

LEASE

BETWEEN

COUNTY OF CONTRA COSTA

AND

GERALD VALENTE AND THE JARED A. MONEZ 1994 TRUST

September 1, 2016

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Gerald Valente and the Jared A. Monez 1994 Trust

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EXHIBIT A – Legal Description of Premises

EXHIBIT B - Site Map

**LEASE BETWEEN COUNTY OF CONTRA COSTA
AND
GERALD VALENTE AND THE JARED A. MONEZ TRUST**

This lease agreement is dated September 1, 2016, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**Lessor**”), and GERALD VALENTE, individually and as Trustee of the JARED A. MONEZ 1994 TRUST (“**Tenant**”).

RECITALS

- A. Lessor owns and operates Buchanan Field, a public airport located at Concord, California (the “**Airport**”), as shown on the Airport Layout Plan, which plan is on file in the office of the Contra Costa County Director of Airports (the “**Director of Airports**”).
- B. Lessor and Tenant were parties to a lease dated March 16, 1965, as amended (the “**Original Lease**”), by virtue of the Lease having been assigned to Tenant by the previous tenant on or about January 31, 1994. Under the terms of the Original Lease, the Tenant had a right of first refusal to re-lease the demised premises upon the expiration of the Original Lease. The Original Lease expired by its terms on March 15, 2016 and the Tenant has exercised its right of first refusal.
- C. The “**Premises**” under the Original Lease and this lease consists of approximately two acres (88,920 square feet) of real property that are adjacent to 2285 Diamond Boulevard, Concord, California, as further described on Exhibit A. The Tenant is leasing the Premises for the purposes of operating an automotive dealership.

The parties therefore agree as follows:

AGREEMENT

- 1. LEASE: For and in consideration of the rent, fees, and faithful performance by Tenant of the terms and conditions and the mutual covenants hereof, Lessor hereby leases to Tenant, and Tenant hereby leases from Lessor, the Premises, subject to all easements and encumbrances of record.
- 2. TERM:
 - A. Term: The “**Term**” of this lease is comprised of an initial term and, with the concurrence of the Director of Airports, extension terms. The initial term is five (5) years, commencing September 1, 2016, (the “**Commencement Date**”), and ending August 31, 2021.
 - B. Optional Extensions: Tenant has five (5) options to extend this lease for a term of five (5) years for each option (each an “**Extension Period**”) upon all the terms, covenants and conditions set forth herein, provided (i) Tenant is not in default

beyond any applicable cure period as of the commencement of the Extension Period, and (ii) Tenant is not in default on the day an Extension Request, as defined below, is given.

No earlier than the beginning of the fourth (4th) year of the initial term, and no later than the end of the fifth (5th) year of the initial term, Tenant may request that this lease be extended for five (5) years (the “**First Extension Period**”) by giving the County written notice of its desire to extend the Term (an “**Extension Request**”). The Extension Request will be deemed received by the County upon the Director of Airport’s execution of an acknowledgment of receipt of the Extension Request. The Director of Airports, in his or her sole discretion, may or may not approve the Extension Request. The Director of Airports will respond in writing to Tenant within sixty (60) days after receipt of the Extension Request. Failure of the Director of Airports to respond in writing within sixty (60) days constitutes a denial of the Extension Request.

No earlier than the beginning of the third (3rd) year of the First Extension Period, and no later than the end of the fourth (4th) year of the First Extension Period, Tenant may request that this lease be extended for a second five (5) year period (the “**Second Extension Period**”) by following the same procedures set forth above.

No earlier than the beginning of the third (3rd) year of the Second Extension Period, and no later than the end of the fourth (4th) year of the Second Extension Period, Tenant may request that this lease be extended for a third five (5) year period (the “**Third Extension Period**”) by following the same procedures set forth above.

No earlier than the beginning of the third (3rd) year of the Third Extension Period, and no later than the end of the fourth (4th) year of the Third Extension Period, Tenant may request that this lease be extended for a fourth five (5) year period (the “**Fourth Extension Period**”) by following the same procedures set forth above.

No earlier than the beginning of the third (3rd) year of the Fourth Extension Period, and no later than the end of the fourth (4th) year of the Fourth Extension Period, Tenant may request that this lease be extended for a fifth five (5) year period (the “**Fifth Extension Period**”) by following the same procedures set forth above.

Failure to deliver an Extension Request within the timeframe set forth above constitutes a waiver of Tenant’s right to request an extension.

Upon commencement of an Extension Period, all references to the Term of this lease will be deemed to mean the Term as extended pursuant to this Section.

3. HOLDING OVER:

In the event Tenant remains in possession of the Premises after the expiration of the Term, such holding over does not constitute a renewal or extension of this lease, but will be construed to be a tenancy from month to month on the same terms and conditions set forth in this lease.

If Tenant fails to surrender the Premises to Lessor on expiration or within thirty (30) days after cancellation or termination of this lease, Tenant shall defend, indemnify, and hold Lessor harmless from any and all claims, liability, costs, and damages resulting from Tenant's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant or renter.

4. RENT:

Tenant shall pay rent to Lessor without offset or demand on or before the first day of each month, beginning on the Commencement Date. Rent is payable monthly in advance. Rent for any partial month will be prorated at the rate of 1/30th of the applicable monthly rent per day.

- A. Initial Rent. Beginning on the Commencement Date and continuing through April 30, 2016, Tenant shall pay rent in the amount of Six Thousand Two Hundred Twenty-Five Dollars and No/100 Dollars (\$6,225.00) per month.

Lessor will notify Tenant of any increase in the rent when Lessor completes the calculation of increased rent. If the notice of is given after the effective date of the increase, Tenant shall pay any increased rent retroactively to the effective date of the increase.

- B. CPI Increases. With the exception of September 1, 2026, and September 1, 2036 (each, a "**Revaluation Date**"), on every September 1 during the Term, rent will be increased or remain unchanged and rounded to the nearest dollar, according to the change in the Consumer Price Index ("**CPI**") for the most recent period ending in February, based on the CPI Factor as defined in Section 4.C. Any such adjustment may not increase rent by more than five percent (5%) per annum. In no event will the rent for any year be less than the rent in effect in the immediately preceding year. In the event there is a decrease in the CPI, rent for the years in question will be the same as the rent for the preceding year.

