hours customary to the Operator's business and to conduct such business there in a reputable manner, consistent with first-class new and used motor vehicles sales and leasing establishments, and motor vehicle maintenance, repair and body shops of the finest quality and prestige." In addition, Paragraph 7(1) provides that "if for periods aggregating more than seven (7) consecutive business days the Operator shall fail to so conduct such business, it shall be a default within the meaning of Paragraph 27 below [...]." The covenant of Lessee contained in Paragraph 7(1) of the Lease is hereinafter referred to as the "Continuous Operations Covenant."

D. Paragraph 27A(3) of the Lease provides that an "Event of Default" under the Lease will occur upon the breach of the Continuous Operations Covenant which continues for a period of ten (10) days after Lessee's receipt of written notice thereof from the City.

E. By letter dated March 31, 2008, the City has notified Lessee that Lessee has not been in compliance with the Continuous Operations Covenant for a period of more than seven (7) consecutive business days.

F. Paragraph 7 of the Lease contains additional covenants of Lessee which are related to the Continuous Operations Covenant. The additional covenants (hereinafter referred to as the "Additional Operating Covenants") require Lessee to cause the Operator to (i) adequately staff the Leased Premises with sufficient employees to handle the reasonably anticipated sales and leasing business therein and the reasonably anticipated maintenance and repair business, and carry sufficient motor vehicles, parts, accessories, goods, wares and related merchandise to accomplish the same; and (ii) maintain displays of motor vehicles and related accessories in the display windows, if any, in a manner which is consistent with generally accepted practices for new motor vehicle sales and leasing businesses in the City of Torrance. The Continuous Operations Covenant and the Additional Operating Covenants are hereinafter collectively referred to as the "Operating Covenants."

G. From the commencement date of the term of the Lease, the Operator of the new motor vehicle dealership business conducted at the Leased Premises has been Peninsula Pontiac GMC Buick, Inc., a Delaware corporation ("Peninsula"), as the sublessee of the Leased Premises. On March 7, 2008, Peninsula ceased its business operations at the Leased Premises, resulting in Lessee's non-compliance with the Operating Covenants.

H. In addition to the foregoing, in conjunction with the cessation of Peninsula's business operations at the Leased Premises, the Dealer Sales and Service Agreement between General Motors Corporation and Peninsula was terminated, resulting in the occurrence of an "Event of Default" under Paragraph 27A(6) of the Lease (the "Dealer Agreement Default").

I. Lessee wishes to obtain a replacement Operator to conduct a new motor vehicle dealership business at the Leased Premises, or obtain a new lessee or sublessee to use the Leased Premises for another purpose which is acceptable to the City, and has requested that the City agree to temporarily forbear enforcement of the City's remedies under the Lease in respect of Lessee's non-compliance with the Operating Covenants and the occurrence of the Dealer Agreement Default, and the City is willing to forbear enforcement of such remedies, upon the terms, and subject to the satisfaction of the conditions, contained in this Agreement.

Terms and Conditions

Based upon the foregoing Recitals, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, and intending to be legally bound hereby, the City and Lessee hereby mutually agree as follows:

1. **Forbearance by the City**. The Parties acknowledge and agree that it would be beneficial for Lessee and the City for Lessee to obtain a new Operator, or a new lessee or sublessee of the Leased Premises. To facilitate Lessee's efforts to obtain a new Operator of the Leased Premises, or a new lessee or sublessee of the Leased Premises, the City hereby agrees that, so long as Lessee remains in compliance with its duties and obligations under the Lease, and no "Event of Default" (as defined in the Lease) under the Lease has occurred and is continuing, other than Lessee's failure to comply with the Operating Covenants as described herein and the occurrence of the Dealer Agreement Default, the City will forbear enforcement of its remedies in respect of Lessee's failure to comply with the Operating Covenants and the occurrence of the Dealer Agreement Default (whether such remedies are available to the City pursuant to the Lease, by law or in equity) for the period of one hundred eighty (180) calendar days following the date upon which this Agreement is approved by the City Council of the City (the "Forbearance Period"). If any Event of Default under the Lease (other than Lessee's non-compliance with the Operating Covenants and the occurrence of the Dealer Agreement Default) shall occur and be continuing, or Lessee shall fail to comply with Lessee's obligations under this Agreement for a period of ten (10) calendar days after receipt of a written notice thereof from the City, the City shall have the right, but not the obligation, to terminate the Forbearance Period upon the delivery of written notice of such termination and to thereupon pursue its remedies in respect of Lessee's failure to comply with the Operating Covenants, the occurrence of the Dealer Agreement Default, or the occurrence of such other Event of Default. It is expressly understood and agreed that the City's agreement to forbear enforcement of its remedies, as provided herein, is not intended to, and shall not be interpreted or construed so as to, constitute any waiver of the City's rights or remedies in respect of Lessee's non-compliance with the Operating Covenants or the occurrence of the Dealer Agreement Default, and all such rights and remedies are hereby expressly reserved and retained by the City.

