

AGREEMENT OF SALE

THIS AGREEMENT ("Agreement") is made as of the 30th day of April, 2010 by and between the City of Philadelphia, Department of Public Property (referred to herein as the "Seller"), and Biagio DeSimone (herein referred to as "Buyer"). Seller and Buyer sometimes herein are individually referred to as "Party" and collectively as "Parties".

BACKGROUND

WHEREAS, Seller is the owner and Landlord of 3.5154 acres located at 11295 East Roosevelt Boulevard in Philadelphia, PA (hereafter referred to as the "Property" or "Premises"); and Buyer is the current tenant under a Settlement Lease between Seller and Buyer, dated August 17, 2005 (hereafter referred to as the "Settlement Lease"); and

WHEREAS, on February 6, 2009 Seller issued a Request for Proposal attached hereto as Exhibit "A" (hereafter referred to as the "RFP") for the sale of the above Property and Buyer was a timely Respondent to the RFP; and

WHEREAS, based on the terms and conditions set forth in the RFP and the terms and conditions of this Agreement of Sale, Seller desires to sell, transfer and convey to Buyer in "AS IS" condition, which Buyer desires to purchase from Seller, the Property herein defined.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions and agreements herein contained, and intending to be legally bound, Seller agrees to sell and convey to Buyer its right title and interest in and to the Property and Buyer agrees to purchase and accept from Seller the Property, on the following terms and conditions:

1. The parties expressly agree that the above Background and the RFP are incorporated herein as a material part of this Agreement.
2. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:
 - .01 "Airport" shall mean Philadelphia's Northeast Airport
 - .02 "Airport Layout Plan" shall mean the plan for Philadelphia Northeast Airport.
 - .03 "Approved Escrow Account" shall have the meaning set forth in Section 4b below.
 - .04 "Broker" shall have the meaning set forth in Section 14 below.
 - .05 "Casualty" shall have the meaning set forth in Section 16 below.
 - .06 "City" shall mean The City of Philadelphia.
 - .07 "Closing" shall have the meaning set forth in Section 13 below.

.08 "Closing Date" shall mean the date on which the Closing occurs.

.09 "Due Diligence Period" shall begin on the Effective Date of this Agreement and shall continue as set forth in sections 5 and 7 below.

.10 "Effective Date" shall have the meaning provided in Section 24f below.

.11 "Escrow Agent" shall have the meaning set forth in Section 4b below.

.12 "Environmental Law" shall mean all federal, state, and local environmental safety or health laws, statutes, rules, regulations, ordinances, orders enacted or promulgated, as the case may be, prior to Closing, or common law including, but not limited to, reported decisions of any state or federal court and shall include, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. §2601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.); the Clean Air Act, as amended, (42 U.S.C. § 7401 et seq.); the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.); the Pennsylvania Solid Waste Management Act, as amended (35 P.S. § 6020.101 et seq.); the Pennsylvania Clean Streams Law, as amended (35 P.S. 691.1 et seq.); the Pennsylvania Underground Storage Tank and Spill Prevention Act 35 P.S. § 6021.101, et seq.; and the Pennsylvania Hazardous Material Emergency Planning and Response Act, as amended (35 P.S. § 6022.101 et seq.), as any of the foregoing may hereinafter be amended prior to Closing; and any rule or regulation promulgated pursuant thereto prior to Closing, and any other law, ordinance, rule, regulation, permit or permit condition, order or directive, presently enacted or promulgated or hereafter enacted or promulgated prior to Closing, addressing environmental, health, or safety issues of or by the federal government or any state or other political subdivision thereof, or any agency, court or body of the federal government, or any state or political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

.013 "Exceptions" shall have the meaning set forth in Section 5 below.

.014 "FAA Approval" shall have the meaning set forth in Section 8b below.

.015 "FIRPTA" shall have the meaning set forth in Section 13(c)(iv) below.

.016 "Hazardous Substance" shall mean (A) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive materials, oil, petroleum products or by products, crude oil, natural gas, natural gas liquids, volatile or highly volatile liquids, and/or synthetic gas, and shall include, without limitation, substances or any other elements or compounds defined as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", "pollutants", or "contaminants", as those terms are used in any Environmental Law or at Common Law, and (B) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time, but prior to Closing, are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned-up, or remediated.

.017 "Improvements" shall have the meaning set forth in Section 3 below.

.018 "Land" shall have the meaning provided in Section 3 below.

.019 "Land Survey" shall mean land survey made by a surveyor or civil engineer duly licensed in the Commonwealth of Pennsylvania (i) in accordance with "Minimum Standard Detail Requirements for, ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and ACSM in 1992 and (ii) pursuant to the Accuracy Standards as adopted by ALTA and ACSM and in effect on the date of the land survey.

.020 "Ordinance" shall have the meaning provided in Section 8(b)(ii) below.

.021 "Permitted Exceptions" shall have the meaning provided in Section 5 below.

.022 "Premises" shall have the meaning provided in Section 3 below.

.023 "Property" shall mean the Premises.

.024 "Purchase Price" shall have the meaning provided in Section 4a below.

.025 "Recapture Sum" shall have the meaning set forth in Section 4e below.

.026 "RFP" shall have the meaning set forth in the second recital in the Background section.

.027 "Sales Deposit" shall have the meaning set forth in Section 4b below.

.028 "Seller" shall mean the City of Philadelphia.

.029 "Seller Approval" shall have the meaning set forth in Section 8b below

.030 "Settlement Lease" shall have the meaning set forth in the first recital.

.031 "Title Commitment" shall mean a binder, preliminary title report or commitment issued by the Title Insurer to Buyer providing for the issuance, at the Closing, to Buyer of a Title Policy.

.032 "Title Insurer" shall mean a reputable title insurance company authorized to do business in the Commonwealth of Pennsylvania and selected by Buyer.

.033 "Title Insurer Agent" shall mean an authorized representative of the Title Insurer with the power to act on its behalf.

.034 "Title Policy" shall mean, an ALTA 1970 Owner's Form B (1970 Rev. 10-17 -70 and Rev. 10-17-84) Extended Coverage Policy of Title Insurance, with liability limits equal to the purchase price, dated as of the date of Closing, in favor of the Buyer, issued at standard rate insuring Buyer as the owner of good and marketable and indefeasible fee simple title to the Premises free and clear of mortgages, liens, encumbrances, judgments, and parties in possession and subject only to the "Permitted Title Exceptions".

3. Sale of Property. Subject to the terms and conditions set forth in this Agreement and the RFP, Seller hereby agrees to sell and convey to Buyer in "AS IS" condition, who hereby agrees to purchase from Seller, upon the terms and conditions set forth herein all that certain parcel of land (the "Land"), consisting of approximately 3.5154 acres, located in City of Philadelphia, Commonwealth of Pennsylvania, known as 11295 East Roosevelt Boulevard and more specifically described by metes and bounds in Exhibit "B", attached hereto

and made a part hereof, together with all and singular the current improvements ("Improvements") erected or installed thereon and all rights, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, subject to the terms and conditions set forth herein and the restrictions and covenants set forth in a Deed conveying the Premises. (For purposes of this Agreement, the Land and the Improvements, and the hereditaments, privileges, rights of way, easements and appurtenances thereto collectively are herein referred to as the "Property" or "Premises").

4. Purchase Price.

a. Purchase Price. The purchase price for the Property shall be TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000.00) (said sum is herein referred to as the "Purchase Price").

b. Sales Deposit. Buyer shall pay a total of One Hundred Thousand (\$100,000.00) Dollars, including a credit for the Twenty Five Thousand Dollars (\$25,000.00) Buyer submitted with its proposal for purchase of the Property, to an Escrow Agent designated by Seller (herein referred to as "Escrow Agent"). Escrow Agent, upon clearance of the check and receipt of such monies, shall and agrees by acceptance thereof to promptly deposit and hold the same in a segregated, interest bearing escrow account or certificate of deposit or United States Treasury bills, as designated and pursuant to written instructions given by the Seller and such account, insured certificate of deposit or United States Treasury bills designated by Seller shall be insured by the Federal Deposit Insurance Corporation (hereafter collectively are referred to herein as the "Approved Escrow Account") and to disburse the same One Hundred Thousand Dollars (\$100,000.00) plus interest in accordance with the terms of this Agreement.

c. In the event of doubt by the Escrow Agent as to its duties, obligations or liabilities under the provisions of this Agreement, the Escrow Agent may, in its sole discretion, continue to hold the Sales Deposit and interest in the Approved Escrow Account until the Parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the Parties thereto; or it may deposit all the Sales Deposit plus interest with the Clerk of the Court of Philadelphia County, and upon notifying all the Parties of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of accounting for any portion of the Sales Deposit or interest theretofore delivered out of escrow. In the event of any suit between the Buyer and the Seller wherein the Escrow Agent is made a party by virtue of its acting as Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, Escrow Agent shall be entitled to recover a reasonable attorney's fee and cost incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing Party. Parties agree that the Escrow Agent shall not be liable to any party or person whomsoever for misdelivery to Buyer or Seller of monies subject to this escrow unless such misdelivery shall be due to the willful breach of this Agreement by the Escrow Agent or gross negligence on the part of the Escrow Agent. At Closing, Escrow Agent shall pay the Escrow Monies to the Seller upon the conveyance of the Property pursuant to the terms of this Agreement. If the conveyance of the Property does not take place pursuant to this Agreement, Escrow Agent at Closing shall return the Escrow Monies to the Buyer.

d. Balance of Purchase Price. After application of the Sales Deposit plus interest to the Purchase Price, the balance of the Purchase Price, shall be paid by Buyer at Closing by wire transfer or certified check in immediately available United States funds to a

bank account, which Seller will designate by notice to Buyer not less than seven (7) days prior to Closing.

e. Recapture Condition on Resale:

(1) Buyer and Seller expressly agree that in consideration for the Seller's agreement to sell the Premises to Buyer under the terms and conditions of this Agreement, Buyer shall pay to Seller a sum equal to fifty percent (50%) of the proceeds Buyer receives or shall be entitled to receive upon resale of the Premises on or before October 31, 2024, which exceed the Purchase Price set forth in Section 4a less the value of any capital improvements added by Buyer after Closing including the cost of the service facility (hereafter referred to as the "Recapture Sum").