- C. Consumer Price Index Rent Adjustment. The "**CPI Factor**" means the percentage by which the "**Index**," as defined below, for the most recent one-year period ending in June has increased over the Index in effect for the immediately preceding one-year period, calculated to the nearest one-tenth of one percent. The term "**Index**" means the Consumer Price Index, all Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U. S. Department of Labor, or

its successor or a substitute index published as a replacement for that index by said Department or by any other United States government agency.

D. Fair Market Rental Revaluation of Rent. The revaluation of rent will be based on the fair market rental value of the Premises without any improvements, using the Revaluation Process defined below. Lessor shall initiate the Revaluation Process prior to each Revaluation Date. Rent established through the Revaluation Process is subject to adjustment for changes in the CPI Factor in accordance with 4.C.

1) Terms. The revaluation of rent, including any appraisals prepared as part of the Revaluation Process, as defined below, will be conducted as follows:

- a) All negotiations and actions taken by the Lessor and Tenant under this Section will be undertaken and conducted by the parties in good faith.
- b) If the Revaluation Process is not concluded by the Revaluation Date, the Ground Rent determined by the Revaluation Process described herein will be retroactive to the Revaluation Date to which the Revaluation Process applies. Tenant shall make any retroactive payments of Ground Rent no later than thirty (30) days following the completion of the Revaluation Process.
- c) Except as otherwise provided herein, no waiver by the Lessor of any of the provisions of this Section will be deemed to have been made by the Lessor, unless made expressly in writing by the Director of Airports and no waiver by Tenant will be deemed to have been made unless made expressly in writing by the duly authorized agent of Tenant.
- d) All time periods specified in this Section will be counted in calendar days.

2) Process. The “**Revaluation Process**” consists of the following:

- a) The Lessor shall determine the fair market rental value of the Premises (the “**Lessor Revaluation**”) and shall notify Tenant in writing of the amount of the new monthly rent (the “**Revaluation Notice**”).
- b) If Tenant disagrees with the Lessor Revaluation, Tenant may file with the Lessor a dispute of the amount of Lessor Revaluation (“**Tenant Dispute**”) and include Tenant’s proposed rent revaluation amount. The Tenant Dispute must be in writing and delivered to the Director of Airports no later than twenty-one (21) days after the Revaluation Notice is delivered to Tenant (the

“Dispute Period”). If Tenant does not file a Tenant Dispute with the Lessor within the Dispute Period: (i) the Lessor Revaluation will automatically be deemed to be accepted by Tenant, (ii) Tenant will be deemed to have waived the right to contest the amount specified in the Revaluation Notice, (iii) the new Rent specified in the Revaluation Notice will become effective on the applicable Revaluation Date, and (iv) the Revaluation Process will be over.

- c) If Tenant delivers a Tenant Dispute to the Lessor within the Dispute Period, the Lessor and Tenant will have twenty-one (21) days following the Lessor’s receipt of the Tenant Dispute to attempt to establish a new rent by negotiation (the **“Rent Negotiation Period”**). The Rent Negotiation Period may not be extended beyond the initial twenty-one (21) day period except by mutual written agreement of Tenant and the Director of Airports. If Tenant and the Lessor agree in writing on the new monthly rent during the Rent Negotiation Period, the new monthly rent will become effective on the applicable Revaluation Date and both the Lessor and Tenant will be deemed to have waived the right to contest such new rent.
- d) If the Lessor and Tenant are unable to agree upon a new rent during the Rent Negotiation Period, then the Lessor and Tenant shall each appoint an appraiser to determine the fair market value of the Premises. The Lessor and Tenant shall identify the name of their appraiser by written notice to the other party. The appointment of the appraiser will be made and notice of the appointment will be given to the other party within twenty-one (21) days after the end of the Rent Negotiation Period (the **“Selection Period”**). Each appraiser must be a member of the American Institute of Real Estate Appraisers, have the designation of Member of the Appraisal Institute (**“MAI”**), and have current aviation appraisal experience in appraising property in the geographic area where the Premises is situated. Each party is responsible for paying the fees and costs of its appraiser.
- e) In the event that Tenant does not appoint an appraiser and provide the Lessor with written notice of the appointment within the Selection Period: (i) the initial Lessor Revaluation will automatically be deemed to be accepted by Tenant, (ii) the new monthly rent, specified in the Revaluation Notice will become effective on the applicable Revaluation Date, (iii) Tenant will be deemed to have waived the right to further contest the amount of the Lessor Revaluation by arbitration or in any other manner, and (iv) the Revaluation Process will be over.

- f) In the event that the Lessor does not appoint an appraiser and provide Tenant with written notice of the appointment within the Selection Period:, (i) the monthly rent will remain unchanged or will equal the fair market rental value determined by Tenant's appraiser, whichever is greater, (ii) such monthly rent will become effective on the applicable Revaluation Date, (iii) the Lessor will be deemed to have waived the right to contest the amount of the new monthly rent by arbitration or in any other manner, and (iv) the Revaluation Process will be over.
- g) If the Lessor and Tenant each properly appoint an appraiser during the Selection Period, both appraisers will make an independent determination of the fair market rental value of the Premises. Each appraisal must be completed and a copy of the appraisal report delivered to the other party no later than sixty (60) days from the date the appraiser was appointed (the "**Appraisal Period**") unless otherwise extended by the mutual agreement of the Lessor and Tenant.
- h) Upon completion of both appraisals, the Lessor and Tenant shall make a final attempt to establish a new monthly rent by negotiation. If the Lessor and Tenant agree in writing on a new monthly rent, the new monthly rent will become effective on the applicable Revaluation Date and both the Lessor and Tenant will be deemed to have waived the right to contest such new rent.
- i) In the event that the Lessor and Tenant cannot agree on a revaluation of the monthly rent within thirty (30) days following the Appraisal Period, either the Lessor or Tenant may declare an impasse in the negotiations by providing written notice of the impasse to the other party. The written notice of impasse (the "**Final Proposal**") will include all of the following information: (i) a statement that the declaring party has determined that negotiations have reached an impasse; (ii) the declaring party's final proposed rent revaluation figure; (iii) a statement that the recipient has ten (10) business days to either give written acceptance of the amount of the rent revaluation specified in the Final Proposal or deliver a counter-final proposal (the "**Counter-Final Proposal**") to the declaring party; and (iv) any other supplementary information as the declaring party deems appropriate. The party upon whom the Final Proposal is served shall then have ten (10) business days following receipt of the Final Proposal to either accept the Final Proposal or to reject the Final Proposal and deliver a Counter-Final Proposal to the declaring party. If either the Final Proposal or the Counter-Final Proposal is accepted in writing, then the new monthly Rent will

become effective on the applicable Revaluation Date and both the Lessor and Tenant will be deemed to have waived the right to contest such new Rent.

