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 a Three Party Agreement regarding City-owned property located at 3055-3111 Pacific Coast Highway

RECOMMENDATION

Recommendation of the City Manager that City Council approve a Three Party Agreement among Peyton Cramer Ford, A California Corporation; Ford Leasing Development Company, a Delaware corporation and City of Torrance, a Municipal Corporation concerning a Lease on City-owned property located at 3055-3111 Pacific Coast Highway.

FUNDING

No funding is required for the requested action.

BACKGROUND/ ANALYSIS

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 Three Party Agreement is a requirement of Ford Leasing Development and is used as a guarantee that Ford can retain site control if the Master Tenant, Peyton Cramer Ford defaults on the Lease. This document secures the ability of Ford Leasing Development Company to step in and cure the Lease and then if necessary sublet the Lease to another subsidiary.

The document also acts an Estoppel Certificate that contains certain representations by the City that the Lease is in full force and effect with no material defaults.

Finally it memorializes the Sublease and Sub-sublease contained in the Fifth Amendment to Lease that is also before Your Honorable Body this evening.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By _____
Brian K. Sunshine
Assistant to the City Manager

CONCUR:

_____
LeRoy J. Jackson
City Manager

Attachment:
A. Three Party Agreement

12E

Attachment A

When recorded, please return to:

Tom Loftus
Ford Leasing Development Company
330 Town Center Drive, Suite 1100
Dearborn, MI 48126

THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT ("Agreement") dated as of this _____ day of _____, 2009 ("Effective Date"), among Peyton Cramer Ford, a California corporation (herein called "Cramer"); Ford Leasing Development Company, a Delaware corporation (herein called "LeaseCo"); and City of Torrance, California, a Municipal corporation (herein called "City").

RECITALS:

A. City is the owner of certain improved real property (the "Premises") comprising approximately 2.6 acres located in the City of Torrance, County of Los Angeles, California described in Exhibit 1 attached hereto and commonly known as 3035-3111 Pacific Coast Highway.

B. City, as landlord, entered into a Lease dated November 27, 1972 (as amended and assigned, the "Lease") with Robert N. Norris and Peggy L. Curtis (collectively, "Norris"), as tenants, with an expiration date of December 31, 2034 (the "Lease").

C. Cramer is the current holder of the tenant's interest in the Lease that was originally held by Norris.

D. A Memorandum of Lease with respect to the Lease was recorded in the public records of Los Angeles County, California on August 13, 1998 as instrument number 98 1430332.

E. A Memorandum of Assignment of Lease with respect to the Lease is being recorded in the public records of Los Angeles County, California contemporaneously with this Agreement.

F. Cramer, as sublessor, and LeaseCo, as sublessee, entered into that certain Sublease Agreement dated _____, 2009 with an expiration date of December 31, 2034 (the "Sublease"), for which a Memorandum of Sublease is being recorded in the public records of Los Angeles County, California contemporaneously with this Agreement.

G. Cramer, as sub-sublessee, and LeaseCo, as sub-sublessor, entered into that certain Dealership Sub-Sublease Agreement dated _____, 2009 with an expiration date of December 31, 2034 (the "Sub-Sublease"), for which a Memorandum of Sub-Sublease is being

recorded in the public records of Los Angeles County, California contemporaneously with this Agreement.

H. Cramer, City and LeaseCo desire to enter into this Agreement for the mutual protection and benefit of each.

The parties agree that, notwithstanding the provisions of the Lease, the following shall apply:

1. Definitions. All terms with initial capitalization used herein shall have the meanings given them in the Lease, unless specifically stated otherwise.

2. Representations Regarding the Lease. City represents to LeaseCo that:

(a) the Lease constitutes the entire lease agreement between City and Cramer and is in full force and effect with regard to the Premises;

(b) that all rent and other charges due from Cramer under the Lease have been paid in full up through and including the date of this Agreement; and

(c) that City has not caused any notice to be sent to Cramer of any default under the Lease which has not been cured; and

(d) to the best knowledge of City, Cramer is not presently in default or delinquent in any of the obligations under the Lease.

3. Assignment and Subletting.

(a) City hereby acknowledges and consents to the Sublease and the Sub-Sublease and the same shall not constitute a default under the Lease.

(b) City agrees that, without its consent, following any default by Cramer and termination of the Sub-Sublease on account of such default, or following any sale of the majority of the assets of Cramer to a new dealership, or following a termination of the Sub-Sublease for any reason other than a default on the part of LeaseCo, LeaseCo may sublet the Premises to any person or entity holding a valid Sales and Service Agreement with Ford Motor Company or any of its Affiliates permitting such person or entity to sell motor vehicles manufactured or sold by Ford Motor Company or any of its Affiliates.

(c) City agrees that it will give written notice to LeaseCo of any failure by Cramer to cure any default in the time and manner required by the Lease and this Agreement. If such default is not cured by Cramer and the Lease is terminated on account of such default, City shall and does hereby consent to an assignment of Cramer's interest in the Lease to LeaseCo.