(2) The Recapture Sum shall be payable to City in one lump sum on the date the Premises are transferred. A failure by Buyer to comply with the terms of this paragraph shall be a breach and default of the terms of this Agreement, and the City shall have all available remedies at law or in equity for said breach and default. The provisions of this paragraph shall survive the Closing or termination of this Agreement.

5. Due Diligence: As set forth in Section 2.09, Buyer shall be permitted the following time periods for Due Diligence:

a. Within fifteen (15) days of the Effective Date of this Agreement, Buyer shall order at its expense a Title Commitment covering the Premises from the Title Insurer and Buyer shall concurrently therewith, instruct the Title Insurer to forward a copy of the Title Commitment to Seller on the same date Title Insurer sends the Title Commitment to Buyer. Buyer shall notify Seller within five (5) days of Buyer's receipt of the Title Commitment, but no later than sixty (60) days after the Effective Date of this Agreement of those exceptions, liens or encumbrances disclosed in the Title Commitment which limit or restrict Seller's title to the Property ("Exceptions"). If Buyer fails to disclose such items to Seller within this sixty (60) days time period, such items shall be deemed approved by Buyer. In the event Buyer disapproves of any of the Exceptions and discloses this disapproval to Seller during this sixty (60) day period, Seller shall have thirty (30) days from the end of the sixty (60) day period to remove the Exceptions, but Seller shall have no duty or obligation to remove any Exceptions and Buyer shall be solely responsible for any Exception which costs less than Five Thousand (\$5,000.00) Dollars to remove from the Title Commitment. Those Exceptions which Buyer and Seller approve in writing are referred to as "Permitted Exceptions." In the event the Parties cannot agree to and approve in writing the Permitted Exceptions within one hundred (120) days of the Effective Date, this Agreement shall immediately terminate unless the parties agree to extend the time to negotiate the Permitted Exceptions in writing. Upon such termination the Sales Deposit shall be returned to Buyer and neither party shall have any further obligation to the other under this Agreement. Upon such termination however, Buyer shall remain obligated to Seller under the terms of the Settlement Lease.

b. Within forty-five (45) days of the Effective Date of this Agreement, Buyer shall order at its expense a Land Survey of the Premises from an engineer or surveyor duly licensed in the Commonwealth of Pennsylvania. Buyer shall forward the Land Survey to Seller within five (5) days after Buyer's receipt of the Land Survey. Buyer shall notify Seller within ten (10) days of Buyer's receipt of the Land Survey of those exceptions, liens, encroachments or encumbrances disclosed in the Land Survey which limit or restrict Seller's title to the Property or the metes and bounds of the Premises ("Survey Exceptions"). If Buyer

fails, within the ten (10) day period to disclose such item to Seller, then such items shall be deemed to be approved by Buyer. In the event Buyer disapproves of any of the Survey Exceptions and discloses the disapproval to Seller during the ten (10) day period, Seller shall have thirty (30) days from the date of receipt of the disapproval from Buyer to agree to remove the Survey Exceptions by Closing, but Seller shall have no duty or obligation to remove Survey Exceptions which costs less than Five Thousand (\$5,000.00) Dollars to remove. Those Survey Exceptions which the Parties agree to in writing shall be referred to as "Permitted Survey Exceptions." In the event the Parties cannot agree to and approve in writing within fifty-five (55) days after the Effective Date of this Agreement, this Agreement shall immediately terminate, unless the parties agree to extend the time to negotiate the Permitted Survey Exceptions in writing. Upon such termination, the Sales Deposit plus interest shall be returned to Buyer and neither Party shall have any further obligation to the other under this Agreement. Upon such termination however, Buyer shall remain obligated to Seller under the terms of the Settlement Lease.

6. Settlement Lease. With regard to Buyer's current tenancy at the Premises, the terms and conditions of the Settlement Lease shall remain in full force and effect, unless and until the Buyer and Seller consummate the sale of the Premises at Closing.

7. Environmental Inspections or Tests. Buyer, as part of its Due Diligence shall be permitted to conduct a Phase I and/or a Phase II environmental assessment of the Property (hereafter "Environmental Assessments"). Buyer shall obtain and shall furnish to Seller true and complete copies of the final reports of said Environmental Assessments within sixty (60) days of the Effective Date of this Agreement.

a. Buyer shall be solely responsible for (i) any and all injuries, including but not limited to death to persons; and/or (ii) any and all adverse conditions affecting the Premises; and/or (iii) any and all damage to or contamination of the Premises, which results directly or indirectly, in whole or in part, from Buyer's environmental assessments at the Premises. Said injuries, adverse conditions, damage and/or contamination shall be collectively referred to as "Environmental Injuries and Damage". Buyer shall defend (by counsel approved in writing by City) and indemnify City against any and all claims arising from said Environmental Injuries and Damage and any costs related thereto, including but not limited to reasonable attorneys fees and/or the costs of settlement. This provision shall survive the Closing and/or termination of this Agreement.

b. In the event the environmental assessments reveal any condition that adversely impacts the present and proposed use of the Property, Buyer shall be permitted to terminate this Agreement at any time during the seventy-five (75) day period after the Effective Date. Upon such termination, the Sales Deposit plus interest shall be returned to Buyer, and neither party shall have any further obligation to the other under this Agreement, except as set forth in this Section 7 or as otherwise provided in this Agreement. Upon such termination, Buyer shall remain obligated to Seller under the terms of the Settlement Lease.

8. Conditions Precedent to the Obligations of the Seller: The obligations of the Seller under this Agreement are subject to the satisfaction at Closing of the following conditions:

a. Buyer shall have performed all obligations and agreements, and complied with all covenants and conditions contained in this Agreement, to be performed and complied with by it prior to or at Closing, as set forth in this Agreement; and

b. the Seller shall have obtained, prior to Closing, all necessary governmental approvals for the sale of the Premises to Buyer, including approval by the Federal Aviation Administration (hereafter referred to as "FAA Approval") and approval by City Council of the City of Philadelphia and Mayor of the City of Philadelphia (hereafter referred to as "Seller Approval") as set forth below:

(i). Federal Aviation Administration Approval: Pursuant to the requirements of the Federal Aviation Administration's Airport Compliance Program, as published in FAA Order 5190.6A (Oct. 2, 1989) (FAA Compliance Handbook), the Agreement of Sale and conveyance of the Premises are contingent upon and must be approved by the Federal Aviation Administration (herein referred to as the "FAA"). Any condition imposed by the FAA must be acceptable to the Seller, in its sole and absolute discretion, before Seller shall be obligated to convey the Premises to Buyer. In addition to all other rights and obligations of the City under the RFP, this Agreement of Sale, at law or in equity, the City shall have no duty to convey all or any portion of the Premises to the Buyer unless the FAA approves: a) the sale of the Premises to Buyer under the terms and conditions of this Agreement; and b) the retention of the proceeds from the sale by the City's Division of Aviation; and c) a change in the Airport's Layout Plan.

(ii). Seller Approval: In addition to the City's absolute and sole discretion to accept or reject any condition approved by the FAA under Section 8b(i) above and pursuant to Sections 2-307 and 8-205 of the Philadelphia Home Rule Charter, this Agreement of Sale and conveyance of the Premises shall also be contingent upon and subject to the enactment into law of a certified Ordinance of the City Council of the City of Philadelphia (referred to herein as "City Council"). The City shall have no duty to convey all or any portion of the Premises to the Buyer unless and until a certified Ordinance approving the sale becomes law, either after the Mayor signs the Bill or the appropriate time passes for the Bill to become an Ordinance without the Mayor's signature or City Council overrides a veto by the Mayor (referred to herein as "Ordinance"). The requirements under this paragraph shall be collectively referred to herein as "Seller Approval".

c. Buyer shall have the full power and authority to purchase the Premises from the Seller; and

d. the Premises shall be free and clear of all mechanics', materialmen or other liens resulting or arising from, either directly or indirectly, Buyer's use of the Premises; and

e. All instruments and documents required on the Buyer's part to effectuate this Agreement, and the transactions contemplated herein, shall have been delivered to Buyer or Buyer's attorneys.

f. No suit, action or proceeding shall have been instituted by any unrelated third party before any court or governmental or regulatory body or instituted by any governmental or regulatory body to restrain or prevent the Buyer from the carrying out of the transactions contemplated by this Agreement.

g. If the conditions set forth in this Section 8 are not satisfied prior to Closing, Seller may terminate this Agreement, whereupon the rights and obligations of Buyer and Seller hereunder shall terminate and be of no further force and effect, except as otherwise provided in this Agreement, and all escrow monies shall be returned to Buyer, and Buyer shall

have no further recourse against the Seller. In the event of such termination, Buyer shall remain obligated to Seller, as Seller's tenant, under the terms and conditions of the Settlement Lease.

