

CITY OF RIVERSIDE COMMERCIAL LEASE AGREEMENT
4.2 Acres Vacant Land – E Street, South of Orange Show Road, San Bernardino

(DriveTime Car Sales Company LLC)

This Commercial Lease Agreement ("Agreement" or "Lease"), dated _____, 2017 for reference purposes only, is made by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, as lessor (hereafter referred to as "Landlord"), and **DriveTime Car Sales Company LLC, an Arizona limited liability company and licensed used car dealer**, as lessee (hereafter referred to as "Tenant"). Landlord and Tenant are sometimes referred to in this Agreement individually as a "Party", and collectively as "Parties."

ARTICLE I
PREMISES; EFFECTIVE DATE; TERM; RENT; DEPOSIT; USE; EXTENSIONS

1.1 **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, in accordance with the terms and conditions of this Agreement, certain vacant property described as 4.2 Acres Vacant Land – E Street, South of Orange Show Road, San Bernardino, California, San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02, and as depicted on Exhibit "A," which is attached hereto and incorporated herein by reference ("Premises").

1.2 **Effective Date.** This Agreement shall be effective as of the date first written above.

1.3 **Term.** Though this Agreement is effective as of the Effective Date, the term of the Agreement and Tenant's right to occupy and use the Premises (the "Term") shall commence on the Commencement Date and shall expire on expiration of the sixtieth (60th) full calendar month following the Commencement Date (the "Expiration Date"). Tenant has also the option to extend the Term of the Agreement for four 5-year extensions, in accordance with the terms of this Agreement. The period from the Commencement Date through the Expiration Date prior to any extension may be referred to herein as the "Initial Term" of the Agreement. The Commencement Date and Expiration Date shall be stated in the Acceptance Memorandum attached hereto as Exhibit "B" (the "Acceptance Memorandum") and, when signed by the parties, the Acceptance Memorandum shall be attached to and incorporated in this Agreement.

This Agreement Lease shall be subject to Tenant's review and approval, in Tenant's sole discretion, of the Premises and such other matters as may be relevant to Tenant in Tenant's sole discretion (the "Inspection"). Landlord shall deliver or make available to Tenant all information regarding the Premises in Landlord's possession reasonably requested by Tenant and Landlord shall cooperate with Tenant's Inspection. Tenant may perform a Phase I environmental assessment of the Premises, a physical condition assessment of the Premises and other assessments and investigations of the condition of the Premises. This Agreement shall also be subject to Tenant obtaining any zoning changes or variances, use permits, sign permits, development permits, construction permits, licenses and other governmental approvals that may be required for Tenant's

development and use of the Premises (collectively, the "Governmental Approvals"), all under terms acceptable to Tenant in Tenant's sole discretion. Landlord shall cooperate with Tenant's applications for Governmental Approvals, and Landlord shall also review and approve Tenant's plans for alterations and improvements to the Premises (the "Landlord Plan Approval"), which approval shall not be unreasonably withheld, conditioned or delayed.

From the Effective Date until 11:59 p.m. Arizona time on the date that is 120 days after the Effective Date, (the "Approval Period"), Tenant shall use reasonable efforts to perform its Inspection, obtain the Governmental Approvals and Landlord Plan Approval. Notwithstanding anything to the contrary, until the expiration of the Approval Period, Tenant shall have the absolute right to terminate this Agreement due to the results of its Inspection, its inability to obtain Governmental Approvals and/or the Landlord Plan Approval, or for any other reason whatsoever in Tenant's sole and absolute discretion.

If Tenant elects to proceed with this Agreement, Tenant shall deliver written notice thereof to Landlord ("Continuation Notice"). If Tenant elects to terminate this Agreement, Tenant shall deliver written notice of such election to Landlord ("Rejection Notice"). If Tenant either provides the Rejection Notice or fails to provide the Continuation Notice prior to the expiration of the Approval Period (all of which such occurrences shall be deemed Tenant's election to cancel this Agreement), then the Agreement shall terminate and the parties shall have no further obligations. If Tenant sends a Continuation Notice to Landlord on or before the expiration of the Approval Period, then the Lease shall continue in accordance with its terms.

Tenant's acceptance of the Lease is not a waiver of Landlord's obligations regarding the Premises to the extent and as provided for in this Agreement. Within ten (10) days after Tenant's acceptance, Landlord shall surrender the Premises to Tenant in the condition required by this Lease. The date after Tenant's acceptance of this Lease on which Landlord surrenders possession of the Premises to Tenant in the condition required by this Lease shall be the "Commencement Date" of this Lease. On the Commencement Date, Landlord and Tenant shall sign the Acceptance Memorandum and sign and record a Memorandum of Lease in the form of Exhibit "C" attached hereto.

1.4 Interim Rent. Commencing on the Effective Date and continuing during the Approval Period until Tenant either (a) provides a Continuation Notice, in which case no additional Interim Rent (as defined below) shall be due or owing, and Base Rent shall be paid as set forth below; (b) provides a Rejection Notice, in which case no additional Interim Rent shall be due or owing; or (c) the expiration of the Approval Period, if Tenant fails to provide a Rejection Notice or Continuation Notice, in which case no additional Interim Rent shall be due or owing, Tenant shall pay to Landlord a monthly interim rent fee of One Thousand Five Hundred and no//00 Dollars (\$1,500.00) ("Interim Rent"). Interim Rent shall be paid monthly in advance on the first day of each month during the Approval Period as set forth in the immediately preceding sentence. If the Effective Date of this Lease commences on a day other than the first day of a calendar month or Tenant's obligation to pay Interim Rent ends on a day other than the last day of a calendar month, the Interim Rent for such months shall be appropriately pro-rated. Base Rent shall commence as set forth in Section 1.5 below titled, "Base Rent".

1.5 **Base Rent.** Tenant shall pay to Landlord the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00) per month ("Base Rent"), beginning two hundred forty (240) days after the Commencement Date (the "Base Rent Start Date"), as Base Rent for the Premises. Said rental amount shall be due to Landlord on or before the first day of each successive calendar month during the Term. If the term of this Lease commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent for the first and last fractional months of the Term of this Lease shall be appropriately pro-rated. The Base Rent shall be adjusted annually commencing on the first anniversary date of the Commencement Date, and continuing on each subsequent anniversary date thereafter until the end of each Term, to reflect an annual 2.5% increase.

1.6 **Permitted Use.** Tenant agrees to use the Premises for the construction of a retail automobile dealership, including related and ancillary uses, including the operation, sales, repair, service, and storage uses of automobile vehicles and for no other purpose. Tenant's use of the Premises and the exercise of any rights granted herein shall not harm, injure, impede, alter, destroy, damage or threaten any of Landlord's water rights associated with the Premises, any existing or future wells or appurtenances over, under or on the Premises, the quality or quantity of the water associated with the Landlord's water rights, or interfere in any other way with the Landlord's water rights over, under or on the Premises. Should Landlord determine, in its reasonable discretion that Tenant's use of the property so violates the terms of this Lease, Tenant, upon written notice from Landlord of such violation, shall immediately cease and desist such use.

1.7 **Extension Options.** Landlord hereby grants to Tenant the option to extend the Term and Expiration Date for four (4) additional consecutive five (5) year periods (each an "Extension Option"), the first of which shall commence as of the day after the last day of the Initial Term. To exercise an Extension Option, Tenant shall deliver written notice to Landlord sixty (60) or more days prior to the then current Expiration Date (the "Renewal Notice"). On any expiration or termination of this Agreement, all unexercised Extension Options shall automatically expire and terminate and may not be exercised thereafter.

1.8 **Brokerage Fee.** Landlord and Tenant acknowledge that Marc Piron represents the Tenant in this transaction ("Tenant Broker"), and that Landlord has not engaged a broker in connection with this Lease. Tenant shall pay a commission to Tenant Broker pursuant to a separate agreement.

