

FIRST AMENDMENT TO OPTION AGREEMENTS
BY AND BETWEEN THE CITY OF SAN JOSÉ
AND
COLEMAN AIRPORT PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY

This First Amendment to Option Agreements (" Amendment") is made as of this 1__ day of March 2009, by and between the CITY OF SAN JOSÉ, a municipal corporation ("CITY"), and COLEMAN AIRPORT PARTNERS, LLC, a California limited liability company ("Optionee").

RECITALS

A. The CITY is the owner of certain real property and improvements located at 1125 Coleman Avenue, in San José, California more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Property"); and

B. The CITY and OPTIONEES entered into (i) an Option Agreement (HUD Site) dated July 24, 2008 and (ii) an Option Agreement (Development Site) dated July 24, 2008 (each individually referred to as an "Option Agreement" and collectively as the "Option Agreements"), wherein, subject to the terms and conditions contained therein, the City granted OPTIONEE an option to purchase the Property; and

C. OPTIONEE has informed the CITY that it can no longer continue to maintain the Option Deposits required by Section 1.4.1 of each of the Option Agreements and has requested that the CITY agree to eliminate the provision requiring the Option Deposits from the Option Agreements; and

D CITY believes it is in the best interest of the City to continue with the sale of the Property to OPTIONEE and to continue negotiations with OPTIONEE to accomplish the sale; and

E. The CITY and OPTIONEE now desire to amend the Option Agreements to modify the Option Agreements to allow continued negotiations of the sale of the Property to OPTIONEE.

NOW, THEREFORE, the parties hereby amend the Option Agreement as follows:

1. Section 1.4 of each of the Original Agreements is hereby deleted in its entirety. OPTIONEE is no longer required to maintain the Option Deposit and all references in the Option Agreements to the Option Deposit are of no further effect. Because

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DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

REPLACEMENT -- Recitals B & C, Sections 1 & 3 modified.

RD:EJM:EJM
3/5/2009

OPTIONEE had elected to maintain the Option Deposit in the form of two Letters of Credit, CITY agrees to return the letters of credit to OPTIONEE undrawn.

2. Except for the modifications in this Amendment, in all other respects, the terms and conditions in the Option Agreements shall remain unchanged and in full force and effect.
3. The effective date of this Amendment is the date set forth above.
4. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

THE CITY OF SAN JOSÉ, a municipal corporation

By: _____

Name:

Title:

"OPTIONEES"

COLEMAN AIRPORT PARTNERS,
LLC, a California limited liability
company

By: _____

Title: _____

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EXHIBIT A

LEGAL DESCRIPTION OF AIRPORT WEST SITE

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel A:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF "ADJUSTED PARCEL A" DESCRIBED IN THE LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY SANTA CLARA ON JUNE 22, 1999 UNDER RECORDER'S SERIES NO. 14867793, OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF COLEMAN AVENUE WITH THE NORTHWESTERLY LINE OF "PARCEL B" DESCRIBED IN THE NOTICE OF LOT LINE ADJUSTMENT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JULY 30, 1999 UNDER RECORDER'S SERIES NO. 14920701, OFFICIAL RECORDS, THENCE ALONG THE NORTHEASTERLY LINE OF SAID "PARCEL B" AND "ADJUSTED PARCEL A" ALSO BEING THE SOUTHWESTERLY LINE OF COLEMAN AVENUE SOUTH 57° 34' 50" EAST, 996.50 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTH 32° 25' 10" WEST, 1083.08 FEET TO THE SOUTHWESTERLY LINE OF SAID "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHWESTERLY LINE OF "ADJUSTED PARCEL A" SOUTH 57° 34' 50" EAST, 1002.79 FEET TO THE SOUTHERLY CORNER OF "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHEASTERLY LINE OF "ADJUSTED PARCEL A", NORTH 32° 25' 10" EAST, 1083.08 FEET TO THE EASTERLY CORNER OF "ADJUSTED PARCEL A" AND THE SOUTHWESTERLY LINE OF COLEMAN AVENUE; THENCE ALONG SAID SOUTHWESTERLY LINE OF COLEMAN AVENUE NORTH 57° 34' 50" WEST, 1002.79 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

