

AGENDA OF A SPECIAL MEETING

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

**City Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Tuesday – May 16, 2017 - 6:00 P.M.**

Open To the Public

ROLL CALL

OPEN SESSION

CONSENT CALENDAR

Consent Calendar: Consent calendar items involve matters, which are of a routine or noncontroversial nature. All consent calendar items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

1. Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute the First Amendment to the Exclusive Sales Listing Agreement with R.I. Properties, Inc., doing business as Retail Insite, extending the Exclusive Sales Listing Agreement through December 31, 2017, establishing compensation for a remnant parcel, and authorizing the City Manager or designee the authority to extend this Agreement.

ADJOURNMENT

Adjourn to the Regular Parking Authority Meeting – Tuesday, August 15, 2017 – 6:00 p.m., Council Chambers, Civic Center.

**Council Requests That All Cell Phones and
Pagers Be Turned Off During City Council Meetings**

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at 336-4228 to request a disability-related modification or accommodation. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

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MAY BE OBTAINED THROUGH OUR WEBSITE AT www.nationalcityca.gov**



NOTICE OF SPECIAL MEETING

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

**City Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Tuesday – May 16, 2017 - 6:00 P.M.**

NOTICE IS HEREBY GIVEN that the Parking Authority of the City of National City will hold a special meeting on Tuesday, May 16, 2017, at 6:00 p.m., or as soon thereafter as the matter may be considered, at the Civic Center, 1243 National City Boulevard, National City, California, 91950. The business to be transacted at said meeting will be for the Parking Authority to consider the following:

1. Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute the First Amendment to the Exclusive Sales Listing Agreement with R.I. Properties, Inc., doing business as Retail Insite, extending the Exclusive Sales Listing Agreement through December 31, 2017, establishing compensation for a remnant parcel, and authorizing the City Manager or designee the authority to extend this Agreement.

Dated: May 11, 2017



RON MORRISON
Chairman

**CITY OF NATIONAL CITY, CALIFORNIA
PARKING AUTHORITY AGENDA STATEMENT**

MEETING DATE: May 16, 2017

AGENDA ITEM NO. 1

ITEM TITLE:

Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute the First Amendment to the Exclusive Sales Listing Agreement with R.I. Properties, Inc., doing business as Retail Insite, extending the Exclusive Sales Listing Agreement through December 31, 2017, establishing compensation for a remnant parcel, and authorizing the City Manager or designee the authority to extend this Agreement.

PREPARED BY: Gregory Rose, Property Agent

DEPARTMENT: Housing and Economic
Development

PHONE: (619) 336-4266

APPROVED BY: 

EXPLANATION:

The Parking Authority entered into an Exclusive Listing Agreement with Retail Insite, dated as of October 16, 2013. Retail Insite was selected to provide real estate services for the sale of 15.08- acre parcel of land located at the southwest corner of Sweetwater Road and Bonita Center Drive. Through the development of the property with CarMax a Remnant Parcel of approximately 3.0 acres (Remnant Parcel) was created. Retail Insite desires to amend the original agreement in order to provide an extension to the listing period thru December 31, 2017 and establish compensation for the sale of the Remnant Parcel. This amendment will allow CarMax to finish their due diligence on the property to consummate a sale and allow Retail Insite to find a buyer for the Remnant Parcel. The sales commission for the CarMax portion of the property as stated in the original agreement is equal to 5% of the accepted modified gross sales price but no less than \$75,000. The sales commission on the Remnant Parcel will be 5% of the accepted sales price. The amendment would also delegate to the City Manager or Designee the authority to extend this Agreement.

FINANCIAL STATEMENT:

APPROVED: _____ Finance

ACCOUNT NO.

APPROVED: _____ MIS

Sales commission will be paid directly out of the sale's escrow.

ENVIRONMENTAL REVIEW:

This action is not considered a project as defined by the California Environmental Quality Act (CEQA), and is therefore not subject to CEQA.

