



DATE: June 20, 2012

TO: Honorable Mayor and City Council Members

FROM: Economic & Community Development Department
Property Management Division

SUBJECT: **AMENDMENT 2 TO THE CPI PROPERTY LEASE AGREEMENT WITH
MANHEIM INVESTMENTS, INC., FOR THE PREMISES LOCATED AT
4691 CALLE JOVEN**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 to the CPI Property Lease Agreement with Manheim Investments, Inc., for the property located at 4691 Calle Joven, decreasing the square footage of the premises and extending the term of the agreement to May 23, 2016, for total revenue in the amount of \$565,531.16, and authorize the City Manager to execute the amendment.

BACKGROUND

On May 24, 1996, the City of Oceanside as landlord ("City") and ADT Automotive, Inc., a Delaware corporation, doing business as San Diego Auto Auction as predecessor in interest to Manheim Investments, Inc., a Nevada corporation, as tenant ("Lessee") originally entered into a CPI Property Lease Agreement for the property located at 4691 Calle Joven, Oceanside, CA ("Property"). The CPI Property Lease Agreement was subsequently amended on January 22, 1997, September 17, 1997, and January 7, 1998 (collectively the "Agreement").

The Agreement was for the lease of approximately 29.0 acres of unimproved real property for the purpose of constructing a facility to operate an auto auction and/or vehicle storage business. The Agreement was originally for a ten-year term expiring on May 23, 2006, and provided Lessee with one option to extend for five years, which Lessee exercised, extending the term of Agreement to May 23, 2011. As of May 24, 2011, Lessee has been occupying the Property on a month-to-month basis.

In recent years, the auto auction business has been in a state of decline as a result of the recent recession and the slower-than-expected economic recovery in the automobile resale business. As a result, Lessee no longer needs as much space as it had previously occupied. Although Lessee is desirous of continuing its operation at the Property by requesting an extension of the Agreement, Lessee has also requested a reduction in the size of the Property.



ANALYSIS

The proposed amendment reduces the Property by approximately 5.7 acres from its original size of 29.0 acres, down to 23.3 acres. The approximately 5.7-acre parcel of land ("5.7 Acre Property") would be returned to the City in its improved condition, which consists of an asphalt-paved pad that is partially fenced with a concrete block wall and landscaped.

The proposed amendment also extends the term of the Agreement to expire on May 23, 2016. Further, the Agreement gives the Lessee two additional five-year options to extend the term of the Agreement to expire on May 23, 2021 and May 23, 2026, respectively.

The beginning rent for the reduced 23.3 acre Property commencing the effective date of the Second Amendment to Agreement ("Amendment"), will be at the same rent that Lessee is currently paying, reduced on a prorated basis. For each year of the additional term the rent for the Property will be increased at one percent per annum. Should Lessee exercise the renewal options, the new rent for the Property will be at the fair market value rent at the time of the exercise of the renewals.

Although the City would no longer receive rental income from Lessee on the 5.7 Acre Property, the City would be in a position to enter into another lease arrangement for the use of the property. Staff is in the process of entering into a new lease agreement for the use of the 5.7 Acre Property for use as a towing services facility for impounded vehicles, which generates revenue for the City in excess of what the City was receiving from Lessee. The proposed new lease agreement for the 5.7 Acre Property is subject to approval of the Amendment.

FISCAL IMPACT

Lessee currently pays an annual rent of \$180,816 for the 29.0 acre Property. The rent for the smaller 23.3 acre Property would be reduced to the initial annual amount of \$143,029, subject to increases of one percent per year for the extended term bringing the total consideration to \$565,531.16. The rent from Lessee will continue to be deposited into General Fund Account No. 1101.4351.0009. The reduction results in an initial annual impact of \$37,787 to the General Fund Budget ("Budget").

To address the impact to the Budget, staff has negotiated a new property use agreement for the 5.7 Acre Property, which will be the subject of a separate City Council action. Originally, the Property was leased to Lessee as an unimproved vacant parcel of land, which was subsequently improved by Lessee to its current condition. Inasmuch as the City now has a parcel of land that is improved with an asphalt parking lot and perimeter fencing, the annual rent for the 5.7 Acre Property under the proposed new property use agreement will be more than what Lessee is currently paying for the Property on a prorated basis.

INSURANCE REQUIREMENTS

Lessee will be required to maintain the City's standard insurance requirement over the term of the Agreement.

COMMISSION OR COMMITTEE REPORT

Does not apply.

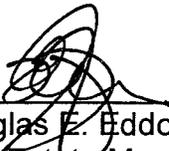
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

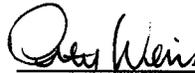
Staff recommends that the City Council approve Amendment 2 to the CPI Property Lease Agreement with Manheim Investments, Inc., for the property located at 4691 Calle Joven, decreasing the square footage of the premises and extending the term of the agreement to May 23, 2016, for total revenue in the amount of \$565,531.16, and authorize the City Manager to execute the amendment.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Teri Ferro, Financial Services Director



Property Management
Memorandum

DATE: March 26, 2012
TO: Honorable Mayor and City Council Members
THROUGH: Peter Weiss, City Manager *W*
FROM: Curtis Jackson, Property Agent *CJ*
SUBJECT: 4691 North River Road RFP Update

The City has a Property Use Agreement ("Agreement") with the San Diego Auto Auction ("Auto Auction") at 4691 North River Road. The Auto Auction notified the City of its desire to reduce the area it leases from the City by 5.7 acres ("Property").

To offset the loss of rental income from Lessee associated with the Property, in the amount of \$35,287.33 annually, Staff issued a Request for Proposals ("RFP") for lease of the Property. The Property will be surrendered to the City in an improved condition, which consists of an asphalt-paved pad that is partially fenced with a concrete block wall and is landscaped. On October 7, 2011, Staff issued the RFP for either a recreational vehicle storage facility and /or towing services facility for impound vehicles.

The City received four proposals to the RFP from:

- 1) Jeffrey Bartlett, an individual interested in using the Property as a vehicle storage yard;
- 2) PRP Storage, a company interested in using the Property as a vehicle storage yard;
- 3) NK Towing, a roadside towing company interested in using the Property as a tow yard, impound facility, auto-auction location and as a vehicle storage yard; and
- 4) Road One, a roadside towing company interested in using the Property as a tow yard, impound facility, and as an auto-auction location.

Both NK Towing and Road One proposals were contingent upon the City approving the Property as the sole impound facility for the City's annual tow contracts through the Police Department.

After review of the proposals by Staff, PRP Storage, NK Towing and Road One were invited in for interviews. Upon completion of the interviews, Road One was identified as providing the highest and best use of the Property and providing the City with the highest financial benefit. Additionally, Road One possessed strong financial stability to succeed at the Property on a long term basis.

