

**THIRD AMENDMENT TO  
ADVERTISING CONCESSION AGREEMENT  
BY AND BETWEEN  
THE CITY OF SAN JOSE  
AND  
CLEAR CHANNEL OUTDOOR, INC., dba CLEAR CHANNEL AIRPORTS**

This THIRD AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by the City of San Jose ("City"), a municipal corporation, and Clear Channel Outdoor, Inc., d/b/a Clear Channel Airports, a Delaware corporation authorized to do business in the state of California ("Concessionaire").

**RECITALS**

**WHEREAS**, on July 31, 2007 City and Concessionaire entered into an Agreement entitled "Norman Y. Mineta San Jose International Airport City of San Jose Advertising Concession Agreement" ("Agreement"); and

**WHEREAS**, on October 1, 2008, City and Concessionaire entered into a First Amendment to the Agreement to make a clerical correction to the Agreement; and

**WHEREAS**, on June 15, 2010, City and Concessionaire entered into a Second Amendment to the Agreement to lower the amount of the Minimum Annual Guarantee ("MAG") retroactive to the Commencement Date, amend the provisions of Section 20 regarding Alterations and Improvements, and amend certain provisions regarding Advertising Sites; and

**WHEREAS**, City and Concessionaire desire to further amend the amended Agreement to combine the Minimum Capital Improvement Expenditure requirements of the various advertising categories in Options I, II and III; remove the requirement for sample

contract submission; delete language requiring removal of display units where no advertising has been sold within a specific time period and to add, at no additional cost to Concessionaire, office/storage space necessary to support Concessionaire's operations at the Airport;

**NOW, THEREFORE**, in consideration of the terms and conditions of this Amendment, the parties agree to further amend the amended Agreement as follows:

**SECTION 1.** Upon execution of this amendment and continuing through the term of the agreement, City leases to Concessionaire and Concessionaire leases from City, those premises described on **Exhibit L**, attached hereto and incorporated herein by this reference (the "Premises") to be used by Concessionaire solely for office and storage purposes to support its Concession Operations. Neither Concessionaire, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Agreement.

In the event that implementation of the City's requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Premises, or any part thereof, Concessionaire shall, at Concessionaire's sole cost and expense, relocate all or part of its operations on the Premises, or any part thereof, or contract or expand the size of the Premises in an expeditious matter only as may be permitted, directed or required by the Director.

Amendments to this Agreement that change or modify the description of the Premises set forth in **Exhibit L**, to specify in writing increases, decreases, or relocation of space described in **Exhibit L** may be executed on behalf of the City by the Director.

**SECTION 2.** No later than ninety (90) days after the Annual Adjustment Date (see **SECTION 5.2.2.2**), Concessionaire shall provide to the City an Annual Statement of Gross Revenues for the preceding year. The Annual Statement of Gross Revenues

shall be certified, at the Concessionaire's sole expense, by a Certified Public Accountant selected by Concessionaire and approved by the City, with the City's approval not to be unreasonably withheld, conditioned, or delayed. Each Annual Statement of Gross Revenues shall be prepared on a cash accounting basis and certified by the chief financial officer or other principal accounting officer of Concessionaire as being true and correct in all material respects. If Concessionaire is delinquent for fifteen (15) days or more in furnishing the City with any Annual Concession Report required to be delivered under this Agreement, Concessionaire shall pay the City Twenty-Five Dollars (\$25) per day thereafter per delinquency as liquidated damages for the City's additional costs incurred in monitoring and enforcing Concessionaire's compliance with this reporting requirement.

**SECTION 3.** Section 4.9.2 "Display Advertising Approvals" is amended to read as follows:

**"4.9.2 Display Advertising Approvals**

Prior to contracting with any third party to place display advertising in the Concession Areas, Concessionaire shall submit all prospective display advertising to the Director for approval to assure that it meets the advertising standards set out in this Agreement. All display advertising submissions will include an Artwork Approval Form that will indicate that the Director has reviewed the artwork for compatibility with the Airport advertising standards and it will be returned to Concessionaire. All of the signed Artwork Approval forms will be kept on file at the corporate offices of Concessionaire, and Concessionaire shall not accept any display advertising that is determined by the Director to not meet the advertising standards set out in this Agreement."

**SECTION 4.** Section 4.12 "Unsold/Vacant Spaces" is amended to read as follows:

**"4.12 Unsold/Vacant Spaces**

**4.12.1** Concessionaire shall exercise good faith efforts and sound business practices to keep all display advertising spaces/fixtures filled with revenue-producing

advertising. Display spaces and fixtures for which advertising is not sold shall first be offered to the City through the Director for Airport or other City use at no cost to City.

