

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 and Fifth  
Amendment to Lease concerning City-owned property located at  
3055-3111 Pacific Coast Highway**

**RECOMMENDATION**

Recommendation of the City Manager that City Council approve modifications to a Lease on City-owned property located at 3055-3111 Pacific Coast Highway by and among the City of Torrance (Landlord), a municipal corporation, Peyton Cramer Infiniti, a California Corporation (Current Tenant) and Peyton Cramer Ford, a California Corporation (New Tenant) which include:

- Assignment of Lease; and
- Consent to Assignment of Lease
- Consent to termination of Sublease for Jaguar Franchise; and
- Consent to Ford Sublease; and
- Consent to Ford Sub-sublease
- Modifications to certain terms and conditions of Lease

**FUNDING**

No funding is required for the requested action.

**BACKGROUND**

The original Lease was entered into in 1972 and was operated as Curtis Oldsmobile. The Lease has been Assigned from time to time and is currently operating as an Infiniti Dealership. The site also housed, until recently, a Jaguar Dealership as well. The Lease has a term which expires on May 31, 2013 and has three options periods; one 11-year and two 10-year options giving a maximum term to 2044. The land area is 2.79 acres.

The site just west of the 3055-3111 site is the former Mitsubishi site. The site has been demolished and will add 1.94 acres to be used as parking for the Ford dealership.

**ANALYSIS**

The Fifth Amendment to Lease contains the modifications to the existing Lease that will authorize the following:

- Modifications to certain terms and conditions of Lease
- Assignment of Lease and Consent to Assignment of Lease
- Consent to termination of Sublease for Jaguar Franchise; and
- Consent to Ford Sublease; and
- Consent to Ford Sub-sublease

### **Modifications to certain terms and conditions of Lease**

The Fifth Amendment to Lease contains certain modifications to the Lease Terms. The current term of the Lease has a maximum term with options to 2044; because the Lease area of the former Mitsubishi site is being used to provide parking for the Ford dealership, the terms of both must expire at the same time. The Lease term is being modified to expire on December 31, 2034 with no options to extend. The Fair Market valuation is also modified to include a valuation at 2013 and again in 2024 using a set rate of return of 7% on the value of the premises exclusive of improvements. Finally, this Leasehold currently has no percentage rent clause, in order to make the transition of the franchises revenue neutral to the City a one-percent of gross profit clause is added to this Lease. This makes all Leases being addressed this evening to have the same percentage rent clause.

Also contained is a modification to the requirement to operate during the construction of the improvements needed to transition the site from an Infiniti Dealership to Ford 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.

### **Assignment of Lease and Consent to Assignment of Lease**

This allows for the Lease to be assigned from one entity to another. Because this transaction requires City Consent to allow the transfer it is included in the document before you this evening.

### **Consent to Termination of Sublease for Jaguar Franchise**

The City, as Landlord, originally consented to allow the Jaguar Franchise to occupy space on the Leasehold, terminating the sublease is required. The Franchise is already off the premises, this is a required step to prepare Lease documentation for the Ford Franchise.

### **Consent to Ford Sublease**

Ford is requiring a sublease as a means to guarantee their operation in the Torrance market. The sublease allows for Ford to operate in the event of default by the Master Tenant.

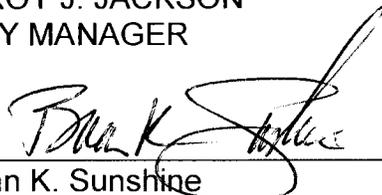
### **Consent to Ford Sub-sublease**

The Sub-sublease Leases the site back to Peyton Cramer Ford as the Franchise

operator. The site is therefore Leased to Peyton Cramer Ford, subleased to Ford Leasing Development Company and then subleased back to Peyton Cramer Ford.

Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By   
Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
LeRoy J. Jackson  
City Manager

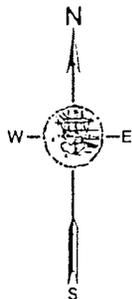
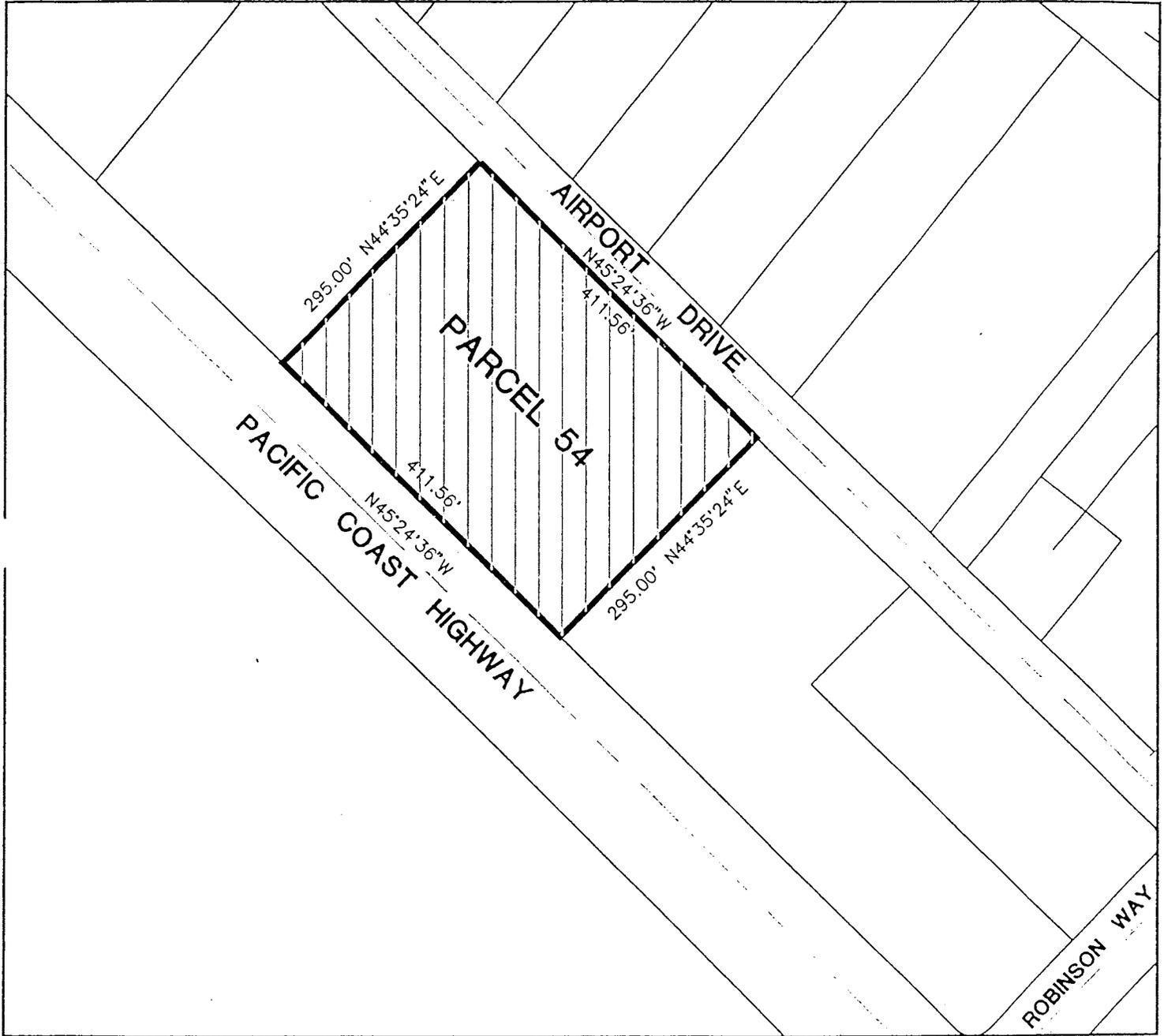
Attachments:

- A) Site Map
- B) Assignment of Lease, Consent to Assignment of Lease, Consent to Termination of Existing Sublease, Consent to New Sublease, and Fifth Amendment to Lease



# LEASE SKETCH

## (121409 SQ. FT. - 2.79 AC.)



RICHARD W. BURTT  
CITY ENGINEER

ASSIGNMENT OF LEASE, CONSENT TO ASSIGNMENT OF LEASE, CONSENT TO TERMINATION OF EXISTING SUBLEASE, CONSENT TO NEW SUBLEASE AND SUB-SUBLEASE, AND FIFTH AMENDMENT TO LEASE

This Assignment of Lease, Consent to Assignment of Lease, Consent to Termination of Existing Sublease, Consent to New Sublease and Sub-Sublease, and Fifth Amendment to Lease (this "Amendment") is made on the 15<sup>th</sup> day of September, 2009 (the "Effective Date"), by and among CITY OF TORRANCE, a municipal corporation (the "Landlord"), PEYTON CRAMER INFINITI, a California corporation (the "Current Tenant"), and PEYTON CRAMER FORD, a California corporation (the "New Tenant").

WITNESSETH

A. Landlord, as landlord, and Robert N. Norris and Peggy L. Curtis, as tenants, entered into that certain Ground Lease dated as of November 27, 1972, as modified by Amendment of Ground Lease dated as of November 27, 1972, that certain Second Amendment of Ground Lease dated March 3, 1983, that certain Assignment of Ground Lease dated March 11, 1983, that certain Assignment of Ground Lease dated March 29, 1985, that certain Letter Lease Agreement dated November 1, 1985, that certain Assignment of Lease dated July 23, 1993, that certain Third Amendment to Lease dated July 23, 1983, that certain Letter Lease Agreement dated July 26, 1993, that certain undated Landlord's Waiver of Lien, that certain Consent to Assignment of Lease and Merger dated as of August 13, 1998, and that certain Fourth Amendment to Lease dated as of November 4, 2003 (collectively, the "Lease"), pursuant to which Landlord leases to Current Tenant certain improved real property identified as 3035-3111 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. Current Tenant and New Tenant desire to obtain Landlord's consent to the termination of that certain Net/Net/Net Sublease Agreement dated as of August 13, 1998 (the "Jaguar Sublease"), by and between Current Tenant, as sublandlord, and Peyton Cramer Jaguar, a California corporation ("Jaguar"), as subtenant, and Landlord agrees to give its consent.

E. Current Tenant and New Tenant desire to obtain Landlord's consent to (i) that certain Sublease Agreement dated \_\_\_\_\_, 2009 (the "Ford Sublease"), by and between New Tenant, as sublandlord, and Ford Leasing Development Company ("Ford"), as subtenant, to be evidenced by a Memorandum of Sublease to be recorded in the Official Records of Los Angeles County, California, and (ii) that certain Dealership Sub-sublease dated \_\_\_\_\_, 2009 (the "Ford Sub-sublease"), by and between Ford, as sublandlord, and New Tenant, as subtenant, to be evidenced by a Memorandum of Sub-sublease to be recorded in the Official Records of Los Angeles County, California, and Landlord agrees to give its consent.

F. 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 of 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 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.

6. 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.”

7. 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 2010 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 (30<sup>th</sup>) 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 Subsection 4.5, 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 30<sup>th</sup> 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 Subsection 4.5 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 (10<sup>th</sup>) 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, or 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 Subsection 4.5, 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:  $\$50,000.00 \div 12 \times 5.5 \text{ months} = \$22,916.67$ . 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."

8. 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 Fifth Amendment to Lease for New Tenant to implement altering/constructing the improvements.

9. Consent to Termination of Jaguar Sublease. Landlord, Current Tenant and New Tenant acknowledge that the Jaguar Sublease has terminated. To the extent Landlord, Current Tenant and New Tenant are required to consent to the termination of the Jaguar Sublease, Landlord, Current Tenant and New Tenant consent to the termination of the Jaguar Sublease.

10. Consent to Ford Sublease. Landlord, Current Tenant and New Tenant acknowledge that that the execution of this Amendment is part of a series of transactions that includes the execution of the Ford Sublease. To the extent Landlord, Current Tenant and New Tenant are required to consent to the execution of the Ford Sublease, Landlord, Current Tenant and New Tenant consent to the execution of the Ford Sublease.

11. Consent to Ford Sub-sublease. Landlord, Current Tenant and New Tenant acknowledge that that the execution of this Amendment is part of a series of transactions that

includes the execution of the Ford Sub-sublease. To the extent Landlord, Current Tenant and New Tenant are required to consent to the execution of the Ford Sub-sublease, Landlord, Current Tenant and New Tenant consent to the execution of the Ford Sub-sublease.

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

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

With a copy to:

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

13. 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.

14. 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.

15. 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.

16. 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

//  
//  
//

CURRENT TENANT:

PEYTON CRAMER INFINITI, a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NEW TENANT:

PEYTON CRAMER FORD, a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A  
FORD SUBLEASE

**SUBLEASE AGREEMENT**

LANDLORD: PEYTON CRAMER FORD

**TABLE OF CONTENTS**

<u>Article</u>	<u>Description</u>	<u>Page</u>
	Term Sheet .....	T-1
Exhibit 1	Description of Land .....	E-1
Exhibit 2	Title Exceptions .....	E-2
1	Premises and Lease Term .....	1
2	Basic Rent and Additional Rent .....	1
3	Taxes, Assessments and Utility Charges .....	2
4	Authorized Use .....	3
5	Insurance .....	3
6	Remedies in Case of Default .....	4
7	Environmental Assessment .....	4
6	Assignment and Subletting .....	4
9	Indemnification .....	5
10	Repairs and Maintenance .....	5
11	Early Termination .....	6
12	Notices .....	6
13	Alterations and Tenant's Property .....	7
14	Right of Each Party to Perform Others' Covenants .....	7
15	Condemnation .....	7
16	Quiet Enjoyment .....	8
17	Holding Over .....	8
18	Right of First Refusal To Purchase Or Lease .....	9
19	Miscellaneous .....	9
20	Term Sheet; Integration of Documents, Execution .....	10

SUBLEASE AGREEMENT

TERM SHEET

Address of Premises: 3035 Pacific Coast Highway and  
3111 Pacific Coast Highway  
Torrance, California

Basic Lease Provisions

1. Date of Lease: \_\_\_\_\_

2. Landlord: Peyton Cramer Ford

3. Tenant: Ford Leasing Development Company

4. Commencement Date: \_\_\_\_\_

5. Expiration Date: December 31, 2034

6. Basic Rent: \$17,797.77 per month, subject to adjustment to conform to adjustments in the Prime Lease; provided, however, that in no event shall the Basic Rent exceed the amount of the basic rent paid to the City of Torrance by the tenant in accordance with the terms of that certain Lease dated June 1, 1996, as amended and assigned, for the property identified as 3311 Pacific Coast Highway in Torrance, California ("3311 PCH"). 3311 PCH was formerly the site of the Power Ford Torrance dealership now being operated by Landlord at the Premises. At the time Landlord operated the Power Ford Torrance dealership at 3311 PCH the property was leased by the City of Torrance to Peyton Cramer Ford, subleased by Peyton Cramer Ford to Ford Leasing Development Company, and sub-subleased by Ford Leasing Development Company to Peyton Cramer Ford. It is the intention of Landlord and Tenant that Tenant's Basic Rent for the Premises shall not exceed the amount of the basic rent Tenant would pay if it were still the sublessee of the property located at 3311 PCH.

