

Council Meeting of
September 15, 2009

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

Members of the Council:

SUBJECT: City Manager – Approve an Assignment of Lease concerning City-owned property located at 3233 Pacific Coast Highway

RECOMMENDATION

Recommendation of the City Manager that City Council approve modifications to a Lease by and among the City of Torrance (Landlord), a municipal corporation, Carwell, LLC, a Delaware limited liability company operating as South Bay Mercedes (Current Tenant) and Peyton Cramer Infiniti, a California corporation (New Tenant) which include a Second Amendment to Lease, Assignment of Lease, and Consent to Assignment of Lease concerning City-owned property located at 3233 Pacific Coast Highway.

FUNDING

No funding is required for the requested action.

BACKGROUND

The original Lease was entered into in 1984. The original tenants were William J. Adkins and Joseph Alflen; the property was leased to develop a Mercedes dealership. The land area is 2.45 acres. The Lease originated April 1, 1984 and terminates March 31, 2034.

The site has operated continuously as a Mercedes Franchise since the Lease inception. The Lease was assigned to an AutoNation affiliate in March of 1998. The Tenant has requested to move their existing franchises from one site to another; the transaction requested for approval with this Council action is to move the Infiniti Franchise to the current Mercedes site; this site becomes available with the move of the Mercedes Franchise to the Ford site.

The transactions for this Council item concern amending the existing Lease for the property located at 3233 Pacific Coast Highway to allow for the operation of an Infiniti Dealership at the site.

ANALYSIS

The Second Amendment to Lease contains the modifications to the existing Lease required to terminate the use of the facility as a Mercedes Franchise and allowing for the Infiniti Franchise to locate and operate at the facility located at 3233 Pacific Coast Highway:

- **Second Amendment to Lease**

The Second Amendment to Lease makes certain changes to the Lease to allow for flexibility for other franchises to operate at the site. The current Lease only allows for the sale of new Mercedes vehicles. The Lessee has requested flexibility to move franchises within the City of Torrance from one City leased site to another; this will allow the

relocation of Franchises AutoNation sees for the best interest of sales in the community. The Amendment replaces the sale of Mercedes vehicles to Mercedes Benz, Infiniti and/or Ford.

Also contained is a modification to the requirement to operate during the construction of the improvements needed to transition the site from a Mercedes Dealership to an Infiniti Dealership; the Amendment gives an amount not to exceed 18 months for non-operation while under construction. It is anticipated that due to the movement of the three franchises involved there will not be a continuous period of non-operation but periods for each site when under construction. All other aspects of the Lease remain in full force inclusive of rent. Also contained in the Amendment are:

- **Assignment of Lease**

This Assigns the Lease from the current tenant, Carwell, LLC (Mercedes) to Peyton Cramer Infiniti (Infiniti). This authorizes the acceptance of the Leasehold. Peyton Cramer Infiniti is the AutoNation entity that operates Infiniti of South Bay. The Assignment of Lease moves the Lease into Peyton Cramer Infiniti's name.

- **Consent to Assignment of Lease**

Per the Lease document, Assignment of the Lease requires City Council review and approval. This action allows for the consent of the City for the Lease to be assigned from Carwell, LLC (current tenant) to Peyton Cramer Infiniti (new tenant).

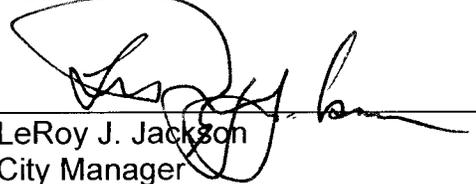
Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By 