**4.12.2** Concessionaire shall keep all public service messages and fillers fresh and current and shall replace them if requested by the Director.”

**SECTION 5. Section 20.5 “Minimum Capital Improvement Expenditure”** is amended to read as follows:

**“20.5 Minimum Capital Improvement Expenditure**

**20.5.1** Concessionaire shall make a Minimum Capital Improvement Expenditure at the Airport in the amount of not less than One Million Eight Hundred Seventy-Nine Thousand Dollars (\$1,879,000) for the aggregate of Options I, II and III. Concessionaire shall document its Capital Improvement Expenditures to the satisfaction of the Director in the form the Director requires.

**20.5.2** Upon Concessionaire’s documentation of its Minimum Capital Improvement Expenditure under **Section 20.5.1** above, Additional Advertising Sites will not be subject to any further Minimum Capital Improvement Expenditures.

**20.5.3** Display projects that take longer than six (6) months to develop may be installed after the Commencement Date of this Agreement or, if applicable, after the effective date of an amendment to this Agreement executed in accordance with **Section 4.4.3**, if approved by the Director.

**20.5.4** If Concessionaire fails to expend the required Minimum Capital Improvement Expenditure as set forth above, Concessionaire shall pay on demand to City an amount equal to the difference between such minimum required amounts and the sums actually expended by Concessionaire.

**20.5.5** The following Concession Capital Improvement Expenditures (collectively referred to as “Concessionaire’s Allowable improvement Expenditure”) may be counted toward Concessionaire’s Minimum Capital Improvement Expenditure:

- a) Costs incurred by Concessionaire for: improvements and equipment, plumbing, electrical and mechanical improvements, lighting, wall finishes, flooring, and removable equipment that is necessary to the operation of the Concession Areas.

- b) Fees and costs payable to Concessionaire's architects and contractors, not to exceed ten percent (10%) of the sum of: (a) the total construction costs contracted for directly by Concessionaire and paid to a construction contractor or materials supplier; and (b) the total cost of advertising displays purchased by Concessionaire and installed and used by Concessionaire in the Advertising Sites.
- c) City's E&I Fees (as provided in **SECTION 20.7**)
- d) Asbestos abatement costs not reimbursed to Concessionaire by City.

**20.5.6** The following costs shall not be counted as part of Concessionaire's Minimum Capital Improvement Costs:

- a) Concessionaire's costs for internal design, review, management and oversight of Concession Areas construction.
- b) Concessionaire's licensing or franchising costs.
- c) Any other future renovation and remodeling of Concessionaire's Trade Fixtures and Equipment which Concessionaire, at its option, elects to make during the term."

**SECTION 6.** A new **Exhibit L**, entitled "**OFFICE AND STORAGE SPACE**", is attached hereto and incorporated herein.

**SECTION 7.** Concessionaire hereby agrees that the terms and conditions of this Amendment constitute consideration for the full and complete settlement and release of any and all claims against City relating directly or indirectly to the amount of the Minimum Annual Guarantee (MAG), as provided in the Agreement, including but not limited to any requests for any prepayment, buyout or reduction of the MAG made by Concessionaire to City, which arose on or prior to the date of this Amendment. Concessionaire acknowledges that it has had the opportunity to seek legal counsel regarding this matter. By such release Concessionaire expressly waives its' rights, if any, under California Civil Code Section 1542 which provides: "A General Release does

not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor.”

**SECTION 8.** City hereby acknowledges that Concessionaire has satisfied its Minimum Capital Improvement Expenditure as required by Section 20.5 of the Agreement.

**SECTION 9.** All of the provisions of the amended Agreement not specifically amended by this Third Amendment shall remain in full force and effect.

**WITNESS THE EXECUTION HEREOF** the day and year written above.

“City”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation of the State of California

  
\_\_\_\_\_  
KEVIN FISHER  
Senior Deputy City Attorney

\_\_\_\_\_  
DENNIS HAWKINS, CMC  
City Clerk

Date: \_\_\_\_\_

“Concessionaire”

CLEAR CHANNEL OUTDOOR, INC.,  
d/b/a CLEAR CHANNEL AIRPORTS, a  
Delaware corporation