Staff is in the process of negotiating the terms and conditions of a Lease Agreement with Road One. Upon conclusion of the negotiation, Staff will present a Lease Agreement to the City Council for approval. Staff Anticipates the Lease Agreement to come before City Council in June 2012.

cc:

Michelle Skaggs-Lawrence, Deputy Director
Doug Eddow, Real Property Manager

**SECOND AMENDMENT
TO CPI PROPERTY LEASE AGREEMENT**

This Second Amendment to CPI Property Lease Agreement ("Amendment") is made 20th day of June, 2012 ("Effective Date"), by and between the City of Oceanside ("CITY") and Manheim Investments, Inc., a Nevada corporation ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE's predecessor in interest, ADT Automotive, Inc. doing business as San Diego Auto Auction ("ADT") entered into that certain CPI Property Lease Agreement, dated May 24, 1996 for the real property located at 4691 Calle Joven, Oceanside, CA ("Lease"); which Lease was amended by Lease Amendment No.1 dated December 23, 1998 ("Lease Amendment");

WHEREAS, an Agreement to Lease, dated January 22, 1997 was entered into between CITY and ADT regarding the respective covenants to be performed by each party in order to execute an amendment to the Lease, which Agreement to Lease was amended by the Amendment to Agreement to Lease dated September 17, 1997; amended by the Second Amendment to the Agreement to Lease entered into on January 7, 1998; and further amended by the Third Amendment to the Agreement to Lease dated April 8, 1998;

WHEREAS, ADT and LESSEE entered into a Distribution Agreement dated December 31, 2001, whereby a dividend distribution was made by ADT to LESSEE transferring the assets and rights used in the conduct of the business located at the premises from ADT to LESSEE, which Distribution Agreement was consented to by CITY;

WHEREAS, the Lease provides for one (1) remaining renewal option to extend the term of the Lease for five (5) years expiring May 23, 2016, and that LESSEE has elected to exercise the remaining renewal option and has also requested two (2) additional renewal options to extend the term of the Lease for an additional five (5) years each;

WHEREAS, LESSEE has also requested a reduction in the size of the PREMISES by approximately 5.7 acres from approximately 29.0 acres to approximately 23.3 acres; and

WHEREAS, CITY and LESSEE are agreeable to extending the term of the Lease for another five (5) year term, providing for two (2) additional renewal options to extend the term of the Lease an additional five (5) years each, and beginning the Effective Date, reducing the size of the PREMISES by approximately 5.7 acres from approximately 29.0 acres to 23.3 acres.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

AGREEMENT

The Lease, beginning on the Effective Date, shall be amended to read as follows:

1. Subsection 1.01 Premises, of SECTION 1: USES is deleted in its entirety and replaced with the following language:

1.01 Premises.

The CITY hereby leases to LESSEE and LESSEE leases from CITY, in accordance with the terms of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as 4691 Calle Joven, more particularly shown on Exhibit "A-1", attached hereto and by this reference made a part of this Lease (hereinafter referred to as the "PREMISES"). The exact configuration of the PREMISES shall consist of a total of approximately 23.3 acres as determined by a licensed surveyor, which cost shall be paid by the CITY.

CITY shall pay the cost of a high grade chain-link fence that would separate the PREMISES from the approximate 5.7 acre parcel of land that is no longer part of the PREMISES and is being returned to the City, more particularly shown on Exhibit "B-1", attached hereto and by this reference made a part of this Lease (hereinafter referred to as the "5.7 Acre Parcel"), which fencing will provide for both the PREMISES and the 5.7 Acre Parcel to be completely fenced and/or walled from public access and separated from one another.

2. Subsection 2.01 Commencement, and Subsection 2.02 Renewal Options, of SECTION 2: TERM are deleted in their entirety and replaced with the following language:

2.01 Term for Premises.

The term of this Lease commenced on May 24, 1996, and will terminate on May 23, 2016.

2.02 Extension of Term.

The LESSEE may extend the term of this Lease for the PREMISES for two (2) additional five (5) year terms for the period May 24, 2016 through May 23, 2021 and the period May 24, 2021 through May 23, 2026, provided that the LESSEE is not in default or breach of any term, condition, covenant or provision of this Lease. The LESSEE shall exercise this extension by providing a written notice thereof to the City Manager not more than three-hundred sixty-five (365) days and at least one-hundred eighty (180) days prior to the expiration of the term of this Lease or the applicable extension term. Rent for the extended term shall be determined as described in Subsection 3.04.

In no event shall the term of this Lease be extended in excess of ten (10) years beyond the expiration of the term of this Lease without the mutual written agreement of the parties and the prior approval of the City Council.

3. Subsection 3.02 Rent. and Subsection 3.04 Rent for Extended Term(s). of SECTION 3: RENT is deleted in their entirety and replaced with the following language:

3.02 Rent.

a. Minimum Monthly Rent. LESSEE shall pay to the CITY as Rent the sum of Eleven Thousand Nine Hundred Nineteen and No/100 Dollars (\$11,919.00) per month beginning on July 1, 2012.

b. Annual Rent Adjustment. The Minimum Monthly Rent set forth above shall be increased annually thereafter as follows:

July 1, 2013 – June 30, 2014	\$12,038.00
July 1, 2014 – June 30, 2015	\$12,158.00
July 1, 2015 – May 23, 2016	\$12,280.00

3.04 Rent for Extended Terms.

For each respective extension term, no later than ninety (90) days from the receipt of LESSEE'S written election to extend the term of this Lease pursuant to Subsection 2.02, the City Manager shall, in writing, provide LESSEE with the CITY'S calculated fair market rent which the CITY is willing to accept for the PREMISES. The fair market rental value shall be determined based upon the location of the PREMISES in an industrial zone in the City of Oceanside as vacant land available for industrial use. No later than thirty (30) days after the City Manager provides LESSEE with the CITY'S fair market rental rate LESSEE shall provide CITY with its determination of acceptance or rejection of the CITY'S calculated fair market rent. In the event the parties cannot agree on the fair market rent, each party shall select an MAI appraiser, which appraisers shall select a third MAI appraiser who will make a determination of the fair market rent for the PREMISES, which rent shall be the recalculated rental rent for the PREMISES for the extended term. Provided, however, in no event shall the rental rate be less than that required during the preceding annual term. The CITY and LESSEE shall split the cost of the appraisal for the recalculated fair market rent, if required.

4. Subsection 7.06 Right of First Refusal. of SECTION 7: SPECIAL PROVISIONS shall be added as follows:

7.06 Right of First Refusal.

Is the intent of City to lease for rent the 5.7 Acre Parcel to a third party. In the event the lease to said third party is terminated and the CITY again seeks to lease for rent the 5.7 Acre Parcel to another third party ("Subsequent Third Party"), LESSEE shall have

the right of first refusal to lease the 5.7 Acre Parcel ("ROFR"). Said ROFR shall be for the same terms and conditions as offered to the Subsequent Third Party. The CITY shall notify LESSEE in writing of the terms and conditions of the proposed lease to the Subsequent Third Party. Within thirty (30) days of said notice from the CITY, LESSEE shall notify CITY in writing of its decision to exercise its ROFR or to waive its ROFR. If LESSEE elects to exercise its ROFR, CITY and LESSEE shall further amend the Lease to incorporate the new terms and conditions for the 5.7 Acre Parcel. Failure by CITY and LESSEE to amend the Lease within one hundred twenty (120) days of the expiration of said thirty (30) day notice from the CITY shall terminate LESSEE's ROFR. In the event LESSEE waives its ROFR, CITY shall be without obligation to enter into a lease with the Another Third Party. Should the lease with the Subsequent Third Party terminate and CITY desire to lease to yet another third party, LESSEE shall have the same ROFR as set forth above.

5. All other terms, conditions, covenants and provisions of the Lease shall remain in full force and effect. In the event of any conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall control.