## 7. Taxes:

- a) Tax Period: July 1 to June 30
- b) Applicable Taxes: assessed as of the tax status day (sometimes referred to as the "tax day," "assessment day," "date of finality," etc.) next preceding said fiscal year.

## 8. Notices:

- a) Landlord: Peyton Cramer Ford  
c/o AutoNation, Inc.  
200 SW First Avenue, 14th Floor  
Ft. Lauderdale, Florida 33301  
Attn: Corporate Real Estate Services

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

- b) Tenant: Ford Leasing Development Company  
P.O. Box 6006  
Dearborn, MI 48121-6006  
Attention: Dealership Real Estate Operations

Copy to: Ford Leasing Development Company  
The American Road  
Dearborn, MI 48121  
Attention: Secretary

9. Actual Cash Value: \$ \_\_\_\_\_

10. Main Lease: That certain Ground Lease dated November 27, 1972 between the City of Torrance, as landlord, and Robert N. Curtis and Peggy L. Curtis, as subsequently amended and whose interest has been subsequently assigned to Peyton Cramer Ford, as tenant.

12. Article 5.01 Insurance is hereby deleted in its entirety and replaced with the following:

"Tenant shall maintain general or public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and the streets and alleys adjoining the Premises, affording protection of at least \$3,000,000 single limit per occurrence of loss or damage. In addition, Tenant shall maintain pollution liability insurance affording protection of at least \$1,000,000 single limit per occurrence. Such coverage shall provide protection for underground storage tanks as required by the EPA regulations published October 26, 1988 (and any subsequent provisions or amendments thereto), and will include providing protection for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks. Tenant may self-insure for such coverage. All such insurance shall be

effected at Tenant's expense under valid and enforceable policies issued by insurers of recognized responsibility which are qualified to do business in the state where the Premises are located. Such policies shall be for a minimum term of one year and insure Landlord and Tenant, as their respective interests may appear and may insure other parties. Each policy or certificate to the extent obtainable, shall contain an agreement by the insurer that such policies shall not be canceled or substantially modified without at least 30 days' prior notice to Landlord. Originals or duplicate originals of such policies shall be delivered by Tenant to Landlord promptly after the Commencement Date, and similar replacement policies shall be delivered by Tenant to Landlord promptly after receipt."

11. Article 19 Right of First Refusal to Purchase or Lease is hereby deleted in its entirety.

IN WITNESS WHEREOF, Landlord and Tenant have executed the Sublease Agreement to which this Term Sheet is attached by signing and dating this Term Sheet.

Landlord:

Peyton Cramer Ford

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Tenant:

Ford Leasing Development Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**

Attached to and a part of the Sublease Agreement dated as of the date specified in **Item 1 of the Term Sheet** between the party (herein called Landlord) identified as Landlord in **Item 2 of the Term Sheet** and the party (herein called Tenant) identified as Tenant in **Item 3 of the Term Sheet**.

**Description of the Land:**

**Exhibit 2**

Attached to and a part of the Lease Agreement dated as of the date specified in **Item 1 of the Term Sheet** between the party (herein called Landlord) identified as Landlord in **Item 2 of the Term Sheet** and the party (herein called Tenant) identified as Tenant in **Item 3 of the Term Sheet**.

Title Exceptions respecting the Premises:

1. The lien of ad valorem real property taxes and special assessments.
2. Visible easements and the state of facts an accurate and up to date survey and personal inspections would show.
3. Applicable zoning and building laws and regulations.
4. Recorded building and use restrictions, conditions, covenants, exceptions, leases, easements, and rights and agreements, including without limitation those that may be listed below.

## SUBLEASE AGREEMENT

This Sublease Agreement dated as of the date specified in **Item 1 of the Term Sheet**, between the party (herein called Landlord) identified as Landlord in **Item 2 of the Term Sheet** and the party (herein called Tenant) identified as Tenant in **Item 3 of the Term Sheet** (herein referred to as the "Lease").

### RECITALS

Landlord has agreed to lease the Premises (hereinafter defined), to Tenant pursuant to the terms, covenants and conditions hereinafter set forth; and additionally Tenant has agreed to sub-lease the Premises to Landlord or a third party (herein called Dealer) for use as an authorized dealership pursuant to one or more sales and service agreements (herein collectively called Sales Agreements) with Ford Motor Company and/or any of its subsidiaries or affiliates (herein collectively called Ford) pursuant to the terms of a sub-lease (herein called the Sublease), executed and delivered by Tenant as sublandlord and Dealer as subtenant, simultaneously with the execution and delivery of this Lease. The term Sublease also shall apply to any other sublease covering the Premises executed by Tenant as sublandlord at any time during the Lease Term (hereinafter defined).

### WITNESSETH:

That for and in consideration of these presents and of the mutual covenants and undertakings, the parties agree as follows:

#### ARTICLE 1. Premises and Lease Term

1.01 Upon and subject to the terms and provisions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following property (herein collectively called the Premises) for the term (herein called the Lease Term) hereinafter provided:

(a) the land described in Exhibit 1; and

(b) all buildings, structures and improvements now or hereafter erected on such land either prior to the Commencement Date (hereinafter defined) or during the Lease Term, and all fixtures, equipment and other property (other than Tenant's Property as hereinafter defined) now or hereafter installed therein either prior to the Commencement Date or during the Lease Term (all of the foregoing being herein collectively called the Improvements).

1.02 Except as hereinafter provided, the Lease Term shall commence on the date (herein called the Commencement Date) specified in Item 4 of the Term Sheet and shall expire at midnight on the date (herein called the Expiration Date) specified in Item 5 of the Term Sheet.

1.03 If the Sublease executed and delivered simultaneously with the execution and delivery of this Lease expires or is terminated for any reason during the Lease Term, Tenant at its option may terminate this Lease and all of Tenant's obligations hereunder at any time thereafter upon giving to Landlord not less than 30 days' prior written notice of such termination. Subsequent subletting of the Premises shall not constitute a waiver of Tenant's absolute right to terminate this Lease at any time after the termination of the Sublease.

#### ARTICLE 2. Basic Rent and Additional Rent

2.01 Tenant shall pay to Landlord a net monthly rental (herein called Basic Rent), over and above the other and additional payments to be made by Tenant, in the amount specified in Item 6 of the Term Sheet.

2.02 Basic Rent for the first month or partial month (calculated on the basis of the actual number of days of such partial month of the Lease Term) shall be paid to Landlord on or before the Commencement

Date and thereafter each installment of Basic Rent shall be paid on or before the first business day of each and every calendar month during the Lease Term.

2.03 Tenant shall pay, as additional rent, all other amounts, liabilities, obligations and other payments which Tenant herein assumes or agrees to pay (herein collectively called Additional Rent). Basic Rent and Additional Rent are herein sometimes collectively called the Rents.

2.04 Rents shall be remitted to Landlord at the address specified in Section 12.01 or at such other place or to such other person or entity as Landlord from time to time may designate by notice to Tenant; provided however, that Tenant's obligation contained in this Section 2.04 shall be deemed satisfied to the extent of payments made to the holder of any mortgage note upon the Premises.

2.05 Upon expiration of the Lease Term, Tenant shall remove its goods and effects and peacefully yield up the Premises to the Landlord.

2.06 If the Lease Term shall terminate prior to its stated expiration date (except pursuant to Section 6.01), then Landlord shall refund to Tenant all Rents paid with respect to periods occurring after the termination of the Lease.

### **ARTICLE 3. Taxes, Assessments and Utilities**

3.01 For the purpose of this Lease, "Applicable Taxes" shall mean ad valorem real and personal Property taxes assessed and levied against the Premises and Tenant's Property (hereinafter defined).

3.02 (a) Tax Period shall mean the period specified in Item 7a of the Term Sheet.

(b) Applicable Taxes shall mean the taxes specified in Item 7b of the Term Sheet.

3.03 Landlord shall make all arrangements necessary to have the collecting authority send all pertinent tax bills directly to Tenant or its designee. All pertinent tax bills received by Landlord shall be immediately forwarded directly to Tenant or its designee to permit timely remittance in the normal course of business. Landlord shall be fully liable for all interest and penalties reasonably chargeable to its failure to perform as aforesaid.

3.04 Tenant or its designee shall bear the expense of and remit to the collecting authority Applicable Taxes becoming due and payable during the Lease Term, and Tenant shall furnish to Landlord receipted copies of tax bills when they become available. Tenant shall bear the expense of Applicable Taxes for full Tax Periods during the Lease Term and, additionally, the expense thereof for the Tax Periods in which the Lease Term begins or terminates in the proportion that the number of days the Lease Term exists within each of such Tax Periods bears to the total number of days in such Tax Period. Applicable Taxes remitted by Tenant or its designee but properly the expense of Landlord, as set forth herein, shall be paid to Tenant or its designee by Landlord promptly upon receipt of Tenant's or its designee's written request accompanied by supporting documents.

3.05 Tenant shall bear the expense of and remit to the collecting authority special assessments applicable to the Premises, but only to the extent that such assessments become due and payable in full or in installments during the Lease Term. Those installments becoming due and payable after the termination of the Lease Term shall be the sole responsibility and at the sole expense of Landlord. For purposes of this Section 3.05, payment in installments over the longest possible term shall be deemed to have been elected in any instance where a determinable option so to pay existed, or may exist, notwithstanding that an assessment may have been, or may hereafter be, paid in full, and Tenant shall bear the expense of only such installments as would have become due, payable and delinquent during the Lease Term had the installment option been elected. Landlord agrees to give Tenant timely notice of and an opportunity to participate in all hearings and negotiations regarding special assessments affecting the Premises.

3.06 Upon written request of Tenant, or its designee, Landlord will arrange meetings with proper tax official for the purposes of negotiating real estate tax assessments against the Premises, and Landlord shall extend to Tenant or its designee a timely opportunity to participate in all such negotiations. Landlord

shall not negotiate any assessment, nor concur therein, unless Tenant or its designee has participated as aforesaid, or has declined in writing to do so.

3.07 Tenant or its designee shall have the unrestricted right in its name, or in the name of Landlord if required, to pursue such administrative and judicial procedures as may be necessary to contest and appeal from any assessment or valuation, and pay under protest any billing of Applicable Taxes or assessments, all or part of which are borne by Tenant under the terms of this Lease. Landlord agrees to cooperate in all reasonable ways to further any such procedure by Tenant or its designee. Benefits and expenses resulting from any contest with respect to such assessments or Applicable Taxes for Tax Periods in which the Lease Term begins or terminates shall be borne ratably by Tenant or its designee and Landlord in proportion to the amount of the contested Applicable Taxes, or assessments required to be borne by each pursuant to the terms of this Lease in the absence of a contest thereof.

3.08 Personal property taxes on property located upon the Premises shall be remitted by the owner thereof, and the owner shall file any and all personal property tax returns that may be required in relation thereto. Tenant shall reimburse Landlord, as Additional Rent, for personal property taxes paid by Landlord on property located upon the Premises and used therewith. Reimbursement shall be made within 30 days after paid receipts therefore are delivered by Landlord to Tenant.

3.09 Tenant shall pay or cause to be paid all charges incurred by Tenant for water, sewer, gas, electricity, light, heat, and power, and for telephone, protective and other communication services, and for all other public or private utility services which are used, rendered or supplied upon, to or in connection with the Premises at any time during the Lease Term.

#### **ARTICLE 4. Authorized Use**

4.01 Tenant shall use and occupy the Premises only for lawful purposes. Tenant shall not permit any unlawful occupation, business, or trade to be conducted on the Premises or any part thereof. Tenant shall not breach or suffer the breach of any enforceable recorded covenants, conditions, agreements or restrictions affecting the Premises, or any part thereof, or the use of the same.

#### **ARTICLE 5. Insurance**

~~5.01 Tenant shall maintain general or public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and the streets and alleys adjoining the Premises, affording protection of at least \$3,000,000 single limit per occurrence of loss or damage. In addition, Tenant shall maintain pollution liability insurance affording protection of at least \$1,000,000 single limit per occurrence. Such coverage shall provide protection for underground storage tanks as required by the EPA regulations published October 26, 1988 (and any subsequent provisions or amendments thereto), and will include providing protection for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks. Tenant may self-insure for such coverage. All such insurance shall be effected at Tenant's expense under valid and enforceable policies issued by insurers of recognized responsibility which are qualified to do business in the state where the Premises are located. Such policies shall be for a minimum term of one year and insure Landlord and Tenant, as their respective interests may appear and may insure other parties. Each policy or certificate to the extent obtainable, shall contain an agreement by the insurer that such policies shall not be canceled or substantially modified without at least 30 days' prior notice to Landlord. Originals or duplicate originals of such policies shall be delivered by Tenant to Landlord promptly after the Commencement Date, and similar replacement policies shall be delivered by Tenant to Landlord promptly after receipt.~~

5.02 (a) Tenant shall obtain and maintain throughout the Lease Term, fire and broad form extended coverage insurance covering the Premises (i) in an amount not less than the greater of (A) 100% of the then actual cash value of the Improvements, actual cash value being the cost of replacing the Improvements exclusive of the cost of excavation, foundations and footings below the lowest basement floor, less depreciation of the Improvements, (B) the amount which would cause Tenant to be considered a co-insurer under such insurance, and (ii) subject to such deductibles as Tenant shall determine in its reasonable discretion from time to time.