9. Conditions Precedent to the Obligations of the Buyer. The obligations of the Buyer under this Agreement to purchase the Property from Seller are subject to the following at or prior to Closing (anyone of which may be waived in writing, in whole or in part, by Buyer prior to or at Closing):

a. All of the representations and warranties by Seller set forth in this Agreement shall be true as of the Effective Date and as of Closing in all respects as though such representations and warranties were made prior to and as of such dates.

b. Seller shall have performed, observed and complied with all covenants, agreements and conditions required by this Agreement to be performed, observed and complied with by it prior to and/or at Closing.

c. All instruments and documents required on the Seller's part to effectuate this Agreement, and the transactions contemplated herein, shall have been delivered to Buyer or Buyer's attorneys.

d. No suit, action or proceeding shall have been instituted by any unrelated third party before any court or governmental or regulatory body or instituted or threatened by any governmental or regulatory body to restrain or prevent the Seller from the carrying out of the transactions contemplated by this Agreement.

e. Within sixty (60) days after City Council approval of the transfer of the Property from Seller to Buyer, and to the extent permitted under any Proviso or Stipulated Proviso between the Parties to the decision of the Zoning Board of Adjustment regarding the Property, Buyer shall have obtained a final unappealable zoning and use registration permit from the Department of Licenses and Inspections of the City of Philadelphia allowing it to construct and operate a permanent service and parts facility on the Property to allow Buyer to use the Property as a full service new and used vehicle sales, lease and service facility.

f. Buyer shall have financing of Two Million Dollars (\$2,000,000.00) from BNB Bank and One Million Five Hundred Thousand Dollars (\$1,500,000.00) from PIDC, available at Closing.

g. If the conditions set forth in this Section 9 are not satisfied prior to Closing as set forth herein, or within ten (10) days after receipt of notice thereof, whichever is earlier, Buyer shall have the following options, at its sole option, which it must exercise at least ten (10) days prior to Closing:

(i) Buyer may terminate this Agreement, whereupon the rights and obligations of Buyer and Seller hereunder shall terminate and be of no further force and effect, except as otherwise provided in this Agreement, and all escrow monies shall be returned to Buyer, and Buyer shall have no further recourse against the Seller, and in the event of such termination Buyer shall remain obligated to Seller, under the terms and conditions of the Settlement Lease; or

(ii) Buyer may consummate the Sale for the Purchase Price set forth in this Agreement by giving Seller notice thereof without any further recourse against the Seller.

(iii) If Buyer shall fail to exercise one of the above options by giving Seller notice thereof, this Agreement shall terminate and be of no further force and effect, except as otherwise provided in this Agreement, and all escrow monies shall be returned to Buyer, and Buyer shall have no further recourse against the Seller, and in the event of such termination Buyer shall remain obligated to Seller, under the terms and conditions of the Settlement Lease.

10. Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the Effective Date and as of the date of Closing as follows:

- a. Except as set forth in this Agreement, Seller is not aware of any restrictions or limitations to its lawful ownership of the Property.
- b. Seller has full right and authority, subject to Section 8b to enter into this Agreement and to perform all of the obligations of the Seller herein.
- c. Except for the Settlement Lease, there are no agreements of sale, purchase, leases, tenancies, or other rights of occupancy or use of any portion of the Property.
- d. Seller is not aware of any litigation or proceeding pending or threatened, relating to the Seller or the Property, or any part thereof, which, if adversely determined, could have an adverse effect on title to, or the use and enjoyment of, or value of, the Property, or any part thereof, or which could in any way interfere with the consummation of this Agreement. Seller does not assume responsibility or liability for any pending or threatened litigation or proceeding relating to the Buyer or the Property, or any part thereof, which arises from, either directly or indirectly, Buyer's activities, operations, occupancy of or tenancy at the Property.
- e. The zoning classification of the Premises is C-7 - Commercial. Seller makes no representations regarding Buyer's ability to obtain any required zoning approvals for any change in the current use of the Premises.
- f. No condemnation or eminent domain proceeding is pending or, to the best of the Seller's knowledge threatened, which would affect the Premises. If any condemnation proceeding were instituted prior to Closing and Seller receives notice thereof prior to Closing, Seller shall notify Buyer forthwith of the pendency of such proceeding and forward copies of any documents received by the Seller in regard thereto to the Buyer. Buyer, shall have, at its sole option, the right to either (i) accept title to the Premises, less and except the portion condemned without any diminution in the Purchase Price, or (ii) terminate this Agreement by notice thereof to Seller, and thereupon each Party shall have no obligation or liability to the other Party, except as set forth in the Settlement Lease. Buyer shall have thirty (30) days after Buyer's receipt from Seller of the notice of condemnation and the documents evidencing the condemnation to give notice of the exercises of such option to Seller, which shall run concurrently with any election period Buyer has under Section 13 of the Settlement Lease.
- g. Buyer is in compliance with all of the terms and conditions of the Settlement Lease.
- h. Seller knows of no notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Property and its use, and Seller has no reason to believe that any authority contemplates issuing such a notice or that any such violation exists.

11. Representations and Warranties of Buyer: Buyer represents and warrants to Seller as of the Effective Date and as of the date of Closing as follows:

- a. Buyer has full right and authority to enter into this Agreement and to perform all of the obligations of the Buyer herein.
- b. The purchase of the Property shall not result in the Buyer becoming obligated under any contractual arrangements with anyone other than the Seller as described in this Agreement.
- c. Buyer has not received notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Property and its use and has no reason to believe that any authority contemplates issuing such a notice or that any such violation exists.
- d. Buyer is not aware of any litigation or proceeding pending or threatened, relating to the Buyer which would prevent Buyer from performing its duties and obligations under this Agreement.
- e. The purchase of the Property shall not result in the Buyer becoming obligated under any contractual arrangements with anyone other than the Seller as described in this Agreement.
- f. After reasonable investigation, the Premises have not been used, during the period of the Buyer's tenancy at the Premises, in violation of applicable Environmental Laws for the generation, manufacture, storage or disposal of, and there has not been transported to or from the Premises by the Buyer, or anyone acting by or on behalf of Buyer, any Hazardous Substances in violation of applicable Environmental Laws; and to the best of the Buyer's knowledge, the Premises, during the Buyer's tenancy, has not been used for the generation, manufacture, storage or disposal of, and there has not been transported to or from the Premises, any Hazardous Substances in violation of applicable Environmental Laws.
- g. After reasonable investigation, there are no Hazardous Substances present on the Premises in violation of applicable Environmental Laws.
- h. There has been no use of the Premises, during the Buyer's tenancy at the Premises, that may, under any federal, state or local law, including applicable Environmental Laws or regulation, impose upon the Seller or its successors any monetary obligations.
- i. Buyer has not been identified in any litigation, proceeding or investigation as a responsible party, or potentially as a party responsible for, any liability for disposal or release of any Hazardous Substances at the Premises.
- j. No work has been performed or is in progress at, and no materials have been furnished to, the Premises which, though not presently the subject of, might give rise to, any mechanics', materialmen's or other liens against the Premises or any portion thereof. If any lien for such is filed before or after Closing, Buyer shall promptly discharge the same.
- k. Buyer is in compliance with all the terms and conditions of the Settlement Lease.

l. In the event of a resale of the Premises on or before October 31, 2024, Buyer shall notify Seller and pay the Recapture Sum to the Seller in accordance with the provisions of Section 4e of this Agreement.

m. After reasonable investigation, no lien or super-lien has been recorded in any registry for the filing of such liens or asserted, or to the best of Buyer's knowledge, threatened against the Premises for any liability in connection with any environmental contamination arising, either directly or indirectly, from Buyer's occupancy, tenancy or use of the Premises.

n. After reasonable investigation, the Premises are in compliance with Environmental Law.

o. After reasonable investigation, there are no underground storage tanks in any location on the Premises.

12. Seller's Conditions Precedent to Closing: Prior to Closing, the following conditions must be satisfied to the satisfaction of the Seller in its sole and absolute discretion:

a. FAA Approval in accordance with Section 8(b)(i) of this Agreement; and

b. Seller Approval in accordance with Section 8(b)(ii) of this Agreement;
and

c. Thirty (30) days after the Buyer receives a copy of the City's proposed Deed for the Premises, but no later than fifteen (15) days before the Closing Date, City has receipt from Buyer of Buyer's written Notice of its acceptance of the City's terms and conditions for the Deed conveying the Premises, which may include the City's conditions and restrictions (whether they be restrictive covenants, easements or other restrictions, conditions or property rights), as well as any and all restrictions imposed by the FAA or other governmental authority with jurisdiction. The City's conditions and restrictions may include or concern: (i) the City's and Airport's standard deed restrictions, covenants, easements or conditions regarding utilities, sewer, aviation, existing pipelines, etc.; and (ii) parking, vehicle display, operations and deliveries; and (iii) building set backs; and (iv) loading areas at the rear and side of the buildings; and (v) curb cuts: one on Roosevelt Blvd and two on Red Lion Road; and (vi) outdoor storage at the rear of the facility and extensive outdoor storage; and (vii) signage: no roof sign, no flashing, animated or motion sign, and only two signs at the premises; and (viii) no massage parlor or spa, blood bank, abortion clinic, adult book or video tape store, or adult night club; and (ix) no convenience store, bar, night club, bank, ice skating rink or community recreation center.

d. All other necessary governmental approvals for the transactions contemplated in this Agreement.

13. Closing.

a. Closing ("Closing") for the sale and purchase of the Property in accordance with this Agreement is subject to the conditions precedent set forth in Sections 8, 9 and 12 of this Agreement.

b. Closing shall be within seventy-five (75) days following both Seller Approval and the receipt by Seller of FAA Approval, whichever is later (referred to herein as "Date of Closing"), and shall be held at One Parkway, 1515 Arch Street, 17th Floor, Conference Room 17 A, Philadelphia, Pennsylvania at 11 :00 a.m. local time. The Date of Closing may be extended by the Parties pursuant to mutual written agreement of the Parties. If Closing does not take place by the herein defined Date of Closing and the parties have not agreed to an extension, either Party may terminate this Agreement by written notice to the other, whereupon the Sales Deposit plus interest shall be returned to the Buyer, and Buyer shall remain obligated to Seller under the Settlement Lease.

c. At Closing

(i) Seller shall:

(a) execute and deliver to Buyer a Deed conveying good and marketable title to Buyer subject to the Restrictive Covenants set forth in the Deed, any and all restrictions imposed by the FAA or other governmental authority with jurisdiction, and the City's terms and conditions for the Deed in accordance with Section 12c above; and

(b) all other documents necessary and appropriate to consummate the transactions set forth herein; and

(c) execute and deliver a 1099 Solicitation Form;

(d) Seller shall execute and deliver to the Title Insurer and to the Buyer such reasonable affidavits and other documents as may be required by the Title Insurer and Buyer for the consummation of the transaction and/or as may be contemplated by this Agreement and to satisfy Seller's obligations under this Agreement.