- j) If neither the Final Proposal nor the Counter-Final Proposal is accepted, not later than forty-five (45) days after delivery of the Final Proposal, the appraiser selected by the Lessor and the appraiser selected by Tenant will jointly select a third appraiser with the designation of MAI and with current aviation appraisal experience in appraising property in the geographic area where the Premises is situated. The third appraiser will determine the fair market value of the Premises. The third appraiser will render a final written decision within thirty (30) days of his appointment. The cost of the third appraiser will be shared equally by the Lessor and Tenant. The appraiser's decision is binding on all parties and will apply retroactively to the Revaluation Date.

5. ADDITIONAL PAYMENT PROVISIONS:

- A. Late Rental Payments: In the event Tenant fails to pay Lessor any amount due under this lease within five (5) days after such amount is due, Tenant shall pay to Lessor a late charge of One Hundred and No/100 Dollars (\$100) per occurrence (the "Late Charge"), plus interest on the unpaid balance at a rate of one and one-half percent (1.5%) per month, from the date the payment was due and payable until paid in full. Tenant shall pay all Late Charges as additional rent on or before the date the next installment of rent is due. Lessor and Tenant hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix Lessor's actual damage from any late payments and, thus, that Tenant shall pay as liquidated damages to Lessor the Late Charge specified in this Section, which is the result of the parties' reasonable endeavor to estimate fair average compensation for the late payment (other than attorneys' fees and costs). Lessor's acceptance of the Late Charge as liquidated damages does not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Lessor from exercising any of the rights and remedies available to Lessor under this lease.
- B. Form and Place of Payment: Tenant shall pay all rents and fees in cash or by personal check, certified check, or money order, payable to the County of Contra Costa, by delivering same on or before due date to the Director of Airports Office, 550 Sally Ride Drive, Concord, California 94520, or at such other place as Lessor may designate from time to time.
- C. Returned Checks: If a check written by Tenant is returned for insufficient funds, Lessor may impose a reasonable service charge in addition to any Late Charge and in addition to any charges imposed by the bank. Lessor may require Tenant to pay rent by certified check or money order if Tenant's bank or banks have

returned one or more personal checks within the preceding twelve (12) month period.

D. Security Deposit:

- 1) Upon execution of this lease, Tenant shall pay to Lessor the sum of Six Thousand Two Hundred Twenty-Four and No/100 Dollars (\$6,224.00) in cash as security for the faithful performance of the terms, covenants, and conditions of this lease (the "**Security Deposit**").
- 2) Upon the occurrence of a Default, as defined in Section 26, Lessor may in its sole discretion (but is not required to) apply the Security Deposit, or any portion of it, to any expense, loss or (i) any rent or other sum owed to Lessor, (ii) any amount that Lessor may spend or become obligated to spend in exercising Lessor's rights under this lease, or (iii) damage sustained by Lessor resulting from Tenant's Default. Upon demand by Lessor, Tenant shall immediately pay to Lessor a sum equal to that portion of the Security Deposit expended or applied by Lessor as provided in this subsection so as to maintain the Security Deposit at its original level.
- 3) Upon the expiration or termination of this lease and (i) Tenant's satisfaction of the conditions set forth in Section 9. Condition of Premises, and (ii) a final accounting by Lessor, any remaining Security Deposit balance shall be refunded to Tenant, without interest. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of law in force or that become in force after the date of execution of this lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises. Lessor and Tenant agree that Lessor may, in addition, claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant or Tenant's officers, agents, employees, independent contractors or invitees.

6. LESSOR PROCESSING AND TRANSACTION FEES:

In the event that Tenant requires or requests Lessor's review, investigation, processing, recordation, or any other action in connection with any Tenant document, proposal or other matter that requires Lessor's staff time and resources, other than time and resources of the Contra Costa County Airports Division (e.g., a proposed assignment or other transfer, or an estoppel certificate), Tenant shall pay Lessor a transaction fee of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) plus all of Lessor's costs, including, but not limited to, staff time at rates determined by the County Auditor for time spent in connection with the until the matter is complete ("**Transaction Fee**"). The Transaction Fee will increase by Five Hundred and No/100 Dollars (\$500.00) on every fifth anniversary of the Commencement Date and is due thirty (30) days after demand therefor by Lessor.

7. USE OF PREMISES:

Except as otherwise provided herein, the Premises may be used by Tenant only for the operation of an automotive dealership which shall include new and used automobile sales and automobile leasing, rentals, services and maintenance in conjunction with operating such uses on the adjacent property.

Tenant may not use the premises for any other purpose without the Director of Airport's express prior written consent. Any use of the premises other than as described herein without the Director of Airports' prior written consent is a default of this lease.

8. SUBLEASES:

A. Tenant's Conditional Right. If Tenant satisfies all of the following conditions in this subsection A, Tenant may sublease the Premises ("**Subtenant**"):

- 1) Tenant may not transfer any interest in the Premises, or in any improvement, that is greater than an interest for a term of years.
- 2) Tenant shall cause all subleases to be subject, and subordinate, to this Lease.
- 3) Tenant shall cause Subtenant to confirm in writing that (i) they have received and read this Lease, and (ii) they agree to be bound by the terms of this Lease.
- 4) Tenant may sublease the Premises along with any lease or sublease of its own adjacent property, located at 2285 Diamond Boulevard, for the purpose of operating an automotive dealership.

B. Additional Terms Applicable to All Subleases. All subleases are subject to the following terms:

- 1) Notwithstanding Tenant's exercise of its right to enter into one or more subleases, Tenant is and will remain responsible for the full performance of this Lease and is not released from any obligations under this Lease as a result of any sublease.
- 2) All subleases and Subtenants are subject to the rules and regulations adopted from time to time by Lessor.

9. CONDITION OF PREMISES:

A. Commencement Date. Tenant is leasing the Premises in an "as is" physical condition with no warranty, express or implied, on the part of Lessor as to the condition of the Improvements, the condition of the soil or the geology of the soil.