(b) Actual cash value is deemed to be in the amount specified in **Item 9 of the Term Sheet**, as of the Commencement Date, and shall at the written request of Landlord be determined from time to time during the Lease Term (but not more frequently than once in any 36 calendar months) by an appraiser, engineer, architect or contractor designated by Tenant, approved in writing by Landlord and paid by Landlord.

5.03 All such fire and extended coverage insurance shall be effected at Tenant's expense under valid and enforceable policies issued by insurers of Tenant's choice; provided such insurers are of recognized responsibility and are qualified to do business in the State where the Premises are located. Such policies shall name Tenant as sole loss payee and shall insure Landlord and Tenant as their respective interests may appear. Each policy or certificate, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be canceled without at least 10 days' prior notice to Landlord. Certificates of such policies shall be delivered by Tenant to Landlord.

5.04 Notwithstanding anything in this Lease to the contrary, Landlord hereby releases Tenant from any liability or obligation for damage or destruction caused to the Premises or any portion thereof by fire or any other perils that are insured under the fire and extended coverage insurance referred to in this Article.

#### **ARTICLE 6. REMEDIES IN CASE OF DEFAULT**

6.01 If Tenant shall default in its performance of or compliance with any of its obligations under this Lease and such default shall continue for a period of 60 days after notice given by Landlord to Tenant of such default (unless, in the case of any default which cannot with due diligence be remedied within such 60 day period, a course of action adequate to remedy the same shall be commenced by Tenant within such period and thereafter shall be prosecuted with diligence and continuity), or if Tenant shall be adjudicated a bankrupt or insolvent or make an assignment for the benefit of creditors, then, in the event of any such situation, Landlord, at its option may lawfully enter into and upon the Premises or any part thereof and repossess the same and evict Tenant and all persons claiming under and through Tenant, and remove any effects, forcibly, if necessary, without being guilty of trespass and without prejudice to any remedies which may be available for arrears of Rents or for Tenant's breach of covenant; and upon entry as aforesaid, this Lease shall terminate and wholly expire. In the case of any such termination, Landlord will use its best efforts to relet the Premises at the best possible rent obtainable and, except for the period subsequent to any termination by Tenant of this Lease and its obligations pursuant to Section 1.03, Tenant shall indemnify Landlord against all loss of rent which Landlord may incur during the remainder of the period which would have been the Lease Term in the absence of such termination.

#### **ARTICLE 7. Environmental Assessment**

7.01 An Environmental Assessment of the Premises has been obtained. Both Landlord and Tenant have reviewed the Assessment including any completed remedial work and find the environmental condition acceptable. Landlord hereby agrees that it shall indemnify, defend and save Tenant harmless from and against any and all claims, demands, actions, suits, costs and expenses (including attorneys' fees) (collectively "claims") caused by or arising out of the presence or release of any hazardous substance on or from the Premises, which presence, release or failure to comply occurred, in whole or in part, (a) prior to the Commencement Date or (b) during any Control Period (hereinafter defined).

7.02 If Landlord receives reimbursement from an insurer or governmental authority for any remediation costs, the monthly Basic Rent shall be appropriately reduced to reflect such reimbursement, less any costs or expenses associated with obtaining such reimbursement.

#### **ARTICLE 8. Assignment and Subletting**

8.01 During the Lease Term, Tenant, without the consent of Landlord, may assign this Lease or any interest herein or sublease all or part of the Premises.

8.02 During any assignment of this Lease or subleasing of the Premises, Tenant shall remain liable for the payment of the Rents and for the performance or observance of all of the covenants, conditions and undertakings of Tenant hereunder.

8.03 Notwithstanding anything in this Lease to the contrary, during any Control Period within the Lease Term:

(a) Tenant shall not have any obligation to pay the Rents or to perform any other obligation of Tenant under this Lease unless and until all then due basic rent and additional rent under the Sublease have been paid and all other obligations of the subtenant under the Sublease which arose during such period have been performed; and

(b) no default of this Lease shall be deemed to have occurred, nor shall Landlord have the right to enforce this Lease against Tenant respecting any circumstances or event which shall have occurred during any Control Period; and

(c) Landlord shall be and shall remain liable for all obligations of subtenant under the Sublease, including but not limited to Applicable Taxes and repairs and maintenance.

The term "Control Period" shall mean a period of time which shall commence when the subtenant under the Sublease (i) is the same person or entity as Landlord, (ii) controls or is controlled by Landlord, (iii) along with Landlord is controlled by a third party, or (iv) is a debtor In possession, trustee in bankruptcy or a receiver of the original subtenant, and which shall end 30 days after such affiliations and relationships no longer exist and Landlord so notifies Tenant. For the purposes of this Lease, the terms "controls" and "controlled by" shall mean the power, whether or not exercised, to direct, or cause the direction of, the management and/or policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise. There shall be no waiver of the provisions of this Section 8.03 in the event Tenant chooses to make payments or to perform any of the obligations of Tenant under this Lease, and the provisions of this Section shall not affect or diminish the validity of this Lease or Tenant's estate in the Premises created hereby.

#### **ARTICLE 9. Indemnification**

9.01 Landlord shall indemnify and save harmless Tenant (and anyone claiming under Tenant) against and from any loss, damage, claim, liability, cost and expense (including without limitation reasonable counsel fees and disbursements) which shall be asserted against and incurred by Tenant (or anyone claiming under Tenant) occasioned by or arising from (a) any default by Landlord under this Lease or (b) any negligent or other tortious act of Landlord with respect to the Premises. To the extent that Tenant recovers from the insurance carried pursuant to Section 5.01, Landlord is released from this indemnification.

9.02 Tenant shall indemnify and save harmless Landlord against and from all loss, damage, claim, liability, cost and expense (including without limitation reasonable counsel fees and disbursements) which shall be asserted against or incurred by Landlord and occasioned by or arising from (a) any default by Tenant under this Lease or (b) any negligent or other tortious act of Tenant with respect to the Premises. To the extent that Landlord recovers from the Insurance carried pursuant to Section 5.01, Tenant is released from this indemnification.

#### **ARTICLE 10. Repairs and Maintenance**

10.01 Tenant shall make (a) non-structural repairs and replacements to the Improvements necessary to keep and maintain the Improvements in the condition in which they were on the Commencement Date, and (b) repairs and replacements necessitated by Tenant's acts or negligence; except that Tenant shall not be liable for any repairs and replacements required as a result of ordinary wear and tear, or for which Landlord is obligated pursuant to this Article 10, Landlord shall assign and transfer to Tenant any warranty or guaranty received by Landlord from any party who may have supplied labor, or services and/or materials with respect to any portion of the Premises which Tenant is required to repair or replace pursuant to this Lease.

10.02 Landlord shall make (a) repairs and replacements (other than those which Tenant is obligated to make under the terms of this Lease) which may be necessary to keep and maintain the Improvements in good repair, order and condition, including without limitation, the roof, exterior walls, concrete floor slabs, foundations, beams, columns, joists, masonry walls and load bearing partitions, and all other structural portions of the buildings, and (b) repairs and replacements, though interior and non-structural,

necessitated by Landlord's acts or negligence. Tenant shall permit Landlord to enter upon the Premises at all reasonable times during normal business hours to examine the condition of the Improvements and to make such repairs and replacements thereto as Landlord is required to make pursuant to this Lease. All such repairs and replacements made by Landlord shall be done at such time and in such manner as to cause as little inconvenience and disruption as possible to Tenant's business operations in or on the Premises.

10.03 If the Premises shall be damaged by fire, casualty, act of God or other cause or happening, to an extent which in the reasonable judgment of Tenant impairs the use or occupancy of the Premises as an automobile or truck dealership, then Tenant, in its reasonable discretion, shall have the right, by giving notice to Landlord of any such happening, to terminate this Lease as of the time of such happening; and Tenant's obligation to pay the Rents shall cease and the Rents paid shall be apportioned and the unearned portion shall be refunded to Tenant. In the event this Lease is so terminated, any and all proceeds from the insurance coverage referred to in Section 5.02 and 5.03 shall be assigned to Landlord or the first mortgagees, as the case may be. If Tenant does not elect to terminate this Lease, Landlord shall expeditiously rebuild and restore the Premises as nearly as practicable to the condition existing immediately prior to such damage, destruction, demolition or removal and the Rents will abate during the period that Tenant does not use the Premises by reason of such happening or the rebuilding and restoration of the Premises.

10.04 If the Premises shall be damaged by any aforesaid happening to an extent which in the reasonable judgment of Tenant does not impair the use or occupancy of the Premises as an automobile or truck dealership, then Landlord shall expeditiously rebuild and restore the Premises as nearly as practicable to the condition existing immediately prior to such damage, destruction, demolition or removal and the Rents shall abate pro rata during the period that Tenant is deprived of the use of all or any portion of the Premises by reason of such happening and the rebuilding and restoration of the Premises.

10.05 Upon the completion of any rebuilding and restoration of the Premises and the receipt by Tenant of a certified statement of the cost thereof, Tenant shall reimburse Landlord for the portion of such costs that are covered by the fire and extended coverage insurance permitted under Section 5.02, less the permitted deductible.

10.06 If Landlord fails in any of the foregoing events expeditiously, and in any event within nine months from the date of such damage, destruction, demolition or removal, to complete the rebuilding and restoration of the Premises, in addition to the right of Tenant to cause such rebuilding and restoration to be made pursuant to Article 14, Tenant shall have the alternative right by giving notice to Landlord to terminate this Lease as of the date of the happening.

#### **ARTICLE 11. Early Termination**

11.01 If any statute, law, ordinance, ruling, order or regulation (herein called Prohibition) now exists or is hereafter enacted prohibiting or substantially impairing any use of the Premises for an automobile and truck sales and service establishment, including without limitation the sale, storage, display, repair and service (including the outdoor sale, storage and display, without screening, of new and used motor vehicles, the performance indoors of body and fender repair work and painting, and engine, chassis and transmission repair work) of all types of new and used motor vehicles, parts, motor vehicle fuels and such other items as are incidental to an automobile and truck sales and service establishment, then Tenant, at any time thereafter, by giving notice to Landlord may designate a date (which date shall be not later than 60 days after the giving of such notice) on which this Lease and all of Tenant's liability thereunder shall terminate and thereupon, on the date fixed in such notice, this Lease and Tenant's liability hereunder shall terminate as if such date were the date originally fixed in this Lease for the expiration thereof and the Rents shall be adjusted and paid to such date of termination.

11.02 Upon any termination of this Lease, other than pursuant to Section 6.01, Landlord and Tenant shall prorate all Rents required to be paid by Tenant hereunder so that the Rents attributable to the periods up to and including the date of any such termination of this Lease shall be borne by Tenant and the Rents attributable to periods from and after the date of any such termination of this Lease shall be borne by Landlord. The provisions of this Article shall survive any termination of this Lease.

## ARTICLE 12. Notices

**12.01** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid (or if mail service shall be unavailable as the result of a strike or other cause beyond the control of the party required to provide such notice, by air or surface parcel delivery service), addressed as specified in **Item 8a and 8b of the Term Sheet** or to such other address as either party may designate to the other by written notice. Any notice by certified or registered mail shall be deemed to have been given on the date of certification or registration thereof. Any notice by air or surface parcel delivery shall be deemed to have been given on the date submitted to the carrier for delivery.

## ARTICLE 13. Alterations and Tenant Property

**13.01** Tenant, at its expense, may make additions, alterations, and improvements to the Premises and may install therein or thereon fixtures, machinery, equipment and advertising signs (herein collectively called Tenant's Property) without any consent being required of Landlord other than for structural additions, alterations and improvements, and all Tenant's Property (except painting and wall coverings) shall remain Tenant's property, and at Tenant's election, may be removed prior to termination of this Lease; provided, however, that Tenant shall repair any physical damage to the Premises occasioned by removal thereof.

**13.02** In no event shall the Rents be changed because of any additions, improvements, alteration or betterment by Landlord or any other party (including but not limited to Tenant or any subtenant) unless this Lease shall be amended in writing and any adjustment in the Rents specifically stated in the amendment.

## ARTICLE 14. Right of Each Party to Perform Others' Covenants

**14.01** Each party shall have the right at any time, after ten days notice to the other party (or without notice in case of emergency or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment including but not limited to Applicable Taxes or to perform any act required of such other party under any provision of this Lease, any mortgage note upon the Premises, including without limitation the right of Tenant to cure any default by Landlord under any mortgage note upon the Premises, and in exercising such right, to incur necessary or incidental costs and expenses, including reasonable counsel fees. Nothing herein shall imply any obligation on the part of either party to make any payment or perform any act required of the other party, and the exercise of the right so to do shall not constitute a release of any obligations of a waiver of any default.

**14.02** All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed by the other party to the party making and paying the same within ten days after notice, together with interest at the rate of 12% per annum compounded monthly, (or if such amount shall be in excess of the highest rate of interest permitted by law, then at such highest rate permitted by law), from the respective dates of the making of such payments or the incurring of such costs and expenses. In addition to any other rights and remedies available to either party, Landlord shall have, in respect of Tenant's failure to make reimbursement of any amount as aforesaid, the same rights and remedies as in the case of default by Tenant in the payment of Basic Rent, and Tenant shall have, in respect of Landlord's failure to make reimbursement of any amount as aforesaid, including, but not limited to, Applicable Taxes, the right to deduct such amount from the Rents due and payable or to become due and payable hereunder.