(ii) Buyer shall:

(a) execute and deliver to Seller a statement, in a form acceptable to Seller, certifying the Buyer's full right and authority to purchase the Property for the Purchase Price set forth in this Agreement; and

(b) pay the entire balance due for the Purchase Price to the Seller at Closing by wire transfer in immediately available United States funds to a bank account, which Seller shall designate by notice to Buyer not less than seven (7) days prior to Closing; and

(c) direct the Escrow Agent to transfer at Closing any monies held in Escrow directly to the Seller at the above bank account in immediately available United States funds; and

(d) pay the premium for any Title Policy; and

(e) pay all notices of assessments for public improvements issued prior to Closing, and all other notices of assessments issued and received by Buyer subsequent to Closing for public improvements.

(iii) The Seller, Buyer and Title Insurer Agent shall execute a Settlement Sheet which shall account for the payment pursuant to this Agreement of the

Purchase Price as adjusted in accordance with this Agreement and the payment of such adjustments by the Title Insurer Agent.

(iv) The Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, requires that every buyer of U.S. real property must, unless an exemption applies, deduct and withhold from seller's proceeds ten percent (10%) of the gross sales price. The primary exemptions which might be applicable are: (a) seller provides buyer with an affidavit under penalty of perjury, that seller is not a "foreign person", as defined in FIRPTA, or (b) seller provides buyer with a "qualifying statement", as defined in FIRPTA, issued by the Internal Revenue Service. Seller agrees to execute and deliver as appropriate, any instrument, affidavit and statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder at Closing.

14. Brokers. Seller and Buyer warrant and represent that they have not dealt with any real estate broker, finder or similar party with respect to this Agreement and the transactions contemplated by this Agreement. Buyer shall be solely responsible for any and all claims, demands, liabilities, and causes of action, losses and expenses, fines, penalties and costs whatsoever (including reasonable attorney fees and court costs) for brokers' fees, commissions or charges, which are asserted against either the Seller or Buyer, by any person or parties who allege that they were engaged and/or retained in connection with this Agreement or the transactions contemplated by this Agreement.

15. Notices. All notices, demands and requests, given to any of the Parties in accordance with the provisions of this Agreement shall be effective only if in writing and signed by the Party giving the notice and being delivered by United States certified mail, postage prepaid and return receipt requested, or by a nationally recognized courier service, or sent by facsimile transmission followed by a hard copy sent by United States postage prepaid first class mail, when addressed to the following parties:

a. To Seller at:
James Tyrrell
Deputy Director of Aviation Property Management and Business Development
Philadelphia International Airport
Executive Offices
Terminal D, 3rd floor
Philadelphia, PA 19153

With a copies to:
Divisional Deputy City Solicitor
City of Philadelphia, Law Department
1515 Arch Street, 16th floor
Philadelphia, PA 19102

b. To Buyer at:
Biagio DeSimone
6101 Frankford Avenue
Philadelphia, PA 19135

With copies to:
Michael Mattioni, Esquire
Mattioni, Ltd.

399 Market Street, Suite 200
Philadelphia, PA 19106
Fax: 215-923-2227

Neshaminy Abstract, LLC
22 S. Main Street, Suite 222
Doylestown, PA 18901
Attention: Carol Oelschlegel
Fax: 215-348-7171

- c. To Escrow Agent at:
Neshaminy Abstract, LLC
22 S. Main Street, Suite 222
Doylestown, PA 18901
Attention: Carol Oelschlegel
Fax: 215-348-7171

d. or to such other address as the Party to receive the notice, demand or request, may hereafter designate by written notice to the other Party.

e. All Notices, requests and other communications given under the terms and conditions of this Agreement shall be deemed to have been sufficiently given for all purposes hereof on the third (3rd) business day after proper mailing thereof (in the case of United States registered or certified mail) or on the date of facsimile transmission or on the date of the delivery thereof by a courier service as aforesaid, and may be given on behalf of either party by its counsel.

16. Risk of Loss. In the event of a "Casualty", as hereinafter defined, or other event or circumstances that shall cause loss or damage to the Property, or Improvements located thereon, prior to Closing, Buyer shall bear the cost of said loss or damage, and Buyer shall be obligated to perform all its duties under the terms and conditions of this Agreement of Sale and shall accept the Property "AS IS", without abatement of the Purchase Price. A "Casualty" means any damage to the Property, or the Improvements located thereon, by reason of fire, accident, weather or any other direct or indirect cause or condition, including a condition of the Premises. On the Closing Date, Seller will terminate all existing insurance policies for the Premises.

17. Operation of the Property. Buyer agrees that from and after the Effective Date hereof until Closing, Buyer shall continue to operate and manage the Property in accordance with the terms and conditions of the Settlement Lease.

18. Default and Remedies.

a. Default of Seller. In the event the Seller defaults in the performance of its duties and obligations under this Agreement, Buyer's exclusive and the sole remedy under this Agreement, the Settlement Lease, the RFP, at law or in equity, is to receive a return of its Sales Deposit and any interest accrued thereon as liquidated damages for Seller's default, in which event this Agreement shall terminate. Buyer shall have no further recourse against Seller.

BUYER EXPRESSLY WAIVES THE RIGHT TO SPECIFIC PERFORMANCE. In the event of such a default by Seller, the parties shall remain obligated to each other under the terms and conditions of the Settlement Lease.

b. Default of Buyer. In the event the Buyer defaults in the performance of its duties and obligations under this Agreement, in addition to any other remedy Seller has under this Agreement, the Settlement Lease, the RFP, at law or in equity, Seller may retain the Sales Deposit and any interest accrued thereon as liquidated damages for Purchaser's default, in which event this Agreement shall terminate. In the event of such a default by Buyer, the parties shall remain obligated to each other under the terms and conditions of the Settlement Lease.

19. Non-Indebtedness. Buyer is not currently indebted to Seller, and will not at any time prior to Closing be indebted to Seller, for or on account of any delinquent taxes (including, but not limited to, taxes collected by Seller on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to Seller has been established. In addition to any other rights or remedies available to Seller at law or in equity, Buyer acknowledges and consents to the following rights and remedies of the Seller in the event of any breach or failure to conform to this certification: at the sole option of the Seller, Seller may either (a) terminate this Agreement, or (b) in addition to payment of the balance of the Purchase Price due at Closing, require that Buyer pay the full amount of said indebtedness to Seller on or before Closing.

20. MacBride Principles. In accordance with Section 17-104 of The Philadelphia Code, Buyer by execution of this Agreement, certifies and represents that (i) Buyer does not have, and will not have at any time prior to Closing any investments, licenses, franchises, management leases or operations in Northern Ireland and (ii) no product to be provided to the Buyer will originate in Northern Ireland, unless the Buyer has implemented the fair employment principles embodied in the MacBride Principles. In the performance of this Agreement Buyer agrees that it will not utilize any suppliers, subcontractors or subconsultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management leases or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Buyer further agrees to include the provisions of this subparagraph, with appropriate adjustments for the identity of the parties, in all approved subcontracts and supply contracts entered into prior to Closing. Buyer agrees to cooperate with the Seller's Director of Finance in any manner, which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Buyer expressly understands and agrees that any false certification or representation in connection with this section and/or any failure to comply with the provisions of this section shall constitute a substantial breach of this Agreement entitling the Seller the rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

21. Nondiscrimination. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and Buyer shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin or sex. In the event of such discrimination, Seller may terminate this Agreement immediately. In accordance with Chapter 17-400 of The Philadelphia Code, Buyer agrees that its payment or reimbursement of membership fees or other expenses associated with participation by it or its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual

orientation, religion, national origin or ancestry, constitutes, without limiting the generality of any other provision of this Agreement, a substantial breach of this Agreement entitling the Seller to all rights and remedies provided in this Agreement or otherwise available in law or equity. Buyer further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities, as the case may be, under Chapter 17-400 of The Philadelphia Code prior to Closing. Without limiting the generality of any other provision of this Agreement, failure to so cooperate shall constitute a material breach of this Agreement entitling the Seller to all rights and remedies provided herein or otherwise available in law or equity.

22. No Other Agreements. Except for the RFP, the Settlement Lease and any Stipulated Proviso entered into by the Parties under Section 9e of this Agreement, this Agreement and the exhibits attached hereto, contain all the promises, agreements and conditions, inducements and understandings between the Parties relevant to the sale and purchase of the Property. There are no other agreements, conditions, inducements, understandings, warranties or representations, oral or written, expressed or implied, between them other than as set forth herein.

23. Survival. Except to the extent that any provision of this Agreement expressly provides that it shall not survive Closing, all of the representations, warranties, and agreements of Sellers and Buyer under this Agreement shall survive Closing and delivery of the Deed for the periods herein expressly stated.