"CITY"

THE CITY OF OCEANSIDE
a Municipal corporation

APPROVED AS TO FORM:

By: _____
City Manager

By: *Brian S. Hamilton*, ASST.
City Attorney

LESSEE"

MANHEIM INVESTMENTS, INC.
a Nevada corporation

By: *Shauna Sullivan Muhl*

Name: Shauna Sullivan Muhl
Secretary

Title: _____

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

Sandra L. Gordon

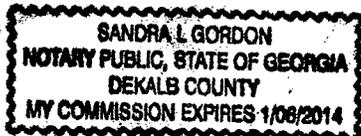


EXHIBIT "A-1"
LEGAL DESCRIPTION OF PREMISES

APN: 257-060-49 & 157-080-55

VESTING: CITY OF OCEANSIDE

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN AS DESCRIBED IN EXHIBIT 'C' TO AGREEMENT TO LEASE, LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996 BETWEEN THE CITY OF OCEANSIDE, AS LESSOR AND ADT AUTOMOTIVE, INC., DOING BUSINESS AS SAN DIEGO AUTO AUCTION, INC., AS LESSEE, ON FILE WITH THE CITY OF OCEANSIDE DEPARTMENT OF PROPERTY MANAGEMENT, AND THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN AS SHOWN ON RECORD OF SURVEY 6684 RECORDED MAY 24, 1966 AS FILE NO. 86648, ALL IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER NORTH 00°37'57" WEST 14.00 FEET TO A POINT ON THE CENTERLINE OF NORTH RIVER ROAD PER ROAD SURVEY NO. 935, SAID POINT BEING ON A NON-TANGENT 2000.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 04°56'13" WEST;

THENCE EASTERLY ALONG SAID CENTERLINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 12°19'29" A DISTANCE OF 430.21 FEET;

THENCE LEAVING SAID CENTERLINE, RADIAL TO SAID CURVE, SOUTH 17°15'42" EAST 52.00 FEET TO A POINT ON A NON-TANGENT 2052.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, BEING THE **TRUE POINT OF BEGINNING**, A RADIAL FROM SAID POINT BEARS NORTH 17°15'42" WEST, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°10'32" A DISTANCE OF 400.24 FEET TO A LINE PARALLEL WITH AND DISTANT 52.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH 61°33'46" EAST 882.38 FEET;

THENCE LEAVING SAID PARALLEL LINE NORTH 71°06'38" EAST 19.44 FEET TO THE BEGINNING OF A 56.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9°32'52" A DISTANCE OF 9.33 FEET TO A LINE PARALLEL WITH AND DISTANT 56.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH 61°33'46" EAST 281.22 FEET TO A POINT ON A NON-TANGENT 42.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 10°37'08" WEST;

THENCE LEAVING SAID PARALLEL LINE, SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 45°21'39" A DISTANCE OF 33.25 FEET;

THENCE SOUTH 34°01'13" EAST 47.99 FEET TO THE BEGINNING OF A 131.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°03'57" A DISTANCE OF 29.87 FEET;

THENCE SOUTH 47°05'10" EAST 429.37 FEET TO A LINE PARALLEL WITH AND DISTANT 26.50 FEET NORTHWESTERLY OF THE NORTHWESTERLY BOUNDARY OF RECORD OF SURVEY NO. 15161, RECORDED APRIL 12, 1996 AS FILE NO. 1996-182505 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE ALONG SAID PARALLEL LINE THE FOLLOWING COURSES:

SOUTH 27°09'22" WEST 578.25 FEET TO A POINT ON A NON-TANGENT 2302.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL FROM SAID POINT BEARS NORTH 62°18'25" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°05'25" A DISTANCE OF 927.71 FEET;

THENCE NON-TANGENT TO SAID CURVE SOUTH 46°27'23" WEST 19.96 FEET;

THENCE SOUTH 58°52'23" WEST 55.44 FEET TO THE WESTERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4;

THENCE LEAVING SAID PARALLEL LINE, ALONG SAID WESTERLY LINE NORTH 00°48'52" WEST 647.60 FEET TO THE SOUTHWEST CORNER OF PARCEL 1 DESCRIBED IN GRANT DEED TO AA PROPERTY HOLDINGS, INC., RECORDED JUNE 10, 1996 AS DOCUMENT NO. 1996-0287643 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE LEAVING SAID WESTERLY LINE, ALONG THE SOUTHERLY LINE OF SAID PARCEL 1 NORTH 89°57'06" EAST 400.04 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 1;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 1 NORTH 00°48'52" WEST 217.82 FEET TO THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4;

THENCE LEAVING SAID EASTERLY LINE ALONG SAID SOUTH LINE SOUTH 89°57'06" WEST 400.04 FEET TO THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4;

THENCE LEAVING SAID SOUTH LINE, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4 NORTH 00°37'19" WEST 10.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY OF THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4;

THENCE LEAVING SAID EAST LINE, ALONG SAID PARALLEL LINE NORTH 89°30'05" WEST 872.36 FEET TO THE SOUTHEAST CORNER OF LAND DESCRIBED IN GRANT DEED TO KAWANO, INC., RECORDED JANUARY 16, 1969 AS FILE NO. 9358 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE LEAVING SAID PARALLEL LINE, ALONG THE EAST LINE OF SAID LAND DESCRIBED IN GRANT DEED TO KAWANO, INC. NORTH 17°15'06" WEST (NORTH 17°15'42" WEST RECORD PER SAID LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996) 42.85 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 23.337 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "B".

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

MICHAEL L. SCHLUMPBERGER, PLS 7790

DATE

EXHIBIT "B-1"
LEGAL DESCRIPTION OF 5.7 ACRE PARCEL

APN: 157-060-49

VESTING: CITY OF OCEANSIDE

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED IN EXHIBIT 'C' TO AGREEMENT TO LEASE, LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996 BETWEEN THE CITY OF OCEANSIDE, AS LESSOR AND ADT AUTOMOTIVE, INC., DOING BUSINESS AS SAN DIEGO AUTO AUCTION, INC., AS LESSEE, ON FILE WITH THE CITY OF OCEANSIDE DEPARTMENT OF PROPERTY MANAGEMENT, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER NORTH 00°37'57" WEST 14.00 FEET TO A POINT ON THE CENTERLINE OF NORTH RIVER ROAD PER ROAD SURVEY NO. 935, SAID POINT BEING ON A NON-TANGENT 2000.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH 04°56'13" WEST;

THENCE EASTERLY ALONG SAID CENTERLINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 12°19'29" A DISTANCE OF 430.21 FEET;

THENCE LEAVING SAID CENTERLINE, RADIAL TO SAID CURVE, SOUTH 17°15'42" EAST 52.00 FEET TO A POINT ON A NON-TANGENT 2052.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL FROM SAID POINT BEARS NORTH 17°15'42" WEST, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°10'32" A DISTANCE OF 400.24 FEET TO A LINE PARALLEL WITH AND DISTANT 52.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH 61°33'46" EAST 882.38 FEET;

THENCE LEAVING SAID PARALLEL LINE NORTH 71°06'38" EAST 19.44 FEET TO THE BEGINNING OF A 56.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9°32'52" A DISTANCE OF 9.33 FEET TO A LINE PARALLEL WITH AND DISTANT 56.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH 61°33'46" EAST 281.22 FEET TO THE TRUE POINT OF BEGINNING AND A POINT ON A NON-TANGENT 42.00 FOOT RADIUS CURVE,

CONCAVE SOUTHWESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 10°37'08" WEST;

THENCE LEAVING SAID PARALLEL LINE, SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 45°21'39" A DISTANCE OF 33.25 FEET;

THENCE SOUTH 34°01'13" EAST 47.99 FEET TO THE BEGINNING OF A 131.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°03'57" A DISTANCE OF 29.87 FEET;

THENCE SOUTH 47°05'10" EAST 429.37 FEET TO A LINE PARALLEL WITH AND DISTANT 26.50 FEET NORTHWESTERLY OF THE NORTHWESTERLY BOUNDARY OF RECORD OF SURVEY NO. 15161, RECORDED APRIL 12, 1996 AS FILE NO. 1996-182505 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE PARALLEL TO AND CONCENTRIC WITH AND 26.50 FEET NORTHWESTERLY OF SAID NORTHWESTERLY BOUNDARY THE FOLLOWING COURSES:

NORTH 27°09'22" EAST 84.59 FEET;

THENCE NORTH 26°54'25" EAST 315.11 FEET;

THENCE NORTH 26°35'09" EAST 210.75 FEET;

THENCE NORTH 21°25'50" EAST 48.74 FEET;