## ARTICLE 15. Condemnation

**15.01** The term "Taking" shall mean (a) a taking during the Lease Term of all or part of the Premises as a result of condemnation or eminent domain or by agreement between Landlord and the governmental or other body which has the power of condemnation, (b) damage to all or part thereof as of the result of condemnation or eminent domain proceedings, and (c) damage incidental to a public work. The term "Date of Taking" shall mean the date on which title is vested in such authority or the damage is imposed, as the case may be. Landlord shall have the right to prosecute and negotiate any action involving a Taking.

15.02 Forthwith upon the receipt by Landlord or Tenant of any notice of the institution of any proceeding for a Taking, or for any street widening other than a Taking or any change of grade affecting the Premises or any part thereof, the party receiving such notice shall promptly give notice to the other party to this Lease.

15.03 In the event of a Taking of either the fee of, or the temporary use of, or a perpetual or temporary easement upon, all of the Premises, the Lease Term, at the election of Tenant, shall expire as the Date of Taking. Such election shall be made by notice to Landlord within 120 days after the Date of Taking.

15.04 In the event of a Taking or the temporary use of, or a perpetual or temporary easement, upon less than all of the Premises, if Tenant, in its reasonable discretion, shall determine that the remaining portions of the Premises cannot be used satisfactorily for all the specific purposes set forth in Section 7.01 and shall forward a notice to Landlord of such determination within 120 days after the Date of Taking, this Lease shall expire as of the Date of Taking, or, if Tenant shall have remained in possession of the untaken part of the Premises after the Date of Taking, this Lease shall terminate as of the date specified in such notice by Tenant to Landlord. Such date shall be no sooner than the date Tenant vacates the Premises, nor later than the 180th day after the Date of Taking.

15.05 In the event this Lease shall terminate in accordance with the provisions of Sections 15.03 or 15.04, the aggregate of the awards or other proceeds of the Taking (including any interest in or paid with respect to such award or proceeds) on account of Landlord's and Tenant's interests in the Premises shall be divided between Landlord and Tenant as follows:

(a) Tenant shall be entitled to receive such portion of such awards or proceeds, with the interest thereon, as shall represent (i) the value, immediately prior to the Date of Taking, of Tenant's leasehold estate and Tenant's property so taken, and (ii) damages to the portion of Tenant's Property and leasehold estate not so taken; and

(b) Landlord shall be entitled to receive the balance of such awards or proceeds, with the interest thereon.

15.06 In the event of a Taking which does not result in a termination of this Lease by Tenant pursuant to Sections 15.03 or 15.04:

(a) Landlord immediately shall repair and restore the Premises to the condition that existed immediately prior to the Taking (or if the Premises are not capable of being so repaired and restored, then as closely to such condition as is possible and is consistent with the use of the Premises as an automotive dealership);

(b) the total of the awards or other proceeds of the Taking, with the interest thereon, shall first be used to reimburse Landlord for its actual expenses in restoring or repairing the Premises and the remainder shall be allocated between Landlord and Tenant in the manner prescribed in Section 15.05; and

(c) this Lease shall remain in full force and effect with respect to the remainder of the Premises, except that Basic Rent, from and after the Date of Taking, shall be equal to the product obtained by multiplying Basic Rent in effect immediately prior to the Date of Taking by a fraction, the numerator of which shall be the fair market value of the Premises immediately following the Date of Taking and the denominator of which shall be the fair market value immediately prior to the Date of Taking.

15.07 In the event of any street widening (other than a Taking) or change of grade affecting the Premises the aggregate of the awards or other proceeds paid in connection therewith (including any interest included in or paid in respect of such awards or proceeds) after deducting the reasonable expenses of Landlord and Tenant in collecting the same, shall be allocated between Landlord and Tenant in the manner prescribed in Section 15.05, and there shall be the same reduction in Basic Rent as recited in Section 15.06.

15.08 Nothing contained in this Article 15 shall be deemed to give Landlord any interest in any award for any Taking of any Tenant's Property or the property of any subtenant, and all such awards shall belong to Tenant or such subtenant, as the case may be. All claims for any such award may be filed and prosecuted by Tenant or any subtenant, as the case may be.

#### **ARTICLE 16. Quiet Enjoyment**

16.01 Upon Tenant paying the Rents and performing all of Tenant's obligations under this Lease, Tenant may peacefully and quietly enjoy the Premises during the Lease Term, subject however, to the provisions of this Lease and to the matters specified In Exhibit 2.

#### **ARTICLE 17. Holding Over**

17.01 Any holding over by Tenant or any assignee or subtenant of Tenant beyond the expiration of the Lease Term shall give rise to a tenancy from month to month at the same Basic Rent payable during the last month of the Lease Term and all other provisions of this Lease shall continue.

#### **ARTICLE 18. Discharge of Lien**

18.01 In the event that the Premises or any part thereof or shall become subject to any vendor's, mechanic's, laborer's, materialman's or other lien, encumbrance or charge based upon the furnishing of materials or labor to or for the benefit of Tenant, at any time during the Lease Term, Tenant shall cause the same, at its sole cost and expense, to be satisfied or discharged within 90 days after notice thereof to Tenant given by or on behalf of the lienor.

#### **ARTICLE 19. Right of First Refusal To Purchase Or Lease**

~~19.01 During the Lease Term, Tenant, its successors and assigns, shall have the right and option of first refusal to purchase or lease the Premises (herein called the Right of First Refusal), all upon and subject to the terms and provisions of this Article~~

~~19.02 Before selling or leasing, directly or indirectly, the whole or any part of the Premises, including any beneficial interest in the Premises, Landlord, its successors and assigns, shall have given notice to Tenant of such proposed sale or lease, together with a true, correct, and complete copy of a contract of sale or purchase agreement or lease, duly executed by the proposed vendee or lessee and by Landlord, as vendor, or lessor containing all the terms and provisions of the proposed sale or lease. Tenant shall have a period of 60 days (after receipt of such notice and such contract of sale, purchase agreement or lease) to purchase or lease the Premises, or the part thereof which is the subject of such contract of sale or purchase agreement or lease, at the same price or rental and upon and subject to the terms and provisions as are contained in such contract of sale or purchase agreement or lease. Tenant may exercise the Right of First Refusal by giving notice to Landlord within such 60-day period. If Tenant does not elect to exercise the Right of First Refusal, Landlord may consummate such sale or lease in accordance with the terms and provisions of such contract of sale or purchase agreement or lease. Such sale or lease shall be subject to the Right of First Refusal, which shall continue to be applicable to the Premises until the expiration or termination of this Lease as provided herein.~~

~~19.03 For the purposes of this Article, if Landlord is a corporation or a partnership, a sale shall include a transfer, assignment, pledge or other disposition of (a) all or substantially all the assets of Landlord, or (b) the transfer of a majority of the outstanding voting stock or other ownership interest of Landlord.~~

#### **ARTICLE 20. Miscellaneous**

20.01 Landlord covenants with Tenant that any consent or approval required of Landlord herein shall not be withheld or delayed unreasonably.

20.02 No failure by Landlord or Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agree-

ment, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

20.03 The rights and obligations contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their respective personal representatives, successors and permitted assigns.

20.04 If any provision of this Lease or the application thereof to any person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

20.05 This Lease shall be construed and enforced in accordance with the laws of the State where the Premises are located.

20.06 This Lease, including the Exhibits, which are made a part of this Lease and the Sublease contain the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither Landlord nor Landlord's agents have made any representations or warranties with respect to the Premises, or this Lease, except as expressly set forth herein, and no rights or remedies are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

20.07 The relationship between the parties hereto is solely that of landlord and tenant and nothing herein contained shall constitute or be construed as establishing any other relationship between them, including, without limitation, the relationship of principal and agent, employer and employee or parties engaged in a partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither party is the agent of the other and neither is in any way empowered to bind the other or to use the name of the other in connection with the construction, maintenance or operation of the Premises, except as otherwise specifically provided herein.

20.08 Tenant at its option may record this Lease, or at Tenant's or Landlord's request, each party shall execute a short form, notice or memorandum of lease for recording purposes. Landlord shall cooperate with Tenant in every reasonable way to place this Lease (or short form, notice or memorandum, if executed) in recordable form. Landlord shall not record this Lease without Tenant's written consent, but may record a short form, notice or memorandum hereof.

20.09 All of the covenants and agreements of Tenant hereunder shall be deemed and construed to be "conditions" as well as "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate instance.

20.10 Unless the context otherwise expressly requires, the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section, subsection or other subdivision.

20.11 The headings of the Articles in this Lease are for convenience only and shall not be used to construe or interpret the scope or intent of this Lease or in any way affect the same.

20.12 Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver or termination is sought; provided, however, no such instrument shall be deemed binding on Tenant unless signed by the President, a Vice President, Secretary or Assistant Secretary of Tenant or by any other person to whom authority to execute any such instrument shall be delegated in writing by any of such officers.

#### **ARTICLE 21. Term Sheet; Integration of Documents; Execution**

21.01 This Lease consists of this Lease, the Term Sheet, Exhibit 1, Exhibit 2 and the other Exhibits, if any, specified in the Term Sheet, all of which shall constitute a single agreement. Landlord and Tenant have executed this Lease by signing and dating the Term Sheet.

EXHIBIT B  
FORD SUB-SUBLEASE

**DEALERSHIP SUB-SUBLEASE**

TENANT: PEYTON CRAMER FORD

**TABLE OF CONTENTS**

<u>Article</u>	<u>Description</u>	<u>Page</u>
	Term Sheet .....	T-1
Exhibit 1	Description of Land.....	E-1
Exhibit 2	Title Exceptions .....	E-2
1	Premises and Lease Term .....	1
2	Basic Rent and Additional Rent.....	2
3	Taxes, Assessments and Utility Charges .....	3
4	Authorized Use .....	6
5	Insurance .....	7
6	Remedies in Case of Default.....	8
7	Environmental Matters & Underground Tanks .....	9
8	Discharge of Lien.....	11
9	Indemnification of Landlord .....	11
10	Repairs .....	12
11	Assignment or Subletting.....	13
12	Notices .....	13
13	Alterations and Tenant Equipment .....	14
14	Right of Entry .....	14
15	Condemnation .....	15
16	Subordination and Attornment.....	16
17	Termination of Sales Agreement.....	17
18	Miscellaneous .....	17
19	Term Sheet; Integration of Documents; Execution.....	18

## DEALERSHIP SUB-SUBLEASE

TERM SHEET

Address of Premises: 3035 Pacific Coast Highway and  
3111 Pacific Coast Highway  
Torrance, California

Basic Lease Provisions

1. Date of Lease: \_\_\_\_\_, 2009
2. Landlord: Ford Leasing Development Company  
a Delaware corporation
3. Tenant: Peyton Cramer Ford
4. Commencement Date: \_\_\_\_\_, 2009
5. Expiration Date: December 31, 2034
6. Basic Rent: Basic Rent shall be equal to the Basic Rent in the  
Main Lease as referenced in item 9 of this Term Sheet
7. Taxes:
  - a) Tax period: Fiscal year, July 1 to June 30
  - b) Applicable taxes: assessed as of the tax status day (sometimes referred to  
as the "tax day", "assessment day", "date of finality",  
etc.) next preceding said fiscal year.
8. Notices:
  - a) Landlord: Ford Leasing Development Company  
P.O. Box 6006  
Dearborn, MI 48121-6006  
Attention: Dealership Real Estate
  - Copy to: Ford Leasing Development Company  
The American Road  
Dearborn, MI 48121  
Attention: Secretary

b) Tenant: Peyton Cramer Ford  
c/o AutoNation, Inc.  
200 SW First Avenue, 14th Floor  
Ft. Lauderdale, Florida 33301  
Attn: Corporate Real Estate Services

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

9. Main Lease: (i) That certain Ground Lease dated November 27, 1972 between the City of Torrance, as landlord, and Robert N. Curtis and Peggy L. Curtis, as subsequently amended and whose interest has been subsequently assigned to Peyton Cramer Ford, as tenant, and (ii) That certain Sublease Agreement dated \_\_\_\_\_ between Peyton Cramer Ford, as landlord, and Ford Leasing Development Company, as tenant, covering the Premises described in Exhibit 1 herein.

10. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be obligated to pay any costs or expenses that are covered by the Main Landlord under the Main Lease as defined above in 9(j) of the Term Sheet.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed the Dealership Sub-Sublease to which this Term Sheet is attached by signing and dating this Term Sheet.

Landlord:  
**FORD LEASING DEVELOPMENT COMPANY**  
A Delaware corporation

Tenant:  
**PEYTON CRAMER FORD**

by: \_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

its: \_\_\_\_\_

date: \_\_\_\_\_

date: \_\_\_\_\_

**EXHIBIT 1**

Attached to and a part of the Dealership Sub-Sublease dated as of the date specified in **Item 1 of the Term Sheet** between the party (herein called Landlord) identified as Landlord in **Item 2 of the Term Sheet** and the party (herein called Tenant) identified as Tenant in **Item 3 of the Term Sheet**.