(d) In the event that LeaseCo assumes the Lease, LeaseCo may assign the Lease or sublet the Premises without the requirement of the prior written consent of the City. LeaseCo shall, subsequent to any assignment of the Lease, remain fully liable to City for all duties and obligations of the lessee arising under the Lease, unless (a) the assignment of the Lease

constitutes a complete assignment of LeaseCo's rights and privileges under the Lease and a complete assumption by the assignee of all of LeaseCo's duties and obligations under the Lease; and (b) the assignee is financially responsible in the reasonable opinion of City.

4. Default.

(a) The City shall not terminate the Lease because of any default by Cramer without providing LeaseCo with the following rights to cure the default:

(1) City shall provide LeaseCo with written notice describing the default by Cramer (the "Default Notice").
(2) In the case of a monetary default, LeaseCo shall have ten (10) days following its receipt of the Default Notice to pay to LeaseCo the amount necessary to cure the default.
(3) In the case of a non-monetary default, LeaseCo shall have fifteen (15) days following its receipt of the Default Notice to cure the default; provided, however, that if the default is of a type that cannot reasonably be cured within the fifteen (15) day period, then so long as LeaseCo commences the cure within the fifteen (15) day period and diligently prosecutes the cure to completion, then City shall not terminate the Lease.

(b) The City agrees to accept performance by LeaseCo of Cramer's obligations under the Lease with the same force and effect as if performed by Cramer. LeaseCo shall not become liable for the performance of Cramer's obligations under the Lease unless and until LeaseCo assumes the Lease.

(c) Cramer agrees that if an event of default occurs which cannot be cured by Cramer or LeaseCo (e.g. bankruptcy of Cramer), then Cramer shall assign the Lease to LeaseCo upon LeaseCo's request. If Cramer fails to do so within five (5) business days after LeaseCo's request, then Cramer shall be deemed to have given LeaseCo power of attorney to execute and deliver such assignment on Cramer's behalf.

5. Modification of Lease.

(a) City and Cramer agree not to modify or amend the Lease without the prior written consent of LeaseCo.

(b) City and Cramer agree that, to the extent any provisions of the Lease are inconsistent with this Agreement, the Lease is hereby modified and amended accordingly, and that the provisions of this Agreement shall prevail over any inconsistent provisions of the Lease.

6. Notices. All notices, elections, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given at the time delivered or deposited in the United States mail, certified or registered, and postage per-paid, or deposited with a reliable overnight delivery service that provides evidence of delivery (e.g. FedEx), addressed or sent to the parties as following:

If to City: City Clerk of the City of Torrance

3031 Torrance Boulevard
Torrance, CA 90513

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

and

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

If to LeaseCo: Ford Leasing Development Company
P.O. Box 6006
Dearborn, MI 48121-6006
Attention: Dealership Real Estate

7. Term.

This Agreement shall commence on the Effective Date and expire on December 31, 2034.

8. General Provisions.

(a) The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

(b) This Agreement may be executed in one or more counterparts, each of which may be as effective as the original.

(c) The captions set forth in the Agreement are for purposes of reference only and shall not limit, expand or alter the meaning of this Agreement.

(d) This Agreement shall be binding upon the parties, their successors, heirs, representative and assigns.

(e) This Agreement may not be amended or modified except in writing signed by all the parties hereto.

(f) No party shall represent itself as the agent or legal representative of the other parties for any purpose whatsoever, and none shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other party in any way whatsoever, unless otherwise stated herein or in the Lease, Sublease or Sub-Sublease. This Agreement shall not create or be deemed to create any agency, partnership or joint venture between the parties.

(g) This Agreement shall be recorded in the official records of Los Angeles County, California.

(h) This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which together shall be considered one instrument).

IN WITNESS WHEREOF, the parties have executed this Three Party Agreement as of the day and year first above written.

PEYTON CRAMER FORD

By: _____

Its: _____

FORD LEASING DEVELOPMENT COMPANY

By: _____
J. A. Lynch
Its: Vice President

CITY OF TORRANCE, a Municipal corporation

By: _____

Its: _____

Exhibit 1

ALL-PURPOSE ACKNOWLEDGMENT - California

State of Michigan)
)ss
County of Wayne)

On _____, 2009 before me, _____ (name, title of officer), personally appeared J.A. Lynch, [____] personally known to me -- OR -- [____] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature

ALL-PURPOSE ACKNOWLEDGMENT - California

State of)
)ss
County of)

On _____, 2009 before me, _____ (name, title of officer), personally appeared _____, [____] personally known to me -- OR -- [____] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature

ALL-PURPOSE ACKNOWLEDGMENT - California

State of)
)ss
County of)

On _____, 2009 before me, _____ (name, title of officer), personally appeared _____, [____] personally known to me -- OR -- [____] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature

EXHIBIT 1
LEGAL DESCRIPTION

That property in the City of Torrance, County of Los Angeles, State of California more particularly described as: Parcel 54, of Official Map Number 2 as filed in Book 5, Pages 44 through 51 inclusive, of Official Maps, records of Said County, of that certain land consisting of approximately 121,409 square feet.