

**THIRD AMENDMENT TO LEASE
BETWEEN CONTRA COSTA COUNTY AND LITHIA REAL ESTATE, INC.**

This Third Amendment to Lease (“**Amendment**”) is dated _____, 2020 (the “**Effective Date**”), and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**Lessor**” or “**County**”), and FUTURE AUTOMOTIVE CONCORD, INC, a California corporation (“**Lessee**” or “**Tenant**”). Lessor and Lessee are sometimes collectively referred to as the “**parties**,” and each a “**party**.”

Recitals

- A. County owns fee title to the approximately 6.1-acre parcel of real property better known as 4901 Marsh Drive (the “**Premises**”), in the City of Concord, California, near the Buchanan Field Airport (“**Airport**”).
- B. Lessor entered into a lease (“**Lease**”) dated August 20, 1985, with the Solano Way Partnership, a California General Partnership, for use as an automotive dealership as more specifically described in the Lease. The Lease was amended on May 21, 1996, and on August 17, 1999.
- C. Solano Way Partnership assigned its leasehold interest to Comerica Bank Detroit, a Michigan banking corporation, (“**Comerica**”) as security for a loan pursuant to an Assignment dated January 23, 1990.
- D. Solano Way Partnership further assigned its leasehold interest for the purpose of securing a loan with Chrysler Credit Corporation (“**Chrysler**”) pursuant to an Assignment dated May 1, 1991.
- E. Solano Way Partnership subleased the Premises, with County’s consent, to Lithia Real Estate, Inc., on March 21, 1997.
- F. Solano Way Partnership assigned its leasehold interest to Lithia Real Estate, Inc., an Oregon Corporation, pursuant to an Assignment dated September 21, 1999.
- G. Lithia Real Estate, Inc. assigned its leasehold interest to Crown Automotive, Inc., a California corporation, pursuant to an Assignment dated June 8, 2011.
- H. Crown Automotive, Inc. assigned its leasehold interest to Lithia Real Estate, Inc. pursuant to an Assignment dated October 6, 2015.
- I. Lithia Real Estate, Inc. assigned all of its right, title and interests in the Lease to Tenant pursuant to an Assignment dated January 7, 2020.
- J. Lessor and Tenant desire to amend the Lease in order to modify the term and rent provisions therein. Tenant has agreed to pay the County \$15,000 as consideration for the Lease modifications.

The parties therefore agree to amend the Lease as of the Effective Date, as follows:

Agreement

- 1. Parties. Each reference to “Lessee” or “Tenant” under the Lease, as amended, shall mean “FUTURE AUTOMOTIVE CONCORD, INC, a California corporation.”

2. Section 4. Term, in the Lease, as amended, is deleted in its entirety and replaced with new Section 4. Term, to read as follows:

4. Term.

A. Initial Term. The initial Lease term (“**Term**”) begins on the Effective Date, and it expires on August 20, 2032.

B. Extensions. Tenant may extend the Term of the Lease up to three times, one extension at a time, each for an additional period of five (5) years (each an “**Extension Period**”), upon all terms, covenants, and conditions set forth herein, and provided both (i) that Tenant is not in default beyond any applicable cure period as of the commencement of the Extension Period, and (ii) that Tenant is not in default on the day an Extension Notice (defined below) is given. Not less than six (6) months prior to the end of the Term, Tenant may request that the Lease be extended by an Extension Period by giving to the Director of Airports written notice (the “**Extension Notice**”) of Tenant’s intention to exercise the option to extend the Term for an Extension Period. Tenant’s failure to timely deliver an Extension Notice shall constitute a waiver of Tenant’s option to extend the Term.

Lease extension period one would commence on August 21, 2032, and end on August 20, 2037. Lease extension period two would commence on August 21, 2037, and end on August 20, 2042. Lease extension period three would commence on August 21, 2042, and end on August 20, 2047.

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. Section 5. Rent in the Lease, as previously amended, is hereby deleted in its entirety and replaced with new Section 5. Rent, to read:

5. Rent: Tenant shall make the following payments to Lessor:

A. Upfront Payment. In recognition of this lease effectively extending the 1985 Lease, Tenant shall pay \$15,000 as a non-refundable upfront payment to Lessor on or before January 15, 2020.