THENCE NORTH 11°01'55" EAST 39.12 FEET TO A POINT ON A NON-TANGENT 69.10 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 80°06'03" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°19'36" A DISTANCE OF 31.75 FEET TO THE BEGINNING OF A REVERSE 185.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°13'13" A DISTANCE OF 42.69 FEET TO THE NORTHEASTERLY LINE OF SAID LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996;

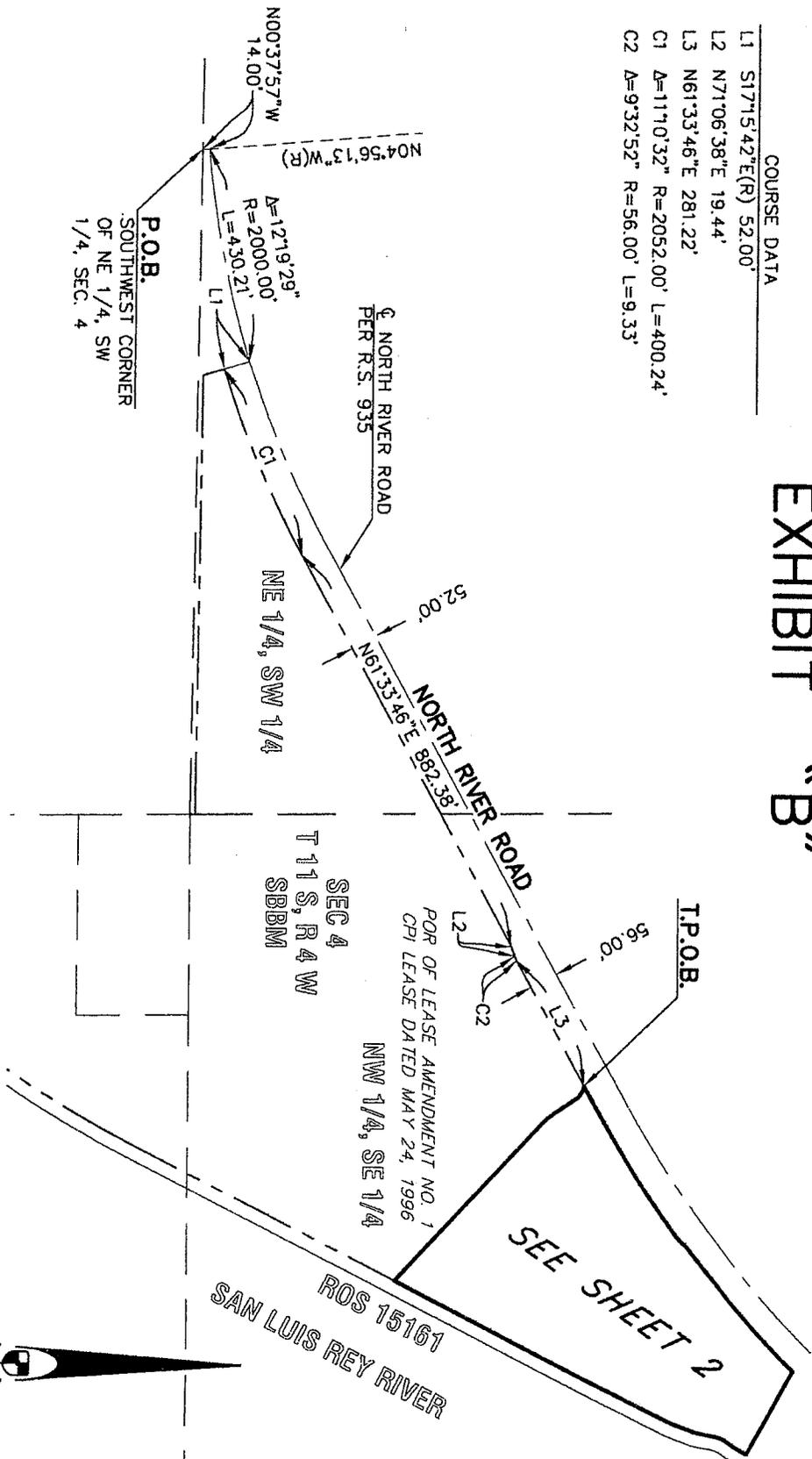
THENCE LEAVING SAID 26.50 FOOT PARALLEL AND CONCENTRIC LINE, NON-TANGENT TO SAID CURVE, ALONG SAID NORTHEASTERLY LINE NORTH 61°04'04" WEST 187.10 FEET TO A POINT ON A NON-TANGENT 2052.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL FROM SAID POINT BEARS NORTH 45°44'20" WEST, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE OF NORTH RIVER ROAD;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTHWESTERLY ALONG SAID CONCENTRIC CURVE, THROUGH A CENTRAL ANGLE OF 8°59'34" A DISTANCE OF 322.07 FEET;

EXHIBIT "B"

COURSE DATA

- L1 S17°15'42"E(R) 52.00'
- L2 N71°06'38"E 19.44'
- L3 N61°33'46"E 281.22'
- C1 Δ=1170'32" R=2052.00' L=400.24'
- C2 Δ=9°32'52" R=56.00' L=9.33'



THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

MICHAEL L. SCHLUMBERGER, PLS 7790

Right-Of-Way Engineering Services, Inc.
 615 S. Tremont Street · Oceanside, CA 92054
 (760) 637-2700 FAX (760) 637-2701
 File Name: Auto Auction Lease.dwg
 Job No. 1109-0047-01



NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

SCALE: 1" = 300'

CITY OF OCEANSIDE

LEASE PARCEL 1

MAY 14, 2012

SHEET 1 OF 2

EXHIBIT "B"

NORTH RIVER ROAD

Q NORTH RIVER ROAD
PER R.S. 935

I.P.O.B.

S10°37'08"W(R)

Δ=45°21'39"
R=42.00'
L=33.25'

Δ=13°03'57"
R=131.00'
L=29.87'

S61°33'46"W
76.99'
S34°01'13"E
47.99'

Δ=7°30'31"
R=2056.00'
L=269.44'

Δ=10°01'48"
R=56.00'
L=9.80'

Δ=8°59'34"
R=2052.00'
L=322.07'

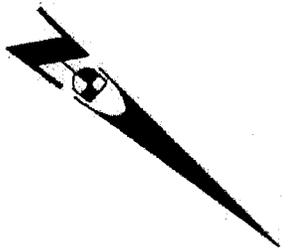
N45°44'20"W(R)

AREA = 5.709 ACRES
MORE OR LESS

POR OF LEASE AMENDMENT NO. 1
CPI LEASE DATED MAY 24, 1996

NW 1/4, SE 1/4
SEC 4
T 11 S, R 4 W
SBBM

SCALE: 1"=100'



S47°06'10"E 429.37'

N21°09'22"E
84.53'

26.50'

N26°54'25"E 315.11'

RDS 15161
SAN LUIS REY RIVER

N26°35'09"E 210.75'

26.50'

N21°25'50"E
48.74'

N11°01'55"E
39.12'

Δ=26°19'36"
R=69.10' L=31.75'

Δ=13°13'13"
R=185.00' L=42.69'

N61°04'04"W 187.10'

S80°06'03"E(R)

CITY OF OCEANSIDE

LEASE PARCEL 1

MAY 14, 2012

SHEET 2 OF 2

CPI PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

**ADT AUTOMOTIVE, INC.
d/b/a SAN DIEGO AUTO AUCTION**

MAY 24, 1996

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EXHIBITS

Exhibit "A" - Legal Description and Survey of Premises

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter the "Lease") is made and entered into this 24th day of May, 1996 ("Effective Date") by and between the **CITY OF OCEANSIDE**, a municipal corporation, (hereinafter the "CITY"), and **ADT AUTOMOTIVE, INC.**, doing business as **SAN DIEGO AUTO AUCTION, INC.** (hereinafter the "LESSEE").