B. During Term. Tenant shall maintain the Premises in accordance with Section 13. Maintenance, Repair and Storage.

10. ADVERTISING AND SIGNAGE:

Tenant, at Tenant's sole cost and expense, may only erect and maintain on the Premises such sign or signs ("**Signage**") of the type, style, size, design, and location permitted and approved in writing by the Director of Airports. All Signage must be consistent with the written sign policy of the Airport and in compliance with all applicable laws, rules, ordinances, and regulations and required approvals, authorizations, and permits, prior to erecting any Signage. Any on-site Signage must be prepared by a professional sign company or advertising organization. County reserves the right to disapprove any of Tenant's Signage and to require Tenant to remove any Signage.

11. UTILITY OBLIGATIONS:

Tenant shall pay utility providers directly for all utilities used or consumed on the Premises by Tenant or its subtenants, including, but not limited to gas, water, electricity, garbage disposal, storm and sanitary sewer services, janitorial services, and telephone services.

In the event Lessor, or any utility company, requires that any existing or new distribution system be installed underground, Tenant shall, at its own cost and expense, provide all necessary facility changes on the Premises, so as to receive such service.

12. ALTERATIONS AND ADDITIONS:

Tenant shall not make any alterations, erect any additional structures, or make any improvements on the Premises without the prior written consent of the Director of Airports. In the event Tenant makes alterations or constructs additions that violate the conditions contained in this lease (an "**Unauthorized Addition**"), at the Director of Airports sole discretion, Tenant shall remove any Unauthorized Addition at Tenant's sole cost and expense. If Tenant is required to remove any Unauthorized Addition, Tenant, at its sole cost and expense, shall restore the Premises to the conditions existing immediately prior to the existence of the Unauthorized Addition, or such other condition designated by Lessor in its election. If Tenant is not required to remove any Unauthorized Addition, such Unauthorized Additions shall remain on and be surrendered with the Premises on expiration or termination of this lease.

If Tenant wishes to make any alterations, erect any additional structures, or make any additional improvements to the Premises as provided in this Section, Tenant may not commence construction until Tenant has the prior written consent of Lessor. In addition, a Notice of Lessor Non-Responsibility shall be posted and recorded by Tenant during construction in accordance with Civil Code Sections 3094 and 3129. Tenant shall mail a copy of such Notice of Lessor Non-Responsibility to Lessor upon filing it with the County Recorder.

13. MAINTENANCE, REPAIR AND STORAGE:

- A. Tenant shall, at its sole cost and expense throughout the Term of this lease, maintain the Premises in a first-class condition. Grounds maintenance includes cracks, sealing and other infrastructure repairs. All maintenance, repairs, and replacements shall be of a quality substantially equal to the original material and workmanship. The Director of Airports, or his or her designee, shall be the sole judge of the quality of maintenance.

Upon written notice by Airport, Tenant shall perform whatever reasonable maintenance Airport deems necessary. If said maintenance is not undertaken by Tenant within thirty (30) days after receipt of written notice, Airport shall have the right to enter upon the Premises and perform such necessary maintenance, the cost of which shall be reimbursed by Tenant to Airport as additional rent, without offset, upon Tenant's receipt of Airport's request for said reimbursement.

- B. Tenant may not store, or permit others to store, any materials, supplies, products, equipment, or other personal property on the without the prior written consent of the Director of Airports.
- C. Tenant shall provide or cause to be provided adequate enclosures, screened areas and/or suitable covered metal receptacles within the Premises for the short-term accumulation and storage of solid waste, such as rubbish, trash, and garbage. Such enclosures and/or screened areas shall be designed in such a way as to prevent, to the extent possible, odors, fumes, attraction of pests and dispersal of wastes due to wind or water runoff and shall be serviced regularly by qualified waste removal and disposal services.

14. LAWFUL CONDUCT:

Tenant shall obey and observe, and shall ensure that all persons entering upon the Premises obey and observe all the terms and conditions of this lease and all statutes, ordinances, resolutions, regulations, orders, and policies now in existence or adopted from time to time by the United States (including, but not limited to, the Federal Aviation Administration), the State of California, the County of Contra Costa, the Central Contra Costa Sanitary District, the San Francisco Bay Regional Water Quality Control Board, and any other government agencies with jurisdiction over the Airport (collectively, the "**Applicable Laws**") including, but not limited to, Applicable Laws concerning health, safety, fire, accessibility, police, and the environment.

Tenant shall pay all fines and penalties levied against it by any government agency for Tenant's violation of any Applicable Law associated with activities on the Premises.

15. WASTE, QUIET CONDUCT, NUISANCE, POLLUTION:

- A. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any nuisance or other act or thing that may disturb the quiet enjoyment of the

use of Buchanan Field Airport or surrounding property.

- B. Tenant shall not permit any activity on the Premises that directly or indirectly produces unlawful or excessive amounts or levels of air pollution, (e.g., gases, particulate matter, odors, fumes, smoke, dust), water pollution, noise, glare, heat emissions, trash or refuse accumulation, electronic or radio interference with navigational and communication facilities used in the operation of the Airport or by aircraft, or any other activity that is hazardous or dangerous by reason or risk of explosion, fire, or harmful emissions.

16. HAZARDOUS MATERIALS:

- A. Definition of Hazardous Materials: As used in this lease, the term "Hazardous Materials" means any hazardous or toxic substance, hazardous or radioactive material, or hazardous waste, pollutant or contaminant at any concentration that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Premises. Hazardous Materials include, but are not limited to, the following: (1) any "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste," as defined in Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health & Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (2) any "hazardous substance" as that term is defined in Section 25316 of the California Health & Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (3) any material or substance listed as a chemical known to cause cancer or reproductive toxicity pursuant to Section 6380 of the California Labor Code, Division 5, Part 1, Chapter 2.5 (Hazardous Substances Information and Training Act); (4) any "hazardous waste" as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (42 U.S.C. Section 6903); (5) any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.* (42 U.S.C. Section 9601); (6) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local statute, ordinance, resolution, regulation, order, policy, or requirement, including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect; (7) any petroleum product; (8) any radioactive material, including any "source materials", "special nuclear materials", or "byproduct material" as defined in 42 U.S.C. Section 2011 *et seq.*; (9) any asbestos in any form or condition; and (10) any polychlorinated biphenyls (PCBs) and any substances or any compounds containing PCBs.
- B. Use of Hazardous Materials: Tenant shall not cause or permit any Hazardous Materials, to be generated, brought onto, stored, used, emitted, released, discharged or disposed of in, on, under, or about the Premises by Tenant or its

officers, employees, agents, contractors, renters, guests or invitees, except for limited quantities of (1) standard office and janitorial supplies containing chemicals categorized as Hazardous Materials; or (2) such other Hazardous Materials as are approved in advance in writing by Lessor. During the term of this lease, Tenant shall strictly comply with all applicable laws, statutes, ordinances, regulations, orders, etc., in effect that relate to public health and safety and protection of the environment including, but not limited to those identified in this Section (“**Environmental Laws**”).