24. Miscellaneous.

a. The captions in this Agreement are inserted for reference only and do not define or limit any of the provisions herein.

b. Each Party shall pay its own attorney fees.

c. Any public announcement made in regard to this Agreement shall be subject to the written approval of Seller.

d. Time is of the essence.

e. This Agreement shall bind and benefit the Parties and their heirs, executors, personal representatives and successors and it shall not be assigned by either Party without the written consent of the other.

f. This Agreement shall be effective upon the date ("Effective Date") of execution and delivery to Seller and Buyer of fully executed originals of this Agreement. Delivery of fully executed originals to the Buyer, which have been countersigned by Seller, shall be determined in accordance with the provisions of Section 15e.

g. Title to the Premises has not been derived by adverse possession.

h. Buyer shall, prior to Closing, advise the Seller in writing of its taxpayer identification number.

i. **This Agreement shall not be recorded in the Office for the Recording of Deeds or in any other office or place of public record.**

j. This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania.

k. As used in this Agreement and when required by its content, each number (singular and plural) shall include all numbers and each gender shall include all genders.

l. Nothing in this Agreement shall be construed as a waiver by the Seller of any of its rights, immunities or defenses under the Political Subdivision Tort Claims Act, 42 Pa. C. S. A. Section 8541 *et seq.*

25. Exhibits. Attached to this Agreement and made a part hereof are the following exhibits:

Exhibit A: RFP

Exhibit B: Legal Description of Land

Exhibit C: Joinder

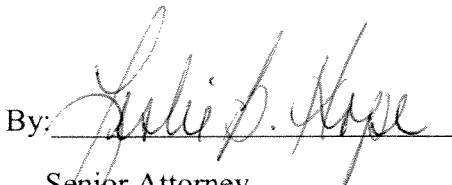
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Approved as to form:

Shelley R. Smith

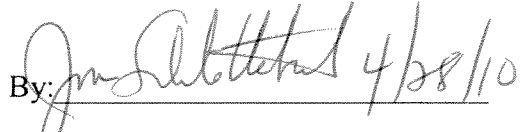
City Solicitor

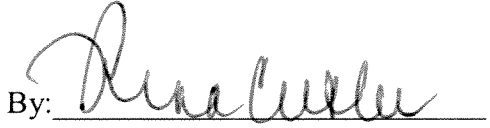
By: 
Senior Attorney

gfa

SELLER:

City of Philadelphia, Department of
Public Property and Department of
Commerce, Division of Aviation

By: 
Commissioner of Public Property

By: 
Deputy Mayor, Transportation &
Utilities

WITNESS:

By: 
Name

BUYER:

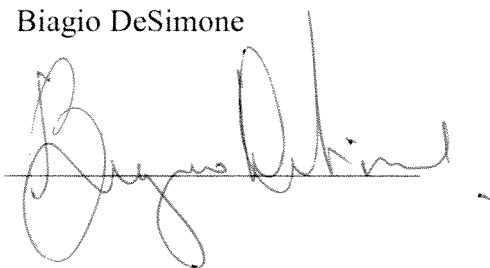
Biagio DeSimone


EXHIBIT "A"
RFP

REQUEST FOR PROPOSALS
ACQUISITION OF LAND PARCEL LOCATED AT 11295 Roosevelt Boulevard
PHILADELPHIA, PENNSYLVANIA

REQUEST FOR PROPOSALS

*ACQUISITION OF LAND PARCEL LOCATED AT
11295 Roosevelt Boulevard
Philadelphia, Pennsylvania*

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SECTION I - GENERAL INFORMATION

A. Statement of Opportunity

1. General Description:

The City of Philadelphia (**City**), through its Department of Public Property (**Public Property**) and its Department of Commerce, Division of Aviation (**Aviation**) is requesting proposals for:

**THE ACQUISITION OF A 3.5154 ACRE PARCEL
LOCATED AT 11295 ROOSEVELT BOULEVARD IN
PHILADELPHIA, PENNSYLVANIA.**

This Request for Proposals (“RFP”) outlines the City’s objectives, describes the general characteristics of the business opportunity, and seeks the submission of proposals and related qualifications from parties interested in acquiring the 3.5154 acre parcel at 11295 Roosevelt Boulevard in Philadelphia, PA (the “Parcel” or “Premises”). The intent of the City is to enter into an Agreement of Sale (**Agreement**) with an established and responsible business entity or person for the sale of the parcel in **AS IS** condition, subject to the terms and conditions of the existing Lease for the premises.

2. Ownership and Existing Leasehold:

The parcel is owned by the City and is leased by DeSimone, Inc. (the “Tenant”) under a Lease executed by the City and Tenant on August 17, 2005. The original term of the Lease expires on October 31, 2024. The Lease may be renewed at Tenant’s option for two additional renewal periods, the first renewal term is five (5) years and the second renewal term is four (4) years. Under the Lease, the City holds title to the 3.5154 acres (the “Land”) and the Tenant holds title to the permanent building constructed thereon (the “Improvement”) from which Tenant operates its car dealership.

B. Anticipated Procurement Schedule

The proposals deadline, (“Submission Date”) pursuant to this RFP is as provided below. Proposals must be submitted to the Aviation’s Primary Contact, as provided in Section I D below, by the time and date indicated below. Section V “FORMAT FOR SUBMISSION” contains explicit instructions on the requirements for Proposals submitted in response to this RFP.

Date and Time

Activity

February 25, 2009

Non-mandatory pre-proposal informational meeting and site visit (See Section I C.).

March 20, 2009

Questions and/or requests for clarification or

information must be received, in writing, at the office listed for Aviation's Primary Contact.

April 7, 2009

Submission Date.

The above dates and times are estimates only and Aviation reserves the right, in its sole discretion, to alter this schedule, as it deems necessary or appropriate. Notice of changes in the due date/time for submission of respondent questions, and the submission date will be posted on www.phl.org and <http://www.phila.gov/rfp/> and will be e-mailed to prospective respondents who request notification.

C. Pre-Submission Meeting

There will be a non-mandatory pre-submission informational meeting followed by an informal site visit on the date given in the above schedule at 2 PM on Wednesday, February 25, 2009. The informational meeting place is Northeast Philadelphia Airport, Division of Aviation Administration Building, 9800 Ashton Road, Philadelphia, PA 19114.

D. Primary Contact

The name, address, and contact information for Aviation's Primary Contact for this RFP is as follows:

Mr. James Tyrrell
Deputy Director of Aviation
Property Management and Business Development
Philadelphia International Airport, Terminal E
Philadelphia, PA 19153

E. Inquiries

In accordance with the Reservation of Rights in Section V.F. of this RFP, it is the responsibility of the respondents to inquire about and seek clarification regarding any requirements of this RFP that are not understood. Questions that may arise in the preparation of the proposal shall be submitted in writing to Aviation's Primary Contact, by the deadline given in Section I B. Any information given to a prospective respondent will be furnished to all other prospective respondents as an addendum to the RFP, if that information is necessary in submitting responses or if the lack of that information would be prejudicial to any other prospective respondent. Verbal explanations or instructions given before submission date will not be binding.

F. Respondent Requirements

The respondent shall demonstrate that it has sufficient financial capacity to acquire the Premises at a purchase price that is acceptable to City. See Section IV.E.3 of this RFP. Respondents must

possess experience or familiarity with local and all other pertinent and relevant laws, codes and standards for such acquisitions.

G. General Disclaimer of City

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. No other party, including any respondent, is intended to be granted any rights hereunder. Any response, including written documents and verbal communications, by any respondent to this RFP, may be subject to public disclosure by City, or any authorized agent of the City. All responses to this RFP become the property of the City.

H. Conflict of Interest

Based on the information in this RFP and any other information available or known to the respondent, the respondent shall certify in writing to the City that it knows of no past, current or anticipated conflict between its interests or the interests of any partners or employees, and those of the City; and that it knows of no facts which might create the appearance of such a conflict. The respondent shall disclose in full written detail all ownership interests held by individuals or entities, including joint venture interests, and anything that may create the appearance of a conflict. If the City elects to further consider the respondent's proposal, additional information on the identity of other participants or any involvement with other consultants working for Aviation will be more fully disclosed. The respondent must then identify any resulting potential conflicts of interest. Please disclose and explain any negative events in the respondent's recent history including criminal charges, civil litigation or administrative actions involving the respondent or its employees over the last two years.

If there is reason to believe that collusion exists among respondents, none of the participants in such collusion will be considered. This shall not be construed as the intention to prevent more than one proposal from any respondent.

SECTION II - DESCRIPTION OF PREMISES AND LEASEHOLD

A. Parcel Context – Northeast Philadelphia

The Parcel, currently leased as a car dealership, is located in the Northeast section of Philadelphia and lies in close proximity to Northeast Philadelphia Airport. The area is well served by a network of highways including Roosevelt Boulevard and Interstate 95. Land use in the area is primarily of commercial developments and is dominated by retail establishments. The immediate area, bounded by Roosevelt Boulevard and Red Lion Road, consists of property owned by the City, TJ Maxx and the School District.

B. Site Characteristics

1. Location - The Parcel located on the southeast corner of Roosevelt Boulevard and Red Lion Road and is bounded by property owned by the School District and TJ Maxx. The front of the Parcel is located on Roosevelt Boulevard.

2. Size – The Parcel is 153,121 square feet in area. The site is irregular in shape (generally triangular) with 387 linear feet of frontage along the east side of Roosevelt Boulevard and approximately 708 linear feet of frontage along the south line of Red Lion Road. (See attached site plan in **Appendix A**).

3. Site Conditions – The Parcel is generally level and cleared. It is improved with a 6,225 square foot building along the frontage of Roosevelt Boulevard that is used by the Tenant to operate its automobile dealership. The bulk of the site is asphalt paved automobile parking.

4. Zoning – The Parcel is zoned C-7. Tenant operates its automobile dealership in accordance with the terms and conditions of the Lease, the Tenant’s Use Registration Permits (Nos. 439748 and 444998) for indoor automobile sales from the building on the Premises, and a Certificate for outdoor sales at the rear of the Premises, which the Tenant obtained from the Zoning Board of Adjustment on December 2, 2003. A zoning change may be required for other uses of the property, upon termination of the Tenant’s Lease.

5. Access – The Parcel is conveniently connected to Roosevelt Boulevard and Red Lion Road. There is also access to the Parcel through public transportation via SEPTA bus route 14 which connects with the Market Frankford elevated transit line.

6. Utilities – The Parcel is serviced by water, gas, electric and phone utilities. Any upgrades to existing utility services and any new connections to support the Parcel will be their responsibility of the purchaser and the Tenant, in accordance with the terms and conditions of the existing Lease.