RECITALS:

WHEREAS, CITY is the lawful owner of certain real property as more particularly described hereinbelow; and

WHEREAS, CITY desires to lease certain real property to LESSEE and LESSEE desires to lease certain real property from the CITY.

NOW THEREFORE, the parties hereto agree as follows:

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE hereby leases from CITY, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property (hereinafter "PREMISES") situated in the City of Oceanside, County of San Diego, State of California, and more particularly described in the legal description and survey attached hereto as Exhibit A, which is incorporated herein by reference.

1.02 Uses. It is expressly agreed that the PREMISES are leased to LESSEE solely and exclusively for the purpose of an **auto auction**, and/or vehicle storage and for such other ancillary or incidental purposes as may be first approved in writing by the City Manager, which approval shall not be unreasonably withheld.

LESSEE covenants and agrees to actively and continuously use and operate the PREMISES for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of LESSEE and acts of God. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that LESSEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, LESSEE shall be deemed in default under this Lease. LESSEE shall not use the PREMISES in any manner which will constitute a nuisance.

1.03 Related Discretionary Actions. By executing this Lease, neither CITY nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the PREMISES. Discretionary action includes, but is not limited to rezoning, variance, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the PREMISES.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the PREMISES.

1.05 Reservation of Rights. CITY shall not unreasonably or substantially interfere with LESSEE's use of the PREMISES while LESSEE is in possession of the PREMISES, however the CITY specifically retains the following rights:

a. **Subsurface Rights.** CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the PREMISES.

b. **Easements.** CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the PREMISES for utilities, thoroughfares, or access as it deems advisable for the public good.

c. **Right to Enter.** CITY has the right to enter the PREMISES during business hours for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services; provided, however, CITY has the right to enter the PREMISES at any time to perform the activities described below in Paragraph 1.05d. These activities include, but are not limited to, activities related to the existing ground water well on the Premises.

d. **Activities Relating to Water Wells.** LESSEE acknowledges that CITY has one (1) existing water well located on the Northeast side of the PREMISES and CITY intends to install one (1) additional water well on the PREMISES at some time in the future in connection with the CITY's desalination system. At the same time as LESSEE constructs its improvements to the PREMISES, LESSEE agrees to install an underground drainage pipe to connect the existing well site to LESSEE's drainage system in accordance with CITY's plans so that no water is discharged to the surface of the PREMISES. LESSEE shall permit CITY to inspect the installation of the drainage pipe during construction and shall inform CITY of LESSEE's planned construction schedule so that CITY may have personnel on site to perform inspections. CITY agrees to inspect the installation of the pipe at the completion of the installation in a timely manner so that LESSEE's construction is not delayed. CITY shall reimburse LESSEE for the cost of the piping within thirty (30) days of CITY's final inspection and receipt of an invoice from LESSEE, along with all appropriate backup documentation deemed necessary by CITY. LESSEE agrees to cause its contractor to provide a one year warranty of workmanship to CITY for the installation of the pipes which shall commence on the date CITY completes its

inspection and accepts the work. LESSEE shall provide access to the existing well site by means of a gate installed in LESSEE's fence on the north side of the PREMISES. CITY reserves the right to construct one (1) additional water well, underground facilities, and appurtenances, at some future date. In so constructing the one (1) additional well, CITY agrees to install an underground drainage pipe to connect the one (1) additional well to LESSEE's drainage system so that no water is discharged to the surface of the PREMISES. CITY will provide LESSEE with a site plan for the additional well, the location of which shall be in an area on the PREMISES which is reasonably acceptable to LESSEE and which meets the needs of CITY. The wells will each be located in a concrete block enclosure to be constructed at CITY's cost. The size of the enclosure will not exceed forty (40) feet by sixty (60) feet and CITY shall use its best efforts to minimize the size of the enclosure. CITY agrees to provide LESSEE at least six (6) months prior written notice of CITY's intention to construct the well and appurtenant facilities. CITY shall use its best efforts to provide further written notice of CITY's construction timing as construction plans develop so that LESSEE can be prepared to relocate its vehicles during the construction period. LESSEE agrees to provide CITY with clear access for the construction of said well and appurtenances. CITY agrees to pay all costs of construction, repair, maintenance and inspection of the wells and appurtenances. Additionally, CITY shall at its cost, promptly restore and repair any of LESSEE's property improvements damaged or destroyed by CITY's activities hereunder. CITY also agrees to include the wells as part of its liability insurance coverage. CITY agrees to defend, indemnify, and hold harmless LESSEE and its officers, agents, and employees against all claims for damages to persons or property arising out of the conduct of CITY in connection with its rights reserved in this Paragraph 1.05d. CITY's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by LESSEE, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. CITY acknowledges that LESSEE has installed a security system and has retained security personnel at the PREMISES. CITY agrees to cooperate with LESSEE's security policies when gaining access to the PREMISES.

Except for the rights described in subparagraph (d) above, CITY will not reimburse LESSEE for damages, if any, to the permanent improvements located on the PREMISES resulting from the CITY exercising the rights reserved in this Lease. CITY will pay the costs of the maintenance and repair of all CITY installations made pursuant to these reserved rights. CITY's use of the PREMISES is paramount to that of the LESSEE's use.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of 10 years commencing on (date of closing on the Lease will be inserted here MAY 24, 1996).

2.02 Renewal Options. The LESSEE may extend the term of this Lease for two (2) additional five (5) year periods, provided that the LESSEE is not in default.

The LESSEE shall exercise a Renewal Option by providing a written notice thereof to the City Manager not more than 365 days and at least 180 days prior to the expiration of the term of this Lease or any extension thereof. Rent for the extended term(s) shall be determined as described in Paragraph 3.04.

In no event shall the term of this Lease be extended in excess of 10 years beyond the expiration of the initial term of the Lease without the mutual agreement of the parties and the prior approval of the City Council.

2.03 Termination Provisions. No special termination options are available except those described in this Lease.

2.04 Holdover. Any holding over by LESSEE after expiration or termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the PREMISES by LESSEE after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect. In the event of any holding over, LESSEE shall continue to pay Rent. In addition to the payment of Rent, LESSEE shall, in the event of any holding over beyond 90 days, pay an increase in the Rent equal to the product of Rent times five percent (5%) per year for each year that this Lease has been in effect.

2.05 Abandonment by LESSEE. Even though LESSEE has breached this Lease and abandoned the PREMISES, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the Rent as it becomes due, and the CITY's expenses incurred in recovering the Rent.

2.06 Quitclaim of LESSEE's Interest. On termination of this Lease for any reason, CITY shall provide LESSEE with and LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the PREMISES. LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. CITY may record such deed only on the termination of this Lease. If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE's failure to execute the quitclaim deed and the notice will be conclusive evidence of the termination of this Lease and all LESSEE's rights to the PREMISES.

2.07 Surrender of PREMISES. Upon termination of this Lease, LESSEE shall surrender the PREMISES to CITY free and clear of all liens and encumbrances created by LESSEE. The PREMISES, when surrendered by LESSEE, shall be in good order, condition and repair (reasonable wear and tear and damages by the elements excepted).

2.08 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: RENT

3.01 Time and Place of Payment. The LESSEE shall make all payments monthly in advance on or before the **first (1st) day** of each new month. In the event the commencement of this Lease is after the **first (1st) day** of the month, the first month's Rent shall be prorated based on a **30-day** proration formula.

Checks should be made payable to the CITY of Oceanside and delivered to the CITY at the address set forth in Section 6 of this Lease. The place and time of payment may be changed at any time by CITY upon **30-days** written notice to LESSEE. LESSEE agrees to pay CITY an additional \$15 for any returned check which is not honored by the financial institution from which the check is drawn.