ORDINANCE: INTRODUCTION: FINAL ADOPTION:

STAFF RECOMMENDATION:

Adoption of the Resolution

BOARD / COMMISSION RECOMMENDATION:

Not Applicable

ATTACHMENTS:

1. Retail Insite Exclusive Sales Listing Agreement.
2. Amendment to the Exclusive Listing Agreement.

**RETAIL INSITE
EXCLUSIVE SALES LISTING AGREEMENT**

1. In consideration of the listing for sale of the real property commonly known as vacant land – Plaza Bonita Road in the City of National City, CA hereinafter described (the "Property") by R.I. PROPERTIES, INC., dba: RETAIL INSITE ("Broker") and Broker's agreement to use its best efforts to effect a sale of same, the undersigned hereby grants to Broker the exclusive right to negotiate a sale of the Property for a period described below and under the terms of this Agreement:

LISTING TERM (hereinafter the "Term")

Commencement October 16, 2013

Termination midnight June 15, 2014 or upon thirty (30) day's written notification by either party to the other

PROPERTY DESCRIPTION

Address: Southeast corner of Highways 805 and 54

Description: 15.08 acres of vacant land known as APN# 564-471-11

TERMS

As negotiated and accepted by the Parking Authority of the City of National City ("Owner").

2. Owner agrees to pay Broker a sales commission equal to the greater of (a) 5% of the accepted modified gross sales price or (b) the sum of \$75,000.00. The accepted modified gross sales price shall be an amount equal to the actual sales price less the amount actually paid to the County of San Diego by Owner. In no event shall the sales commission be an amount greater than the accepted modified gross sales price. This commission shall be earned for services rendered if, during the Term the Property is sold to a buyer procured by Broker, Owner or anyone else, (b) any contract for the sale of the Property is entered into by Owner and the Property is in fact sold pursuant to such contract. In the event a deposit is made with respect to a contract for the sale of the Property and any deposit is retained by Owner because such sale is not consummated, then the deposit shall be equally divided between Owner and Broker, except that Broker's portion thereof shall not exceed the greater of (a) 5% of the accepted modified gross sales price or (b) the sum of \$75,000.00. Said amount shall be due and payable upon close of Escrow.
3. Owner further agrees to pay Broker a commission in accordance with Section 2, above, if, within one hundred twenty (120) calendar days after the expiration or termination of the Term the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to the sale with any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term. Broker is authorized to

continue negotiations with such persons or entities. Broker agrees to submit a reasonable list of such persons or entities to Owner not later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted it shall not be necessary to include the offeror's name on the list.

4. Owner and Broker agree that the Property will be offered in compliance with all applicable federal state and local anti-discrimination laws and regulations.
5. Owner agrees to cooperate with Broker in effecting a sale of the Property and to refer to Broker all inquiries of anyone interested in the Property. In the event of an offer that is accepted by Owner, Broker is authorized to accept a deposit from the prospective purchaser and to handle it in accordance with the instruction of the parties unless contrary to applicable law. Broker is exclusively authorized to advertise the Property and exclusively authorized to place a sign(s) on the Property if, in Broker's opinion, such would facilitate the sale of the Property. Owner represents that it is the owner of the Property. Owner and its counsel will be responsible for determining the legal sufficiency of a Purchase Contract and any other documents relating to any transaction contemplated by this Agreement.
6. Owner agrees to disclose to Broker and to prospective purchasers any and all information which Owner has regarding present and future zoning and environmental matters affecting the Property and the condition of the Property, including, but not limited to structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on or about the Property. Broker is authorized to disclose any such information to prospective buyers.
7. Owner agrees to disclose to Broker and to prospective purchasers any information which Owner may have as to whether the Property is or may be situated in a special studies zone as delineated under the Alquist-Priolo Earthquake Fault Zoning Act, Sections 2621-2630, inclusive, of the California Public Resources Code.
8. Owner acknowledges that Broker in some cases may represent prospective purchasers. Owner desires that the Property be presented to such persons or entities, and consents to the dual representation created thereby. In such event Broker shall disclose to Owner in writing that Broker represents the prospective purchaser. Brokers shall not disclose the confidential information of one principal to the other.
9. In the event that the Property comes under the jurisdiction of a bankruptcy court, Owner shall immediately notify Broker of the same, and shall promptly take all steps necessary to obtain court approval of Broker's appointment, unless Broker shall elect to terminate this Agreement upon said notice.
10. In the event that the Property becomes the subject of foreclosure proceedings prior to the expiration of the Agreement, then this Agreement shall be deemed suspended until such time as the Owner may reacquire his interest in the Property within the Term, if any. If this Agreement is suspended pursuant to this paragraph, Broker shall be free to enter into a Listing Agreement with any receiver, the party initiating the foreclosure, the party purchasing the Property at a foreclosure sale, or any other person having an interest in the Property.