ARTICLE II

CONDITION OF PREMISES; DELIVERY OF PREMISES; COMMON FACILITIES

2.1 **Condition of Premises.** Tenant has examined the Premises and agrees to take possession of the Premises in an "as is" condition. Tenant acknowledges and agrees that, except for the express representations set forth in this Agreement, Landlord, including its authorized agents, representatives and employees, has not made any representations, guarantees or warranties regarding the Premises, nor has Landlord, its agents, representatives, or employees made any representations, guarantees or warranties regarding whether the Premises and improvements

thereon comply with applicable covenants and restrictions of record, building codes, ordinances or statutes in effect at the Commencement Date.

2.2 Delivery of Premises. Landlord agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Tenant by the Commencement Date of this Agreement, as specified in Section 1.3. If, despite said efforts, Landlord is unable to deliver possession as agreed, Tenant shall not be subject to any liability therefore, nor shall such failure affect the validity of this Agreement. Tenant shall not, however, be obligated to pay rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within thirty (30) calendar days after the Commencement Date, Tenant may, by notice in writing after the end of such thirty (30) calendar day period, cancel this Agreement and the Parties shall be discharged from all obligations hereunder.

2.3 Landlord Access. Landlord, and its authorized agents, representatives, and employees, may immediately enter the Premises at any time in case of emergency (which means an imminent threat to life or material property damage), and otherwise with forty-eight (48) hours prior notice to Tenant to: (i) inspect the Premises; (ii) exhibit the Premises to prospective purchasers, lenders, insurer or tenants; (iii) determine whether Tenant is complying with all its obligations hereunder; provided, however, that Landlord shall only exhibit the Premises to prospective tenants during the last three (3) months of the Term.

There shall be no abatement of any Base Rent by reason of Landlord's entry of the Premises pursuant to this Section 2.3 and Tenant hereby waives any claim for damages, including but not limited to interference with business, lost profits, and any other incidental or consequential damages of any sort whatsoever, for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, or about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance); and Landlord shall have the right to use any and all means which Landlord may deem reasonably proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. No provision of this Agreement shall be construed as obligating Landlord to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Landlord in this Agreement.

ARTICLE III PAYMENT OF BASE RENT; LATE CHARGES

3.1 Payment of Rent. Base Rent shall be paid in advance on or before the first calendar day of each month during the Term. If the Base Rent Start Date falls on a calendar day other than that first calendar day of the month or the Term ends on a calendar day other than that last calendar day of a calendar month, then Base Rent will be appropriately prorated by Landlord based on the actual number of calendar days in such month. Base Rent shall be paid to Landlord without written

notice or demand, and without offset, in lawful money of the United States of America at Landlord's address, or to such other address as Landlord may from time to time designate in writing.

3.2 Late Charges. Tenant hereby acknowledges that late payment by Tenant of the Base Rent, additional rent, or any other sums due under this Agreement will cause Landlord to incur costs not contemplated by this Agreement. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Premises.

Accordingly, if any installment of Base Rent, additional rent, or any other sums due from Tenant under this Agreement, shall not be paid by Tenant and received by Landlord on the day it becomes due hereunder, Landlord shall provide written notice to Tenant alerting Tenant to the same (provided that Landlord shall only be required to provide one such notice each calendar year, after which point a late charge shall automatically accrue on the tenth day of the month), and if Tenant fails to remit the same within ten (10) days after its receipt of such notice, Tenant shall thereupon pay to Landlord a late charge equal to two percent (2%) of the overdue amount. Landlord and Tenant agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the loss to Landlord that could be reasonably anticipated by such nonpayment by Tenant and the anticipation that proof of actual damages sustained by Landlord would be costly or inconvenient to determine. Landlord and Tenant agree that such late charge shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord at law, in equity, or under this Agreement. Landlord, at its option, may deem any such overdue amounts and/or late charges so unpaid to be additional rent, nonpayment of which shall, in addition to any other rights and remedies available to Landlord, give rise to those rights and remedies of Landlord set forth in Section 12.2 of this Agreement.

ARTICLE IV USE; COMPLIANCE WITH LAWS; NON-DISCRIMINATION; LANDLORD REPRESENTATIONS

4.1 Use. The Premises shall be used only for the purposes set forth in Section 1.5, and purposes incidental to that use. Tenant shall use the Premises in a careful, safe and proper manner. Tenant shall not use or permit the Premises to be used or occupied for any purpose or in any manner prohibited by any applicable law, ordinance order, rule, regulation or other governmental requirement. Tenant shall not commit waste or suffer or permit waste to be committed in, on or about the Premises. Tenant shall conduct its business and control its employees, agents and invitees in such a manner so as not to create a nuisance or a risk of fire or other hazard, or that would violate, suspend, void or increase the rate of fire or liability or any other insurance of any kind at any time carried by Landlord upon the Premises.

4.2 Compliance with Laws. Tenant shall comply with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant

in a proceeding brought against it by any governmental entity, that Tenant has violated any such governmental requirement shall be conclusive as between the Landlord and the Tenant and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by Landlord.

4.3 Compliance with Environmental Laws. Tenant and the Premises shall remain in compliance with all applicable laws, ordinances, orders, rules and regulations regulating, relating to, or imposing liability of standards of conduct concerning any Hazardous Materials, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Premises, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C Section 25288 et seq.]; the California Hazardous Substances Account Act [H & S C Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state or local law, ordinance, order, rule or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under or about the Premises, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use ("Environmental Laws").

A. Tenant shall immediately notify Landlord in writing and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or compliance with Environmental Laws. Tenant shall promptly cure and have dismissed with prejudice and of those actions and proceedings to the reasonable satisfaction of Landlord. Tenant shall keep the Premises free of any lien imposed pursuant to and Environmental Law.

B. For the purpose of Section 4.4, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under any Environmental Law. Tenant shall not permit to occur any release, generation, manufacture, storage, treatment, transportation or disposal of any Hazardous Materials on the Premises during the Term; provided, however, that "Hazardous Materials" shall not include materials commonly used in the ordinary

operations of a retail automobile sales, storage, and repair operations, provided that (1) such materials are used and properly stored in the Premises in quantities ordinarily used and stored in comparable retail automobile sales, service, storage, and repair operations, and (2) such materials are used and properly stored in compliance with Environmental Laws. Tenant shall promptly notify Landlord in writing if Tenant has or acquires notice or knowledge that any Hazardous Materials have been or are threatened to be released, discharged, disposed of, transported, or stored on, in, under or from the Premises; and if any Hazardous Materials are found on the Premises, Tenant, at its sole cost and expense, shall immediately take such action as is necessary to detain the spread of and remove the Hazardous Material to the complete satisfaction of Landlord and the appropriate governmental authorities.

C. Landlord shall, at Landlord's sole cost and expense, have the right from time to time with the notice required in this Lease, to conduct environmental audits of the Premises, and Tenant shall reasonably cooperate (at no cost to Tenant) in the conduct of those audits; provided, however, that Landlord's entry and audits shall not unreasonably interfere with Tenant's occupation of the Premises.

D. If Tenant fails to comply with the forgoing covenants pertaining to Hazardous Materials, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any Hazardous Materials from the Premises. The costs of Hazardous Materials removal and any other cleanup (including transportation and storage costs) will be additional rent under this Agreement, and those costs will become due and payable on demand by the Landlord. Tenant shall give Landlord, its agents and employees access to the Premises to remove or otherwise cleanup any Hazardous materials. Landlord, however, has no affirmative obligation to remove or otherwise cleanup any Hazardous Materials, and this Agreement shall not be construed as creating any such obligation.

E. Except to the extent caused by Landlord's gross negligence or willful or criminal misconduct, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant's sole cost), and hold Landlord and Landlord's elected and appointed officials, officers, employees, agents, successors and assigns free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Landlord in connection or arising out of: (i) any violation or claim of violation of any Environmental Law by Tenant; or (ii) the imposition of any lien for the recovery of costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on, in, under or affecting all or any portion of the Premises. Tenant's indemnification shall survive the expiration and termination of this Agreement.

4.4 Non-Discrimination. Tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex,

genetic information, gender, gender identity, gender expression, marital status, age, national origin, or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of the Premises, nor shall the Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Tenants, Tenants, Sub-tenants, or vendees in the Premises herein leased.