3.02 Rent.

a. Initial Minimum Rent. LESSEE shall pay to the CITY as Rent the sum of Two Thousand Three Hundred Sixty Four Dollars (\$2,364.00)¹ per month ("Initial Minimum Rent") during the first five (5) anniversary years of this Lease commencing on the Effective Date as defined in Paragraph 6.15.

b. Rent Adjustment Dates. Commencing on the date which is the sixth (6th) anniversary of the Effective Date, and on the same date each year thereafter during the term of this Lease (including any extension thereof but excluding the first year of the extension, which is the eleventh anniversary year), the Rent will be adjusted in accordance with 3.02(d).

c. Adjustment Index. The Adjustment Index is the Consumer Price Index, All Items, 1982-84-100, all Urban Consumers, San Diego, as published by the United States Department of Labor, Bureau of Labor Statistics. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's Comprehensive Official Index most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by the CITY and LESSEE. If the parties cannot agree within **60 days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subsection 3.02(c).

Regardless of the index publication dates, the Rent Adjustment Dates are those dates set forth in subsection 3.02(b). The LESSEE shall continue to pay the same amount of Rent payable prior to the Rent Adjustment Date until the CPI is available and the Rent Adjustment Computation is made. The CITY shall furnish the LESSEE with the Rent

¹ (\$400 x 5.909 acres)

Adjustment Computation and the LESSEE shall have thirty (30) days from its receipt to pay the CITY the amount of underpayment of Rent for the month or months that may have elapsed pending the Rent Adjustment Computation.

d. Rent Adjustment Computation.

1. Definitions.

Initial Minimum Rent: The Initial Minimum Rent as set forth in subsection 3.02(a)

Existing Minimum Rent: The Existing Minimum Rent shall be the Rent payable prior to the Rental Adjustment Date.

Percent Change in the CPI: The Percent Change in the CPI that occurred over the twelve (12) months that preceded the Rent Adjustment Date.

2. Rent Adjustment Computation.

$$\text{Rent} = \text{Existing Minimum Rent} + (\text{Initial Minimum Rent} \times \text{Percentage Change in CPI})$$

FOR EXAMPLE:

- (a) First Adjustment (6th anniversary year)
Existing Rent \$2,364
Percent Change in the CPI 2%

$$\begin{aligned} \text{Rent} &= \$2364 + (2364 \times 2\%) \\ \text{Rent} &= \$2411 \end{aligned}$$

- (b) Second Adjustment (7th anniversary year)
Rent = \$2411 + (2364 x 2%)
Rent = \$2458

3.03 Delinquent Rent. If LESSEE fails to pay the Rent when due, LESSEE will pay in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent is still unpaid at the end of 15 days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

3.04 Rent for Extended Term(s). No later than ninety (90) days from the receipt of LESSEE's written election to extend the term of this Lease pursuant to Section 2.02, the City Manager shall provide LESSEE with the CITY's written

determination of the Rent for the extended term based upon the fair market rental value of the PREMISES ("City's Rent Notice"). The fair market rental value shall be determined based upon the location of the PREMISES in an industrial zone in Oceanside as vacant land available for industrial uses. If LESSEE agrees with the rent amount contained in the City's Rent Notice, the amount shall be used as the Rent amount for the eleventh (11th) and succeeding anniversary years of the term, subject to adjustment as described in Section 3.02(c). If LESSEE disagrees with CITY's calculation of Rent, LESSEE shall notify CITY of its disagreement in writing ("Lessee's Notice") within **thirty (30) days** of LESSEE's receipt of the City's Rent Notice. Within **fifteen (15) days** of receipt of Lessee's Notice, CITY and LESSEE will mutually agree on an MAI appraiser with at least **five (5) years** of experience in appraising industrial property in Northern San Diego County, which appraiser will be retained jointly by the CITY and LESSEE to determine the fair market rental value of the PREMISES as described in this Section 3.04. The appraiser shall provide written notice to both CITY and LESSEE of his or her determination within thirty (30) days of being retained. The appraiser's determination shall be final. The parties shall each pay one-half (1/2) of the fee of the appraiser. If the parties cannot agree on a single appraiser within the fifteen (15) day period, each party shall appoint its own appraiser within the next fifteen (15) days and each of the appraisers shall provide written notice to both CITY and LESSEE of his/her determination within thirty (30) days of being retained. The determinations of each of the appraisers shall be averaged to determine the base rent. The appraisers' determinations shall be final. The parties shall pay one-half (1/2) of the fees of both appraisers.

SECTION 4: INDEMNITY/INSURANCE

4.01 Indemnity. LESSEE shall defend, indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the LESSEE or its employees, agents, or other in connection with its use and occupation of the PREMISES under this Lease, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. LESSEE's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

4.02 Insurance. LESSEE shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:

- a. LESSEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$1,500,000

Workers Compensation. LESSEE shall maintain California Workers Compensation insurance with statutory limits.

b. All insurance companies affording coverage to the LESSEE shall be required to add the CITY of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

c. All insurance companies affording coverage to the LESSEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **30-days** written notice to the CITY of Oceanside should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. LESSEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. LESSEE shall provide a substitute certificate of insurance no later than **30 days** prior to the policy expiration date. Failure by the LESSEE to provide such a substitution and extend the policy expiration date shall be considered a default by LESSEE.

g. Maintenance of insurance by the LESSEE as specified in this Lease shall in no way be interpreted as relieving the LESSEE of any responsibility whatever and the LESSEE may carry, at its own expense, such additional insurance as it deems necessary.

h. Any failure or refusal by LESSEE to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving LESSEE **60 days** prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES but not acts of God . LESSEE agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. LESSEE shall, within **72 hours** after occurrence, report to CITY any damage causing serious property damage to the PREMISES.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of PREMISES. LESSEE represents and warrants that it has independently inspected the PREMISES and made all tests, investigations, and observations necessary to satisfy itself of the condition of the PREMISES. LESSEE acknowledges it is relying solely on such independent inspection, tests, investigations, and observations and does not hold CITY responsible for any defects in the PREMISES.

5.02 Waste, and Damage. LESSEE shall not commit or suffer to be committed any waste or any public or private nuisance, agrees to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the PREMISES shall be damaged by any cause which put the PREMISES into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the PREMISES to the condition which existed prior to said damage; or, at CITY's option, and upon receipt of written demand thereof, LESSEE agrees to clear and remove from the PREMISES all debris resulting from said damage and rebuild the PREMISES in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. LESSEE shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the PREMISES.

5.03 Maintenance. As part of the consideration for this Lease, LESSEE agrees to assume full responsibility and cost for the operation, maintenance, including painting, and repair of the PREMISES, throughout the term of this Lease and without expense to CITY. LESSEE will perform all maintenance, repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe and sanitary condition to CITY and in compliance with all applicable laws. LESSEE further agrees to provide approved containers for trash and garbage and to keep the PREMISES free and clear of rubbish and litter, or any other fire hazards. LESSEE waives all right to make repairs at the expense of CITY as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the PREMISES in a safe and sanitary condition, CITY shall always have the right, but not the duty, to enter (during reasonable business hours), and inspect the PREMISES. In the event that CITY finds that the PREMISES are not in a safe and sanitary condition, LESSEE must perform the reasonably necessary maintenance, repair or replacement work within **ten (10) days** after written notice from CITY is received. In the event LESSEE fails to perform such work, CITY shall have the right, upon written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said PREMISES in a safe and sanitary condition. LESSEE shall make payment no later than **ten (10) days** after CITY's written demand therefore. CITY shall not be required at any time to perform maintenance, or to make any improvements or repairs whatsoever, on or for the benefit of the LESSEE.

The rights reserved in this section shall not create any obligations or increase obligations for CITY elsewhere in this Lease.