7. Environmental – The Parcel is being offered in **AS IS** condition. The City makes no representations regarding the environmental condition of the Parcel. An environmental investigation is recommended by prospective purchasers during the due diligence period.

C. Description of Leasehold

1. Lease Term and Renewals – The premises are currently under a long term lease with the Tenant. The original lease term expires on October 31, 2024. The Tenant has two renewal options under the Lease: the first is for a period of five (5) years and the second is for a period of four (4) years.

2. Tenant’s Permitted Use and Operations – The Lease restricts the Tenant’s use of the premises to the existing car dealership. In accordance with the Tenant’s use permits and Zoning Board Certificate, the Lease limits the number of automobiles which Tenant may display for sale along the front of the premises on Roosevelt Boulevard. Commercial deliveries are limited to the Red Lion Road entrance to the premises and Tenant’s hours of operation are limited by the terms and conditions of the Lease.

3. Rent – Rent is set at \$155,000 per annum plus \$125.00 for every automobile sale that exceeds a minimum of 150 motor vehicle sales per month through the remaining lease term. During the renewal periods, Tenant is obligated to pay the greater of the above rent paid during the last year before the renewal period which is adjusted by the Consumer Price Index or the fair market value of the Premises.
4. Other Terms and Conditions – The Tenant must comply with all other terms and conditions of the Lease, including without limitation the Landlord’s requirements for care of the Premises and improvements or alterations to the Premises. A copy of the Lease will be provided to qualified responders upon request.

SECTION III - AGREEMENT OF SALE AND CONVEYANCE

A. General Scope

1. Negotiations -- Subject to the Reservation of Rights contained in Section V.F. of this RFP, the City intends to enter into an Agreement of Sale for the subject Parcel with the selected respondent to this RFP. The response to this RFP will be the basis for negotiations with the selected respondent. In the event negotiations are successful, the City will execute the Agreement of Sale with the selected respondent for a purchase price (see Section IV.E.3 of this RFP) and on terms and conditions that are acceptable to the City. In the event negotiations are not successful, the City shall have the right to re-issue this RFP or enter into negotiations with another respondent or enforce all or any combination of its rights under the Reservation of Rights set forth in Section V.F. of this RFP.
2. Conveyance – In the event the City and the selected Respondent execute an Agreement of Sale and the Agreement is not terminated by its terms, the City shall convey good and marketable title to the selected respondent subject to certain Restrictive Covenants described below in Section III.C. of this RFP, which shall be stated more particularly in the Agreement of Sale and the Deed conveying ownership of the property to the selected respondent.
3. Conveyance Schedule – The Agreement of Sale successfully negotiated with the selected respondent will include the following conveyance and payment schedule:
 - a. *Sales Deposit* – Upon execution of the Agreement of Sale, the selected respondent must pay a sales deposit equal to ten percent (10%) of the purchase price. The sales deposit will be credited against the purchase price at Closing or retained by the City as liquidated damages or returned to the selected respondent in accordance with the terms and conditions of the Agreement of Sale.
 - b. *Due Diligence* – There will be a sixty (60) day Due Diligence Period that will commence upon the execution of the Agreement of Sale. The selected respondent must comply

with all the requirements of the Agreement of Sale regarding the due diligence period and inspection, including any requirements for insuring and indemnifying the City.

c. Property Closing – The selected respondent will be expected to close on the conveyance of the Parcel no later than the Closing Date specified in the Agreement of Sale, which shall be absolutely contingent upon the FAA and City approvals described in Sections III.D and III.E of this RFP.

B. AS IS Condition

The City is offering the Parcel in **AS IS** condition. The City makes no representations or warranties regarding the condition of the Parcel or of fitness for any particular purpose. As set forth in the Conveyance Schedule in Section III.A. above of this RFP, the City will provide the selected respondent with an opportunity to perform a due diligence inspection of the Parcel

C. Restrictive Covenants

The Parcel shall be subject to restrictive covenants running with the land, which shall be stated in the Agreement of Sale and the Deed conveying the Premises to the selected respondent. The Restrictive Covenants shall repeat the restrictions stated in the Lease on the use and operations of the Tenant's automobile dealership at the Premise and shall include height and noise restrictions, because the Parcel is located near PNE.

D. FAA Approval

Pursuant to the requirements of the Federal Aviation Administration's Airport Compliance Program, as published in FAA Order 5190.6A (Oct. 2, 1989) (FAA Compliance Handbook), the Agreement of Sale and conveyance of the Premises are contingent upon and must be approved by the Federal Aviation Administration ("FAA"). Any condition imposed by the FAA must be acceptable to the City in its sole and absolute discretion. In addition to all other rights and obligations of the City under this RFP, the Agreement of Sale, at law or in equity, the City shall have no duty to convey all or any portion of the Premises to the selected respondent unless the FAA approves the sale.

E. City Council Approval

In accordance with Sections 2-307 and 8-205 of the Philadelphia Home Rule Charter, the Agreement of Sale and conveyance of the Premises shall also be contingent upon and subject to the approval of the Mayor and the City Council of the City of Philadelphia. In addition to all other rights and obligations of the City, the City shall have no duty to convey all or any portion of the Premises to the selected respondent unless and until a certified ordinance approving the sale becomes law.

F. Fees

The City will not pay any fees or commissions to parties acting as agents, brokers, consultants or contractors as part of this transaction.

G. City Agreement Requirements

In addition to the Due Diligence requirements, the City may require that the Agreement include, among other things, an indemnification, insurance, and a surety bond (or letter of credit) for performance. Note that the Agreement will be subject to all applicable zoning, environmental and regulatory criteria, including, but not limited to, factors such as height and noise restriction, due to the location of the parcel near PNE.

H. Compliance

The successful respondent shall comply with, and cause the compliance with all federal, state and local laws applicable to activities and obligations undertaken, including all federal, state and local environmental laws and regulations.

SECTION IV - FORMAT FOR SUBMISSION

A. Hard Copy Proposal

Submission by facsimile, by electronic mail or by any form of unauthorized communication will not be accepted. The "hard copy" proposal is to be submitted on 8½" x 11" paper with comb-style, coil or spiral binding. Limit your proposal, including all attachments, to one volume, less than two (2) inches thick. Oversize attachments to your proposal, such as renderings, may be sent to Aviation's Primary Contact detached from the proposals, as long as they are clearly labeled with this RFP title and the name of the respondent. Small attachments, such as fold-out sheets or CD's shall be included with the proposals in suitable sleeves, so they do not become separated. Submit two (2) signed original, and six (6) copies to Aviation's Primary Contact as in Section I. D.

B. Duration of Proposal

In consideration of the City's evaluation of the submitted proposals, each respondent agrees that its Purchase Price shall be a firm offer to the City, and shall remain open for acceptance by the City until this RFP process is concluded.

C. Respondent's Security

The package of hard copy proposals shall be accompanied by refundable security in the form of a Certified Check or Money Order (**security**) made payable to "The City of Philadelphia" in the amount of Twenty - Five Thousand Dollars (\$25,000). Failure to submit the required security with the proposal will result in the respondent's disqualification from consideration. Security will only be refunded without interest, to the unsuccessful respondent(s) after execution of a final Agreement or at the conclusion of this RFP process. Any respondent which has not been released from its proposal by the City or which refuses to execute an Agreement, deliver bonds,

insurance, etc. in conformity with the City's requirements, may forfeit some or all of such security as liquidated damages.

Upon the execution of the Agreement of Sale and the compliance with all initial requirements of the City's acceptance of respondent's proposal, the security will be credited against the Security Deposit required under the Agreement of Sale for the purchase of the Parcel and refund or forfeiture of the Security Deposit shall be subject to the terms and conditions of the Agreement of Sale.

In the event the respondent whose proposal is accepted by the City fails to execute the Agreement of Sale or to comply with all the requirements of the City's acceptance of such proposal, the security shall be retained by the City as liquidated damages for such failure. The proposal previously accepted by the City shall be deemed rejected, and neither the City nor such respondent shall have any further rights or liabilities with respect to such proposal.

D. Respondent's Responsibility

The respondent shall carefully examine the terms of the RFP and shall investigate and inspect the parcel, and shall consider all of the circumstances and conditions of this offering by the City. The City will endeavor to present accurate information, but respondents are advised to verify independently the accuracy of any information received from the City, including the information contained in this RFP.

E. Contents of Proposal

Proposals shall contain all of the following elements to be considered complete. See also City's Reservation of Rights in Section V.F. of this RFP regarding the City's right to consider or reject all or any part of a proposal submitted in response to this RFP and to request additional or clarifying information from any respondent.

1. Description of Respondent – Provide the name and title of the individual or entity submitting the proposal, the address for the respondent, the daytime phone number and fax number, and e-mail address. Clearly indicate the home office address and local office address if they differ. State the ownership structure of respondent (corporation, partnership, sole proprietorship, joint venture) and describe any recent major reorganization within the firm or merger with other firms. If a corporation, state the date the corporation was created, the state of incorporation and the names and professional addresses of those authorized to negotiate for respondent and execute an Agreement of Sale. If a partnership, provide the date and type of partnership and list each general partner owning more than five (5%) of the partnership. If a joint venture provide the date of organization and the location where the Agreement is recorded, and the names and addresses and percentages of ownership. The respondent shall provide evidence that it is authorized to engage in business transactions in the Commonwealth of Pennsylvania or provide assurance that it will obtain such authority upon award, by documenting that respondent has applied for registration to the Pennsylvania Department of State, Corporation Bureau. Respondent must disclose if it has ever been barred from any City programs, or has had a City contract cancelled for nonperformance.

2. Letter of Authority – The proposal must include a letter from a principal of the respondent documenting his or her authority to submit the offer to purchase the Parcel and to enter into a legally binding Agreement of Sale.