Description of the Land:

## EXHIBIT 2

## PERIODIC MAINTENANCE CHART

	MONTHLY	QUARTERLY	SEMI-ANNUALLY	ANNUALLY	OTHER
<b>PAVING</b>			Spring & Fall: Seal cracks, holes and ravelling with asphalt patching compound.	Dig out badly alligatored spots and patch. Fill potholes and depressions with asphalt paving.	<u>Every 5 Years</u> Suggest application of seal coat.
<b>ROOF</b>			Clean off debris. Clean out gutters, downspouts and roof sumps.	Patch blisters, tears, cracks with felts & fabric in patching cement. Renew pitch pockets.	<u>Every 2 Years</u> Rearrange or add duck boards in regularly travelled roof areas.
<b>OVERHEAD DOORS</b>		Oil hinges and rollers. Tighten loose screws & bolts. Adjust spring tension.	Replace worn rollers, pins and hinges.	Tighten, reinforce and glue loose joints. Scrape loose paint, prime & touch up.	<u>Every 2 Years</u> Replace torn and crushed gaskets. Paint doors inside out.
<b>WALLS (INTERIOR)</b>		Remove oil, grease & smudges from interior walls.	Wash service and body shop interior walls. Touch up paint.	Wash showroom & office interior walls. Patch damaged areas & touch up paint. Paint locker & toilet rooms.	As required in Landlord's sole judgement, paint showroom & office interior walls. Paint service, body shop & related offices interior walls.
<b>WALLS (EXTERIOR)</b>				Repair mortar joints exterior wall. Seal cracks & touch up paint on exterior wall.	As required in Landlord's sole judgement, paint exterior walls and trim. Reseal exterior natural masonry walls.
<b>UNIT HEATERS (OIL OR GAS)</b>		Clean & adjust thermostat contacts. Lubricate motors, shaft & fan bearings.	Clean & adjust pilot light & main burner nozzle.	Remove rust. Paint flue with high-temperature paint.	
<b>HEATING &amp; AIR CONDITIONING SYSTEM (GAS FIRED ROOF TOP UNITS)</b>	Change filters.	Tighten loose set-screws, bolts & nuts. Lubricate bearings of motor, shaft & fan.	Add refrigerant as needed at beginning of cooling season. At end of cooling season, clean drain pan, inlet screen, coils, fan housing &	Clean air ducts, registers & grills. Adjust dampers & deflectors.	<u>Every 3 Years</u> Repaint unit casing.

			thermostat contact Touch up paint the rust spots.		
<b>OIL INTERCEPTORS AND SEPTIC SYSTEM (IF INSTALLED)</b>	Bail out oil interceptor.			Remove sludge & crust build-up in sep system. Pump clear & re-start.	
<b>AIR COMPRESSOR</b>	Change crankcase oil. Test safety valve. Clean air intake filter, coolin coil & fan.	Lubricate motor shaft & compresso bearings. Replace frayed belts as required.	Tighten anchor bol Add rubber or felt washers as require to eliminate vibrati		
<b>LIFTS</b>	Tighten superstructure bol & oil valve. Clean tighten packing gland at cylinder. Add oil. Lubricate piston wall, inspec hose of travelling piston.			Touch up paint on superstructure. Replace packing gla as required. Check reading of cathodic protection system.	Every 2 Years Professional ins- pection & load tes
<b>PAINT BOOTH</b>	Wash inside of booth. Scrap floor Clean floor drain sump. Remove paint & rust from f sprinkler heads. Check electrical cords for wear. Change filters in booth.	Caulk booth panel seams as required Clean light fixtures Change filters in a make up unit. Lub cate bearings in make up air motor Oil door hinges.	Clean heat exchanger of make up air unit. Clean exhaust fan & mot Adjust belt tension Replace worn belts	Touch up paint the rust spots.	
<b>ENVIRONMENTAL</b>	Maintain reporting and recordkeeping requirements of Provincial or Federal Agencies.				

## DEALERSHIP SUB-SUBLEASE

DEALERSHIP SUB-SUBLEASE (herein called this Sublease) dated as of the date specified in **Item 1 of the Term Sheet**, between the party (herein called Landlord) identified as Landlord in **Item 2 of the Term Sheet** and the party (herein called Tenant) identified as Tenant in **Item 3 of the Term Sheet**.

### WITNESSETH:

That for and in consideration of these presents and of the mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. PREMISES AND LEASE TERM

1.01 Upon and subject to the terms and provisions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the following property (herein collectively called the Premises) for the term (herein called the Lease Term) hereinafter provided:

- (a) the land described in Exhibit 1 hereto; and
- (b) all buildings, structures and improvements now or hereafter erected on such land either prior to the Commencement Date (hereinafter defined) or during the Lease Term, and all fixtures, equipment and other property (other than Tenant Equipment, as hereinafter defined) now or hereafter installed therein either prior to the Commencement Date or during the Lease Term (all of the foregoing being herein collectively called the Improvements).

SUBJECT, HOWEVER, to the Main Lease (hereinafter defined) and to zoning ordinances and regulations, covenants, restrictions, easements, liens, charges, encumbrances, title conditions and exceptions affecting the Premises, or any part thereof, as of the Commencement Date.

- 1.02 (a) Except as hereinafter provided, the Lease Term shall commence on the date (herein called the Commencement Date) specified in **Item 4 of the Term Sheet** and shall expire at midnight on the date (herein called the Expiration Date) specified in **Item 5 of the Term Sheet**.
- (b) Intentionally deleted.
- (c) If Tenant shall use or occupy all or any part of the Premises prior to the Commencement Date, such use or occupancy shall be deemed to be under all the terms and provisions of this Lease, including, without limitation, the obligation to pay Basic Rent and Additional Rent as hereinafter provided.
- 1.03 (a) Tenant covenants that, over and above, and in addition to, its duties and obligations contained in this Lease, it shall, at its own cost and expense, promptly perform and observe all the duties and obligations of Landlord as tenant under the lease or leases (herein collectively called the Main Lease) referred to and described in **Item 9 of the Term Sheet**, a copy of which has been delivered to Tenant, as fully as if it were the tenant under the Main Lease, and shall comply with all duties, obligations, restrictions and requirements of the Main Lease applicable to Landlord as tenant thereunder, irrespective of whether such duties, obligations, restrictions or requirements are more stringent than those herein imposed upon Tenant; and Tenant shall not do or cause to be done, nor omit to be done, any act or thing whereby an event of default shall occur under any provision of the Main Lease, or which would, after the giving of notice or a lapse of time, or both, constitute an event of default under the Main Lease.

- (b) Nothing contained in this Lease shall be construed as granting to Tenant any rights or privileges under the Main Lease, all of Tenant's rights and privileges are as specified herein. Nothing contained in this Lease shall obligate Tenant to pay the rent referred to in the Main Lease.

1.04 In any case where a period of grace is granted to Landlord as tenant under the Main Lease with respect to the performance or observance of any covenant, condition or obligation (herein collectively called Covenants), Tenant shall be deemed to be in default under this Lease if it shall not have performed or observed any such Covenants within one-half the grace period allowed under the Main Lease for the performance or observance of such Covenants; and in any case where no grace period is granted under the Main Lease for the performance or observance by Landlord as tenant thereunder of any Covenants, Tenant shall perform or observe such Covenant, not less than five days prior to the date when such Covenant is to be performed or observed pursuant to the applicable provisions of the Main Lease.

1.05 In any case where, pursuant to any provision of the Main Lease, Landlord, as tenant under the Main Lease, is required or permitted to give any notice, Tenant with respect to such provision, shall be required under this Lease to give notice to Landlord 30 days prior to the date on which Landlord as tenant under the Main Lease is required or permitted to give such notice.

1.06 Except as otherwise expressly provided herein, Landlord does not make any of the representations or warranties of the landlord (herein called the Main Landlord) under the Main Lease and does not undertake to perform or observe any of the terms or covenants of Main Landlord to be performed or observed under the Main Lease, but Landlord agrees to use reasonable efforts to cause the Main Landlord to perform or observe such terms and covenants; provided, however, Landlord shall not be obligated to institute any judicial action or proceeding to enforce performance or observance by the Main Landlord of such terms or Covenants.

1.07 In the event Landlord acquires fee ownership of all or any part of the land described in Exhibit 1 hereto, this Lease shall terminate simultaneously with such event as though such date were the Expiration Date.

## **ARTICLE 2. BASIC RENT AND ADDITIONAL RENT**

2.01 Tenant shall pay to Landlord a net monthly rental (herein called Basic Rent), over and above the other and additional payments to be made by Tenant, in the amount specified in **Item 6 of the Term Sheet**.

2.02 Basic Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Basic Rent throughout the Lease Term.

2.03 Tenant shall pay, as additional rent, all other amounts, liabilities, obligations and other payments which Tenant herein assumes or agrees to pay (herein collectively called Additional Rent), and in the event of any failure on the part of Tenant to pay any item of Additional Rent, Landlord shall have all rights, powers and remedies provided for herein or by law in the case of nonpayment of Basic Rent.

2.04 Basic Rent and Additional Rent for the first month or partial month (calculated on the basis of the actual number of days of such partial month) of the Lease Term shall be paid to Landlord prior to the Commencement Date, and thereafter, unless contrary notice is given by Landlord to Tenant, each installment of Basic Rent and Additional Rent shall be paid in advance through the Ford Motor Company Dealer Payment System including the Ford Motor Company Parts Account (herein called the System) by a charge to Tenant's account on the last day in each that a charge can be made to the System prior to the month for which Basic Rent and Additional Rent are payable.

2.05 In the event there are not sufficient funds in the System, then any shortage of Basic Rent and Additional Rent shall be paid to Landlord in advance on or before the first business day of the applicable month at Post Office Box 67-19701, Detroit, MI 48267, or at such place or to such other person or entity as Landlord from time to time may designate by notice to Tenant, all without notice, demand, counterclaim, set off, deduction or defense, and without abatement, suspension, deferment, diminution or reduction for any reason whatsoever, except as hereinafter otherwise specifically provided. Should any payment of Basic Rent or Additional Rent be received by Landlord subsequent to the 10th day of the month for which it is due, then Tenant shall pay to Landlord as Additional Rent, at that time, a late charge equal to 2% of the amount due under this Section.

2.06 On the Expiration Date or earlier termination of this Lease, Tenant shall remove its goods and effects and peacefully yield up the Premises to Landlord in the order and condition required by the provisions of Sections 10.01 and 10.03. Tenant shall not be obligated to return the Improvements with a fair market value equivalent to the fair market value of the Improvements at the Commencement Date.

2.07 If the Lease Term shall terminate prior to the Expiration Date (except pursuant to Section 6.01), then Basic Rent and Additional Rent paid with respect to periods occurring after the termination of the Lease Term shall be refunded to Tenant, subject, however, to Landlord's right of set off with respect to any uncured default by Tenant in the performance of its obligations under this Lease.

### ARTICLE 3. TAXES, ASSESSMENTS AND UTILITY CHARGES

#### 3.01 Definitions.

(a) For the purposes of this Lease, "**Applicable Taxes**" shall mean ad valorem real and personal property taxes assessed and levied against the Premises and Tenant Equipment.

(b) For the purposes of this Lease "**Additional Taxes**" shall mean:

(i) all taxes, assessments, levies and charges which are now or hereafter may be assessed, levied or imposed in addition to, in replacement of or in substitution for ad valorem real or personal property taxes, including, without limitation, such taxes, levies and charges which, in whole or in part, are measured or calculated by or based upon Basic Rent and/or Additional Rent, including, without limitation, gross income, gross receipts, license, occupation, privilege, value added, documentary stamp, transfer, excise, sales and use taxes (but excluding special assessments and any tax on or measured by the net income of Landlord); and

(ii) all taxes, assessments, levies and charges, including without limitation, gross income, gross receipts, license, occupation, privilege, value added, documentary stamp, transfer, excise, sales and use taxes (but excluding special assessments and any tax on or measured by the net income of Landlord) and all license, permit and authorization fees now or hereafter levied or imposed upon, assessed against, attributable to or becoming a lien upon the Premises, the appurtenances thereto, the streets or sidewalks adjacent thereto, this Lease, the leasehold estate created thereby, the instrument creating the same, the occupancy or use of the Premises, the business conducted thereon, Basic Rent or Additional Rent payable under this Lease (but excluding therefrom any taxes, assessments, levies and charges which are the obligation of the Main Landlord under the Main Lease).

#### 3.02 Term Sheet Definitions.

(a) **Tax Period** shall mean the period specified in **Item 7a of the Term Sheet**.

(b) **Applicable Taxes** shall mean the taxes specified in **Item 7b of the Term Sheet**.

(c) Tax Period for Additional Taxes shall mean the basis as is customarily utilized in the community where the Facilities are located.

**3.03 Tenant's Requirement to pay Applicable Taxes and Additional Taxes; Landlord's Rights.**

(a) Tenant shall remit to the appropriate collecting authorities, 10 days before the due date or dates, all Applicable Taxes and Additional Taxes levied or imposed upon or assessed against the Premises, Tenant Equipment and/or Tenant and which become due and payable during, or which are levied, imposed or assessed for Tax Periods within the Lease Term, and Tenant shall provide copies of the paid tax receipt, cancelled check, or other evidence satisfactory to Landlord, as evidence of payment thereof to Landlord within such 10 day period.

(b) Nothing in this Article shall be deemed to affect any right or remedy of Landlord under any provision of this Lease or any statute or rule of law to pay any of such Applicable Taxes and/or Additional Taxes and to collect from Tenant as Additional Rent the amount so paid together with:

(i) all costs and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses, architects, engineers and other consultants) incurred by Landlord in connection with the exercise of its rights hereunder;

(ii) interest at the rate specified in Section 14.03; and

(iii) a processing fee of \$500.00 for each such occurrence.

**3.04 Payments during Lease Term.**

Tenant shall bear:

(a) Applicable Taxes and Additional Taxes for all Tax Periods which fall wholly within the Lease Term; and

(b) a portion of the Applicable Taxes and Additional Taxes for Tax Periods in which the Commencement Date or Expiration Date occurs during the Lease Term in the proportion that the number of days the Lease Term exists within each such Tax Period bears to the total number of days in such Tax Period. Tenant shall bear Applicable Taxes and Additional Taxes regardless of whether such taxes are required to be remitted by Landlord, Tenant or a third party.

**3.05 Escrow.**

If Tenant shall be in default under the Lease, in addition to all other rights of Landlord, Tenant shall pay to Landlord on each Basic Rent payment date, commencing on the first such date, a sum equal to one-twelfth of the total annual amount, as estimated and specified to Tenant from time to time by Landlord, of those Applicable Taxes and/or Additional Taxes which by the terms of this Article 3 are to be borne by Tenant. If required by Landlord, Tenant shall make an additional payment to Landlord, simultaneously with the payment of the first installment of Basic Rent and on such other Basic Rent payment date or dates as Landlord may require from time to time, of a sum which, when added to the aforesaid payments for Applicable Taxes and/or Additional Taxes, will provide Landlord with funds sufficient to pay all such Applicable Taxes and/or Additional Taxes at least one month prior to the earlier of:

(i) the date such Applicable Taxes and/or Additional Taxes become delinquent;

(ii) the latest date such Applicable Taxes and/or Additional Taxes could be paid with the greatest available discount, if any; or

(iii) the last day of the current Tax Period; notwithstanding that any or all monies so deposited may be due to the appropriate collecting authorities in the future.