4.5 Landlord Representations and Warranties. Landlord hereby represents, warrants, and covenants unto Tenant the following:

A. Landlord is solvent as of the date hereof and the person executing this Lease is fully authorized and empowered to execute this Lease and to bind Landlord thereby. This Lease, when executed and delivered, shall be valid and binding upon Landlord.

B. To the best of Landlord's actual knowledge, the execution and performance of this Lease will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, security agreement, or any other instrument or document to which Landlord is a party, or its Premises secured.

C. To the best of Landlord's actual knowledge, Landlord, is the sole holder of fee title to the Premises and, to Landlord's actual knowledge, the consent of no other person is required to grant an exclusive leasehold interest in the Premises to Tenant. Title to the Premises is free of all monetary encumbrances other than those of public record that include covenants of nondisturbance.

D. To the best of Landlord's actual knowledge, the Premises does not currently violate any applicable laws (including, without limitation, any Environmental Laws) and there are no pending demands, claims or actions against Landlord or the Property relating to the condition or use of the Property or its compliance with any applicable laws (including, without limitation, Environmental Laws). Tenant acknowledges that Landlord has not performed any assessment of the Premises to determine the present of Hazardous Materials and, to the best of Landlord's actual knowledge, the Property is free of Hazardous Materials.

E. Landlord hereby waives and releases any and all liens, security interests and rights of Landlord created, granted or imposed by statute, law or regulation ("Statutory Liens") on, in or to any tangible personal property of Tenant located at any time at the Premises (the "Tenant Personalty"). Landlord acknowledges and agrees that Tenant may convey the Tenant Personalty, including granting security interests in the Tenant Personalty, from time to time free and clear of all Statutory Liens. Landlord shall, upon written demand of Tenant from time to time execute and deliver to Tenant such documents as may reasonably be required to evidence and confirm Landlord's waiver of the Statutory Liens. Currently, Tenant obtains financing from one or more lenders (each, a "Lender") secured by Tenant's personal property, including Tenant's inventory of motor vehicles located on the Premises from time to time. Each Lender, or Lender's agent, requires that Landlord waive any liens of Landlord on Tenant's personal property, provide certain notices to such Lender or Lender's agent and allow each Lender or Lender's agent access to the Premises to take possession of Tenant's personal property. Therefore, on the Commencement Date, Landlord shall sign and deliver to Tenant each of the Landlord Waivers in the form of Exhibit "D-1" and

Exhibit "D-2" attached hereto (the "Landlord Waivers"). Tenant shall deliver the Landlord signed Landlord Waivers to each Lender or Lender's agent and, when the Landlord Waiver is signed by Landlord and each Lender, a copy of each of the fully signed Landlord Waivers shall be attached to and incorporated into this Lease. The Landlord Waivers may be recorded in the county where the Premises is located.

F. So long as Tenant shall pay Base Rent and other amounts due hereunder as the same become due and comply with all other obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord and Tenant's occupancy and use of the Premises shall not be disturbed. To the best of Landlord's actual knowledge, no person other than public utilities has the right to access or cross over the Premises from adjacent properties, whether by existing driveways or otherwise, and Tenant may remove or block all existing driveways to and from adjacent properties.

G. Landlord fully and forever waives and releases Tenant from any and all obligations, claims, administrative proceedings, judgments, damages, fines, costs, and liabilities, including reasonable attorneys' fees, that arise from or in connection with the presence of Hazardous Materials in, on, or under the Premises as of the Commencement Date that existed prior to the Effective Date of the Lease and are unrelated to Tenant's use and lease of the Premises.

ARTICLE V TAXES AND UTILITIES

5.1 **Possessory Interest Tax/Property Taxes.** Tenant recognizes and understands that this Agreement may create a possessory interest subject to taxation and that Tenant may be subject to the payment of taxes levied on such interest. Tenant shall pay all taxes including without limitation any possessory interest, property tax, real estate and personal property taxes and assessments assessed, levied, confirmed or imposed during the Term of this Agreement, whether or not now customary or within the contemplation of Landlord and Tenant: (i) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or by the cost or value of the leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to the improvements is in Tenant or Landlord; (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Premises; and (iii) upon the Premises and all personal property, furniture, fixtures and equipment, and all replacements, improvements, or additions to them, whether owned by Landlord or Tenant; provided, however, that Tenant shall not be responsible to pay: any taxes assessed on any adjacent property not included in the Premises leased to Tenant, or any taxes assessed in connection with Landlord's income from or transfer of any interest in the Premises.

5.2 **Utilities.** Tenant shall pay the appropriate suppliers for all water, gas, power, electricity, light, heat, telephone, facsimile, internet, and other utilities and communications services used by Tenant on the Premises during the Term, including the taxes thereon, whether or not the services are billed directly to Tenant. Tenant shall procure, or cause to be procured, without cost to

Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any of the services to and upon the Premises. Landlord, upon request of Tenant, shall at the sole expense and liability of Tenant, join with Tenant in any application required for obtaining and continuing any of the services.

ARTICLE VI INSURANCE; INDEMNIFICATION; WAIVER AND RELEASE

6.1 Minimum Insurance Requirements. At all times during the Term and during any other time in which Tenant occupies the Premises, Tenant, at its sole cost and expense, shall procure, pay for and maintain the following types of insurance with the following coverages:

A. **Commercial General Liability.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term: (i) a policy of commercial general liability insurance, including ISO Standard contractual liability insurance, for bodily injury, property damage and personal/advertising liabilities arising out of the use or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount satisfactory to Landlord and of not less than One Million Dollars (\$1,000,000) per occurrence and a Two Million Dollar (\$2,000,000) annual aggregate for all claims.

B. **Tenant's Property and Business Interruption Insurance.** Tenant shall, at Tenant's sole expense, obtain and maintain during the Term, insurance coverage for (i) Tenant's personal property, inventory, alterations, fixtures and equipment located on the Premises, for the full replacement value thereof without deduction for depreciation. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the personal property, inventory, alterations, fixtures and equipment so insured; and for (ii) loss of income and extra expense in such amounts as will reimburse Tenant for direct and indirect loss of earnings attributable to all perils commonly insured against by prudent Tenants.

6.2 Delivery of Evidence of Tenant's Insurance. Each certificate thereof shall be delivered to Landlord by Tenant on or before the effective date of such policy and thereafter Tenant shall deliver to Landlord renewal certificates within a reasonable amount of time following policy renewal. Tenant's compliance with the provisions of Article VI shall in no way limit Tenant's liability under any of the other provisions of this Agreement.

6.3 Other Insurance Requirements. The insurance to be acquired and maintained by Tenant shall be with companies admitted to do business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher. Tenant shall deliver to Landlord, prior to taking possession of the Premises, a certificate of insurance evidencing the existence of the policies required hereunder, and such certificate shall certify that the policy:

A. Names Landlord and any other entities designated by Landlord as additional insureds under the Commercial General Liability policy;

B. Insures performance of Tenant's indemnity set forth in this Agreement;

C. Provide that no act or omissions of Tenant shall affect or limit the obligations of the insurer with respect to other insureds or including Landlord;

D. Include all waiver of subrogation rights endorsements necessary to effect the provisions below; and

E Provide that the commercial general liability policy and the coverage provided shall be primary, that Landlord although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord by reasons of acts or omissions of Tenant, and that coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant.

6.4 Mutual Waiver of Subrogation. The Parties hereto release each other and their respective authorized employees, agents and representatives, from any and all claims, demands, loss, expense or injury to any person, or to the Premise or to personal property, including, but not limited to, furnishings, fixtures or equipment located therein, caused by or resulting from perils, events or happenings which are the subject of insurance in force at the time of such loss. Each Party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither Party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy in effect as required by this Agreement.

6.5 No Ownership. Nothing contained in Article VI shall be construed as creating or implying the existence of: (i) any ownership by Tenant of any fixtures, additions, alterations, or improvements in or to the Premises, or (ii) any right on Tenant's part to make any addition, alteration or improvement in or to the Premises.

