

PERMIT

This agreement, made and entered into this 26th day of August 1986 by and between the City of Portland, "City" and The Sunday Auto Exchange, Inc, "Permittee."

TERMS AND CONDITIONS OF PERMIT

1. PREMISES - City grants to Permittee an exclusive right to use and occupy that portion of the Portland Auto Port Parking Garage described as follows: Cashier's Booth, Elevators and Two Parking Floors for the sole purpose, and no other, of buying or selling used cars, light trucks, or motorcycles by private parties.
2. TERM - Under this agreement, Permittee is entitled to use and occupy said premises from 10:00 AM to 4:00 PM each Sunday for a period of one calendar year, commencing August 24, 1986, together with the further right of access to, and a limited use thereof for one hour before and after the hours stated, for the purpose of installing equipment, preparing the premises and equipment for use, packing and removal of equipment, and cleaning.
3. FEES - Permittee agrees to furnish everything necessary to said use not hereinafter agreed to be furnished by City and to pay to City for use of said space the sum of \$675.00 per month, excluding the month of December. The above fee is based on the condition that the Permittee charges no more than \$25.00 per parking space. If and when the Permittee desires to increase the charge per parking space, the monthly fee due hereunder shall be renegotiated. Said payments shall be made on or before the first business day of each month. Any rent not paid within ten (10) days after it is due shall bear interest at the rate of 12% per annum from the due date until paid.
4. EXTRA HELP - In the event it is or becomes necessary, in the judgment of the City, for the City to have an employee or employees present during Permittee's use, Permittee shall pay to City the cost of such employees, and in case it is necessary for City to employ extra help, Permittee shall pay the cost for said extra help. Should the cost of extra help exceed one hundred dollars (\$100.00) per month Permittee shall have the option to renegotiate the monthly permit fee as stated herein. If the City and Permittee are unable to negotiate a revised monthly fee this permit shall be voidable by either party upon thirty (30) days written notice.
5. FIRE - Permittee shall provide at least one portable fire extinguisher on each floor occupied by sellers of automobiles during permittees hours of operation. In case the said parking garage or any part thereof shall be destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this permit by the City impossible, including, without limitation thereto, the requisitioning of the premises by the United States Government or any arm or instrumentality thereof, or by reason of labor disputes, then and thereupon this permit shall terminate

and the Permittee shall pay rental for said premises only up to the time of such termination, at the rate herein specified, and the said Permittee hereby waives any claim for damages or compensation should this permit be so terminated.

6. EXHIBITORS - In the event that the above described portion of said building is not vacated by permittee by 4:00 PM each Sunday in accordance with this agreement, then City shall be and is hereby authorized to remove from said building at the expense of the Permittee, goods, wares, merchandise and property of any and all kinds and description, which may be then occupying the portion of said building, and said City shall not be liable for any damages or loss to said goods, wares, merchandise or other property which may be sustained, either by reason of such removal or the place to which it may be removed, and the City is hereby expressly released from any and all claims for damages of whatever kind or nature. Permittee shall hold city, its agents and employees harmless from all claims arising because of such removal of property.

7. ELECTRICITY - City shall provide and maintain existing electricity and lighting. In the event extra lights, other than the regular house lights, or electrical power shall be required by Permittee, they shall be paid for by Permittee at the current rates in effect in said building. All electrical connections must be made by a representative of City or the approved City electrical contractor. Multiple plugs such as twin sockets, cube taps, etc., will not be permitted. Any such connections found will of necessity be rewired by the electrical contractor to conform with City and Fire regulations. Such changes will be charged to the Permittee. Equipment and services under this contract must comply with the City of Portland and State of Oregon safety codes, for places of employment.