If at any time Landlord shall determine that the amount of such payments made by Tenant is insufficient to accomplish the purpose of this Subsection 3.05, Tenant shall pay, immediately upon request, the amount of the deficiency to Landlord. If at any time during the Lease Term, Landlord shall have advanced funds for the payment of such Applicable Taxes and/or Additional Taxes, Tenant shall remit to Landlord, immediately upon request, the funds so advanced. All payments to be made by Tenant pursuant to this Section 3.05 shall be applied by Landlord to the payment of those Applicable Taxes and/or Additional Taxes to be remitted by Landlord hereunder. No payments made by Tenant to Landlord shall earn interest for the benefit of Tenant while held by Landlord. In the event of any default (other than the default triggering the establishment of payments under this Subsection 3.05) by Tenant in the performance of any obligation under this Lease, Landlord shall have the right to apply all such payments to the cost of curing such default. If Landlord determines that the sum of such payments exceeds the amounts required to pay such Applicable Taxes and/or Additional Taxes, Landlord shall credit the amount of such excess against future monthly payments required to be made by Tenant pursuant to this Section 3.05. Landlord shall remit to the appropriate collecting authorities before the delinquency date or dates all Applicable Taxes and Additional Taxes which Landlord has collected from Tenant pursuant to this Subsection 3.05.

### **3.06 Special Assessments.**

Except to the extent that the same are the obligations of Main Landlord, special assessments which become due in full or any part and all installments of special assessments which become due during the Lease Term (whether or not such assessments or the first of such installments become due prior to the Commencement Date) shall be borne by Tenant as Additional Rent and shall be remitted by Tenant on or before the date such installments become due and Tenant shall provide copies of the paid receipt, cancelled check, or other evidence satisfactory to Landlord, as evidence of payment thereof to Landlord. For purposes of this Section 3.06, payment in installments over the longest possible term will be deemed to have been elected in any instance where a determinable option so to pay existed or may exist, notwithstanding that an assessment may have been or may hereafter be paid in full, and Tenant shall bear the expense of only such installments as would have become due, payable and delinquent during the Lease Term had the installment option been elected. In the event of default under the Lease, in addition to other rights of Landlord, Tenant shall make periodic payments in advance to Landlord (at the times and otherwise in the manner specified in Section 3.05 for payments with respect to Applicable Taxes and/or Additional Taxes) for special assessments or installments thereof which Tenant is required to bear pursuant to this Section 3.06.

### **3.07 Right to Contest.**

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of Applicable Taxes, Additional Taxes or special assessments, provided:

(i) all contest proceedings shall be conducted in good faith and with due diligence by Tenant and by counsel, if any; and copies of all pleadings and other related documents involved in the contest shall be submitted to Landlord prior to the filing with any administrative or judicial body;

(ii) the cost of any such contest shall be borne solely by Tenant; and

(iii) any such contest shall not relieve Tenant of its obligation to make the payments to the appropriate collecting authorities required in Subsection 3.03 and/or to Landlord specified in Subsection 3.05 and Section 3.06.

(b) If Landlord elects, or has elected prior to the Commencement Date, to contest the amount or validity, in whole or in part, of Applicable Taxes, Additional Taxes or special assessments, the benefits and expenses resulting from any such contest shall be shared and borne ratably by Landlord and Tenant in the same manner in which such Applicable Taxes, Additional Taxes or special assessments are required to be borne by each pursuant to this Article 3 in the absence of a contest, provided, however, Tenant shall not be required to bear expenses in an amount which shall exceed the benefits in reduced Applicable Taxes, Additional Taxes or special assessments accruing to Tenant as a result of such contest. Where the contest involves or involved Applicable Taxes, Additional Taxes or special assessments which are payable over a period longer than one year, such benefits will be deemed to be the aggregate of the benefits for the portion of the Lease Term in which the assessments are payable.

### 3.08 Personal Property Taxes.

Personal property taxes on personal property located upon the Premises shall be remitted by the owner thereof, and the owner shall file any and all personal property tax returns that may be required in relation thereto. Tenant shall reimburse Landlord, as Additional Rent, for personal property taxes paid by Landlord on property located upon the Premises and used therewith. Reimbursement shall be made within 30 days after paid receipts therefor are delivered by Landlord to Tenant.

### 3.09 Utility Charges.

Tenant shall pay or cause to be paid all charges and taxes incurred by Tenant for or on account of water, sewer, gas, electricity, light, heat and power and for protective, telephone, and other communication services and for all other public or private utility services which may be used, rendered or supplied upon, to or in connection with the Premises or any part thereof at any time during the Lease Term.

## ARTICLE 4. AUTHORIZED USE

4.01 (a) Tenant shall use and occupy the Premises only for the operation of a Ford Motor Company authorized automobile and/or truck dealership and related purposes. The Premises may be used for additional purposes (including but not limited to the sale, display, storage and/or service of vehicles not covered by a Ford Motor Company Sales and Service Agreement) only with the express written consent of Landlord, which consent may be withheld at Landlord's sole discretion. Landlord shall have the option to increase Basic Rent (by an amount to be determined by landlord in its sole discretion) as a condition to giving any such consent. In addition, Landlord shall have the right (which right may be exercised by landlord in its sole discretion), in each case by giving to Tenant not less than two year's prior notice, (i) to modify or withdraw any consent previously given pursuant to this Section 4.01 and (ii) to increase Basic Rent (whether or not Basic Rent previously had been increased) as a condition for continuing any such consent. Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Premises or any part thereof. Tenant shall not reach or suffer the breach of any condition, agreement or restriction, either recorded or of which Tenant has knowledge, affecting the Premises or any part thereof or the use of same.

(b) Any portion of Basic Rent imposed pursuant to this Section 4.01 shall be remitted directly to Landlord notwithstanding that Landlord may have directed Tenant to remit other portions of Basic Rent to one or more third parties.

4.02 If any law, ordinance, ruling order or regulation (herein collectively called Prohibition) now exists or is hereinafter enacted, adopted or issued prohibiting or substantially impairing the use and

occupancy of the Premises as an automobile dealership, then, at any time within one year after the Prohibition becomes effective, Tenant (unless the Prohibition results from any act or omission by Tenant) or Landlord, by giving notice to the other, may designate a date on which this Lease shall terminate (which date shall be not later than 60 days after the giving of such notice); and, thereupon, on the date fixed in such notice, this Lease shall terminate as if such date were the Expiration Date.

## ARTICLE 5. INSURANCE

5.01 During the Term of this Lease, Tenant shall maintain general or public liability insurance, including but not limited to contractual liability coverage, against claims for bodily injury, death or property damage occurring on, in or about the Premises and the streets and alleys adjoining the Premises, affording protection of at least \$3,000,000 single limit per occurrence of loss or damage. In addition, Tenant shall maintain pollution liability insurance affording protection of at least \$1,000,000 single limit per occurrence. Such coverage shall provide protection for underground storage tanks as required by the EPA regulations published October 26, 1988 (and any subsequent provisions or amendments thereto), and will include providing protection for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks. If during the Lease Term changed conditions or other pertinent factors, in the reasonable judgment of Landlord, should render inadequate the insurance limits referred to above, Tenant shall furnish on demand such additional coverage as reasonably may be required by Landlord. All such insurance shall be effected at Tenant's expense under valid and enforceable policies issued by insurers of recognized responsibility which are qualified to do business in the State where the Premises are located. Such policies shall be for a minimum term of one year, and name Landlord, Main Landlord, Tenant and all mortgagees as insureds, and shall, to the extent obtainable, contain an agreement by the insurer that such policies shall not be cancelled or substantially modified without at least 30 days' prior notice to Landlord and Main Landlord. The insurance provided by the Tenant shall be primary insurance and will not be excess to or contributory with respect to any insurance or self-insurance maintained by Ford Motor Company. A certificate of insurance evidencing the coverages required herein shall be delivered by Tenant to Landlord and Main Landlord prior to the Commencement Date, and similar replacement certificates shall be delivered by Tenant to Landlord and Main Landlord at least 15 days prior to the expiration dates of expiring policies. If Tenant does not provide such evidence to Landlord and Main Landlord of valid liability insurance coverage, then Landlord at its option may provide said coverage at any time and without notice to Tenant. The cost thereof will be charged to Tenant as Additional Rent. Landlord agrees that Tenant may provide the insurance coverage required by this Lease through an insurance program maintained by AutoNation, Inc., a Delaware corporation ("AutoNation"), Tenant's indirect parent company.

5.02 Tenant shall pay to Landlord the cost as determined by Landlord of fire and extended coverage insurance (including, at Landlord's election, earthquake, flood, and rental income insurance) upon the Premises. Landlord shall have the right to determine the amount, form, deductible amount and carriers of such insurance. At Landlord's election, Tenant shall make periodic payments in advance on account of such costs at the times and otherwise in the manner specified in Section 3.04 for payments with respect to Applicable Taxes.

5.03 Tenant, at its sole cost and expense, shall carry such other insurance as customarily is maintained by operators of similar property, or as reasonably may be required by Landlord from time to time for its protection against any loss, hazard, or liability to which Landlord may be exposed.

5.04 Landlord hereby waives, to the extent of recovery by Landlord under Landlord's fire and extended coverage insurance policies, (a) any obligation on the part of Tenant to make repairs to the Premises necessitated or occasioned by fire or other casualty that is an insured risk under such insurance policies and (b) any right of recovery against Tenant for any loss occasioned by fire or other casualty that is an insured risk under such policies. Tenant hereby waives any right of recovery against Landlord, or anyone claiming under Landlord, for any loss occasioned by fire or other casualty which is an

insured risk under Tenant's policies of fire and extended coverage insurance covering the property of Tenant.

#### **ARTICLE 6. REMEDIES IN CASE OF DEFAULT**

6.01 If any one or more of the following events shall occur and be continuing:

(a) default shall be made by Tenant in the due and punctual payment of Basic Rent or Additional Rent as and when the same becomes due and payable, and such default shall continue for a period of ten days; or

(b) default shall be made by Tenant in the performance of any of the obligations set forth in Article 8; or

(c) default shall be made by Tenant in the performance of any other term or provision of this Lease, and such default shall continue for a period of 20 days after notice by Landlord to Tenant; or

(d) Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy or other applicable law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant's property or its leasehold interest in the Premises, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(e) (i) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy or other applicable law, or (ii) any trustee, receiver or liquidator of Tenant or of all or any substantial part of Tenant's property or its leasehold interest in the Premises shall be appointed without the consent or acquiescence of Tenant; and such order, judgment, decree or appointment shall remain unvacated or unstayed for an aggregate of 60 days (whether or not consecutive); or

(f) default shall be made by Tenant in the performance of any term or provision of any lease or sublease between Landlord and Tenant (other than this Lease) covering any premises used for dealership purposes in conjunction with the Premises;

then, in any such event, Landlord, at its option, by notice to Tenant, may designate a date not less than five days from the giving of such notice on which this Lease shall terminate in all respects as if such date were the Expiration Date.

6.02 Upon any such termination, Tenant shall quit and peacefully surrender its interest in the Premises to Landlord, and Landlord upon and at any time after such termination may, without further notice, re-enter and repossess the Premises, either by force, summary proceedings or otherwise, without being liable to any prosecution therefor.

6.03 At any time or from time to time after such termination of this Lease, Landlord may relet the Premises or any part thereof for such term or terms and on such conditions as Landlord in its discretion may determine, and Landlord may collect and receive the rents therefor. Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof or for any failure to collect any rent upon any such reletting.

6.04 No such termination of this Lease shall relieve Tenant of its liabilities and obligations under this Lease, and such liabilities and obligations shall survive any such termination. In the event of any

such termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay Basic Rent and Additional Rent required to be paid under this Lease by Tenant up to the time of such termination. Thereafter, until the Expiration Date, Tenant shall pay to Landlord as liquidated damages for its default (a) Basic Rent and Additional Rent which would have been payable by Tenant under this Lease were it still in effect, less (b) the net proceeds of reletting, if any, effected pursuant to Section 6.03, after deducting all expenses of Landlord in connection with such reletting. Tenant shall pay such liquidated damages on the days on which Basic Rent and Additional Rent would have been payable under this Lease if it were still in effect.

6.05 At any time after a termination of this Lease pursuant to Section 6.01, whether or not Landlord shall have collected any liquidated damages pursuant to Section 6.04, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated final damages for Tenant's default (herein called Final Damages) and in lieu of all liquidated damages pursuant to Section 6.04 beyond the date of such demand, an amount equal to the excess, if any of (x) Basic Rent which would be payable under this Lease from (i) the date to which Tenant shall have satisfied in full its obligations to pay liquidated damages pursuant to Section 6.04, to (ii) the Expiration Date, over (y) the then fair net rental value (net after Additional Rent) of the Premises for the same period, both discounted to present worth at the rate of 6% per annum, compounded annually. However, if any statute or rule of law shall limit the amount of Final Damages to an amount less than the above agreed upon amount, Landlord shall be entitled to prove as Final Damages the maximum amount allowable under such statute or rule of law.

6.06 In the event of any expiration or termination of the Lease Term, Tenant, so far as permitted by law, hereby expressly waives (a) the service of any notice of intention to re-enter provided for by law, (b) the institution of legal proceedings for re-entry or repossession, and (c) any and all rights to redeem, re-enter or repossess the Premises, or to restore the operation of this lease. Tenant also waives any right to trial by jury in the event that, upon any expiration or termination of the Lease Term, legal proceedings shall be instituted by Landlord and further waives the benefits of any and all laws now or hereafter in force exempting property from liability for rent or for debt. The terms "enter", "re-enter", "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meaning.