5.04 Improvements/Alterations. Other than the improvements permitted pursuant to LESSEE's conditional use permit, no other improvements, structures, or installations shall be constructed on the PREMISES, without prior written approval by the City Manager which approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the PREMISES in a safe and sanitary condition, including structural repair and restoration of damage. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Utilities. LESSEE agrees to obtain, if applicable, and pay for all utilities (including service and installation charges) in connection with the development, occupation and operation of the PREMISES.

5.06 Liens. LESSEE shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES without the prior written consent of the City Manager. LESSEE shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES for which LESSEE does not have the prior written consent of the City Manager.

5.07 Encumbrance. Upon receiving prior consent by the City Manager, LESSEE may encumber its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively for the purpose of developing and/or improving the PREMISES. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the PREMISES; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commission; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.08 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the PREMISES, including any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever

erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the PREMISES, including any licenses or permits.

LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all taxes levied on LESSEE's possessory interest.

5.09 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all CITY ordinances and regulations. If any such unauthorized item is found on the PREMISES, LESSEE shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost.

5.10 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the PREMISES now existing or constructed on the PREMISES by LESSEE, excepting such trade fixtures which may be removed without causing damage to the PREMISES shall, at the expiration of this Lease, be deemed to be part of the PREMISES and shall become CITY's property, free of all liens and claims except as otherwise provided in this Lease.

b. Trade fixtures and personal property shall be removed by LESSEE, on or before the expiration of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.

c. If the removal of the trade fixtures or personal property by LESSEE results in damage to the remaining improvements on the PREMISES, LESSEE shall repair all such damage.

5.11 Eminent Domain. If all or part of the PREMISES are taken through condemnation proceedings by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire PREMISES are taken, this Lease shall terminate on the vesting of title or taking of possession by the condemnor, whichever first occurs.

b. **Partial Taking.** If, in the opinion of LESSEE, the remaining part of the PREMISES are unsuitable for its use, this Lease shall terminate on the vesting of title in condemnor or possession by the condemnor, whichever first occurs.

If, in the opinion of LESSEE, the remainder of the PREMISES are suitable for its use, this Lease shall terminate in regard to the portion taken on the vesting of title in condemnor or possession by the condemnor, whichever first occurs, but shall continue for the portion not taken. The Rent shall be equitably reduced to reflect the portion of the PREMISES taken. The CITY and LESSEE will execute an appropriate amendment to the Lease.

c. **Award.** LESSEE shall receive compensation for the taking and damaging of LESSEE's improvements from any monies awarded in any such taking of the PREMISES by a condemning authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

d. **Transfer.** CITY has the right to transfer CITY's interests in the PREMISES in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the PREMISES in accordance with this Lease.

e. **No Inverse Condemnation.** The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation so long as such rights do not unreasonably or substantially interfere with LESSEE's operations.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested to the respective party as follows:

To CITY:

CITY OF OCEANSIDE
Property Management
300 N. Coast Highway
Oceanside, CA 92054

To LESSEE:

ADT Automotive, Inc.
435 Metroplex Drive
Nashville, TN 37211
Attn: General Counsel

With Copy To:

San Diego Auto Auction, Inc.
4691 Calle Joven
Oceanside, CA 92057
Attn: General Manager

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: 1) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) **three (3) working days** following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 CITY Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purpose of directing LESSEE in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the CITY's Senior Property Agent.

6.03 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, martial status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE's use of the PREMISES.

6.04 Waiver of Trial by Jury. CITY and LESSEE hereby mutually waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other in any matter whatsoever arising out of or in anyway connected with this Lease, the relationship of the CITY and the LESSEE, LESSEE's use or occupancy of the PREMISES, and/or claim of injury or damage.

6.05 Entire Agreement. This Lease comprises the entire integrated understanding between CITY and LESSEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the PREMISES, and advice from its own attorneys.

6.06 Interpretation of the Lease. The interpretation, validity and enforcement of this Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California.

The LESSEE shall be responsible for complying with all Local, State and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, this Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Lease Modification. This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

6.08 Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy for any default does not waive the use of another remedy for the same default for another or later default. CITY's acceptance of Rent is not a waiver of any default preceding the Rent payment. CITY and LESSEE specifically agree that the PREMISES are CITY-owned and held in trust for the benefit of the citizens of the CITY of Oceanside and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the CITY Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the CITY Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by CITY against LESSEE to enforce payment of Rent due, or to enforce any of the terms and conditions hereof, or in case CITY shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of the leasehold estate and the possession of the PREMISES, provided CITY effects a recovery, LESSEE shall pay CITY all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the LESSEE's duties be delegated, without the express written consent of CITY. Any attempt to assign or delegate this Lease without the express written consent of CITY shall be void and of no force or effect. A consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of Rent herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of Rent; or **30 days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), CITY shall have the right to immediately terminate this Lease; and that in the event of such termination, LESSEE shall have no further rights hereunder and LESSEE shall thereupon vacate the PREMISES and shall have no further right to claim thereto, and CITY shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the PREMISES. CITY shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from LESSEE in the amount necessary to compensate CITY for all the detriment caused by the LESSEE's failure to perform its obligations under the Lease.

In the event CITY consents to an encumbrance of the leasehold estate for security purposes in accordance with Section 5.07 of this Lease, it is understood and agreed that CITY shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to LESSEE, and in the event LESSEE shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default within **15 days** following the expiration of the period within which LESSEE may cure such default, provided, however, CITY shall not be required to furnish any further notice of default to said beneficiary or mortgagee. CITY's notice of default to the beneficiary or mortgagee shall state the date by which the LESSEE must cure the default.

6.12 Bankruptcy. In the event LESSEE becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of LESSEE's interest under this Lease, CITY shall have the right to declare a default.

6.13 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

6.14 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

6.15 Effective Date. This Lease shall become effective on the date on which both of the following have occurred: (a) this Lease is executed by both parties; and (b) the escrow officer for the escrow opened to consummate the Agreement to Lease certifies that the escrow has closed.

6.16 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and shall be binding upon any party executing the same and all of which together shall constitute one and the same document.

SECTION 7: SPECIAL PROVISIONS

7.01 Improvement Plans. All plans for the improvement of the PREMISES shall comply with applicable codes and ordinances and shall be obtained and provided at LESSEE's sole cost and expense.

7.02 Permits. LESSEE shall comply with applicable codes, including, but not limited to, obtaining all required building, engineering, and grading permits.

7.03 Occupancy. LESSEE shall be responsible for obtaining the building and/or engineering inspector's final permit approval prior to occupying the PREMISES.

7.04 Improvement Costs. LESSEE shall solely be responsible for funding the improvements to be made in or upon the PREMISES.

7.05 No Agency, Partnership, or Joint Venture. Nothing contained in this Lease shall be deemed or construed by the parties, or any third party, as creating the relationships of principal and agent, partnership, or joint venture by the parties. It is understood and agreed that no provision contained in this Lease or any acts of the parties shall be deemed to create any relationship other than the relationship of landlord and tenant.

7.06 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the PREMISES which are in any way explosive or hazardous, and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said PREMISES which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the PREMISES or other PREMISES and the improvement thereon. No machinery or apparatus shall be used or operated on or about the PREMISES which will in any way injure the PREMISES or improvements thereon. Provided, however, that nothing contained in this section shall preclude LESSEE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects. Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the LESSEE and the CITY.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

Date: 4-2-96

CITY
THE CITY OF OCEANSIDE

By: Thomas J. Wilson
City Manager

ATTEST:

By: [Signature]
City Clerk

APPROVED AS TO FORM:

By: [Signature]
City Attorney

LESSEE
ADT AUTOMOTIVE, INC. d/b/a
SAN DIEGO AUTO AUCTION

Date _____

By: [Signature]
Senior Vice President & CFO

State of California)
County of _____)

Personally appeared before me _____, a notary public of said County, with within named _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the within instrument for the purpose therein contained.