Brian K. Sunshine
Assistant to the City Manager

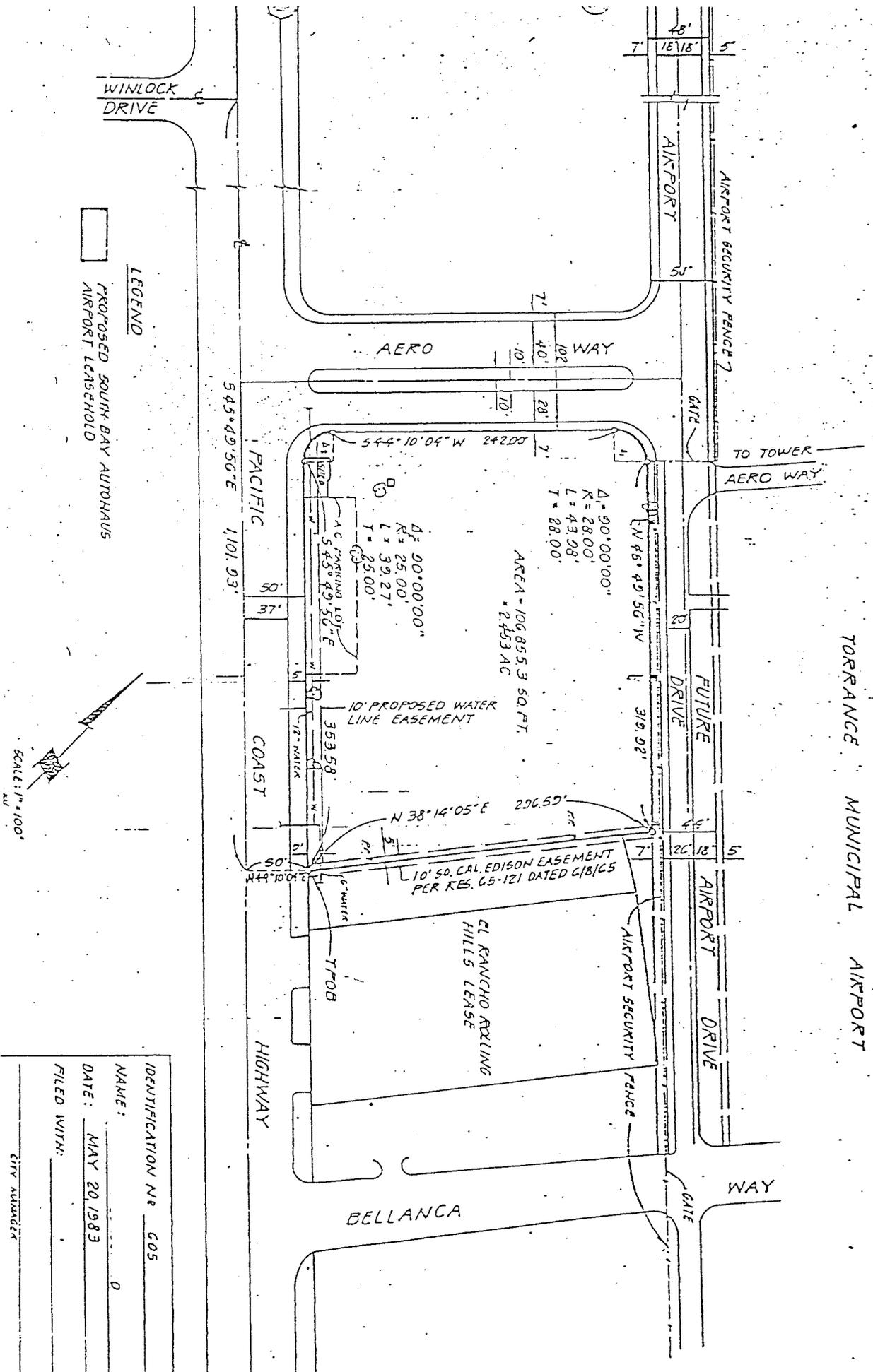
CONCUR:



LeRoy J. Jackson
City Manager

Attachments:

- A) Site Map
- B) Second Amendment to Lease



ASSIGNMENT OF LEASE, CONSENT TO ASSIGNMENT OF LEASE AND SECOND
AMENDMENT TO LEASE

This Assignment of Lease, Consent to Assignment of Lease and Second Amendment to Lease (this "Amendment") is made on the 15th day of September, 2009 (the "Effective Date"), by and among CITY OF TORRANCE, a municipal corporation (the "Landlord"), CARWELL, LLC, a Delaware limited liability company (the "Current Tenant"), and PEYTON CRAMER INFINITI, a California corporation (the "New Tenant").

WITNESSETH

A. Landlord, as landlord, and William J. Adkins and Joseph Alflen, as tenants, entered into that certain Lease dated April 1, 1984, as modified by Addendum to Lease dated as of July 12, 1985, that certain Assignment of Lease dated as of March 19, 1998, that certain Consent to Assignment of Lease and Merger dated as of March 20, 1998, and that certain First Amendment to Lease dated as of March 21, 2000 (collectively, the "Lease"), pursuant to which Landlord leases to Current Tenant certain improved real property identified as 3233 Pacific Coast Highway in Torrance, California (the "Leased Premises").