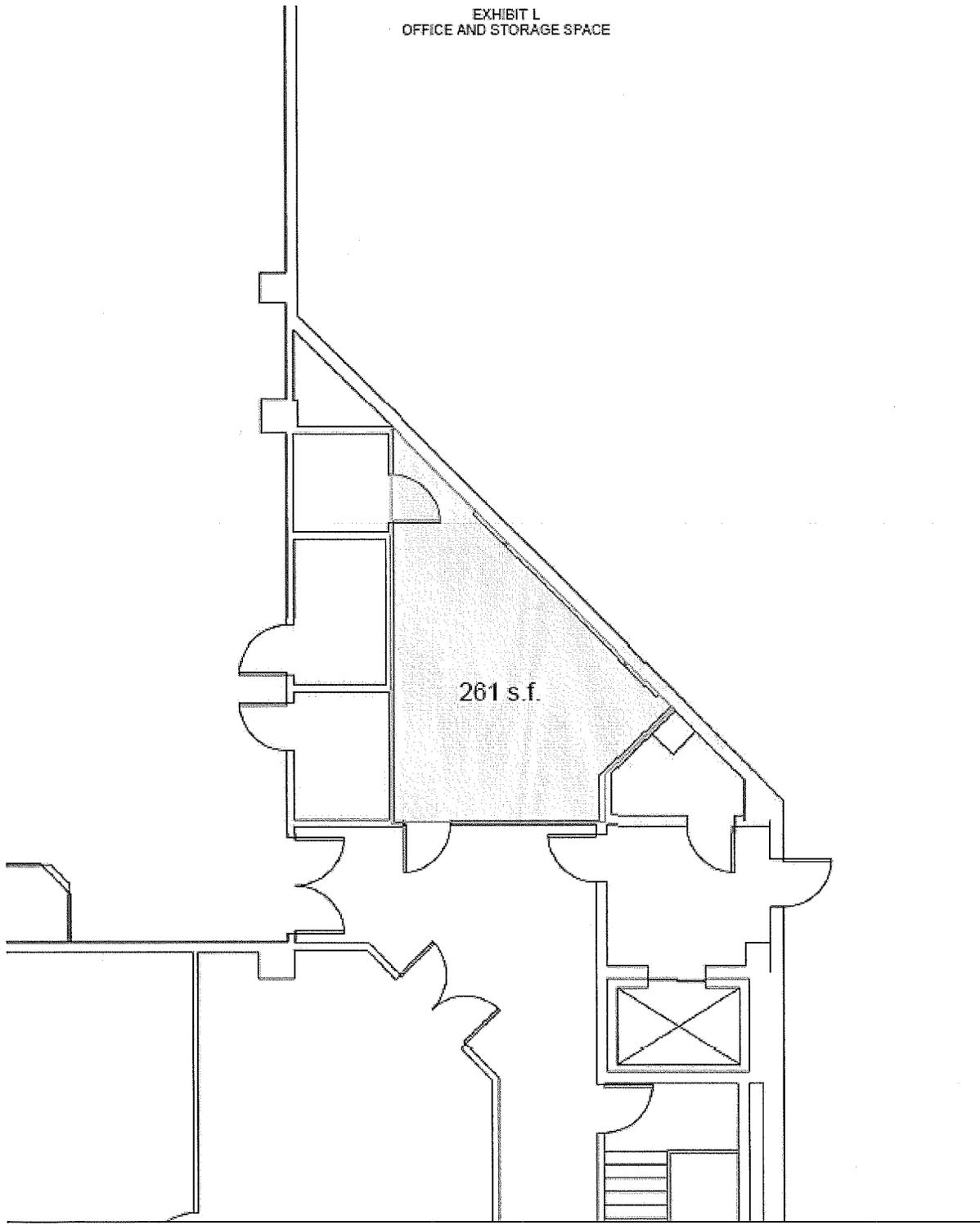
By:   
\_\_\_\_\_

Name: Bryan Packer

Title: EVP Real Estate

Date: July 2, 2012

EXHIBIT L  
OFFICE AND STORAGE SPACE



**NOTE**  
  
Date: 8/30/2011

Clear Channel  
Terminal A Floor 3  
Exhibit L

WILLIAM Y. MINETA  
**SAN JOSE**  
INTERNATIONAL  
AIRPORT 

**CORPORATE SECRETARY CERTIFICATE**

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, Sara Lee Keller certify that I  
Name of Secretary or Assistant Secretary

am the  Secretary or  Assistant Secretary of the corporation named in the

attached agreement; that Bryan Parker  
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the EVP Real Estate  
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

[Signature]  
Signature of Secretary or Assistant Secretary

\_\_\_\_\_  
Corporate Seal

July 2, 2012  
Date