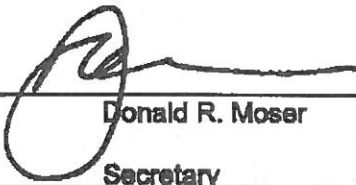
- 11. Each signatory to this Agreement represents and warrants that (s)he has full authority to sign this Agreement on behalf of the party for whom (s)he signs and this Agreement binds such party.
- 12. This Agreement, along with the attached Addendum, constitutes the entire agreement between Owner and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, cancellation or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and Broker. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assigns of the parties.
- 13. The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, Property or the subject matter of this Agreement, including but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.


The undersigned Owner hereby acknowledges receipt of a copy of this Agreement.

ACCEPTED:

R.I. PROPERTIES, INC.

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

By: 
Donald R. Moser

By: 
Ron Morrison

Title: Secretary

Title: Chairperson

Address: 12264 El Camino Real, Suite 202
San Diego, CA 92130-3061

Address: 1243 National City Blvd

Date: 12/15/2013

Date: _____

Telephone: Direct 858.523.2087 | Main 858.523.2090

Telephone: (619) 336-4233

CONSULT YOUR ADVISORS - This document has legal consequences. No representation or recommendation is made by Broker as to the legal or tax consequences of this Agreement or the transaction(s) which it contemplates. These are questions for your attorney and financial advisors.

**ADDENDUM TO EXCLUSIVE SALES LISTING AGREEMENT
BETWEEN
R.I. PROPERTIES, INC., dba RETAIL INSITE
AND
THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY**

This Addendum to the Exclusive Sales Listing Agreement constitutes part of the Exclusive Sales Listing Agreement between R.I. Properties, Inc., dba Retail Insite ("Broker") and the Parking Authority of the City of National City ("Owner")(the "Agreement"). The terms of this Addendum are incorporated into the Agreement for all purposes and references to the Agreement shall refer to the Agreement as modified by this Addendum. Unless modified by this Addendum, each term of the Agreement is unamended and in full force.

The Broker and the Owner mutually agree that the following paragraphs are added to the Agreement:

1. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither the Broker nor the Broker's employees are employees of the Owner or the City of National City, and are not entitled to any of the rights, benefits, or privileges of the City of National City's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the Broker and the Broker's employees, and it is recognized by the parties that a substantial inducement to the Owner for entering into this Agreement was, and is, the professional reputation and competence of the Broker and its employees. Neither this Agreement nor any interest herein may be assigned by the Broker without the prior written consent of the Owner. Nothing herein contained is intended to prevent the Broker from employing or hiring as many employees as the Broker may deem necessary for the proper and efficient performance of this Agreement.

2. **NON-DISCRIMINATION PROVISIONS.** The Broker shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The Broker will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Broker agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the Owner setting forth the provisions of this non-discrimination clause.

3. **INDEMNIFICATION AND HOLD HARMLESS.** The Broker agrees to defend, indemnify and hold harmless the Owner and the City of National City, their officers and employees, against and from any and all liability, loss, damages to property, injuries to, or death

of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the Broker's performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Owner or the City, their agents, officers, or employees. The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

4. **WORKERS' COMPENSATION.** The Broker shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar State or federal acts or laws applicable; and shall indemnify, and hold harmless the Owner and the City of National City and their officers and employees from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the Owner or the City of National City or their officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the Broker under this Agreement.

5. **INSURANCE.** The Broker, at its sole cost and expense, shall purchase and maintain the following checked insurance policies:

A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile Insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("any auto"). The policy shall name the Owner and the City of National City and their officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided.

C. Commercial General Liability Insurance with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate, covering all bodily injury and property damage arising out of its operations under this Agreement. The policy shall name the Owner and the City of National City and their officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this Property and this Agreement.

D. Workers' Compensation Insurance in an amount sufficient to meet statutory requirements covering all of Broker's employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the Owner and the City of National City. Said endorsement shall be provided prior to commencement of work under this Agreement.

If the Broker has no employees subject to the California Workers' Compensation and Labor laws, the Broker shall execute a Declaration to that effect. Said Declaration shall be provided to the Broker by the Owner.

E. The aforesaid policies shall constitute primary insurance as to the Owner and the City of National City their officers, employees, and volunteers, so that any other policies held by the City of National City shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the Owner and the City of National City of cancellation or material change.

F. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the Broker shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.