2. **Lessee's Right to Assign or Sublease**. The City hereby further agrees that during the Forbearance Period, the provisions of Paragraph 25E(4) of the Lease shall not be applicable, and Lessee shall have the right to effect an assignment, sublease or other transfer of its interests under the Lease or in and to the Leased Premises, as if Lessee's failure to comply with the Operating Covenants and the Dealer Agreement Default had not occurred, but in all cases, subject to the prior written consent of the City as provided in Paragraph 25 of the Lease (without reference to Paragraph 25E(4)).

3. **Lessee's Performance Obligations**. In consideration of the City's covenants in Sections 1 and 2 above, Lessee hereby confirms and agrees that during the Forbearance Period, Lessee shall:

(a) Perform and discharge fully when due all of the duties and obligations of Lessee under the Lease, including, without limitation: (i) the payment of all rent due and payable under Paragraphs 4 and 5 of the Lease (with the percentage rental provisions of Paragraph 6 of the Lease being operative only upon the commencement of business operations at the Leased Premises); (ii) the payment of the monthly liquidated damages amounts pursuant to Paragraph 12J of the Lease; (iii) the payment of all "Additional Rent" pursuant to Paragraph 8 of the Lease; (iv) the payment of all taxes, assessments and utility charges payable pursuant to Paragraph 15 of the Lease; and (v) the maintenance of all insurance coverages required by Paragraph 22 of the Lease; but excluding Lessee's compliance with the Operating Covenants;

(b) Exercise Lessee's diligent efforts to obtain a new Operator for the Leased Premises, or a replacement lessee or sublessee which will use the Leased Premises for a purpose acceptable to the City, in all cases subject to the City's consent and approval rights under the Lease;

(c) Keep the City informed of Lessee's efforts to locate a new Operator, lessee or sublessee for the Leased Premises, which shall include, without limitation, a report of such activities to the Office of the City Manager of the City at least once each month during the Forbearance Period;

(d) Take such actions as are reasonably required to provide for the security and maintenance of the Leased Premises and the improvements located thereon as a vacant property, which shall include the engagement of a property management service and may include the fencing of the perimeter of the Leased Premises for security purposes; and

(e) In the event that Lessee shall engage the services of a real estate broker, finder or other person or entity to assist Lessee with the identification of a new Operator, lessee or sublessee of the Leased Premises, Lessee shall be and remain solely responsible for the payment of any brokerage commission, finder's fee or other form of compensation payable to such broker, finder or other person or entity, and shall indemnify, defend and hold the City harmless from and against any claims related thereto.

4. **Extension of the Forbearance Period** So long as Lessee has complied with Lessee's obligations under the Lease, other than compliance with the Operating Covenants, and throughout the Forbearance Period has exercised diligent efforts to locate a new Operator, lessee or sublessee of the Leased Premises, the City agrees that upon the request of Lessee, the City will negotiate in good faith with respect to an extension of the Forbearance Period for an additional period of one hundred eighty (180) calendar days, upon the terms and conditions applicable to the initial Forbearance Period.

5. **Referral of Inquiries**. From and after the date of this Agreement until the expiration or earlier termination of the Forbearance Period, the City shall refer to a representative designated by Lessee all inquiries which may be made to the City in respect of the possible leasing or subleasing of the Leased Premises. The initial representative for Lessee shall be David W. Frederickson, Western Region Manager, General Motors Corporation, Worldwide Real Estate (805-373-9540). Lessee may change such representative upon written notice thereof to the City.

6. **Effect on Lease**. This Agreement is not intended to constitute any amendment or modification of the terms of the Lease, which shall remain in full force and effect, except as expressly provided herein.

7. **Limited Nature of Forbearance Covenant**. The City's agreement to forbear enforcement of its remedies under the Lease is expressly limited to the matters described in Section 1 above. The City's execution and delivery of this Agreement does not create or imply any obligation of the City to forbear enforcement of its remedies under the Lease in respect of any other Event of Default which may occur and be continuing under the Lease.

8. **Notices**. Any notice given by either of the Parties shall be given in the manner specified in Paragraph 33 of the Lease.

9. **Judicial Reference**. Any dispute arising under this Agreement shall be resolved through the judicial reference process described in Paragraph 29 of the Lease.

10. **Construction**. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to conflict of laws principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first written above.

CITY OF TORRANCE
A Municipal Corporation

By:_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By:_____
Ronald Pohl
Assistant City Attorney

ARGONAUT HOLDINGS, INC.
A Delaware Corporation

By:_____
Jay A. Malott, President

Execution Recommended
Worldwide Real Estate

By:_____
David W. Frederickson

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