#### **ARTICLE 7. ENVIRONMENTAL MATTERS & UNDERGROUND TANKS**

7.01 Landlord has obtained an environmental assessment (herein called the Commencement Assessment) of the Premises and has delivered a copy to Tenant. Tenant has reviewed the Commencement Assessment prior to entering into this Lease. The Cost of Work (defined below) for remediation necessitated by the presence of any Hazardous Substance (defined below) emanating from and/or upon, above or beneath the Premises shall be added to the monthly Basic Rent in the manner provided in Section 7.05.

7.02 If the Commencement Assessment shall disclose the existence emanating from and/or upon, above or beneath the Premises of any Hazardous Substance which (a) is required by law or regulation to be cleaned up, removed or otherwise remediated (herein collectively called Remediation), or (b) in Landlord's judgment should be remediated, Landlord shall be responsible for undertaking Remediation and for dealing with all governmental bodies having jurisdiction over the Premises or the Remediation. The Cost of Work for such Remediation shall be added to the monthly Basic Rent in the manner provided in Section 7.05.

7.03 If the Commencement Assessment discloses the existence of any underground storage tanks on the Premises, Landlord shall have the right, at any time during the Lease Term, to enter upon the Premises in accordance with the provisions of Article 14 to remove any such underground storage tanks and related pumps, piping and appurtenances (herein collectively called USTs). The Cost of Work for removing a UST, or Remediation associated therewith, and the cost of installing any replacement USTs (if such installation is agreed to in writing by Landlord and Tenant) shall be added to the monthly Basic Rent in the manner provided in Section 7.05.

To the extent that the Basic Rent is reduced under the Main Lease Agreement pursuant to Article 7.02 of the Main Lease, there shall be a corresponding reduction in the Basic Rent under this Dealership Sublease.

7.04 Pursuant to the terms of Article 14, Landlord shall have the right, upon notice to Tenant, to enter upon the Premises at any time during the Lease Term to conduct an inspection or environmental assessment, and if such inspection or assessment discloses the presence of any Hazardous Substance emanating from and/or upon, above or beneath the Premises, to undertake the Remediation of such Hazardous Substance even if such Remediation is the obligation of Tenant under Article 10. In any case in which the Remediation of such Hazardous Substance is the obligation of Tenant under Article 10, the Cost of Work for such Remediation shall be borne by Tenant and shall be remitted to Landlord as Additional Rent, upon Landlord incurring such expense, or portions thereof, promptly upon demand.

7.05 With respect to any work required or permitted by this Article 7, which is not the responsibility of Tenant under Article 10, effective on the earlier of (a) the completion of any such work or (b) on each January 1 during the Lease Term for any such work done during the year then ended, the monthly Basic Rent shall be increased to an amount equal to the following:

(i) The then-current monthly Basic Rent; plus

(ii) One-twelfth of the annual rent rate charged by Landlord based on a 15-year amortization (at the time work is authorized) of the cost of any assessment; plus

(iii) One-twelfth of the annual rent rate charged by Landlord based on a 15-year amortization (at the time work is authorized) of the Cost of Work (defined below); provided, however, that the increase resulting from this Section 7.05(iii), shall not result in a Basic Rent which exceeds the product of (x) the fair market value (as determined by an independent appraiser selected by Landlord) of the Premises multiplied by (y) one-twelfth of the rental factor or factors for a 25-year amortization period (expressed as a percent) being used by Landlord in computing basic rent for dealership properties on the date the Basic Rent is to be increased. In addition, if the increase resulting from this Section 7.05(iii) results in an increase of 25% or more in the immediately preceding Basic Rent, Tenant shall have the option to terminate this Lease by providing to Landlord within 90 days after receiving notice from Landlord of the increase in Basic Rent. Tenant's notice of termination shall designate a date for termination not more than 180 days after the date of the notice. This Lease shall then terminate on such date as if such date were the Expiration Date.

7.06 For purposes of this Article 7 and of Article 10, the term "Cost of Work" shall mean, when applied to environmental assessments, removal or replacement of USTs, or Remediation (i) the total contract price paid by Landlord to its contractors to assess the Premises (including the cost and expense of environmental consultants and inspections, soil borings, tests and evaluations), whether or not incurred in connection with the removal, disposal or replacement of an UST or Remediation of the Premises, (ii) the total contract price paid by Landlord to its contractors to close, remove or dispose of USTs (including the disposition of any materials in the USTs and the restoration of soil and paving in the area of the USTs), or to install new USTs, (iii) the total contract price paid by Landlord to its contractors in connection with any Remediation of the Premises (including of the soil or ground water under the Premises or of the air above the Premises) and (iv) the cost of any additions or changes under any contract contemplated by subsections (i), (ii) and (iii) hereof, including costs, expenses and charges for consultants and inspections, soil borings, tests and evaluations, site restoration, construction cost estimates, surveys, attorneys', architects' and engineers' services, licenses and permits, and premiums on fire, extended coverage and other insurance, and uninsured casualty losses, together with interest, compounded monthly, at the rate of interest specified in Section 14.03.

7.07 For the purpose of this Article 7 and of Article 10, the term "Hazardous Substance" means any substance: (i) the presence of which requires investigation or Remediation under any federal, state or local statute, regulation, ordinance, order, action policy or common law; or (ii) which is or becomes

defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State where the Premises are located, or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons.

#### **ARTICLE 8. DISCHARGE OF LIEN**

8.01 In the event that the Premises or any part thereof of Tenant's leasehold interest therein shall become subject to any vendor's, mechanic's, laborer's, materialman's or other lien, encumbrance or charge based upon the furnishing of materials or labor to or at the direction of Tenant, Tenant shall cause the same, at Tenant's sole cost and expense, to be discharged within 30 days after notice thereof to Tenant given by or on behalf of the lienor.

#### **ARTICLE 9. INDEMNIFICATION OF LANDLORD**

9.01 Tenant shall indemnify and save harmless Landlord against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses, architects, engineers and other consultants) which may be imposed upon, incurred by or asserted against Landlord or Main Landlord by reason of any of the following occurring during the Lease Term:

(a) any work or thing done by Tenant or any agent, contractor, employee, licensee or invitee of Tenant in, on or about the Premises or any part thereof;

(b) any use, nonuse, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, or of any street, alley, sidewalk, curb, passageway or space adjacent thereto, or any Tenant Equipment;

(c) any negligent or tortious act of Tenant or any agent, contractor, employee, licensee or invitee of Tenant;

(d) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof or any street, alley, sidewalk, curb, passageway or space adjacent thereto; and

(e) any failure by Tenant to perform its obligations under this Lease.

In the event that any action or proceeding shall be brought against Landlord by reason of any claim covered by this Section 9.01, Tenant, upon notice from Landlord, at Tenant's sole cost and expense, shall resist or defend the same with counsel approved by Landlord. To the extent of the proceeds received by Landlord under any insurance furnished to Landlord by Tenant, Tenant's obligation to indemnify and save harmless Landlord against the hazard which is the subject of such insurance shall be deemed to be satisfied pro tanto.

9.02 Tenant is fully familiar with the physical condition of the Premises and accepts it as is. Landlord has made no representations of whatever nature in connection with the condition of the Premises, and Landlord shall not be liable for any latent or patent defect therein.

9.03 Tenant shall indemnify and save harmless both the Landlord and Main Landlord against all costs and expenses, including, without limitation, fees and expenses of attorneys, expert witnesses, architects, engineers and other consultants, incurred by Landlord and Main Landlord in (i) obtaining possession of the Premises after default by Tenant or (ii) after Tenant's default in surrendering possession upon the expiration or earlier termination of the Lease Term or (iii) in enforcing any obligation of Tenant under this Lease.

#### ARTICLE 10. REPAIRS

10.01 (a) Except to the extent that the same is the obligation of Main Landlord under the Main Lease Tenant shall keep and maintain the Premises (including, without limitation, the roofs, walls, floors, ceilings and windows, the heating, air conditioning, electrical, water, power and plumbing systems and equipment, the paved or blacktopped areas and the adjacent alleys, sidewalks and curbs) and Tenant Equipment in first-class order and repair (including, without limitation, periodic painting, washing and general refurbishing) and free of accumulations of trash, rubbish, snow, and ice and any Hazardous Substance or other contaminants. Except as provided in Section 5.04, Tenant shall make all repairs and replacements, structural and non-structural, foreseen and unforeseen, as may be necessary or desirable in order to keep and maintain the Premises and Tenant Equipment in first-class order and repair and in a condition suitable for the operation and conduct of Tenant's business and cleanup and remove any release of Hazardous Substance or other contaminants on or under the Premises. Without limiting the generality of the foregoing, Tenant's obligations under this Section shall include the performance of maintenance at least as frequent and to the extent provided in Exhibit 2 hereto.

(b) Except for the initial construction or alteration of the Improvements, if any, undertaken by Landlord and except as provided in Section 10.02, Landlord shall not be required to make any repair, replacement, alteration, addition or betterment to or in the Premises or any part thereof, Tenant hereby assuming the full and sole responsibility therefor and for the condition and maintenance thereof during the Lease Term.

10.02 (a) Tenant shall give notice promptly to Landlord if the Premises or any Tenant Equipment shall be damaged or destroyed by fire or other casualty, specifying the date, nature and extent of such damage or destruction. Tenant shall take whatever steps may be necessary to prevent further damage or destruction to the Premises or Tenant Equipment.

(b) If prior to or during the Lease Term (i) the Improvements shall be damaged or destroyed by fire or other casualty insured against by Landlord's fire and extended coverage insurance policy covering the Improvements, (ii) Landlord shall not have elected to terminate this Lease as provided in subsection 10.02(c), and (iii) Tenant shall have paid to Landlord upon demand, the amount of the deductible under the insurance covering the Improvements, then Landlord shall repair or restore the Improvements so damaged or destroyed. Landlord shall have no obligation to repair or restore any Tenant Equipment. If the Premises or any part thereof shall be rendered untenable as a result of such damage or destruction, there shall be a reduction in Basic Rent to the extent and for the period of such untenability, all as shall be determined by Landlord in its reasonable discretion.

(c) If prior to or during the Lease Term the Improvements shall be so damaged or destroyed by fire or other casualty that Landlord, in its reasonable discretion, shall determine that substantial repairs or reconstruction of the Improvements shall be required, Landlord, within 120 days after such fire or other casualty, by notice given to Tenant, may designate a date on which this Lease shall terminate (which date shall be not later than 60 days after the giving of such notice). Thereupon, on the date fixed in such notice, this Lease shall terminate as if such date were the Expiration Date.

(d) Other than as specifically provided in subsection 10.02(b), there shall be no abatement of Basic Rent or Additional Rent on account of any casualty or destruction to or untenability of the Premises, any statute or rule of law to the contrary notwithstanding.

10.03 Tenant at its sole cost and expense shall comply with all laws, rules and regulations of governmental authorities relating to Tenant's use and occupancy of the Premises or any part thereof including, without limitation, all laws, rules, and regulations relating to the environmental condition of the Premises or the use and presence of any Hazardous Substances on the Premises and all orders, rules and regulations of the board of fire underwriters or any other body hereafter exercising similar functions relating to Tenant's use and occupancy of the Premises. Tenant likewise shall comply with the requirements of all governmental permits and certificates and all policies of public liability, fire and other insurance at any time in force with respect to the Premises. Without limiting the foregoing, Tenant shall promptly deliver to Landlord copies of any notice or other correspondence sent by Tenant to any governmental body, or received by Tenant from any governmental body, concerning the environmental condition of the Premises.

10.04 Notwithstanding the provisions of Section 10.01 (a) and 10.03, Tenant shall not be responsible for Remediation or cost of compliance relating to Hazardous Substances or other contaminants located on the Premises if Tenant can demonstrate to Landlord's reasonable satisfaction that the Hazardous Substance or contamination existed prior to the time that Tenant came into possession of the Premises, either pursuant to this Lease or otherwise, and that Tenant has not contributed to or exacerbated the presence of the Hazardous Substance or other contamination.

#### **ARTICLE 11. ASSIGNMENT AND SUBLETTING**

11.01 Without the prior consent of Landlord in each instance, Tenant shall not assign, encumber or mortgage this Lease or any part thereof or sublet all or any part of the Premises or permit the Premises or any part thereof to be occupied or used by any person or entity other than Tenant. Any such consent given in any one instance shall not relieve Tenant of its obligation to obtain the prior consent of Landlord to any further assignment, encumbrance, mortgage, subletting, occupancy or use. An assignment shall include the transfer of a majority of stock or voting control of Tenant, if Tenant is a corporation.

11.02 Tenant hereby irrevocably assigns, transfers and sets over to Landlord, as collateral security for the payment by Tenant of Basic Rent and Additional Rent, all rents and other payments, together with the right to collect and receive the same, now due or which hereafter may become due to Tenant in connection with any assignment, encumbrance, mortgage, subletting, occupancy or use by any person or entity other than Tenant, whether or not in violation of section 11.01. So long as Tenant is not in default under this Lease, Tenant shall be permitted to collect and receive all such rents and other payments so assigned to Landlord.

#### **ARTICLE 12. NOTICES**

12.01 All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid (or if mail service shall be unavailable as the result of a strike or other cause beyond the control of the party required to provide such notice, by air or surface parcel delivery service), addressed as specified in **Item 8a and 8b of the Term Sheet** or to such other address as either party may designate to the other by written notice. Any notice by certified or registered mail shall be deemed to have been given on the date of certification or registration thereof. Any notice by air or surface parcel delivery shall be deemed to have been given on the date submitted to the carrier for delivery.