6.6 Indemnity. Except to the extent caused by the negligence or willful or criminal misconduct of Landlord, Tenant agrees to fully indemnify, defend, and hold Landlord, its elected and appointed officials, officers, employees, agents, successors and assigns, free and harmless from any and all claims, liability, loss, damage, costs, or expenses, including attorney fees, resulting from Tenant's occupation or use of the Premises, specifically including, without limitation, any claim of liability, loss or damage arising by reason of

A. The death or injury of any person or persons, including Tenant or any person who is an employee, agent, guest, or customer of Tenant, or by reason of the damage or destruction of any property, including property owned by Tenant or any person who is an employee, agent, guest, or customer of Tenant, and caused or allegedly caused by either the condition of the Premises as a result of Tenant's occupation of the same, or some act or omission of Tenant or of some agent, contractor, employee, servant, guest, or customer of Tenant on the Premises;

B. Any work performed on the Premises or materials furnished to the Premises at the instruction or request of Tenant; and

C. Tenant's failure to perform any provision of this Agreement, including the obligation to pay any brokerage fee as required by Section 1.8 of this Agreement or to comply with any

requirement of local, state or federal law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

6.7 Waiver and Release. Tenant waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Agreement. In addition, except to the extent caused by the negligence or willful or criminal misconduct of Landlord, Tenant agrees that Landlord, its elected and appointed officials, employees, agents, successors and assigns shall not be liable for any loss, injury, death or damage (including consequential damages) to persons, property, or Tenant's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; terrorism; court order; order of governmental body or authority; earthquake; fire; explosion; falling objects; water; rain; snow; leak or flow of water, or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or light fixtures; or from construction, repair, or alteration of the Premises; or from any acts or omissions of any visitor of the Premises; or from any cause beyond Landlord's control.

ARTICLE VII REPAIRS AND MAINTENANCE; ALTERATIONS

7.1 Repairs and Maintenance Tenant Obligations. Tenant shall, at its sole cost and expense, maintain the Premises in good order, condition and repair (normal wear and tear excepted), and make repairs, restorations and replacements to the Premises, including without limitation the heating, ventilation, air conditioning, mechanical, electrical, lighting, plumbing systems, structural roof, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and the fixtures and appurtenances to the Premises as and when needed to preserve them in good working order and condition, normal wear and tear excepted. All repairs, restorations, and replacements shall be in quality and class equal to the original work or installations. If Tenant fails to make repairs, restorations or replacements within thirty (30) days of written notice thereof from Landlord (or such longer period as may be required if Tenant is not reasonably able to complete such repair in that time period), Landlord may make them at the expense of Tenant and the expense shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

7.2 Alterations. Tenant shall not make any alterations, improvements or additions in, on or about any of the Premises, without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. However, Landlord's prior written consent will not be necessary for any alteration, improvement, or addition which is either (i) non-structural in nature (*i.e.*, alterations which do not require governmental permits); or (ii) costs less than Five Thousand Dollars (\$5,000) including labor and material. All alterations, improvements or additions in, on or about the Premises, whether temporary or permanent in character, shall immediately become Landlord's property and at the expiration of the Term of this Agreement shall remain on the Premises without compensation to Tenant; provided, however, that Tenant shall remain the owner of any and all furniture, trade fixtures, equipment, signs and all other items of Tenant's movable personal property located in, on, or about the Premises.

7.3 Mechanic's Liens. Tenant shall pay or cause to be paid all costs and charges for: (i) work done by Tenant or caused to be done by Tenant, in or to the Premises, and (ii) all materials furnished for or in connection with such work. Tenant shall indemnify the Landlord against and hold the Landlord and the Premises, free, clear and harmless of and from any liens or claims of liens arising out of any work performed, materials furnished or obligations incurred by the Tenant, and Tenant shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within thirty (30) calendar days of written request by Landlord shall constitute a default of this Agreement. At its election, but without having any obligation to do so, the Landlord may pay such liens not so removed by the Tenant and the any amount expended by Landlord shall be collected as additional rent to be paid by Tenant within fifteen (15) calendar days after delivery of a statement for the expense.

ARTICLE VIII DAMAGE AND DESTRUCTION; CONDEMNATION

8.1 Damage or Destruction of Premises. Unless as the result of negligence or intentional unlawful act of Tenant, if during the term of this Agreement, any portion of the Premises shall be damaged by fire or other catastrophic cause, so as to render such portion of the Premises untenable, the obligations under this Agreement may be suspended while such portion of the Premises remains untenable. In the event of such damage, Tenant shall give Landlord notice of such untenable conditions and the Landlord shall elect in its sole discretion, whether to repair the Premises or to cancel this Agreement with respect thereto. It shall notify Tenant in writing of its election within thirty (30) calendar days after service of notice by Tenant. In the event that Landlord elects not to repair the Premises or portion thereof, this Agreement shall be deemed canceled as of the date the damage occurred with respect to the applicable portion(s).

8.2 Condemnation. If all or any part of the Premises shall be condemned or taken as a result of the exercise of the power of eminent domain, including any conveyance or assignment in lieu of any condemnation or taking, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Agreement as to the balance of the Premises by notice to the other within thirty (30) calendar days after the date of such taking; provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as substantially to handicap, impede or impair Tenant's use of the balance of the Premises. In any event, Landlord shall be entitled to any and all compensation, damages, income, rent, awards and any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the bonus value of any unexpired Term of this Agreement or otherwise; provided, however, that nothing herein shall prevent Tenant from pursuing a separate award against the taking entity, specifically for its relocation expenses or for the taking of any personal property or trade fixtures belonging to Tenant, so long as such separate award to Tenant does not diminish any award otherwise due Landlord as a result of such condemnation or taking. In the event of a partial taking of the Premises which does not result in a termination of this Agreement, the monthly rent thereafter to be paid shall be reduced in proportion to the portion of the Premises taken.

A. For purposes of Section 8.2, the date of taking shall be the date upon which the condemning authority takes possession of any part of the Premise or the date upon which Tenant is required by the condemning authority to commence vacating the Premises, whichever is earlier.

B. Notwithstanding anything to the contrary contained in Section 8.2, if the Premises or any part thereof shall be taken under power of eminent domain on a temporary basis, this Agreement shall be and remain unaffected by such taking and Tenant shall continue to pay in full all monthly rent payable hereunder, provided that Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the Term of this Agreement, and Landlord shall be entitled to receive that portion of any award which represents the cost restoration of the Premises and the use and occupancy of the Premises after the end of the Term of this Agreement.

ARTICLE IX ASSIGNMENT; SUBLETTING; PROCESSING

9.1 Assignment and Subletting. Other than a transfer to an affiliate or successor of Tenant, Tenant shall not assign, mortgage, pledge, encumber, or hypothecate this Agreement or any interest herein (directly, indirectly, voluntarily or involuntarily, by operation of law, or otherwise) or sublet the Premises or any part thereof without the prior written consent of Landlord first being obtained, which consent shall not be unreasonably withheld, conditioned, or delayed.

A. In the event that Tenant should desire to sublet the Premises or any part thereof, or assign this Agreement, Tenant shall provide Landlord with written notice of such desire at least sixty (60) calendar days in advance of the proposed effective date of such subletting or assignment. Such notice shall include: (i) the name of the proposed subtenant or assignee; (ii) the nature of business to be conducted by the proposed subtenant or assignee in the Premises; (iii) the terms and conditions of the proposed assignment or sublease including but not limited to a detailed description of all compensation in cash or otherwise which Tenant would be entitled to receive in connection with such assignment or sublease; and (iv) the most recent financial statements or other financial information concerning the proposed subtenant or assignee as Landlord may reasonably require. At any time within thirty (30) calendar days following receipt of Tenant's notice, Landlord may by written notice to Tenant elect to: (i) consent to the proposed subletting of the Premises or assignment of this Agreement; or (ii) disapprove of the proposed subletting or assignment. Landlord shall not unreasonably withhold its consent to a proposed subletting or assignment.