ALL THAT CERTAIN REAL PROPERTY SITUATED PARTIALLY IN THE CITY OF SAN JOSE AND PARTIALLY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

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ALL THAT LAND DESIGNATED AND DELINEATED AS "PARCEL B" IN THE NOTICE OF LOT LINE ADJUSTMENT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JULY 30, 1999, UNDER RECORDER'S SERIES NO. 14920701, OFFICIAL RECORDS AND A PORTION OF "ADJUSTED PARCEL A" DESCRIBED IN THE LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JUNE 22, 1999, UNDER RECORDER'S SERIES NO. 14867793, OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF COLEMAN AVENUE WITH THE NORTHWESTERLY LINE OF SAID "PARCEL B", THENCE ALONG THE NORTHEASTERLY LINE OF SAID "PARCEL B" AND "ADJUSTED PARCEL A" ALSO BEING THE SOUTHWESTERLY LINE OF COLEMAN AVENUE SOUTH 57° 34' 50" EAST, 996.50 FEET; THENCE SOUTH 32° 25' 10" WEST, 1083.08 FEET TO THE SOUTHWESTERLY LINE OF SAID "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHWESTERLY LINE OF "ADJUSTED PARCEL A" AND "PARCEL B" NORTH 57° 34' 50" WEST, 1038.06 FEET TO THE MOST WESTERLY CORNER OF SAID "PARCEL B" THENCE ALONG THE NORTHWESTERLY LINE OF "PARCEL B" THE FOLLOWING SIX (6) COURSES AND DISTANCES.

1. NORTH 32° 25' 09" EAST 250.12 FEET;
2. NORTH 57° 34' 51" WEST, 105.40 FEET;
3. NORTH 08° 45' 53" EAST, 270.00 FEET;
4. NORTH 82° 20' 17" EAST, 219.28 FEET;
5. SOUTH 57° 34' 51" EAST, 87.51 FEET;
6. NORTH 32° 25' 09" EAST, 444.46 FEET TO THE POINT OF BEGINNING.

PARCEL C:

BEING "ADJUSTED PARCEL B" DESCRIBED IN THAT LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY SANTA CLARA ON JUNE 22, 1999 UNDER RECORDER'S SERIES NO. 14867793, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF NEWHALL STREET AT THE EASTERNMOST CORNER OF THAT CERTAIN 7.528 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FOOD MACHINERY CORPORATION, A CORPORATION, TO SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JANUARY 23, 1947, RECORDED FEBRUARY 25, 1947 IN BOOK 1433 OFFICIAL RECORDS, PAGE 231 SANTA CLARA COUNTY RECORDS;

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THENCE NORTH 57 DEG. 34' 50" WEST ALONG THE NORTHEASTERLY LINE OF SAID 7.528 ACRE TRACT 841.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 32 DEG. 25' 10" EAST 35.14 FEET;
THENCE NORTH 57 DEG. 34' 50" WEST 39.00 FEET;
THENCE NORTH 32 DEG. 25' 10" EAST 1047.94 FEET TO THE SOUTHWESTERLY LINE OF COLEMAN AVENUE (100.00 FEET IN WIDTH);
THENCE NORTH 57 DEG. 34' 50" WEST 933.02 FEET ALONG SAID SOUTHWESTERLY LINE;
THENCE SOUTH 32 DEG. 25' 10" WEST 1083.08 FEET TO SAID NORTHEASTERLY LINE OF SAID 7.528 ACRE TRACT;
THENCE SOUTH 57 DEG 34' 50" EAST ALONG SAID NORTHEASTERLY LINE 972.02 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D:

NON-EXCLUSIVE EASEMENT FOR ELECTRICAL UTILITY SERVICE AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED DECEMBER 21, 1999 AS INSTRUMENT NO. 15098683, OFFICIAL RECORDS.

PARCEL E:

NON-EXCLUSIVE EASEMENT FOR ELECTRICAL UTILITY SERVICE AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED DECEMBER 21, 1999 AS INSTRUMENT NO. 15098684, OFFICIAL RECORDS.

APN: 230-46-055 (Affects: Parcel C), 230-46-060 (Affects: Portion of Parcel B), 230-46-062 (Affects: Parcel A) and 230-46-063 (Affects: Remainder Portion of Parcel B)

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