- C. Notification to the Director of Airports: If, during term of this lease, Tenant becomes aware of (a) any actual or threatened release of any Hazardous Materials on, under, or about the Premises; or (b) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Materials on, under, or about the Premises, Tenant shall (1) immediately provide verbal notification to the Director of Airports and (2) provide written notification of such release or investigation to the Director of Airports within twenty-four (24) hours after learning of it. In the event Tenant receives any claims, notices of violation, reports, or other writing concerning the aforementioned release or investigation, Tenant shall furnish copies of all such materials to Lessor no later than the business day following Tenant’s receipt thereof.

Notification to the Director of Airports under this Section does not relieve Tenant of any obligation to notify any governmental agency under any Applicable Law.

- D. Indemnification: Tenant shall, at Tenant’s sole expense and with legal counsel reasonably acceptable to Lessor, indemnify, protect, defend, and hold harmless Lessor and Lessor’s officers, employees, agents, and contractors from and against any and all demands, losses, claims costs, suits liability and expenses including without limitation, attorney’s fees and consultant fees arising out of or relating to the violation of any Environmental Laws or the use, handling, generation, emission, release, discharge, storage or disposal of any Hazardous Materials by Tenant or Tenant’s officers, employees, agents, contractors, renters, guests or invitees. This indemnification applies whether or not the concentration of such Hazardous Materials exceed state or federal maximum contaminant or action levels or whether any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Premises; (2) loss or restriction of use of rentable space on the Premises; (3) adverse effect on the marketing of any rental space on the Premises; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Premises and surrounding properties). This indemnification clause shall survive any expiration or termination of this lease.

17. STORMWATER DISCHARGE:

Lessor has applied for and received a National Pollutant Discharge Elimination Permit (“NPDEP”) under the Federal Clean Water Act, which covers Tenant’s operations on the Premises.

Tenant shall ensure that no pollution or Hazardous Materials of any type is discharged into the storm water system at the Airport, and shall comply with the NPDEP in all respects and is responsible for any such discharge by Tenant or by any of Tenant’s officers, employees, agents, contractors, renters, guests or invitees during the entire term of this lease. Any fine or cost of remedial action required of Lessor, by any agency or agencies having jurisdiction thereover, as a result of actions on or discharges from the Premises, will be charged to Tenant, and Tenant shall immediately reimburse Lessor for such costs upon demand. In addition, any discharge of pollutants or Hazardous Materials, as defined herein, on or from the Premises is a Default of this lease and is grounds for its termination.

Tenant shall observe and obey all policies, rules, and regulations promulgated and enforced by Lessor and any other governmental entity having jurisdiction over the Airport.

18. NOISE ORDINANCE:

Tenant shall comply with Contra Costa County Ordinances 87-8 and 88-82, as amended, or any other rules or ordinances relating to noise standards at the Airport, as may be approved from time to time by the Contra Costa County Board of Supervisors.

19. SECURITY:

Lessor has no obligation to provide security to the Premises.

20. HOLD HARMLESS AND INDEMNIFICATION:

Tenant shall defend, hold harmless, and indemnify the Indemnitees (as defined below) from the Liabilities as defined in this Section 20.

- A. “**Indemnitees**” means Lessor, its governing body, elective and appointive boards, commissions, officers, employees, representatives and agents.
- B. “**Liabilities**” means any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of an Act (as such term is defined below) and such liabilities include, but are not limited to personal injury, death, property damage, inverse condemnation claims of third parties or any combination of these, and including the defense of any suits or actions at law or equity concerning these.

- C. An “Act” means any act, intentional or negligent, and any omission, of Tenant, its agents, subtenants, representatives, invitees, or contractors in connection with the occupancy and use of the Premises by Tenant, its shareholders, or any subtenant, renter or assignee.
- D. The promise and agreement in this Section 20 are not conditioned or dependent on whether Tenant or Lessor has prepared, supplied, or approved any plans or specifications in connection with work performed pursuant to Section 12 or 13 or has insurance or other indemnification covering any of these matters. This indemnification clause shall survive any expiration or termination of this Lease.

21. INSURANCE:

Tenant shall procure and maintain, at its own cost and expense, at all times during the term of this lease, the following policies issued by insurance companies authorized to do business in California, with a financial rating of at least an A + 3A status (unless otherwise stated below) as rated in the most recent edition of Best’s Insurance Reports:

- A. Commercial General Liability and Property Damage: Tenant shall obtain and maintain, owner, landlord, and tenant Commercial General Liability Insurance covering and insuring all parties hereto (including naming Contra Costa County and its officers, agents, and employees as additional insureds under the policy or policies) with a minimum combined single limit coverage of Two Million and no/100 Dollars (\$2,000,000) for all damages due to bodily injury, sickness or disease, or death to any person and damage to property, including the loss of use thereof, arising out of each accident or occurrence arising out of ownership, maintenance, or use of the Premises and all operations necessary or incidental thereto. The liability insurance maintained by the Tenant must be primary.
- B. Fire Insurance: Tenant shall insure for fire and extended coverage risks all personal property, improvements, and alterations in, on, or about the Premises. Such insurance shall be in an amount equal to one hundred percent (100%) of insurable, full replacement value of any Improvements located thereon, and shall include vandalism and malicious mischief endorsements.
- C. Worker’s Compensation: Tenant shall obtain workers’ compensation insurance as required by law, covering all employees of Tenant, and such insurance shall be kept in force during the entire term of this lease.
- D. Form of Policies: Tenant shall cause policies of insurance required by this Section to be in such standard form and written by such qualified insurance companies as is satisfactory to Lessor. Tenant shall provide evidence of such insurance to Lessor in the form of (i) copy of the policies, and (ii) a duly executed certificate of insurance. All of such certificates shall name “Contra Costa County, its officers, agents, and employees” as additional insureds. Said policy or policies or certificates shall contain a provision that written notice of policy lapses,

cancellation or any changes thereto shall be delivered to Lessor no fewer than thirty (30) days in advance of the effective date thereof.