8. RESTRICTIONS ON USE - In connection with its use of the Premises Permittee shall:

- (a) Refrain from selling alcoholic beverages on the Premises unless expressly permitted by this permit;
- (b) Refrain from any activity or the maintenance of any condition that would in any way tend to create a nuisance, damage the reputation of the Premises, or be reasonably offensive to City, other permittees of the building in which the Premises may be located or other owners or users of adjoining property;
- (c) Refrain from any use of the premises that would cause the fire insurance rate on the Premises or the Building to be increased, or that will prevent City from taking advantage of any future ruling of the Oregon Insurance Rating Bureau or its successor that would permit reduced premium rates for long-term fire insurance policies on the Premises. If Permittee shall fail to comply with this restriction upon reasonable notice from City, Permittee shall pay any resulting extra cost of fire insurance upon receipt of billings from City;

- (d) Refrain from any activity or installation that will, in the opinion of a qualified engineer or architect selected by City, overload the floors or create undue stress upon any part of the Premises;
- (e) Refrain from the use of any electrical equipment that will, in the opinion of a qualified electrician selected by City, overload the electrical circuits from which Permittee obtains current, or interfere with the reasonable use of such circuits by City or other permittees of City using the same circuits. Any changes to the wiring necessary to prevent Permittee's use from overloading the circuits shall be paid for by Permittee.

Permittee agrees that every member connected with Permittee's use of said building shall abide by, conform to and comply with all the laws of the United States and State of Oregon, and all of the ordinances of the City of Portland, Oregon and the rules and regulations of the City for the government and management of said building, together with all rules and regulations of the Police and Fire Departments of the City of Portland, and if the attention of said Permittee is called to such violation on the part of Permittee or any personnel employed by or admitted to said premises by said Permittee, said Permittee will immediately desist from and correct such violation.

9. BUILDING CAPACITY - Permittee shall not admit to said premises a larger number of persons than can safely and freely move about in said areas and the decision of the City in this respect shall be final. Further, that Permittee will permit no chairs or movable seats to be or remain in the passageways and will keep all passageways clear at all times; that no portion of the sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to public utilities of said building shall not be obstructed by Permittee or used for any other purpose other than for ingress to and egress from the demised premises.

10. RESPONSIBILITY FOR PROPERTY IN BUILDING - City assumes no responsibility whatever for any property placed in said building, and City is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy of said building or any part thereof under this permit, and all watchmen or other protective service desired by Permittee must be arranged for by special agreement with City.

11. DEFACEMENT OF BUILDING - Permittee shall not injure nor mar, nor in any manner deface said premises and shall not cause nor permit anything to be done whereby said premises shall be in any manner injured or marred or defaced, nor shall he drive nor permit to be driven, any nails, hooks, tacks, or screws in any part of said building nor shall he make or allow to be made any alteration of any kind therein without written permission from City. That if said premises, or any portion of said building or grounds, during the term of this permit shall be damaged by the act, default or negligence of Permittee or by the Permittee's agent, employees, patrons, or any person or persons admitted to said premises by said Permittee, the Permittee will pay to City upon demand, such sum as shall be necessary to restore said premises to their original

condition. Permittee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said building, or to any portion of said building and grounds by consent of Permittee or by or with the consent of Permittee's employees or any person acting for or on behalf of said Permittee and said Permittee agrees to have on hand at all times sufficient police force to maintain order and protect persons and property.

12. CONCESSIONS - City reserves all rights not specifically granted to Permittee under the terms hereof, including but not limited to sole right to sell or give away refreshments, cigars, cigarettes, candies, sandwiches, periodicals and other merchandise, and other privileges, and the Permittee shall not engage in or undertake the sale of any of the aforesaid of similar articles or privileges, without the written consent of the City. Neither Permittee, nor Permittee's exhibitors, shall give away or sell items under the terms of this permit without written permission from the City. The following is authorized:

- (a) The Permittee may arrange for sale of food and non-alcoholic beverages during the time the Permittee is authorized to use the Parking Facility.
- (b) Sale and/or distribution of periodicals.
- (c) Booths for services related to the buying and selling of automobiles.

13. PROHIBITION ON ASSIGNMENT - No part of the Premises may be assigned, mortgaged or subleased by Permittee, nor may a right to use any portion of the Premises be conferred on any third person by any other means, without City's prior written consent. This provision shall apply to all transfers by operation of law and transfers to and by trustees in bankruptcy, receivers, administrators, executors and legatees. No consent in one instance shall prevent this provision from applying to a subsequent instance. City shall have the right to charge a reasonable fee for administrative expenses in connection with any assignment or subpermit to which it gives its consent, as well as to require current financial statements from prospective assignees.

14. INDEMNITY - Permittee agrees to conduct its activities upon the premises so as not to endanger any person lawfully thereon; and to indemnify and save harmless the City against any and all claims for loss, injury or damage to persons or property, including claims of employees of Permittee or any contractor or subcontractor, attributable to the activities of Permittee, its agents, members or guests. The Permittee shall be required to furnish satisfactory evidence of liability insurance, including a copy of the endorsement adding the City as an additional insured. The limits of liability required are: Bodily injury liability \$100,000 per person; \$1,000,000 per occurrence, and \$100,000 for property damage per occurrence or a single limit policy of not less than \$1,000,000 for all claims per occurrence. Permittee will not do, or permit to be done, anything in or upon any portion of the premises or bring or keep anything therein or thereon which will in any way conflict with the conditions of any insurance policy upon the building or any part thereof, or in any way increase any rate of insurance upon the building or on property kept thereon.

15. CARE OF FACILITIES - Permittee agrees to cause said premises to be clean and restored to its original condition immediately after each day's use. Permittee agrees to remove, from in and around the premises, all debris, waste, and any other matter foreign to the facility resulting from permittees use of the facility and/or permittees patrons. Permittee shall empty all garbage receptacles on the floors utilized by permittee and/or permittees patrons inclusive of stair wells immediately after close of business on Sunday evenings. In the event permittee fails to properly clean the premises prior to 6:00 AM of the Monday succeeding permittees use, the City shall have the right to contract for cleaning services and bill permittee for services rendered.

16. SIGNS AND POSTERS - Permittee shall observe the City of Portland's sign code at all times, and shall further take down and remove forthwith all signs, advertisements and/or exhibits of any description, objected to by City or its Parking Facility Manager.

17. ADVERTISING - Permittee agrees not to allow any advertising media, advertising the event for which Permittee is granted this permit, to imply that the City is sponsoring such event.

18. DEFAULT BY PERMITTEE - The following shall be events of default:

- (a) NONPAYMENT BY PERMITTEE. Permittee's failure to pay rent or any other charge under this permit within ten (10) days after it is due.
- (b) NONCOMPLIANCE BY PERMITTEE. Permittee's failure to comply with any term or condition or fulfill any obligation of this permit (other than the payment of rent or other charges) within fifteen (15) days after written notice by City specifying the nature of the default. If the default cannot be completely cured within the 15-day period, this provision shall be satisfied if Permittee commences correction of the default within the 15-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.
- (c) INSOLVENCY OF PERMITTEE. Permittee's insolvency; an assignment by Permittee for the benefit of creditors; the filing by Permittee of a voluntary petition in bankruptcy, an adjudication that Permittee is bankrupt or the appointment of a receiver of the properties of Permittee; the filing of an involuntary petition of bankruptcy and Permittee's failure to secure a dismissal of such petition within thirty (30) days after filing; attachment or levying of execution upon the permithold interest and failure of Permittee to secure discharge of such attachment or release of such levy within ten (10) or repermit of such levy within ten (10) days. If Permittee consists of two or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to City that they have unconditionally acquired the interest of the one causing the

default. If the permit has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Permittee under the permit.

- (d) RE-ENTRY. In the event of a default, City may elect to terminate Permittee's right to possession of the Premises by notice to Permittee. Following such notice, City may re-enter, take possession of the Premises and remove any persons or property by legal action or by self-help, with the use of reasonable force and without liability for damages. City shall have a security interest in Permittee's property on the Premises at the time of re-entry to secure all sums owed or to become owing City under the permit. Perfection of such security interest shall be by taking possession of the property or otherwise as provided by law.

Permittee further covenants that if any default is made in the payment of the rent or any part thereof at the times above specified, or if any default is made in the covenant or agreement herein contained, or if Permittee fails to utilize the space for the purposes provided herein for three (3) successive Sundays, not including December 14, 21, and 28, January 18, and Easter Sunday, this permit and the relationship of the parties at the option of the City shall cease and terminate and the said City may remove all persons therefrom and resort to any legal proceedings and the said Permittee shall, notwithstanding such, pay an amount equal to three (3) months of said rental as herein agreed to be paid as liquidated damages. In case suit or action is instituted by City to enforce compliance with this agreement, City shall be entitled in addition to the costs and disbursements provided by statute to such additional sum in lawful money of the United States as the court may adjudge reasonable for attorney's fees to be allowed in said suit or action.

19. DISCRETIONARY MATTERS - Any decision affecting any matter not herein expressly provided for shall rest solely within the discretion of the City.

20. PERFORMANCE BOND - Permittee shall deposit with the City \$500.00 in the form of cash, certified check, or approved bond as guarantee that the building is cleaned and restored to its original condition immediately following each day's use.

21. CANCELLATION - The City may cancel this permit at any time with or without cause at its sole discretion by giving 90 days prior written notice to the Permittee. In the event the City exercises its right to cancel this permit the City agrees to provide Permittee with an alternate site capable of accommodating 100 automobiles.

22. STORAGE - Permittee is granted the use of the triangular space, described as located at the most northeast perimeter of the driving ramp, on the third floor for storage purposes (see Exhibit 'A' attached hereto and made a part hereof by reference herein). Permittee agrees to install (at no cost to the City) cyclone fencing with a locking gate to secure permittees stored materials and to hold the City harmless for damage or loss of said materials. Erection of fencing is to be approved and supervised by the City of Portland unless otherwise agreed to in writing.

23. EMERGENCY - In the event of an emergency the City shall have the right to immediately interrupt, terminate or otherwise alter permittees use of the premises without liability.

24. SURRENDER OF PREMISES - Upon expiration of the permit term or earlier termination because of default, Permittee shall deliver all keys to City and surrender the Premises to City in first-class condition. Alterations constructed by Permittee pursuant to City's permission shall not be removed or restored to the original condition unless the terms or permission for the alterations so require. Depreciation and wear from ordinary use for the purposes for which the Premises were let need not be restored, but all repair for which Permittee is responsible shall be completed prior to such surrender. Permittee's obligation under this paragraph shall not apply in case of termination of the permit because of destruction of the Premises.

25. REMOVAL OF PERMITTEE'S PROPERTY - Permittee shall remove all furnishings, furniture and trade fixtures that remain the property of Permittee. Failure to do so shall be an abandonment of the property and Permittee shall have no further rights therein except as provided below. City may elect to proceed as follows with respect to such abandoned property after making a good faith effort to contact Permittee:

- (a) Retain or dispose of the property as it sees fit;
- (b) Remove the property and place it in public storage for Permittee's account, in which case Permittee shall be liable for the cost of removal, transportation and storage, plus interest at the rate of 12% per annum from the date of all expenditures.

26. HOLDOVER - Should Permittee fail to vacate the Premises when required, City's rights shall be as follows:

- (a) City may elect to treat Permittee as a permittee from month to month subject to all the provisions of this permit except the provisions for term;
- (b) City may elect to take legal action to eject Permittee from the Premises and to collect any damages caused by Permittee's wrongful holding over.

27. ENTRY FOR INSPECTION - City shall have the right to enter upon the Premises at any time to determine Permittee's compliance with this permit, to make necessary repairs to the Building or to the Premises, or to show the Premises to any prospective permittee, and in addition have the right, at any time during the last two months of the term of this permit, to place and maintain upon the Premises notices for leasing or selling of the Premises.

28. LIENS, REAL PROPERTY TAXES, AND ASSESSMENTS - In the event any liens, real property taxes and/or assessments are levied against the premises, due to permittee's use thereof, permittee agrees to pay in full (and before delinquent) any and all such claims. Upon payment of such claims Permittee

shall have the right to renegotiate the monthly fee due hereunder. If the City and Permittee are unable to negotiate a revised monthly fee this permit shall be voidable by Permittee upon giving City thirty (30) days written notice.

29. ADDITIONAL FLOORS - Permittee shall have the option of using an additional floor of the autoport (floor 2, 3, or 4), excepting therefrom any and all of the "reserved" parking stalls. Access to said reserved stalls shall be maintained at all times. An additional permit fee of \$75.00 per Sunday shall be due and payable within five (5) working days following Permittee's use of the additional floor. Permittee shall not charge an entrance fee to authorized governmental employees for access to the reserved parking stalls.

30. NOTICES - Any notices required or permitted by law of this permit to be given to either party hereto shall be sufficiently given if sent by United States certified mail addressed as specified below, or to such other address as either party may specify to the other in writing from time to time during the term of this lease:

TO CITY: CITY AUDITOR
City of Portland
Room 202 City Hall
1220 SW 5th Avenue
Portland OR 97204

TO PERMITTEE: SUNDAY AUTO EXCHANGE INCORPORATED
POB 02796
7215 SE 34th
Portland OR 97202
Tel #774-2886

31. PREMISES UNUSABLE - In the event that the premises are rendered unusable by reason of fire, act of God, requisitioning of the premises by the United States Government or any arm or instrumentality thereof, exercise by the City of its right to interrupt, terminate or otherwise alter Permittees use of the premises as provided under Section 23 hereof, labor disputes, or determination by a qualified engineer or architect selected by the City that the use by the Permittees overloads the floors or creates undue stress upon any part of the premises, the Permittees shall be released from their obligation hereunder to pay the monthly permit fee and any fee either paid or accruing during such period shall be pro rated according to the number of Sundays for which the premises were unusable. For purposes of the foregoing, the premises shall be considered unusable if the Permittees are restricted in their use to less than one-hundred (100) parking spaces.

32. OPTION TO RENEW - Permittee shall have an option to extend this permit for a period of one year, upon the same terms and conditions set forth herein, except that the rental for such additional period shall be subject to the mutual agreement of the parties. Permittee shall notify City in writing of its intent to exercise this option not later than sixty (60) days prior to the termination of this permit.

IN WITNESS WHEREOF, the respective parties hereto have caused this instrument to be executed, in duplicate, on the day and year first herein written.

DATED: _____, 1986

CITY OF PORTLAND

THE SUNDAY AUTO EXCHANGE INCORPORATE

By _____
Commissioner of Public Works

By *J. Lauren Baution*
Authorized Representative

By _____
City Auditor

By *228 R 200*
Authorized Representative

ORDINANCE No. 158909

An ordinance authorizing a permit agreement with The Sunday Auto Exchange, Inc., for the use of two or more floors of the Portland Auto Port for the buying and selling of used cars on Sundays, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Because of low demand for off-street parking, the Portland Auto Port at SW First & Jefferson is not open on Sunday.
2. The Sunday Auto Exchange, Inc., desires to utilize two or more floors of the facility to provide a place where private parties can buy and sell used cars, light trucks, and motorcycles.
3. The use of the facility by The Sunday Auto Exchange is consistent with the goals and objectives of the Downtown Plan in that it will encourage people to come downtown.
4. The Sunday Auto Exchange will generate revenue to the City of \$7,425 annually.
5. Exhibit "A" is a suitable form of permit agreement for this purpose.

NOW, THEREFORE, the Council directs:

- a. The Auditor and Commissioner of Public Works are hereby authorized to enter into an agreement with The Sunday Auto Exchange, Inc., for the use of space in the Portland Auto Port, said agreement to be substantially in conformance with Exhibit "A" attached to the original only hereof.

Section 2. The Council declares that an emergency exists so that this program may proceed without delay; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **AUG 20 1986**

Commissioner Bogle
Allyn R. Staley/tdw
August 18, 1986

Jewel Lansing

Auditor of the City of Portland

By

Doris E. Olokesa
Deputy

INTRODUCED BY

Commissioner Bogle

NOTED BY THE COMMISSIONER

Affairs

Finance and
Administration

Safety

Utilities

Works

Dick Bogle/kwb

BUREAU APPROVAL

Bureau:

General Services

Prepared By:

Allyn R. Staley
Allyn R. Staley

Date:

8/18/86

Budget Impact Review:

☒ Completed☐ Not required

Bureau Head:

David L. Babiner
David L. Babiner

CALENDAR

Consent ☒

Regular

NOTED BY

City Attorney

City Auditor

City Engineer

Calendar No. *51695*ORDINANCE No. *158909*

Title

An ordinance authorizing a permit agreement with The Sunday Auto Exchange, Inc., for the use of two or more floors of the Portland Auto Port for the buying and selling of used cars on Sundays, and declaring an emergency.

THE COMMISSIONERS VOTED
AS FOLLOWS:

	Yeas	Nays
BOGLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDBERG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCHWAB	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STRACHAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CLARK	<input checked="" type="checkbox"/>	<input type="checkbox"/>

FOUR-FIFTHS CALENDAR

BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

Filed AUG 18 1986

JEWEL LANSING
Auditor of the CITY OF PORTLAND

By

Nancy Dunford
Deputy