#### **ARTICLE 13. ALTERATIONS AND TENANT EQUIPMENT**

13.01 Tenant shall make no changes, additions, alterations or leasehold improvements of any nature whatsoever in or to the Premises or any part thereof (herein collectively called Alterations), without Landlord's prior consent and shall not demolish or destroy the whole or any part of the Premises. Tenant, at its expense, may install trade fixtures and equipment (herein collectively called Tenant Equipment) or make Alterations prior to or after the commencement of the Lease Term, subject in all cases to the following:

(a) prior to the installation of Tenant Equipment or the making of Alterations, Tenant shall have furnished Landlord with a written description thereof, in such reasonable detail as Landlord may require, and all plans and specifications therefor, and Landlord shall have given its consent thereto;

(b) the installation and removal of Tenant Equipment and the making of Alterations shall be accomplished in a good and workmanlike manner (which means that the quality of workmanship and materials shall be at least equal to that of the Improvements), without damage to the Premises or any part thereof and in compliance with all applicable laws and regulations of governmental authorities having jurisdiction including, without limitation those requiring permits, licenses and authorizations of such governmental authorities;

(c) the cost of installing and removing Tenant Equipment and the making of Alterations shall be paid by Tenant so that the Premises at all times shall be free from any lien, mortgage, conditional sales agreement, security interest or title retention agreement or any charge for labor, services, or material supplied or claimed to have been supplied to the Premises as a result of the installation or removal of Tenant Equipment or the making of Alterations;

(d) title to all Alterations immediately shall become the property of Landlord, without payment or offset and shall be deemed part of the Premises and subject to all the terms and provisions of this Lease as though included in the Premises as of the Commencement Date;

(e) all the terms and provisions of this Lease, including, without limitation, the provisions of Sections 8.01, 9.01 and 10.03, shall be in force and effect during the installation and removal of Tenant Equipment and the making of Alterations;

(f) any consent given to Tenant for the installation of any Tenant Equipment or the making of Alterations shall not relieve Tenant of its obligation to obtain the prior consent of Landlord to the installation of any other Tenant Equipment or the making of any other Alterations; and

(g) the installation of Tenant Equipment and the making of Alterations shall be performed so as not to interfere with the construction or alteration of any improvements undertaken by Landlord.

13.02 Subject to the terms and provisions of the Main Lease, Tenant may remove all Tenant Equipment at any time during the Lease Term and upon the Expiration Date or earlier termination of this Lease. Tenant shall repair any damage to the Premises caused by such removal, and all Tenant Equipment not so removed may be removed by Landlord, at Tenant's cost and expense, or may be treated by Landlord as abandoned property and part of the Premises. Tenant shall pay to Landlord on demand the cost of repairing any damage to the Premises resulting from Landlord's removal of Tenant Equipment.

#### **ARTICLE 14. RIGHT OF ENTRY**

14.01 Landlord and Main Landlord and their respective authorized representatives, including, without limitation, mortgagees and lessors of all underlying or ground leases, shall have the right to enter the Premises at all times for the purpose of (a) exercising any right, power or remedy reserved to Landlord in this Lease or to Main Landlord in the Main Lease or (b) after not less than ten days' prior notice to Tenant, performing any obligation of Tenant with respect to which Tenant is in default under this Lease.

14.02 Landlord and its authorized representatives, including, without limitation, mortgagees and lessors of all underlying or ground leases, shall have the right to enter the Premises at all reasonable times during normal business hours for the purpose of (a) examining or inspecting the Premises or (b) showing the Premises to prospective purchasers, mortgagees or tenants.

14.03 All payments made by Landlord and all costs and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses, architects, engineers and other consultants) incurred by Landlord in connection with the exercise of its rights under Section 14.01, together with interest at the rate of 15% per annum (or if 15% per annum shall be in excess of the highest rate of interest permitted by law to be collected from Tenant, then at such highest rate permitted by law), compounded monthly from the respective dates of the making of such payments or the incurring of such costs and expenses, shall constitute Additional Rent and shall be payable to Landlord by Tenant on demand.

14.04 The exercise of any right reserved to Landlord or its authorized representatives in Sections 14.01 or 14.02 shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Basic Rent or Additional Rent or relieve Tenant from any of its obligations under this Lease or impose any liability on Landlord or its authorized representatives by reason of inconvenience or annoyance to Tenant or injury to or interruption of Tenant's business or otherwise.

14.05 In any case in which Landlord, Main Landlord or their respective authorized representative enter the Premises for any of the purposes set forth in this Article 14, Tenant shall not interfere, directly or in any manner or form with, the conduct of any work being performed by or for Landlord. Tenant hereby releases Landlord from any damages or claims of damages arising from any loss of business or from any increase in operating costs of Tenant's business, resulting directly or indirectly from the conduct of any such work, whether or not due to Landlord's negligence.

#### **ARTICLE 15. CONDEMNATION**

15.01 The term "Taking" shall mean a taking prior to or during the Lease Term (but in any event subsequent to the execution of this Lease) of all or part of the Premises as the result of condemnation or by agreement between the condemning authority and either Landlord or Main Landlord (or both). The term "Date of Taking" shall mean the date on which title is vested in the condemning authority.

15.02 In the event of a Taking of the whole of the Premises, this Lease shall terminate on the Date of Taking as if such date were the Expiration Date.

15.03 In the event of a Taking of less than all the Premises, either Landlord or Tenant, within 100 days after the Date of Taking, may terminate this Lease on a date as shall be specified in a notice given to the other party, which date shall be not later than 60 days after the giving of such notice. If Landlord shall not give notice of termination of this Lease within 120 days after the Date of Taking, then this Lease shall remain in full force and effect with respect to the part of the Premises not the subject of the Taking. Basic Rent shall be reduced by an amount equal to the reduction, if any, of Basic Rent payable under the Main Lease and if Landlord shall receive any award or other compensation (herein collectively called the Award) on account of the Taking, Basic Rent payable from and after the Date of Taking shall be reduced further by an amount equal to (a) one-twelfth of the rental factor or factors (expressed as a percentage or percentages) which were used by Landlord in computing Basic Rent, multiplied by (b) the lesser of (i) the Award received by Landlord as a result of the Taking, less all costs and expenses incurred by Landlord in collecting the Award or (ii) the cost of that part of the Premises so taken, as determined by Landlord on the basis of Landlord's property accounts, less (c), in the case of either (a) or (b), all costs and expenses incurred by Landlord in connection with any rebuilding, alteration, or restoration of the Premises undertaken by Landlord as a result of the Taking.

15.04 Landlord shall be entitled to receive the entire Award for any Taking, and Tenant hereby assigns to Landlord all its right, title and interest in and to such Award. However, Tenant shall be entitled to make a claim against the condemning authority and shall be entitled to receive compensation for the value of any Tenant Equipment and Tenant's moving expenses which may be compensable as a result of the Taking. Landlord shall have the right to settle any threatened or filed condemnation proceeding.

15.05 From time to time during the Lease Term, Landlord may convey title to, or grant easements in, portions of the land included in the Premises to governmental authorities or utility companies for road widening, curb rounding and water, sewer, electrical, communication and other utility lines. Any such conveyance or grant shall be deemed a Taking only if Landlord receives compensation therefor; otherwise there shall be no reduction in Basic Rent.

#### **ARTICLE 16. SUBORDINATION AND ATTORNMENT**

16.01 This Lease and all rights of Tenant under this Lease are, and shall remain, subject and subordinate in all respects to all ground or underlying leases now or hereafter affecting the Premises, to all mortgages which now or hereafter may affect such leases or the Premises, to all advances made or hereafter to be made under such mortgages, and to all renewals, modifications, consolidations, replacements and extensions of, and substitutions for, such leases and mortgages.

16.02 If at any time prior to the Expiration Date or earlier termination of this Lease (a) any ground or underlying lease affecting the Premises under which Landlord shall be the lessee shall terminate or be terminated for any reason, or if any mortgage affecting the Premises shall be in default or foreclosure and (b) if any owner, mortgagee, or lessor under or resulting from such lease or mortgage shall then be entitled to possession of the Premises, Tenant agrees that, upon demand of any such owner, mortgagee or lessor, it shall attorn to such owner, mortgagee or lessor.

16.03 The provisions of Section 16.01 and 16.02 shall be self-operative, shall inure to the benefit of any owner, mortgagee or lessor referred to in such Sections, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any such ground or underlying lease, or upon the default in or foreclosure of any such mortgage, and no further instruments of subordination or attornment shall be required in order to give effect to such provisions. Upon demand of Landlord or any such owner, mortgagee or lessor, however, Tenant agrees to execute, from time to time, certificates or other instruments of subordination or attornment in confirmation of the provisions of Sections 16.01 and 16.02, acknowledging such subordination or attornment, and setting forth the terms and conditions of its tenancy. Tenant hereby irrevocably constitutes and appoints Landlord and all such owners, mortgagees or lessors, acting jointly or severally, as Tenant's agents and attorneys-in-fact to execute and deliver any such certificate or other instrument for or on behalf of Tenant. All such certificates or other instruments shall be in form and content satisfactory to Landlord or to any such owner, mortgagee or lessor demanding the same. Nothing contained in this Article shall be construed to impair any right otherwise exercisable by any such owner, mortgagee or lessor.

16.04 Within 10 days after written request by Landlord, Tenant shall execute and deliver to Landlord (or to any other person or entity specified by Landlord) a certificate stating that this Lease is in full force and effect and has not been modified (or if modified, setting forth the specific nature of all modifications), setting forth the date or dates to which Basic Rent and Additional Rent have been paid, and stating whether or not, to the best knowledge of Tenant, Landlord is in default under this Lease, and if Landlord is in default, setting forth the specific nature of all such defaults.

#### **ARTICLE 17. TERMINATION OF SALES AGREEMENT**

17.01 Tenant represents and warrants to Landlord that Tenant is, or in any event not later than the Commencement Date that Tenant will be, the holder of one or more sales and service agreements with Ford Motor Company (herein collectively called Sales Agreement) whereunder Tenant is or will be established as an authorized dealer in new cars or trucks, parts and accessories therefor, and other products of Ford Motor Company for sale at retail at the Premises.

17.02 If on the Commencement Date, Tenant is not the holder of a valid and subsisting Sales Agreement, or if any Sales Agreement held by Tenant shall expire or terminate during the Lease Term and shall not be renewed or replaced, either Landlord or Tenant by notice to the other may designate a date on which this Lease shall terminate. This Lease shall terminate on the date fixed in such notice as if

such date were the Expiration Date; provided, however, that if the Sales Agreement is terminated at will by Tenant, Tenant shall be required to give not less than 30 days' notice to Landlord. This 30-day restriction on Tenant's right to terminate the Lease following an at-will termination of the Sales Agreement shall not affect Landlord's right to earlier terminate this Lease as set forth in this Section 17.02.

#### **ARTICLE 18. MISCELLANEOUS.**

18.01 No failure by Landlord or Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial rent by Landlord during the continuance of any such breach by Tenant, shall constitute a waiver of any such breach, covenant, agreement, term or condition. No waiver of any breach, covenant, agreement, term or condition shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease otherwise shall continue in full force and effect.

18.02 Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally. Only an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought shall be binding on the party. No such instrument shall be deemed binding on Landlord unless signed by the President, a Vice President, Secretary, or an Assistant Secretary of the Landlord, or by any other person to whom authority to execute any such instrument shall be delegated in writing by any of such officers.

18.03 The rights and obligations contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their respective personal representatives, successors and assigns. However, the obligations of Landlord under this Lease shall no longer be binding upon Landlord after any sale, assignment, or transfer by Landlord (or upon any subsequent landlord after the sale, assignment, or transfer by any such subsequent landlord) of its interest in the Premises. In the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee, or other transferee of such interest, and any such grantee, assignee, or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Premises, other than for occupancy thereof, shall be deemed a transfer within the meaning of this Section.

18.04 Unless otherwise specifically provided for in this Lease, each right, power and remedy of Landlord provided for in this Lease shall be cumulative and concurrent with every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Landlord of any or all other such rights, powers or remedies. In the event of any breach or threatened breach by Tenant of any of the provisions of this Lease, Landlord shall be entitled by injunction to restrain such breach or threatened breach or to compel performance of such provisions.

18.05 If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the extent permitted by law.

18.06 This Lease shall be construed and enforced in accordance with the laws of the State where the Premises are located or if the Main Lease provides that the laws of another State shall control, then in accordance with the laws of the State specified in the Main Lease.

18.07 This Lease, including the Exhibits hereto, which are made a part hereof, contains the entire agreement between the parties, and all prior negotiations and agreements are merged herein. Neither Landlord nor Landlord's representatives have made any representations or warranties with respect to the

Premises, the Improvements, or this Lease, except as expressly set forth herein, and no rights or remedies are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

18.08 Tenant agrees that neither this Lease nor any memorandum or short form hereof may be recorded without the prior consent of Landlord.

18.09 The relationship between the parties hereto is solely that of landlord and tenant and nothing contained herein shall constitute or be construed as establishing any other relationship between the parties, including, without limitation, the relationship of principal and agent, employer and employee or parties engaged in a partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither party is the agent of the other and neither is in any way empowered to bind the other or to use the name of the other in connection with the construction, maintenance or operation of the Premises, except as otherwise specifically provided herein.

18.10 Unless the context otherwise expressly requires, the words "herein", "hereof", "hereinafter" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section, subsection or other subdivision.

18.11 All the terms and provisions of this Lease shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressing or importing covenants and conditions were used in each separate term and provision.

18.12 The headings of the Articles in this Lease are for convenience only and shall not be used to construe or interpret the scope or intent of this Lease or in any way affect the same.

18.13 Any holding over by Tenant beyond the Lease Term shall not extend the Lease Term, but otherwise shall be upon and subject to all the terms and conditions of this Lease, except that Basic Rent shall be an amount equal to 150% of the greater of (a) Basic Rent reserved herein or (b) an amount equal to Basic Rent under the Main Lease, if any, plus one-twelfth of the rental factor or factors (expressed as a percent or percentages) used by Landlord in computing Basic Rent for other dealership properties on the Expiration Date, multiplied by the cost of the Premises as determined by Landlord on the basis of Landlord's property accounts. This Section is not intended to authorize or permit Tenant to hold over under any circumstance.

#### **ARTICLE 19. TERM SHEET; INTEGRATION OF DOCUMENTS; EXECUTION**

19.01 This Lease consists of this Dealership Sublease, the Term Sheet, Exhibit I, Exhibit II and the other Exhibits, if any, specified in the Term Sheet, all of which shall constitute a single agreement. Landlord and Tenant have executed this Lease by signing and dating the Term Sheet.