Witness my hand, at office, this ___ day of _____, 1995.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

On this the ___ day of _____, 1995, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of ADT Automotive, Inc., a corporation, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as _____.

In Witness Whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT "C" TO AGREEMENT TO LEASE

**LEASE AMENDMENT NO. 1
TO
CPI LEASE DATED MAY 24, 1996
BETWEEN
CITY OF OCEANSIDE, AS LESSOR
AND
ADT AUTOMOTIVE, INC.,
doing business as SAN DIEGO AUTO AUCTION, INC., AS LESSEE**

This Lease Amendment No. 1 ("First Amendment") is made and entered as of this 14th day of December, 1998, by and between the City of Oceanside, a municipal corporation ("City") and ADT Automotive, Inc., a Delaware corporation, doing business as San Diego Auto Auction, Inc., ("Lessee") and amends and modifies that certain CPI Lease Agreement entered May 24, 1996 ("CPI Lease") by and between City and Lessee. Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the CPI Lease.

A. The CPI Lease presently applies to approximately six (6) acres of real property described in Exhibit A to the CPI Lease ("Original Premises").

B. The parties desire to add other real property to the Original Premises consisting of approximately 22.75 acres as described in Exhibit A attached hereto ("Additional Premises") and to provide for payment of additional rent attributable to the Additional Premises.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective as of December 14, 1998, Exhibit A of the CPI Lease shall be amended to include the Additional Premises described in Exhibit A to this First Amendment.

2. The term of the CPI Lease (as provided in Section 2 of the CPI Lease), as it relates to the Additional Premises, shall be deemed to have commenced as of the date of this First Amendment and shall terminate as provided in Section 2.01 (subject to the renewal options in Section 2.02).

3. The Initial Minimum Rent shall be increased by Nine Thousand One Hundred Dollars (\$9,100) for a total Initial Minimum Rent of Eleven Thousand Four Hundred Sixty-Four Dollars (\$11,464) effective as of the first day of the month following the date this First Amendment is executed, and shall be adjusted at the times provided in Section 3.02(b). The examples for computing the rent adjustments in Section 3.02 d. 2. shall use the Initial Minimum Rent as increased pursuant to this paragraph 3.

4. This First Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event this First Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one agreement.

5. Upon execution hereof, the parties shall execute and cause to be recorded in the office of the County Recorder of San Diego County, California, an Amended Memorandum of Lease in the form attached hereto as Exhibit B.

6. Except as expressly provided in this First Amendment, all terms, provisions and conditions of the CPI Lease shall remain unchanged and unmodified except as the same may be changed by written agreement of the parties hereafter.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first written above.

CITY:

THE CITY OF OCEANSIDE

Date: 12-23-98

By: Thomas J. Wilson
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

LESSEE:

ADT AUTOMOTIVE, INC. d/b/a
SAN DIEGO AUTO AUCTION

Date _____

By: _____

LEGAL DESCRIPTION
(LEASE)

That portion of the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 4, Township 11 South, Range 4 West, San Bernardino Base and Meridian, in the City of Oceanside, County of San Diego, State of California, more particularly described as follows:

Beginning at the Southwest corner of said Northeast Quarter of the Southwest Quarter of Section 4; thence along the Westerly line of said Northeast Quarter of the Southwest Quarter, North $00^{\circ}37'57''$ West 14.00 feet to the intersection with the centerline of North River Road (per Road Survey 935), said point being on a 2000.00 foot radius arc, concave Northwesterly, a radial line through said point bears South $04^{\circ}56'13''$ East; thence Northeasterly along said arc through a central angle of $12^{\circ}19'29''$ and an arc distance of 430.21 feet; thence departing said centerline on a radial bearing South $17^{\circ}15'42''$ East, 52.00 feet to the TRUE POINT OF BEGINNING; thence Northeasterly along a 2052.00 foot radius arc, parallel with the centerline of North River Road through a central angle of $11^{\circ}10'32''$ and an arc distance of 400.24 feet; thence continuing parallel and 52.00 feet southerly of said centerline North $61^{\circ}33'46''$ East, 882.38 feet; thence departing said parallel line North $71^{\circ}06'38''$ East, 19.44 feet to the beginning of a tangent 56.00 foot radius arc, concave Northwesterly; thence along said arc through a central angle of $09^{\circ}32'52''$ and an arc distance of 9.33 feet to the beginning of a line lying 56.00 feet Southeasterly of and parallel with said centerline; thence along said parallel line North $61^{\circ}33'46''$ East, 358.21 feet to the beginning of a tangent 2056.00 foot radius arc, concave Northwesterly; thence continuing parallel with said centerline through a central angle of $07^{\circ}30'31''$ and an arc distance of 269.44 feet to the beginning of a tangent 56.00 foot radius arc, concave Northwesterly; thence along said arc through a central angle of $10^{\circ}01'48''$ and an arc distance of 9.80 feet; thence North $44^{\circ}01'27''$ East, 19.20 feet to the beginning of a non-tangent 2052.00 foot radius arc, concave Northwesterly with a radial bearing of South $36^{\circ}44'46''$ East, said arc lying 52.00 feet Southwesterly of and parallel with said centerline; thence along said parallel arc through a central angle of $08^{\circ}59'34''$ and an arc distance of 322.07 feet; thence departing said parallel arc South $61^{\circ}04'04''$ East, 187.10 feet to a point on a 185.00 foot radius arc, said arc being parallel with and 26.50 feet Westerly of the Westerly line of Record of Survey Map 15161, said arc also being concave Northwesterly, a radial line through said point bears South $66^{\circ}59'40''$ East; thence Southwesterly along said parallel arc through a central angle of $13^{\circ}13'13''$ and an arc distance of 42.69 feet to the beginning of a tangent reverse curve having a 69.10 foot radius, concave Southeasterly, thence continuing parallel with said Westerly line through a central angle of $26^{\circ}19'36''$ and an arc distance of 31.75 feet, a radial line through said point bears North $80^{\circ}06'03''$ West; thence continuing parallel with said Westerly line South $11^{\circ}01'55''$ West, 39.12 feet; thence continuing parallel with said Westerly line South $21^{\circ}25'50''$ West, 48.74 feet; thence continuing parallel with said Westerly line South $26^{\circ}35'09''$ West, 210.75 feet; thence continuing parallel with said Westerly line South $26^{\circ}54'25''$ West, 315.11 feet; thence continuing parallel with said Westerly line South $27^{\circ}09'22''$ West, 539.38 feet to a point on the South line of the Northwest Quarter of the Southeast Quarter of said Section 4, said South line also being the North line of the land leased to ADT Automotive, Inc., per document number 1996-0262858, recorded May 24, 1996; thence departing said parallel line and along said South line South $89^{\circ}57'06''$ West, 313.43 feet to the North East corner of the land deeded to AA Property Holdings, Inc., per document number 1996-0287643, recorded June 10, 1996; thence continuing along said South line, said line also being the North line of said deeded land, South $89^{\circ}57'06''$ West, 400.00 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 4; thence along the East line of said Northeast Quarter of the Southwest Quarter, said line also being the East line of said deeded land, North $00^{\circ}37'19''$ West 10.00 feet; thence along a line parallel with and 10.00 feet Northerly of the Southerly line of said Northeast Quarter of the Southwest Quarter, said

line also being the North line of said deeded land, North 89°30' 05" West, 872.36 feet to the Southeast corner of the land conveyed to Kawano, Inc., per document recorded January 16, 1969 as File No. 9358; thence departing said parallel line and continuing along the east line of said land North 17°15' 42" West, 42.85 feet to the TRUE POINT OF BEGINNING.

Area = 991018.565 Sq. Ft.

22.75 Acres

More or Less

Dale A. Davis

12-16-98

Dale A. Davis, P.L.S.
December 15, 1998