G. Insurance shall be written with only California admitted companies that hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the City of National City's Risk Manager. In the event coverage is provided by non-admitted "surplus lines" carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

H. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the City of National City's Risk Manager. If the Broker does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the Owner may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

I. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the City of National City.

The Broker and the Owner have caused this ADDENDUM TO EXCLUSIVE SALES LISTING AGREEMENT to be signed on 10/14/2013.

BROKER

BY: 
Donald R. Moser

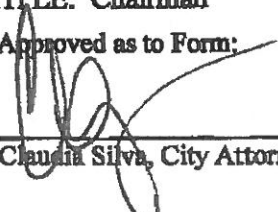
TITLE: Secretary

OWNER

BY: 
Ron Morrison

TITLE: Chairman

Approved as to Form:


Claudia Silva, City Attorney



Amendment to Exclusive Sales Listing Agreement dated April 9, 2013 between the Parking Authority of the City of National City and R.I. Properties DBA Retail Insite.

The terms of the Agreement shall be amended as follows:

1. The expiration date shall be extended to December 31, 2017.
2. If all of the Property or less than all of the Property is sold to Carmax, Broker shall be paid the sales commission set forth in Section 2 of the Agreement.
3. If less than all of the Property is sold to Carmax, Broker is authorized to solicit a buyer for any portion of the property which is not sold to Carmax, which is anticipated to be the westerly 3.00-acre parcel under terms to be accepted by the Parking Authority of the City of National City. In such event, Broker shall be paid an additional sales fee of 5% of the accepted sales price for such portion of the property, in addition to the fee mentioned above.

AGREED TO AND ACCEPTED

 By: _____
 R.I. Properties

Date: _____

 By: _____
 Parking Authority
 of the City of National City

Date: _____

APPROVED AS TO FORM:
Christensen & Spath LLP
Special Counsel

By: _____
 Walter F. Spath III

RESOLUTION NO. 2017 –

RESOLUTION OF THE PARKING AUTHORITY
OF THE CITY OF NATIONAL CITY AUTHORIZING
THE CHAIRMAN TO EXECUTE THE FIRST AMENDMENT
TO THE EXCLUSIVE SALES LISTING AGREEMENT WITH
R.I. PROPERTIES, INC., DOING BUSINESS AS RETAIL INSITE,
TO EXTEND THE TERM OF THE EXCLUSIVE SALES LISTING
AGREEMENT THROUGH DECEMBER 31, 2017, ESTABLISHING
COMPENSATION FOR A REMNANT PARCEL, AND AUTHORIZING
THE CITY MANAGER OR DESIGNEE TO EXECUTE ANY FUTURE
AMENDMENTS TO EXTEND THE TERM OF THE AGREEMENT

WHEREAS, on October 15, 2013, the Parking Authority entered into an Exclusive Listing Agreement with Retail Insite to provide real estate services for the sale of a 15.08- acre parcel of land located at the southwest corner of Sweetwater Road and Bonita Center Drive; and

WHEREAS, through the development of the property with CarMax, a Remnant Parcel of approximately 3.0 acres (“Remnant Parcel”) was created;

WHEREAS, Retail Insite desires to amend the original agreement in order to provide an extension to the listing period thru December 31, 2017 and establish compensation for the sale of the Remnant Parcel; and

WHEREAS, extending the term of the agreement will allow CarMax to finish their due diligence on the property to consummate a sale, and allow Retail Insite to find a buyer for the Remnant Parcel; and

WHEREAS, the sales commission for the CarMax portion of the property, as stated in the original agreement, is equal to 5% of the accepted modified gross sales price, but not less than \$75,000; and

WHEREAS, the sales commission on the Remnant Parcel will be 5% of the accepted sales price.

NOW, THEREFORE, BE IT RESOLVED that the Parking Authority of the City of National City hereby authorizes the Chairman to execute the First Amendment to the Exclusive Sales Listing Agreement with R.I. Properties, Inc., doing business as Retail Insite, to extend the term of the Exclusive Sales Listing Agreement through December 31, 2017.

BE IT FURTHER RESOLVED that the City Council authorizes establishing the compensation for the remnant parcel at 5% of the accepted sales price.

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager or her designee to execute any future amendments to extend the term of the agreement.

[Signature Page to Follow]

Resolution No. 2017 –
Page Two

PASSED and ADOPTED this 16th day of May, 2017.

Ron Morrison, Chairman

ATTEST:

Leslie Deese, Secretary

APPROVED AS TO FORM:

Angil P. Morris-Jones
Legal Counsel
12-