3. Purchase Price – The proposal must include the proposed purchase price and terms of the offer. The entire purchase price will be due and payable at Closing. Consideration of a Proposal is contingent upon a reasonable Purchase Price in light of the minimum appraised value of the property which is \$4.425 million. Subject to the Reservation of Rights in Section V.F., the City intends to negotiate an Agreement of Sale with the respondent who offers the best consideration. The terms and conditions of the Agreement may restrict and/or place certain conditions on the resale of the property, including without limitation additional compensation to be paid to the City upon resale.

4. Financial Information – Respondent must provide sufficient evidence acceptable to the City that Respondent can consummate the transaction.

5. Conveyance Schedule – Respondents must note any proposed changes to the conveyance schedule.

6. Contingencies to Offer to Purchase – Any issues that will require satisfaction prior to the Closing must be listed in respondent's proposal.

7. Projected Use – Respondent must describe its projected use of the Parcel in detail, including without limitation any use that would require a change in the current zoning or the environmental conditions of the Premises.

8. Conflicts – As set forth in Section I.H. of this RFP, the proposal must identify any past, current or anticipated contractual or financial relationship with the City or its officials or employees or any other contractual or financial relationship that may give the appearance of a conflict of interest.

9. Litigation, Judgments and Proceedings -- Provide a Disclosure Statement detailing actions which were instituted by you, your company or members of your company that are currently pending or threatened (including, but not limited to, any litigation, consent orders or agreements with any state or federal regulatory agency issued to respondent or to any subconsultant respondent plans to use for the services described in this RFP), against the City, Aviation, federal government, Commonwealth of Pennsylvania, or any other municipality. Furthermore, the respondent shall describe any proceedings material to respondent's business or finances. Disclose and explain any significant negative events in your firm's recent history including criminal charges, civil litigation or administrative actions involving allegations of securities law violations by your firm or its employees over the past three years.

10. Indemnification -- Respondent shall submit a statement that shall indemnify, defend, and hold harmless, the City and its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees),

claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by respondents act or omission or negligence or fault or the act or omission or negligence or fault of respondent's agents, subcontractors, employees or servants in connection with the RFP Process and Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environmental, failure to pay such subcontractors and suppliers, any breach of the Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless the City, their respective officers, employees and agents, shall survive the termination of the RFP Process and the Agreement. Specific insurance requirements are to be determined at the time of Agreement and negotiation, and shall be dependent upon the specifics of the proposed Facility.

11. Proposal Deposit – Proposals must include the security described in Section IV.C. of this RFP.

SECTION V - SELECTION PROCEDURES

A. Disqualification of Respondents

If more than one proposal is received from any individual, firm, partnership, corporation, or association, under the same or different names, said proposals will not be considered. If there is reason to believe that collusion exists among respondents, none of the participants in such collusion will be considered. No proposal shall be received from, or Agreement awarded to, any City employee or official who may have any direct or indirect interest in such proposal or Agreement.

B. Qualification of Respondents

Aviation will carefully consider the respondent's qualifications in evaluating each proposal. In Aviation's evaluation, the proposal as a whole may bear more weight than the individual parts of the proposal. The successful respondent(s) shall be authorized and licensed as required, to do business in Pennsylvania, or shall obtain such authorization, and license as required, prior to execution of the Agreement and furnishing of any required surety bond, or letter of credit.

C. Selection Criteria

The City intends to execute an Agreement of Sale with the respondent whose proposal best satisfies the criteria set forth in this RFP, and is otherwise in the best interest of the City. The determination to execute such shall be made by the City, in its sole and absolute discretion, which decision shall be final. The City may employ such analysis techniques and professional consultants for proposal evaluation as it deems necessary or desirable. The City may request submission of additional information to assist in evaluating a proposal, and the respondent shall cooperate fully with such request. The Agreement resulting from this RFP will be awarded to the qualified respondent whose proposal the City believes will be the most advantageous to the City. The City may condition an award on the successful respondent's agreement to such terms and

conditions as required by the City including, but not limited to, the City's indemnification, insurance and other contract requirements. Evaluation factors to be considered by the City include, but are not necessarily limited to, respondent's financial capability, as evidenced by financial references, funding commitments and financial background, projected use of the premises, and any other factors the City considers relevant to the evaluation of the proposals.

D. Presentations

The City may determine that oral presentations by some or all of the respondents are needed in order to make further evaluations. If this is necessary, the selected respondents will be notified of the required attendees and the topics to be discussed in the presentation.

E. Negotiations

The City will select a successful respondent for the purpose of entering into Agreement negotiations. Refer to Section F, "Reservation of Rights" regarding negotiations.

F. Reservation of Rights:

1. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City and no other party, including any respondent to this RFP or future respondents to any RFP that may be issued by City, is intended to be granted any rights hereunder. Any response to this RFP, including written documents and verbal communication, may be subject to public disclosure by the City, or any authorized agent of the City and any materials submitted or ideas elicited in response to this RFP shall be the sole and absolute property of the City with the City having title thereto and unrestricted use thereof.

2. The City reserves the right to reject as informal or non-responsive any proposal that, in the City's sole judgment, is incomplete, is not in conformity with applicable law, is not responsive to this RFP, or contains erasures, alterations, ambiguities or other items not called for by this RFP.

3. The City reserves and may exercise all or any one or any combination of the following rights and options:

- a) To reject any and all proposals and re-issue the RFP at any time prior to execution of a final Agreement if, in the City's sole discretion, it is in the City's best interest to do so;
- b) To reject any proposal that in the sole discretion/judgment of the City is not in the best interest of the City;
- c) To issue subsequent RFPs for this acquisition that are substantially different from the terms and conditions set forth in this RFP;
- d) To supplement, amend, substitute or otherwise modify this RFP at any time prior to the execution of final Agreement; to cancel this RFP with or without issuing another RFP;
- e) To accept or reject any or all of the items in any proposal and execute the Agreement in whole or in part if it is deemed in the City's best interest to do so;

f) To reject the proposal of any firm that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any agreement with the City, or is financially, or technically incapable, or is otherwise not a responsible firm;

g) To waive any informality, defect, non-responsiveness and/or deviation from this RFP that is not, in the City's sole judgment, material to the proposal and enter into negotiations with one or more respondents;

h) To permit or reject, at the City's sole discretion amendments (including information inadvertently omitted), modifications, alterations and/or corrections to proposals by some or all of the firms following submission;

i) To request that some or all of the firms modify proposals or provide additional information;

j) To request additional or clarifying information or more detailed information from any firm at any time, including information inadvertently omitted in the proposal;

k) To conduct such investigations as the City considers appropriate with respect to the qualifications of each firm and any information contained in its proposal.

l) To terminate any negotiations at any time and initiate negotiations with another firm and/or conduct simultaneous, competitive negotiations with multiple firms.

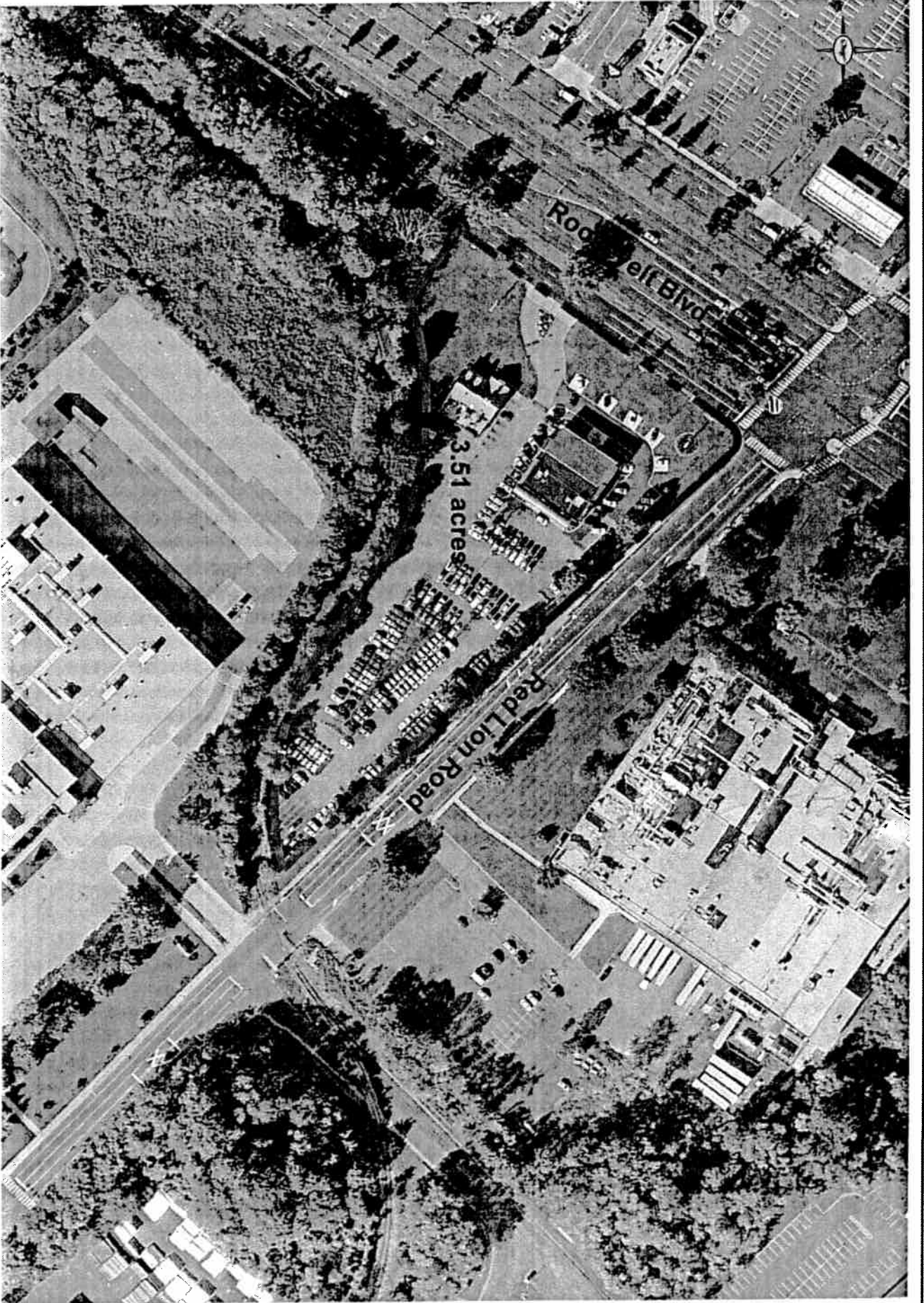
m) To negotiate acceptable terms in an otherwise unacceptable proposal. Such negotiations may result in changes in terms material to this RFP; in such event, the City shall not be obliged to inform other respondents of the changes, or permit them to revise their proposals accordingly, unless the City, in its sole discretion, determines that doing so and permitting such is in the City's best interest. Should negotiations not prove satisfactory with the recommended finalist(s), the City reserves the right to discontinue negotiations with the recommended finalist(s) and additional firms may be asked to enter into negotiations or the City may solicit new proposals or issue a new RFP.

n) To cancel this RFP at any time.