B. Current Tenant desires to assign its interest in the Lease to New Tenant, an affiliate of Current Tenant.

C. Current Tenant and New Tenant desire to obtain Landlord's consent to the assignment to New Tenant of Current Tenant's interest in the Lease and Landlord agrees to give its consent.

D. Landlord and New Tenant desire to modify certain terms and provisions 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. Assignment of Current Tenant's Interest in the Lease. As of the Effective Date, (i) Current Tenant assigns to New Tenant all of Current Tenant's right, title, interest and obligations in and to the Lease and (ii) New Tenant accepts such assignment and assumes all of Current Tenant's right, title, interest and obligations in and to the Lease.

4. Landlord's Consent to the Assignment of New Tenant's Interest in the Lease. Landlord hereby consents to the assignment and assumption described in Section 3 above and Landlord agrees that Current Tenant shall be and hereby is released from any obligations related to

the Lease that accrue on or after the Effective Date. Landlord agrees to recognize New Tenant from and after the date hereof as a party to the Lease and to accept New Tenant's performance thereunder in accordance with the terms thereof. Notwithstanding anything to the contrary contained in the Lease, Landlord hereby agrees that any option to renew or extend the Lease term as set forth in the Lease shall not be terminated as a result of any assignment or transfer of ownership consented to herein, and that New Tenant shall have the right to exercise any such option to renew or extend the Lease term pursuant to the terms set forth in the Lease. Landlord represents and warrants that all consents necessary to be obtained from the holders of any liens on the Leased Premises or, to the extent the Landlord's interest in the property is pursuant to a lease or sublease of the Leased Premises, from any lessor of the Leased Property, have been obtained and that no further consents or approvals are necessary to authorize any assignment or transfer of ownership interest contemplated herein. Landlord further represents and warrants that any assignment to New Tenant of the lessee's interest in the Leased Premises under the Lease shall not cause a default under or be in violation of any lease or sublease to which Landlord or any lessor of Landlord is a party.

5. Modification of Use. The operation of the Leased Premises is currently limited to various uses related to the Mercedes-Benz brand of motor vehicles. Landlord, Current Tenant and New Tenant agree that the use is no longer limited to the Mercedes-Benz brand of motor vehicles and that the Leased Premises may be used for various uses related to Mercedes-Benz, Infiniti and/or Ford brand motor vehicles. All references in the Lease to "Mercedes-Benz" and the manufacturer of Mercedes-Benz motor vehicles are deleted and replaced, as applicable, by "Mercedes-Benz, Infiniti and/or Ford" and the names of the manufacturers of such brands of motor vehicles.

6. Construction / Operation of Business. Landlord, Current Tenant and New Tenant acknowledge that New Tenant intends to alter the current improvements located on the Leased Premises and/or construct new improvements on the Leased Premises. Landlord acknowledges that New Tenant's alteration/construction of improvements will prevent New Tenant from conducting business on the Leased Premises until the alteration/construction process is completed. Landlord and New Tenant agree that any continuous operation requirements in the Lease shall not apply during the period that is no greater than eighteen months (18) from the Effective Date of this Second Amendment to Lease for New Tenant to implement altering/constructing the improvements.

7. Notices. All notices to be provided to the "tenant" under the Lease shall be directed to New Tenant at the following address:

Peyton Cramer Infiniti
c/o AutoNation, Inc.
200 SW First Avenue, 14th Floor
Ft. Lauderdale, Florida 33301
Attn: Real Estate Counsel

With a copy to:

Carwell, LLC
c/o AutoNation, Inc.
200 SW First Avenue, 14th Floor
Ft. Lauderdale, Florida 33301

Attn: Real Estate Counsel

8. 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, Current Tenant and New Tenant hereby ratify and confirm the terms and conditions of the Lease as modified herein.

9. 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.

10. 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.

11. 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 and Tenant have duly executed this Amendment.

LANDLORD:

CITY OF TORRANCE,
A Municipal Corporation

By: _____
MAYOR FRANK SCOTTO

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

JOHN L. FELLOWS III,
CITY ATTORNEY

By: _____

Ronald T. Pohl,
Assistant City Attorney

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CURRENT TENANT:

CARWELL, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

NEW TENANT:

PEYTON CRAMER INFINITI, a California corporation

By: _____
Name: _____
Title: _____