B. Subject to obtaining Landlord's consent in accordance with the requirements of Section 9.1, in order for any assignment or sublease to be binding on Landlord, Tenant must deliver to Landlord, promptly after execution thereof, an executed copy of such sublease or assignment whereby the subtenant or assignee shall expressly assume all obligations of Tenant under this Agreement as to the portion of the Premises subject to such assignment or sublease. Any purported sublease or assignment will be of no legal force or effect unless and until the proposed sublease has been consented to, in writing, by Landlord and a fully executed copy thereof has been received by Landlord.

C. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of its obligations, or alter the primary liability of Tenant to pay rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of payments by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent or further assignment, subletting, hypothecation or third party use or occupancy.

D. Landlord shall have the unconditional right to sell, encumber, pledge, convey, transfer, and/or assign any and all of its rights and obligations under the Agreement without the consent of or notice to Tenant or any guarantor(s) of Tenant's obligations hereunder; provided that the Landlord assignee is solvent and assumes all obligations of Landlord hereunder accruing after the date of the transfer.

9.2 **Processing Fee.** Tenant agrees to pay Landlord an administrative fee of \$500.00 in conjunction with the processing and document review of any requested transfer, assignment, subletting, license, or concession agreement, change of ownership, mortgage or hypothecation of the Agreement or Tenant's interest in and to the Premises.

ARTICLE X HOLDING OVER; SALE OF PREMISES

10.1 **No Right to Holdover.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Agreement. If, without objection by Landlord, Tenant holds possession of the Premises after expiration of the Term, Tenant shall become a Tenant from month-to-month upon the terms herein specified, except that the monthly rent shall equal to one hundred and fifty percent (150%) of the monthly rent payable by Tenant at the expiration of the Term. In addition, Tenant shall continue to pay all other amounts due to Landlord hereunder. Each Party shall give the other notice at least one (1) month prior to the date of termination of such monthly tenancy of its intention to terminate such tenancy. If, after objection by Landlord thereto, Tenant holds possession of the Premises after expiration of the Term, Tenant shall constitute a Tenant at sufferance and without in any way waiving the wrongful holding over of the Premises by Tenant, Landlord shall be entitled to receive for each month or portion thereof during which Tenant wrongfully holds over at the Premises monthly rent equal to two hundred percent (200%) of the monthly rent payable by Tenant at the expiration of the Term together with all other amounts otherwise due to Landlord hereunder. Landlord's receipt of increased monthly rent under this Section 10.1 shall not constitute an extension of the Term nor shall it constitute a waiver of Tenant's wrongful holding over and shall not prejudice any other rights or remedies available to Landlord under this Agreement or by law.

10.2 **Sale of Premises.** In the event Landlord, or any successor owner of the Premises, shall sell or convey the Premises, all liabilities and obligations on the part of the Landlord, or such successor owner, under this Agreement, accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner subject to such new owner's obligation to assume all obligations of Landlord under this Lease.

10.3 Right of First Refusal. Landlord hereby grants Tenant a limited right of first refusal to purchase the Premises, as further defined herein. The right of first refusal to Tenant shall not accrue to Tenant until the Landlord has determined that the Premises are surplus to the needs of the Landlord, and has complied with the disposition procedures set forth in Government Code section 54222 et seq. by contacting the appropriate governmental agencies (local, county, state and regional) as to their interest in procuring the Premises. If no interest is shown from a governmental agency, the Landlord shall not sell or agree to sell the Premises without first offering the Premises to Tenant. The word "sell" shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of the Property or Landlord's interest in the Property.

A. After the Landlord has complied with in Government Code section 54222 et seq. and before the Landlord sells, seeks to sell, or enters into an agreement to sell the Premises, Landlord shall offer ("First Offer") to sell the Premises to Tenant. The First Offer shall be in writing and, at a minimum, include the following proposed conditions for sale: (i) the purchase price proposed for sale;

(ii) the method of purchase price payment;

(iii) the amount of any earnest money deposit;

(iv) the time and location for the close of escrow; and

(v) the other material terms and conditions of the proposed sale of the Premises.

In addition to the foregoing, if Landlord has complied with Government Code section 54222, and receives a bona fide purchase offer from an independent third party, the First Offer shall include a summary of all information in the bona fide purchase offer, but not including the name of the independent third party given to Landlord in connection with such offer from the relevant third party.

B. Tenant shall have ten (10) business days from the date of its receipt of the First Offer to accept the First Offer ("Acceptance Period") by delivering to Landlord the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period. If Tenant fails to accept the First Offer on or before the last day of the Acceptance Period, the First Offer shall be deemed to be rejected.

C. If Tenant responds to the First Offer with anything other than an unequivocal acceptance or rejection, the right of first refusal shall terminate and the response shall be deemed an offer to purchase the Premises on the terms and conditions in the response ("Counter Offer"). Landlord shall be entitled to accept or reject the Counter Offer at Landlord's sole discretion. If the Counter Offer is rejected, Landlord may sell the Premises to any prospective third party purchaser for the purchase price as was set forth in the First Offer and the right of first refusal set forth in this Section 10.3C shall terminate.

D. If Tenant accepts the First Offer, Tenant shall have the greater of (i) ninety (90) days, or (ii) the time period set forth in the Purchase Offer, following acceptance of the First Offer ("Closing Period") to consummate the purchase of the Premises pursuant to the terms and conditions of the First Offer. Consummation shall constitute execution by the Tenant of a Purchase and Sale Agreement reasonably acceptable to the Landlord and Tenant. On the closing date, Landlord shall convey indefeasible fee title to the Premises free of all liens, judgments and adverse claims and free of any lease other than this Lease to Tenant.

ARTICLE XI SUBORDINATION; ESTOPPEL CERTIFICATES

11.1 Subordination. This Agreement and the rights of Tenant hereunder are subject and subordinate to any ground or underlying lease and the lien of the holder of or beneficiary under a mortgage or deed of trust which now or in the future encumbers the Premises and to any and all advances made thereunder, and interest thereon, and all modifications, renewals, supplements, consolidations and replacements thereof. Tenant agrees that any ground or underlying Landlord or lender may at its option, unilaterally elect to subordinate in whole or in part, such ground or underlying lease or the lien of such mortgage or deed or trust to this Agreement. Such subordination or priority of this Agreement, as the case may be, shall be effective without the necessity of executing any further instrument or agreement to effect such subordination or priority; provided, however, that Tenant agrees to execute, acknowledge and deliver to Landlord upon demand any and all instruments reasonably required by Landlord or any such ground or underlying Landlord or lender evidencing the subordination or priority of this Agreement, as the case may be. Notwithstanding any other provision of this Lease, any such subordination by Tenant is and shall be with the understanding that so long as Tenant is not in default of its obligations under this Lease, the tenancy provided for herein shall continue in full force and effect and Tenant shall be permitted to occupy the Premises under the terms hereof notwithstanding any default by Landlord under such mortgage or security instruments, or any transfer of title to the Premises by foreclosure, deed-in-lieu of foreclosure or otherwise.

11.2 Estoppel Certificates. At any time and from time to time, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) business days after request by Landlord, a certificate certifying, among other things: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (ii) the date, if any, to which monthly rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured except as to defaults specified in said certificate; and (iv) such other matters as reasonably may be requested by Landlord. If Tenant fails to respond to a request from Landlord for Tenant to execute and deliver an estoppel certificate to Landlord within the aforementioned ten (10) business day period, Landlord shall have the right to deliver a second notice (the "Estoppel Certificate Failsafe Notice") to Tenant, which Estoppel Certificate Failsafe Notice must be sent by a nationally recognized overnight courier for next business day delivery, requesting Tenant to execute and deliver the estoppel certificate to Landlord (and/or to such other addressee or addresses as Landlord may designate), provided that such Estoppel Certificate Failsafe Notice shall also include in bold, capitalized letters near the top margin of the first page of same, the following statement: **"TENANT'S FAILURE TO**

RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS FOLLOWING TENANT'S RECEIPT OF SAME SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THE LEASE AGREEMENT". If Tenant fails to deliver the estoppel certificate as instructed within five (5) business days following Tenant's receipt of the Estoppel Certificate Failsafe Notice, such failure shall constitute an Event of Default hereunder.