- E. Notice: Tenant shall give Lessor prompt and timely notice of any claim made or suit instituted of which it has knowledge and which could in any way directly, contingently or otherwise, affect either Tenant or Lessor or both, and both Tenant and Lessor have the right to participate in the defense of such claim or suit to the extent of its respective interest.

22. TAXES:

Tenant agrees to pay before delinquency all taxes (including, but not limited to, possessory interest tax), assessments, license fees, and other charges that are levied and assessed upon Tenant's interest in the Premises, or upon Tenant's personal property installed or located in or on the Premises, by Contra Costa County or other legally authorized governmental authority. Tenant may pay any taxes and assessments under protest, without liability, cost or expense to the Lessor, to contest the amount in good faith.

23. INSPECTION, ACCESS AND NOTICE:

Upon twenty-four (24) hours written notice to Tenant, Lessor and its agents have the right to go upon and inspect the Premises and any and every building, structure, or improvement thereon. Lessor also has the right to serve or to post and to keep posted on the Premises, or on any part thereof, any notice permitted by law or this lease, including but not limited to a notice pursuant to Section 3094 of the Civil Code. Lessor is not liable in any manner for any inconvenience, disturbance, loss of business, or other damage arising out of Lessor's entry on the Premises as allowed in this Section. Lessor shall conduct its activities as allowed in this Section in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Tenant, and shall not materially interfere with access to or use of the Premises.

24. ASSIGNMENT AND ENCUMBRANCES:

Tenant may not voluntarily sell, assign, transfer or encumber (each, a "**Transfer**"), its interest in this lease or in the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Lessor's written consent except as provided in this Section 24. In the event Tenant sells its adjacent property for continued use as an automotive dealership, Tenant may then assign this Lease to a purchaser at the same time as the conveyance of its adjacent property. Lessor has the right to require additional financial and other information from the proposed assignee, purchaser, transferee or other encumbering party (each, a "**Transferee**"), to make its decision, and Tenant agrees to assist Lessor in receiving such information from any proposed Transferee. Any Transfer without Lessor's prior written consent is voidable and, at Lessor's election, constitutes a Default.

Any consent to a Transfer does not constitute a further waiver of the provisions of this Section.

If Tenant is a corporation or a limited liability company, any (i) dissolution, merger, consolidation, or other reorganization of Tenant, or (ii) the sale or other transfer of a controlling percentage of the capital stock or membership interests, as the case may be, of Tenant, or (iii) the sale of fifty percent (50%) of the value of the assets of Tenant, shall be deemed a voluntary assignment. The phrase "controlling percentage" means (a) in the case of a corporation, the ownership of, and the right to vote, stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors or (b) in the case of a limited liability company, ownership of, and the right to vote membership interests possessing more than fifty percent (50%) of the total combined voting interests of Tenant.

If Tenant is in default of monetary obligations to Lessor pursuant to this lease, Tenant immediately and irrevocably assigns to Lessor, as security for Tenant's monetary obligations under this lease, all rent from any subletting of all or part of the Premises as permitted by this lease, or a receiver for Tenant appointed on Lessor's application, may collect such rent and apply it toward Tenant's obligations under this lease.

25. SURRENDER OF POSSESSION:

A. Improvements.

Upon expiration, cancellation or other earlier termination of this lease, except as otherwise provided herein, title to all Improvements including all alterations or additions (including Unauthorized Additions) thereto, will automatically vest in Lessor and will remain on and will be surrendered with the Premises.

If Lessor does not desire title to any portion of the Improvements, Lessor shall notify Tenant in writing as soon as practicable of the Improvements to be removed by Tenant (the "Excluded Improvements"). Tenant shall remove the Excluded Improvements, whether above or below ground, within thirty (30) days following the expiration, cancellation or earlier termination of this Lease.

If Tenant fails to remove the Excluded Improvements, Lessor may remove them at Tenant's expense, and, upon written demand by Lessor, Tenant shall immediately reimburse Lessor, in full, for all of the costs and expenses incurred by Lessor in removing such Improvements.

Upon expiration, cancellation, or termination of this lease, Tenant shall surrender to Lessor the Premises and all improvements, including alterations and additions, in good condition (ordinary wear and tear and destruction to the Premises covered by Section 28. Destruction, excepted), provided, however, if Tenant is required to remove Excluded Improvements, Tenant shall the Premises within thirty (30) days after the expiration, cancellation, or termination of this Lease in good

condition (ordinary wear and tear and destruction to such Premises covered by Section 28. Destruction, excepted). If Tenant fails to surrender the Premises to Lessor on expiration, cancellation, or termination of this Lease, Tenant shall defend, indemnify, and hold Lessor harmless from any and all claims, liability, costs, and damages resulting from Tenant's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant or renter.

B. Personal Property.

Title to personal property belonging to Tenant, or Subtenant (for purposes of this Section, each, an "Owner") will remain in the Owner all times during the Term of this Lease, and the Owner has the right at any time to remove any or all of its personal property from the Premises, provided that upon any such removal, Owner shall repair, at Owner's expense, any damage resulting therefrom and leave the Premises in a clean and neat condition.

If Owner fails to remove any personal property from the Premises within thirty (30) days after the expiration, cancellation, or termination of this Lease, such personal property may be removed by Lessor at Tenant's expense, by charging such expense to the Security Deposit, as provided in Section 5. Additional Payment Provisions. If Lessor's cost to remove personal property from the Premises exceeds the amount of the Security Deposit, then Tenant shall reimburse Lessor the difference between Lessor's cost and the amount of the Security Deposit, immediately upon receipt of Lessor's written demand therefor.

C. Effectiveness.

The provisions of this Section will survive the expiration, cancellation or earlier termination of this Lease.

26. DEFAULT:

The occurrence of any of the following is a "Default" by Tenant:

- A. Tenant's failure to pay when due any rent required to be paid under this lease if the failure continues for three (3) days after written notice of the failure from Lessor to Tenant.
- B. Tenant's failure to undertake such maintenance of the Premises as is determined to be reasonable by the Director of Airports, in his sole discretion, if the failure continues for thirty (30) days after notice has been given to Tenant.
- C. Tenant's failure to cure a safety hazard immediately upon notice from Lessor to do so. If, in the sole discretion of the Director of Airports, the required cure of the noticed safety hazard cannot be completed within twenty-four (24) hours, Tenant's failure to perform will constitute a default under the lease unless Tenant undertakes to cure the failure within twenty-four (24) hours and diligently and continuously proceeds to complete the cure as soon as reasonably possible.