*REQUEST FOR PROPOSALS
ACQUISITION OF LAND PARCEL LOCATED AT 11295 Roosevelt Boulevard
PHILADELPHIA, PENNSYLVANIA*

ATTACHMENT A

SITE PLAN



3.51 acres

Rosevelt Blvd

Red Lion Road

11295 Rosevelt Blvd
Property Plan

REQUEST FOR PROPOSALS
ACQUISITION OF LAND PARCEL LOCATED AT 11295 Roosevelt Boulevard
PHILADELPHIA, PENNSYLVANIA

ATTACHMENT B
LEGAL DESCRIPTION

EXHIBIT D

DESCRIPTION OF THE PROPERTY ON
THE S/E/C OF THE ROOSEVELT BLVD.,
AND RED LION ROAD (ENTIRE TRACT)

ALL THAT CERTAIN lot or piece of ground SITUATE in the 66th Ward of the City of Philadelphia described according to a plan made by John Reilly, Surveyor and Regulator of the Fourth Survey District on February 22, 1977 as follows:

BEGINNING at a point of curve on the southeasterly side of the Roosevelt Boulevard (254' wide, State Highway Route #67009) said point being the southwesterly end of an arc that connects said side of the Roosevelt Boulevard and the southwesterly side of Red Lion Road (96' wide); THENCE extending on a curve to the right, having a radius of 20', the arc distance of 35' 2 3/8" to a point of tangent; THENCE extending S 42°37'29" E. along the southwesterly side of Red Lion Road, the distance of 124' 1 7/8" to an angle point; THENCE extending S 43°12'00" E. still along said side of Red Lion Road, the distance of 383' 11 5/8" to a point on the northwesterly side of a 40' wide railroad right-of-way and easement; THENCE extending along the same curve to the right, having a radius of 330', the arc distance of 288' 4 3/8" to a point of tangent; THENCE extending N 53°12'00" W. the distance of 59' 10 1/8" to a point of curve; THENCE extending on a curve to the left, having a radius of 370', the arc distance of 360' 1 1/4" to a point; THENCE extending N 53°26'48" W. the distance of 100' to a point on the southeasterly side of the Roosevelt Boulevard; THENCE extending along the same N 36°33'12" E. the distance of 386' 10 3/8" to the first mentioned point and place of beginning.

BEING part of the same premises which vested in the City of Philadelphia by Ordinance of City Council approved December 18, 1945 authorizing the appropriation of certain lands in the 66th (formerly the 35th Ward of the City of Philadelphia for Airport purposes, containing in area 3.5154 acres.

EXHIBIT D

P00387

*REQUEST FOR PROPOSALS
ACQUISITION OF LAND PARCEL LOCATED AT 11295 Roosevelt Boulevard
PHILADELPHIA, PENNSYLVANIA*

**ATTACHMENT C
INDEMNIFICATION**

RELEASE, WAIVER OF LIABILITY AND INDEMNITY

THIS RELEASE, WAIVER OF LIABILITY AND INDEMNITY (“Release and Indemnity”), is made this ___ day of _____, 200_, and is given by _____ (“Company”) to and for the benefit of **the City of Philadelphia (the “City”).**

WHEREAS, the Company is interested in responding to a certain Request for Proposal (“RFP”) issued on behalf of the City in which proposals are requested to purchase and develop the property located at _____ (the “Property”); and

WHEREAS, a requirement of the RFP is for the proposing company to attend the pre-submission inspection to inspect the Property; and

WHEREAS, the City requires that the Company enter into this Release and Indemnity prior to entering onto the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Company agrees to the following:

1. The Company, for itself, its successors and assigns, officers, directors, shareholders, partners, agents, representatives, employees, invitees, contractors, and subcontractors, and all persons or entities, claiming under or through any of them (collectively, “**Releasers**”) hereby remise, quitclaim, release and forever discharge the City, its officials, officers, agents, boards, departments, agencies, offices, commissions, employees, successors, tenants, subtenants and assigns (acting officially or otherwise) (collectively, the “**Releasees**”), from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever in law or in equity which any of the Releasers may have against Releasees, relating in any way whatsoever, directly or indirectly, to (i) this Release and/or the Property; (ii) the presence on and disposal from the Property of any hazardous substances; (iii) the existence, condition of, operation, use or occupancy of the Property or any part(s) of the Property by the Releasees; or (iv) relating in any way to any activities by the Releasees on the Property; or (v) the exercise of any of the Company’s rights or performance of any of its obligations by itself or by any of the Releasers; or (vi) relating in any way to any activities by the Releasers at the Property. The Company is aware of possible dangerous and hazardous conditions at, in, on, or about the Property and the Company for itself and its successors and assigns, officers, directors, shareholders, partners, agents, employees, invitees, contractors, and subcontractors, and all persons claiming under or through any of them, **hereby voluntarily assumes all risks of loss, damage or injury, including death, that may be sustained by the Company, its successors and assigns, officers, directors, shareholders, partners, agents, employees, invitees, contractors, and subcontractors, and all persons claiming under or through any of them, while at, in, on, or about the Property.**

2. With respect to the RFP Process or the Agreement or the pre-submission inspection of the Property, or any other inspection of the Property by or on behalf of the

Company (whether during the RFP Process for the Property or pursuant to the Agreement for the Property) the Company agrees that upon demand by the City, the Company shall indemnify, defend by counsel approved by the City in writing, and hold harmless the City and its officials, officers, boards, commissions, departments, agencies, offices, employees, agents, successors, tenants, subtenants and assigns (collectively referred to as “**the Indemnitees**”) from and against any and all losses, claims, suits, actions, (including but not limited to administrative or enforcement actions, or public or private cost recovery actions), demands, liabilities, damages and/or expenses (including but not limited to reasonable attorneys’ fees, settlement costs, litigation costs, and/or the costs of enforcing this Release and Indemnity), in law or in equity, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal regardless of ownership), contamination or adverse effects on the environmental condition of the Property, failure to pay subcontractors and suppliers, any breach of the Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) which may be imposed upon or incurred by or asserted against one or more of the Indemnitees by reason, in whole or in part, of (i) any act or omission of the Company, its successors and assigns, officers, directors, shareholders, partners, agents, employees, invitees, contractors, and subcontractors, and all persons or entities acting by, through, or on behalf of Company; (ii) the condition of the Property or any part(s) thereof whether or not caused by the Company; and/or (iii) any activity, operation, act or omission by or on behalf of one or more of the Indemnitees. In the event any action or proceeding is brought against the City, the Company shall, upon written notice from the City resist or defend such claim at the Company’s sole cost and expense (including without limitation, counsel fees, experts’ fees, and court costs), by counsel approved by the City in writing, provided that no approval of counsel shall be required in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim, and provided also that the City may at its election, but shall not be obligated to, engage at City’s expense its own counsel to participate in the defense of any such claim.

3. In addition to the above, Company agrees that it shall be liable for and shall compensate City, upon demand and at fair market value or full replacement value, whichever is greater, for any casualty, or other damage to: (i) the Property or any portion thereof, or (ii) any improvements thereon, or (iii) any equipment of the City, or (iv) any other damages, losses, expenses or costs suffered by City (including but not limited to reasonable attorneys’ fees, litigation costs, settlement costs and/or the costs of enforcing this Release and Indemnity), which arise, directly or indirectly, in whole or in part, from any acts, omissions, activities or operations by Company, its successors and assigns, officers, directors, shareholders, partners, agents, employees, invitees, contractors, or subcontractors, or any persons or entities acting by, through, or on behalf of Company or any of the above.

[INTENTIONALLY LEFT BLANK]

4. The provisions of this Release and Indemnity shall survive the RFP Process and shall be valid and binding regardless of whether the Company issues a response for the RFP. The Company's obligations to the City, the Releasees and the Indemnitees, shall also survive the termination of the RFP Process and the Agreement.

IN WITNESS WHEREOF, the party hereto, intending to be legally bound, has caused this Release and Indemnity to be executed by its duly authorized officer as of the date first written above.

THE COMPANY

[Name of Company]

By: _____

Name: _____

Title: _____

EXHIBIT "B"
LEGAL DESCRIPTION

DESCRIPTION OF THE PROPERTY ON
THE S/E/C OF THE ROOSEVELT BLVD.,
AND RED LION ROAD (ENTIRE TRACT)

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EXHIBIT "C"

JOINDER

The undersigned, intending to be legally bound, does hereby agree to act as Escrow Agent pursuant to Section 4 of the above Agreement, and to hold and disburse the Escrow Monies in accordance with the terms and conditions of the above Agreement.

NEHAMM ABSTRACT LLC, Inc.

By: Carol A. Oelschlegel
Name: CAROL A. OELSCHLEGEL
Title: CLOSING/TITLE OFFICER
Its Duly Authorized Representative