ARTICLE XII DEFAULT; REMEDIES; DISPUTE RESOLUTION

12.1 Event of Default. The occurrence of any one or more of the following events ("Events of Default") shall constitute a breach of this Agreement by Tenant, with the matter described in subsection A. constituting a "Monetary Event of Default" and each of the matters described in subsections B., C., D., E., F., G., H., I., and J. each constituting a "Non-Monetary Event of Default":

A. If Tenant shall default in its obligation to pay any installment of Base Rent when due and shall not cure such failure within ten (10) days following Tenant's receipt of written notice thereof by Landlord to Tenant (a "Monetary Event of Default"); or

B. If Tenant shall vacate or abandon the Premises, which shall be deemed to occur if Tenant fails to continuously occupy the Premises for a period of thirty (30) days during the Initial Term and fails to re-occupy the Premises following ten (10) days written notice from Landlord; provided, however, that nothing herein shall be construed as an express or implied covenant of continuous operation on the part of Tenant, and Landlord acknowledges that there is no covenant of continuous operation with respect to the Premises, arising hereunder or otherwise on the part of Tenant; or

C. If Tenant shall fail to perform or observe any other term hereof to be performed or observed by Tenant hereunder, and such failure shall not have been cured by Tenant within thirty (30) calendar days after notice thereof from Landlord, or, if such failure shall be of a nature so as reasonably to require more than thirty (30) calendar days to effect the cure thereof, Tenant shall not within said thirty (30) calendar day period commence with due diligence and dispatch the curing of such failure; or

D. If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its property; or

E. If within ninety (90) calendar days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding

shall not have been dismissed, or if, within ninety (90) calendar days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or

F. If this Agreement or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) calendar days; or

G. If Tenant fails to timely deliver to Landlord an estoppel certificate execute and acknowledge or otherwise respond within five (5) business days following receipt of an Estoppel Certificate Failsafe Notice pursuant to Section 11.2; or

H. If Tenant assigns or attempts to assign this Agreement or subleases or attempts to sublease any portion of the Premises in violation of Section 9.1; or

I. If waste is committed on the Premises by Tenant; or

J. The occurrence of any event which pursuant to the terms hereof constitutes an Event of Default hereunder.

12.2 Remedies. On the occurrence of an Event of Default by Tenant hereunder, Landlord shall have the right to pursue any one of the following remedies (provided that Landlord may only repossess the Premises following a Monetary Event of Default): (i) repossess the Premises; or (ii) allow Tenant to remain in full possession and control of the Premises.

A. If Landlord chooses to repossess the Premises, then this Agreement will automatically terminate in accordance with the provisions of California Civil Code Section 1951.2. In the event of such termination of the Agreement, Landlord may recover from Tenant:

(i) The worth at the time of award of the unpaid rent which had been earned at the time of termination, including interest at twelve percent (12%) per annum;

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, including interest at the maximum rate allowed by law;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(iv) Any other amount reasonably necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which, in the ordinary course of things, would be likely to result therefrom.

B. "The worth at the time of the award," as used in Section 12.2A(i) and (ii) shall be computed by allowing interest at twelve percent (12%) per annum. "The worth at the time of the

award," as referred to in Section 12.2A(iii) shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank at the time of the award, plus one percent (1%).

C. Tenant shall be liable immediately to Landlord for all third party costs Landlord actually incurs in re-letting the Premises, including lost rents, eviction costs, attorney's fees, and brokers' commissions. Upon any Event of Default by Tenant, Landlord shall use reasonable efforts to mitigate its damages, including, without limitation, re-letting the Premises; provided that any such re-letting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord the rent due under this Agreement on the dates the rent is due, unless Landlord notifies Tenant that Landlord elects to terminate this Agreement or Landlord has relet the Premises. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign its interest in this Agreement, or sublet all or a portion of the Premises, but Tenant shall not be released from liability or its obligations under this Agreement. Landlord's consent to a proposed assignment or subletting shall be as required in Section 9.1.

D. If Landlord elects to re-let the Premises, then any rent that Landlord receives from re-letting shall be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all costs incurred by Landlord in re-letting, including costs for maintenance; and (iii) third, Rent due and unpaid under this Agreement.

E. After deducting the payments referred to in Section 12.2, any sum remaining from any rent that Landlord receives from re-letting shall be held by Landlord and applied in payment of future rent as rent becomes due under this Agreement. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this Agreement, the rent received from any re-letting is less than the rent due on that date, then Tenant shall pay to Landlord, in addition to the remaining rent due, all costs which Landlord incurred in re-letting, including without limitation maintenance, that remain after applying the rent received from the re-letting, as provided in Section 12.2.

12.3 Continuation After Default. Even though Tenant has breached this Agreement and/or abandoned the Premises, this Agreement shall continue in full force and effect for so long as Landlord does not terminate Tenant's right to possession as provided in Section 12.2 above, and Landlord may enforce all its rights and remedies under this Agreement, including the right to recover rent as it becomes due under this Agreement. In such event, Landlord may exercise all of the rights and remedies of a Landlord under California Civil Code Section 1951.4, or any successor statute. Acts of maintenance or preservation or efforts to re-let the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Agreement shall not constitute a termination of Tenant's right to possession.

12.4 Intentionally Omitted.

12.5 Landlord's Right to Cure Default. All agreements and provisions to be performed by Tenant under any of the terms of this Agreement shall be at its sole cost and expense and without abatement of rent, except as set forth herein. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be

performed hereunder and such failure shall not be cured within the applicable cure period provided for herein, if any, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Agreement. All sums so paid by Landlord and all necessary incidental costs shall be on Tenant's account and shall be deemed additional rent hereunder and shall be payable to Landlord on demand.

12.6 Dispute Resolution. Any dispute arising out of or relating to this Agreement, or breach thereof, shall be first submitted to the senior management of each Party for resolution during a thirty (30) calendar day dispute resolution period. Notice must be in writing and served pursuant to Section 13.2 herein. The foregoing dispute resolution period shall run concurrently with any notice and cure periods provided for herein.

ARTICLE XIII GENERAL PROVISIONS

13.1 Attorneys' Fees. Should any action or proceeding be commenced by Landlord to enforce the provisions provided in this Agreement, or should any litigation be commenced between the parties to this Agreement concerning said Property, this Agreement, or the rights and duties of either in relation thereto, all parties shall bear their own attorneys' fees.

13.2 Notice. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, telegraphed, delivered or sent by telex, telecopy or cable and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business calendar days after the date of posting by the United States post office, (iii) if given by telegraph or cable, one (1) business calendar day after the date delivered to the telegraph company with charges prepaid.

To Landlord: The City of Riverside
 3900 Main Street
 Riverside, CA 92522
 Phone: 826-2135

To Tenant: DriveTime Car Sales Company, LLC
 Attn: Real Estate Department
 1720 West Rio Salado Parkway
 Tempe, AZ 85281
 Phone: 602 852-6600
 Fax: 602 852-6686

A. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to deliver because of changed

address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

B. Tenant hereby agrees that service of notice in accordance with the terms of this Agreement shall be in lieu of the methods of service specified in Section 1161 of the California Code of Civil Procedure Section 1161. The provisions of California Code of Civil Procedure Section 1013(a), extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this Agreement.

13.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

13.4 Captions. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

13.5 Amendment of Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

13.6 Waiver. The waiver by Landlord or Tenant of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the Parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Tenant or Landlord in strict accordance with said terms. The subsequent acceptance of any payment hereunder by Landlord shall not be deemed to be a waiver of any breach by Tenant of any agreement, condition or provision of this Agreement, other than the failure of Tenant to pay the particular amount so accepted. Specifically Landlord may accept any payment from Tenant and apply same to any amount owing hereunder notwithstanding any stated intent or instruction on the part of Tenant to the contrary and without waiving or compromising any claim that such payment was less than the payment actually due from Tenant.

13.7 No Merger. The voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or sub-tenancies.

13.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.9 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement, including any permit or license fees which Tenant may be required to obtain pursuant to its occupancy.

13.10 Authority to Execute Agreement. Landlord and Tenant represent and warrant that the individuals who have signed this Agreement have the legal power, right and authority to enter into this Agreement so as to bind each Party for whom they sign to perform as provided herein.