- D. Tenant's failure to provide any instrument or assurance or estoppel certificate required by this lease if the failure continues for five (5) days after written notice of the failure from Lessor to Tenant.
- E. Tenant's failure to perform any other obligation under this lease if the failure continues for thirty (30) days after written notice of the failure from Lessor to Tenant. If, in the sole discretion of the Director of Airports, the required cure of the noticed default cannot be completed within thirty (30) days Tenant shall not be in Default of this Lease if Tenant commences to cure the Default within the thirty (30) day period and diligently and in good faith continues to cure the Default to completion.
- F. The committing of waste on the Premises.
- G. Tenant's failure to comply with any of the provision of Section 30, Non-Discrimination.
- H. Tenant's failure to occupy the Premises for thirty (30) consecutive days, which will be deemed abandonment.
- I. To the extent permitted by law:
 - 1) A general assignment by Tenant or any guarantor of the lease for the benefit of creditors.
 - 2) The filing by or against Tenant or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days.
 - 3) The appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved.
 - 4) Any execution or other judicially authorized seizure of all or substantially all of the assets of Tenant located on the Premises, or of Tenant's interest in this lease, unless that seizure is discharged within thirty (30) days.

When this lease requires service of notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure section 1151 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or similar notice required by this lease) in the manner required by Section 35, Notices, will replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure section 1162 or any similar or successor statute.

27. LESSOR'S REMEDIES:

Lessor has the following remedies upon the occurrence of a Default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law.

A. Lessor may terminate this lease and Tenant's right to possession of the Premises at any time. No act by Lessor other than giving written notice to Tenant shall terminate this lease. Lessor's acts of maintenance, efforts to re-let the Premises, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this lease do not constitute a termination of Tenant's right to possession. Upon termination of this lease, Lessor has the right to recover from Tenant:

- 1) The worth, at the time of the award, of the unpaid rent and fees that had been earned at the time of the termination of this lease;
- 2) The worth, at the time of the award, of the amount by which the unpaid rent and fees that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent and fees that Tenant proves could have been reasonably avoided;
- 3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent and fees that Tenant proves could have been reasonably avoided; and
- 4) Any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Tenant's Default.

"The worth, at the time of the award," as used in (1) and (2) of this Section, is to be computed by allowing interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less. "The worth, at the time of the award," as used in Paragraph 3 of this Section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

B. Lessor, at any time after the occurrence of a Default, can cure the Default at Tenant's cost, provided Lessor has given Tenant thirty (30) days written notice and (i) Tenant has failed to cure such Default within such thirty (30) days or, (ii) if the Default is of such a nature that it cannot be cured within such thirty (30) day period, Tenant fails to pursue such cure diligently to completion. If Lessor at any time, by reason of Tenant's Default, pays any sum to cure the Default or does any act that requires the payment of any sum, the sum paid by Lessor shall be due from Tenant to Lessor within thirty (30) days from the time the sum is paid, upon written notice given by Lessor to Tenant, and if paid by Tenant at a later date,

shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, from the date the sum is paid by Lessor until Lessor is completely reimbursed by Tenant. Such sum, together with interest accrued thereon shall be paid by Tenant as additional rent.

28. DESTRUCTION:

In the event of damage to or destruction of any Improvement, Tenant shall repair, replace or rebuild the Improvement so it is in substantially the same condition as it was in immediately before such damage or destruction. Tenant will have ninety (90) days to commence repair or restoration of the Improvement, and shall diligently pursue the completion of the repair or restoration. The total destruction of the Improvement will terminate this lease.

29. CONDEMNATION:

- A. If the whole or any part of the Premises is taken for any public or quasi-public use under any actions or by any statute or by right of eminent domain, or by a conveyance in lieu thereof, then this lease will automatically terminate as to the portion taken. If only a part of the Premises is so taken and, in the discretion of the Lessor, the balance of the Premises is unusable or unsuitable for the intended purpose of this lease, then Lessor, at its sole option and in its sole discretion, has the right to terminate this lease in its entirety on one hundred twenty (120) days notice to Tenant. If only a part of the Premises is so taken and the Tenant, in the exercise of reasonable discretion, determines that the balance of the Premises is unusable or unsuitable for the Tenant's purposes hereunder, then Tenant has the right to terminate this lease in its entirety on thirty (30) days notice to Lessor.
- B. In the event of a taking of a portion of the Premises under the power of eminent domain that does not result in a termination of this lease, Tenant shall continue to pay rent hereunder without reduction and the lease will continue in full force and effect as to the part not taken. In the event this lease is terminated in its entirety as the result of condemnation, Tenant shall pay all rent provided for in this lease through the date of termination. In no event will Tenant have a claim against Lessor for the value of the unexpired Term of this lease or for any other loss or damage arising or resulting from the termination or partial termination of this lease.

In the event that all or any part of the Premises is taken by eminent domain or conveyed in lieu thereof, both parties have the right to pursue a condemnation award against the condemning agency. Tenant is entitled to any award for lost business, moving expenses and the depreciated value of any fixtures or property improvements installed, and not removed by Tenant. Lessor is entitled to all other amounts awarded, including, but not limited to, all amounts awarded for land value. No claim made by or payments to the Tenant will diminish or otherwise adversely affect the Lessor's award. Provided the Lessor is not the

condemning agency, Tenant shall not have and shall not claim against Lessor for any loss, damage or other matter arising out of a condemnation.