B. Initial Rent: Beginning on the Effective Date, Tenant shall pay rent in the amount of Twenty-Five Thousand Four Hundred Thirty-Two and 42/Dollars (\$25,432.42) per month (“**Rent**”).

C. CPI Increases: On January 1, 2021, and on each January 1 thereafter throughout the Term, the Rent will be increased (or remain unchanged, but not decreased) and rounded to the nearest dollar,

according to the change in the Consumer Price Index (“CPI”) for the most recent period ending October 31, based on the CPI Factor (defined below). Any adjustment to Rent based on the CPI Factor may not be by more than ten percent (10%) per annum or 25% over any five (5) year period of Rent then in effect.

- D. No Decrease in Base Rent: In no event will the Rent for any year be less than the Rent in effect during 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.
- E. 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 October 31 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 governmental agency.

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

- F. 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, plus interest on said unpaid balance at a rate of one and one-half percent (1-1/2%) per month, from the date said payment was due and payable until paid in full. Tenant shall pay said late charge on or before 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.
- G. Form and Place of Payment: All Rent and fees shall be paid in cash or by personal check, certified check, or money order, payable to the County of Contra Costa, and must be received on or before the due date at 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.

- H. Returned Checks: If a check written by Tenant is returned for insufficient funds, Lessor may impose a reasonable service charge 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 in any twelve (12) month period.
- I. 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 (such as review of a proposed assignment, or other transfer, or estoppel certificate or financing of Leasehold Estate), Tenant shall pay all such costs and expenses incurred by Lessor within thirty (30) days after demand therefor by Lessor.

Tenant shall pay to Lessor a transaction fee ("**Transaction Fee**") of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), plus all Lessor's costs, including, but not limited to, staff time at rates determined by the County Auditor, for Lessor's time spent in connection with Lessor's reviewing a transaction until said transaction is completed. The Transaction Fee shall be increased by \$500.00 every five years after the Effective Date of this Third Amendment to Lease.

- 4. Section 18.A. Notice is deleted in its entirety and replaced with new Section 18.A. Notice, to read:

- A. Notice. Any and all notices given under this Lease, or otherwise, must be delivered in a sealed envelope addressed to the party intended to receive the same, at its designated address, and either (a) deposited with the United States Post Office as certified mail with postage prepaid, or (b) delivered in person at the receiving party's designated address. Notice is considered effective either (a) 48 hours after the date of the mailing, or (b) when delivered in person at the party's designated address. All notices must be addressed as follows:

Notice to COUNTY: Director of Airports
550 Sally Ride Drive
Concord, California 94520

Notice to LESSEE: Future Automotive Concord, Inc.
2285 Diamond Blvd.
Concord, CA 94520
Attn: Rick Boyd

A party may change its address for notices by providing the other Party written notice in the manner required herein at least 10 business days before the change of address is effective. A party may provide a courtesy

copy of any notice to the other party by email, but a courtesy copy by email does not substitute for providing notice in the manner required under this section.

5. Except as modified herein, each of the terms and conditions of the Lease remain unmodified and continue in full force and effect. In the event of any conflict between the terms and conditions of the Lease and this third amendment, the terms and conditions of this Amendment will prevail.
6. Subject to the assignment and subletting provisions of the Lease, this Amendment binds and inures to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns. Each party hereto, and the persons signing below, warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this third amendment.

[The remainder of this page intentionally left blank.]

7. The remaining terms and provisions of the Lease are hereby incorporated in this Amendment as though fully set forth herein.

The parties are signing this Amendment as of the Effective Date first above written.

LESSOR:

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

By: _____
Name: Keith Freitas
Title: Director of Airports

TENANT:

FUTURE AUTOMOTIVE CONCORD, INC.,
a California corporation

By: _____
Name: _____
Title: _____

RECOMMENDED FOR APPROVAL:

By: _____
Name: Beth Lee
Title: Assistant Director of Airports

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Sharon L. Anderson,
County Counsel

By: _____
Name: Stephen M. Siptroth
Title: Deputy County Counsel