13.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Tenant shall be responsible for the acts or omissions of its sub-Tenant(s), if any.

13.12 Incorporation of Exhibits. Each of the Exhibits to this Agreement are incorporated by reference as though fully set forth herein.

13.13 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Tenant and Landlord as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to any employees or agents of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the calendar day and year written below.

CITY:

CITY OF RIVERSIDE

By: _____
City Manager

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: Susan Ulloa
Assistant City Attorney

City Attorney File #
15-1462.2

TENANT:

DriveTime Car Sales Company LLC

By: _____
Title: Manager
Printed Name: Jan D. Ehlinger

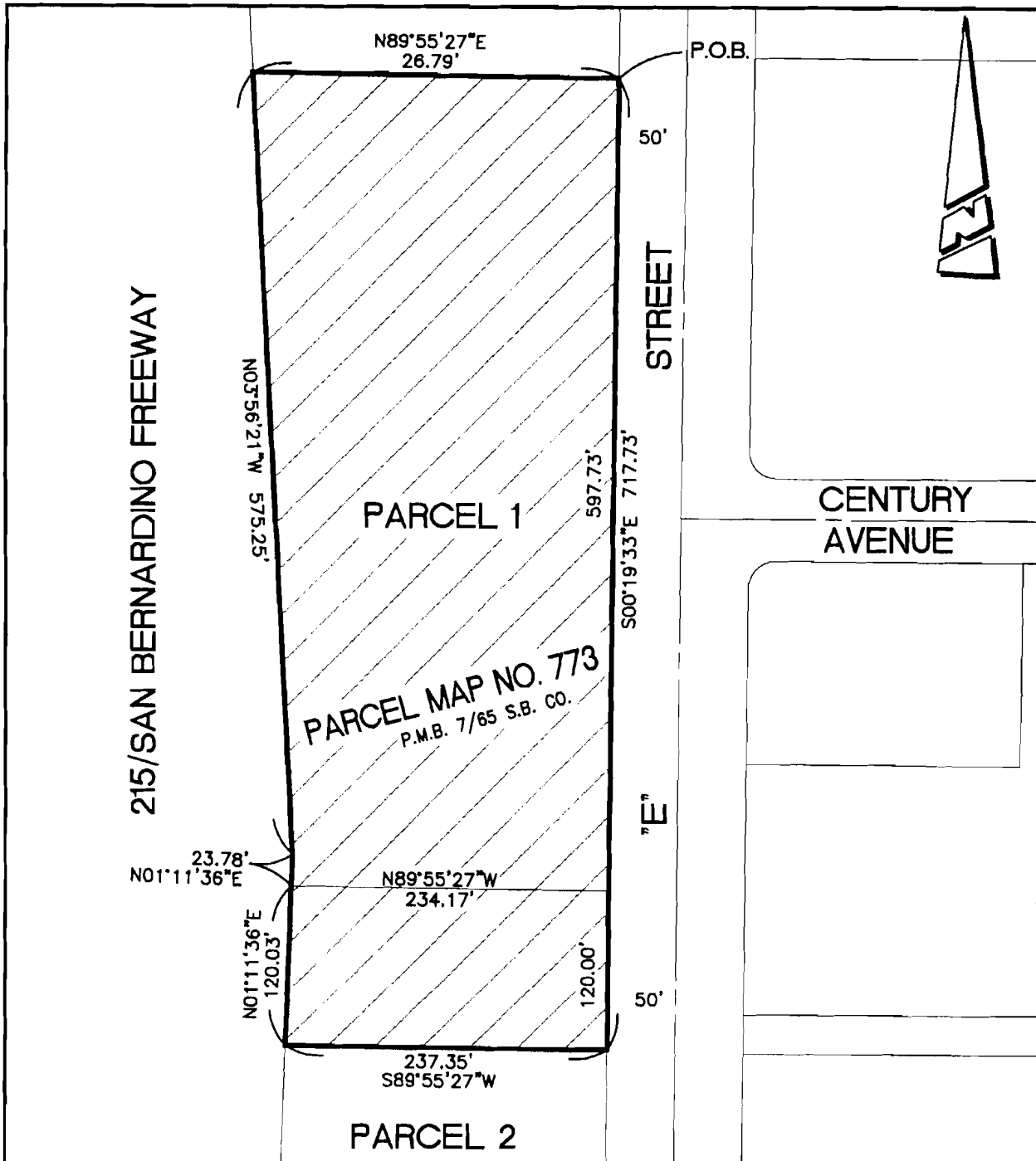
By: _____
Title: _____
Printed Name: _____

EXHIBIT "A"

Premises

(Inserted behind this page)

EXHIBIT "A"



• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: 1"=100'

DRAWN BY: CURT

DATE: 1/06/16

SUBJECT: DRIVETIME LEASE-APN 0141-312-03 & POR. OF 0141-312-02

EXHIBIT "B"

Acceptance Memorandum

**E Street, South of Orange Show Road, San Bernardino, California,
San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02
(the "Property")**

Pursuant to Section 1.2 of the Lease Agreement dated on or about _____, 2016 (the "Lease") between City of Riverside, a California charter city and municipal corporation ("Landlord") and DriveTime Car Sales Company, LLC ("Tenant") with respect to the Property, Landlord and Tenant acknowledge and agree that for all purposes in the Lease:

1. The Commencement Date is _____ **201**_, and Tenant has accepted possession of the Property as of the Commencement Date.
2. The Expiration Date of the Initial Term is _____, **20**__ (60 full calendar months after Commencement Date). Tenant has four options to extend the Lease Term and Expiration Date by four years for each extension. If Tenant exercises all Extension Options then the Expiration Date will be _____, 20__ (25 years after Commencement Date).
3. The Base Rent Start Date is _____, 2016 (180 days after Commencement Date).
4. Notices to Landlord for Landlord Repairs and/or emergencies are to be given to:
Name: _____
Address: _____
Phone: _____ Cell Phone: _____ Email: _____

When signed by Landlord and Tenant, this Acceptance Memorandum is attached to and incorporated in the Lease as Exhibit B, shall replace the form of Exhibit B attached to the Lease as of the Lease Date and the Lease is amended to be consistent with this Acceptance Memorandum.

Dated: _____, 2016

Landlord:

City of Riverside,
a California charter city and municipal corporation

By: _____

Name: _____

Title: _____

Tenant:

DriveTime Car Sales Company, LLC
an Arizona limited liability company

By: _____

Jon D. Ehlinger, Manager

EXHIBIT "C"

Memorandum of Lease

WHEN RECORDED, RETURN TO:

Erika Nunley

DriveTime Car Sales Company, LLC

1720 West Rio Salado Parkway

Tempe, AZ 85281

MEMORANDUM OF LEASE

Landlord:

The City of Riverside

3900 Main Street

Riverside, CA 92522

Tenant:

DriveTime Car Sales Company, LLC

Attn: Real Estate Department

1720 West Rio Salado Parkway

Tempe, AZ 85281

Property:

E Street, South of Orange Show Road, San Bernardino,

California, San Bernardino County Assessor Parcel

Number 0141-252-03 and a portion of 0141-312-02

Described in Exhibit A

This Memorandum of Lease is recorded in the San Bernardino County Public Records to give notice of that certain Lease Agreement dated _____, 2016 (the "Lease") made by and between Landlord and Tenant. The Lease term commences _____, 2016 and expires _____ 202__, subject to extension under the terms stated in the Lease. The Lease grants Tenant certain rights to purchase the Property. All of the other terms, conditions, and agreements contained within the Lease are fully incorporated herein by reference as if set forth in full herein. This Memorandum of Lease does not amend the Lease and is subject to all terms of the Lease.

Landlord:

City of Riverside,

a California charter city and municipal corporation

By:

Name:

Title:

Tenant:

DriveTime Car Sales Company, LLC

an Arizona limited liability company

By:

Jon D. Ehlinger, Manager

STATE OF _____)
)ss
COUNTY OF _____)

Acknowledged before me _____, 201__ by _____ as _____
of the City of Riverside, a California charter city and municipal corporation.

My commission expires:

Notary Public

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Acknowledged before me _____, 201__ by Jon D. Ehlinger as Manager of DriveTime
Car Sales Company, LLC, an Arizona limited liability company.

My commission expires:

Notary Public

EXHIBIT "D-1"

Landlord Waiver – Ally

LANDLORD WAIVER
Sale Inventory – Ally Financial and Ally Bank

WHEREAS City of Riverside, a California charter city and municipal corporation (hereinafter referred to as "Landlord"), is the owner of real property commonly known as E Street, South of Orange Show Road, San Bernardino, California, San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02 (the "Premises") and leases the Premises to **DriveTime Car Sales Company, LLC** (hereinafter referred to as "Tenant"); and

WHEREAS Tenant is about to grant to Ally Financial and/or Ally Bank (Ally Capital in Hawaii, Mississippi, Montana and New Jersey) (the "Ally Parties") a security interest in certain tangible personal property of Tenant which may, from time to time, be located in and on the Premises (the "Tenant Property") as security for any and all loans which the Ally Parties may make to Tenant from time to time; and

WHEREAS the Ally Parties are willing to make such loans only if Landlord waives any liens, claims, demands, or rights which Landlord may have or acquire with respect to such Tenant Property:

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agrees as follows:

- (1) Landlord hereby waives any and all liens, claims, demands, or rights, however arising, including without limitation, the right to levy, distrain, sue, execute, or sell for unpaid rent, which Landlord now has or may hereafter acquire with respect to any or all of the Tenant Property (whether such Tenant Property is now or hereafter located on or in the Premises), including without limitation, machinery, equipment, furniture, fixtures, inventory (including new and used motor vehicles, trucks, trailers, and associated new and used parts), and goods or merchandise, and all additions, replacements, and substitutions therefore; and all of the proceeds thereof;
- (2) Landlord agrees that the Ally Parties, through its authorized representatives, may enter upon the Premises at any time and from time to time for purposes of removing any or all of the Tenant Property or conducting a sale or sales of the Tenant Property on the Premises and that the Ally Parties shall have no obligation to Landlord except the obligation to pay Landlord a reasonable rental for the Premises for the period after which the Ally Parties notifies Landlord of its intent to possess the Tenant Property;
- (3) Landlord warrants to the Ally Parties that Tenant has complied with all obligations owed Landlord by Tenant, including without limitation the payment of all rent as and when due. Landlord agrees to give the Ally Parties written notice of the occurrence of any event which, with the giving of notice or passage of time or both, could result in the creation of the right of Landlord to terminate any lease covering all or any part of the Premises or to

accelerate any rent due thereunder and reasonable opportunity to effect a cure of any such event.

- (4) This Landlord Waiver supersedes any contrary provision of the lease between Landlord and Tenant and extends to and may be relied on by the Ally Parties and by their successors and assigns as well as any subsequent or replacement lender granted a security interest in the Tenant Property that Tenant identifies by written notice to Landlord from time to time (in which case, the references to Ally Financial, Ally Bank, Ally Capital, and the Ally Parties will mean the successor, assignee, or subsequent or replacement lender, as applicable). This Landlord Waiver may be in addition to, and does not terminate, any similar waiver granted by Landlord with respect to any other lender with a security interest granted by affiliates of Tenant in any tangible personal property owned by affiliates of Tenant and located at the Premises.

The laws of the state in which the Premises are located shall govern the validity, interpretation, and enforcement of this Landlord Waiver. Landlord and Tenant each hereby expresses its intention to be legally bound by this Landlord Waiver and acknowledges receipt of benefit therefrom.

IN WITNESS WHEREOF, this Landlord Waiver has been duly executed this _____, 20__.

DriveTime Car Sales Company, LLC Signature: _____ Print Name: _____ Title: _____ Date: _____	City of Riverside, a California charter city and municipal corporation Signature: _____ Print Name: _____ Title: _____ Date: _____
---	--

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 20__ by _____, the _____ of City of Riverside, a California charter city and municipal corporation.

Notary Public

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____, 20__ by Jon D. Ehlinger, the Secretary of DriveTime Car Sales Company, LLC, an Arizona limited liability company.

Notary Public

EXHIBIT "D-2"

Landlord Waiver – Wells Fargo

LANDLORD WAIVER
Lease Inventory – Wells Fargo

WHEREAS City of Riverside, a California charter city and municipal corporation (hereinafter referred to as "Landlord"), is the owner of real property commonly known as E Street, South of Orange Show Road, San Bernardino, California, San Bernardino County Assessor Parcel Number 0141-252-03 and a portion of 0141-312-02 (the "Premises") and leases the Premises to **DriveTime Car Sales Company, LLC** (hereinafter referred to as "Tenant"); and

WHEREAS Tenant and/or one or more affiliates of Tenant ("Tenant Affiliates") is about to grant to **Wells Fargo Bank, N.A.**, a national banking association (the "Lender") a security interest in certain tangible personal property owned by Tenant and/or Tenant Affiliates which may, from time to time, be located in and on the Premises ("Personal Property Collateral") as security for any and all loans which the Lender may make to Tenant and Tenant Affiliates from time to time; and

WHEREAS the Lender is willing to make such loans only if Landlord waives any liens, claims, demands, or rights which Landlord may have or acquire with respect to such Personal Property Collateral:

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agrees as follows:

- (1) Landlord hereby waives any and all liens, claims, demands, or rights, however arising, including without limitation, the right to levy, distrain, sue, execute, or sell for unpaid rent, which Landlord now has or may hereafter acquire with respect to any or all of the Personal Property Collateral (whether such Personal Property Collateral is now or hereafter located on or in the Premises), including without limitation, machinery, equipment, furniture, fixtures, inventory (including new and used motor vehicles, trucks, trailers, and associated new and used parts), and goods or merchandise, and all additions, replacements, and substitutions therefore; and all of the proceeds thereof;
- (2) Landlord agrees that the Lender, through its authorized representatives, may enter upon the Premises at any time and from time to time for purposes of removing any or all of the Personal Property Collateral or conducting a sale or sales of the Personal Property Collateral on the Premises and that the Lender shall have no obligation to Landlord except the obligation to pay Landlord a reasonable rental for the Premises for the period after which the Lender notifies Landlord of its intent to take possession of the Personal Property Collateral;
- (3) Landlord warrants to the Lender that Tenant has complied with all obligations owed Landlord by Tenant, including without limitation the payment of all rent as and when due. Landlord agrees to give the Lender written notice of the occurrence of any event which, with the giving of notice or passage of time or both, could result in the creation of the right

of Landlord to terminate any lease covering all or any part of the Premises or to accelerate any rent due thereunder and reasonable opportunity to effect a cure of any such event.

- (4) This Landlord Waiver supersedes any contrary provision of the lease between Landlord and Tenant and extends to and may be relied on by the Lender and by their successors and assigns as well as any subsequent or replacement lender granted a security interest in the Personal Property Collateral that Tenant identifies by written notice to Landlord from time to time (in which case, the references to Lender will mean the successor, assignee, or subsequent or replacement lender, as applicable). This Landlord Waiver may be in addition to, and does not terminate, any similar waiver granted by Landlord with respect to any other lender with a security interest granted by Tenant in any tangible personal property owned by Tenant and located at the Premises.

The laws of the state in which the Premises are located shall govern the validity, interpretation, and enforcement of this Landlord Waiver. Landlord and Tenant each hereby expresses its intention to be legally bound by this Landlord Waiver and acknowledges receipt of benefit therefrom.

IN WITNESS WHEREOF, this Landlord Waiver has been duly executed this _____, 20__.

DriveTime Car Sales Company, LLC	City of Riverside
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 20__ by _____, the _____ of City of Riverside, a California charter city and municipal corporation.

Notary Public

STATE OF ARIZONA)

COUNTY OF MARICOPA) ss
)

The foregoing instrument was acknowledged before me this _____, 20__ by
Jon D. Ehlinger, the Secretary of DriveTime Car Sales Company, LLC, an Arizona limited
liability company.

Notary Public