30. NON-DISCRIMINATION:

- A. Tenant assures that it will undertake an affirmative action program as such term is defined and required by 14 CFR Part 152, Sub-part E (“**Sub-part E**”) to ensure that no person is excluded from participating in any employment activities covered by Sub-part E on the grounds of race, creed, color, national origin, or sex. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Sub-part E. Tenant assures that it will require that its covered suborganizations provide assurances to Tenant that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by Sub-part E, undertake to the same effort.
- B. In the event of a breach of the above non-discrimination covenants, Lessor has the right to terminate this lease and to re-enter and repossess the Premises and the facilities thereon. This provision does not become effective until the procedures of Title 49, CFR Part 21 are followed and completed, including the expiration of any appeal rights.
- C. Tenant shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- D. Noncompliance with Subsection C. above constitutes a material breach thereof and, in the event of such noncompliance, Lessor has the right to terminate this lease without liability therefore or, at the election of Lessor or the United States, either or both governments shall have the right to judicially enforce the provisions of Subsection C.
- E. Tenant agrees that it shall insert the above four paragraphs in any sublease agreement by which Tenant grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

31. OPERATION OF AIRPORT BY LESSOR:

- A. Aviation Hazards: Lessor shall take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, including preventing Tenant from erecting, any building or other structure on the Premises which, in the opinion of the Lessor or the Federal Aviation Administration, would limit the usefulness of the Airport or constitute a hazard to aircraft.

- B. Navigational Aids: Lessor reserves the right during the term of this lease or any renewal and/or extension or holdover period thereof to install air navigational aids including lighting, in, on, over, under, and across the Premises. In the exercise of any of the rights hereof, Lessor agrees to give Tenant no less than ninety (90) days written notice of its intention to install such air navigational aids and to use its best efforts to minimize interference with Tenant's use of the Premises.

32. AIRPORT USE AND DEVELOPMENT:

- A. This lease is subordinate to the provisions and requirements of any existing or future agreement between Lessor and the United States, including but not limited to the Federal Aviation Administration, relative to the development, operation, and maintenance of the Airport.
- B. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight includes the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation at the Airport.

33. DEVELOPMENT OF PREMISES:

- A. Tenant shall comply with the notification and review requirements covered by 14 CFR Part 77 of the Federal Aviation Regulations in connection with any construction, modification or alteration of any present or future building or structure situated on the Premises.
- B. Tenant shall not erect nor permit the erection of any structure or object, or permit the growth of any tree on the Premises to exceed the established height contours. In the event the aforesaid covenants are breached, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at Tenant's sole cost and expense.
- C. Tenant shall not make use of or develop the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the sole cost and expense of Tenant.
- D. Nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103) or to consent to future construction, modification or alteration.

E. This lease and all of its provisions are subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport by the United States during a time of war or national emergency. In the event the United States Government acquires or takes over the Airport during a time of war or national emergency, rent shall be abated in proportion to that portion of the Premises unavailable for Tenant's use for the period of such acquisition or control by the United States Government.

34. INSTRUMENT OF TRANSFER:

This lease is subordinate and subject to the provisions and requirements of the Instrument of Transfer by and between the United States and Lessor dated the 9th day of October, 1947, and recorded in Book 1137, at page 114 of the Official Records of the County of Contra Costa, State of California.

35. CHOICE OF LAW:

This lease is governed by the laws of the State of California, with venue in the Superior Court of Contra Costa County, California.

36. NOTICES:

Any and all notices to be given under this lease may be served by enclosing same in a sealed envelope addressed to the party intended to receive the same, at its address set forth herein, and deposited in the United States Post Office as certified mail with postage prepaid. When so given, such notice will be effective from the date of its mailing. Unless otherwise provided in writing by the parties hereto, the address of Lessor, and the proper party to receive any such notices on its behalf, is:

Director of Airports
Contra Costa County Airports
550 Sally Ride Drive
Concord, CA 94520-5550

and the address of Tenant is:

Gerald Valente
23 Tweed Blvd.
Nyack, New York 10960
jv18@verizon.net
Phone 201-816-0606
Fax 201-816-1313

37. BINDING ON SUCCESSORS:

The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto.

38. INVALID PROVISIONS; SEVERABILITY:

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision contained herein is held to be invalid by a court of competent jurisdiction, such invalidity does not invalidate any other covenant, condition or provision of this lease, provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Tenant in their respective rights and obligations contained in the valid covenants, conditions and provisions of this lease.

39. ENTIRE AGREEMENT:

This lease and all exhibits referred to in this lease constitute the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed and supersedes all prior or contemporaneous understandings or agreements of the parties. No alterations or variations of this lease are valid unless in writing and signed by Lessor and Tenant.

40. CUMULATIVE RIGHTS AND REMEDIES:

The rights and remedies with respect to any of the terms and conditions of this lease are cumulative and not exclusive and are in addition to all other rights and remedies at law or in equity. Each right or remedy shall be construed to give it the fullest effect allowed in law.

41. NO THIRD-PARTY BENEFICIARIES:

Nothing in this Agreement, express or implied, is intended to confer on any person, other than Lessor and Tenant, and their respective successors-in-interest, any rights or remedies under or by reason of this lease.

42. NO CONTINUING WAIVER:

The waiver by Lessor of any breach of any of the terms or conditions of this lease does not constitute a continuing waiver or a waiver of any subsequent breach of the same or of any other terms or conditions of this lease. The receipt by Lessor of any rent with knowledge of the breach of any term or condition of this lease shall not be deemed to be a waiver by Lessor, unless such waiver is specifically expressed in writing by the Director of Airports. No payment by Tenant or receipt by Lessor of a lesser amount than specified

in this lease shall be deemed to be other than a payment on account of such rent and shall not be deemed a waiver of notice of termination and of forfeiture of this lease.

43. COVENANT AGAINST LIENS:

Neither Tenant nor Lessor shall permit any mechanic's, materialman's, or other lien against the Premises, or the property of which the Premises forms a part, in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien is filed against the Premises, or property of which the Premises forms a part, the party charged with causing the lien will cause the same to be discharged, provided however, that either party may contest any such lien, so long as the enforcement thereof is stayed.

[Remainder of Page Intentionally Left Blank]

44. HEADINGS AND CAPTIONS:


The section headings and captions of this lease are, and the arrangement of this instrument is, for the sole convenience of the parties to this lease. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this lease. The lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this lease and their counsel have read and reviewed this lease and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this lease.

The parties are signing this lease as of the date stated in the introductory clause.

LESSOR
CONTRA COSTA COUNTY, a political
subdivision of the State of California

TENANT
Gerald Valente

By: _____
Keith Freitas
Director of Airports

By:  _____
Gerald Valente

RECOMMENDED FOR APPROVAL:

Jared A. Monez 1994 Trust

By: _____
Beth Lee
Assistant Director of Airports

By:  _____
Gerald Valente
Trustee

By: _____
Karen A. Laws
Principal Real Property Agent

APPROVED AS TO FORM:

SHARON L. ANDERSON,
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel