

**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 \_\_\_\_\_, 2011, 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"), amend the provisions of Section 20 regarding Alterations and Improvements, and amend certain provisions regarding Advertising Sites; and

**WHEREAS**, City and Concessionaire desire to amend the amended Agreement to combine the Minimum Capital Improvement Expenditure requirements of the various advertising categories in Options I, II and III and to add office/storage space necessary

to support Concessionaire's operations at the Airport, at no additional cost to Concessionaire;

**NOW, THEREFORE**, the parties agree to further amend the amended Agreement as follows:

**SECTION 1. Section 3.1 "Permitted Uses"** is amended to read as follows:

**3.1 Permitted Uses**

- 3.1.1** The Concessionaire shall have the non-exclusive right, privilege, and obligation to finance, design, develop, install, maintain and operate advertising displays (the "Permitted Use"), for the purpose of establishing high quality, state of the art Advertising Sites as approved by the City. This Agreement is non-exclusive in character and in no way prevents the City from entering into an Agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or concessionaires or others in other premises at the Airport during the term of this Agreement. Concessionaire shall use the Concession Area, including the Advertising Sites, for the Permitted Uses and for no other purpose.
- 3.1.2** Concessionaire shall be permitted to occupy approximately 261 square feet of space located on the third floor of Terminal A for the purpose of office and storage use, as shown on the attached **Exhibit L** (the "Premises"). There will be no additional Concession Fee or any other additional rent or charge to Concessionaire for use of this space.
- 3.1.3** 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.
- 3.1.4** Amendments to this Agreement which change or modify the description of the Premises set forth in **Section 3.1.2** above, to specify in writing increases, decreases, or relocation of space described in **Section 3.1.2** above may be executed on behalf of the City by the Director."

**SECTION 2. 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 3.** A new **Exhibit L**, entitled "**OFFICE AND STORAGE SPACE**", is attached hereto and incorporated herein.

**SECTION 4.** 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

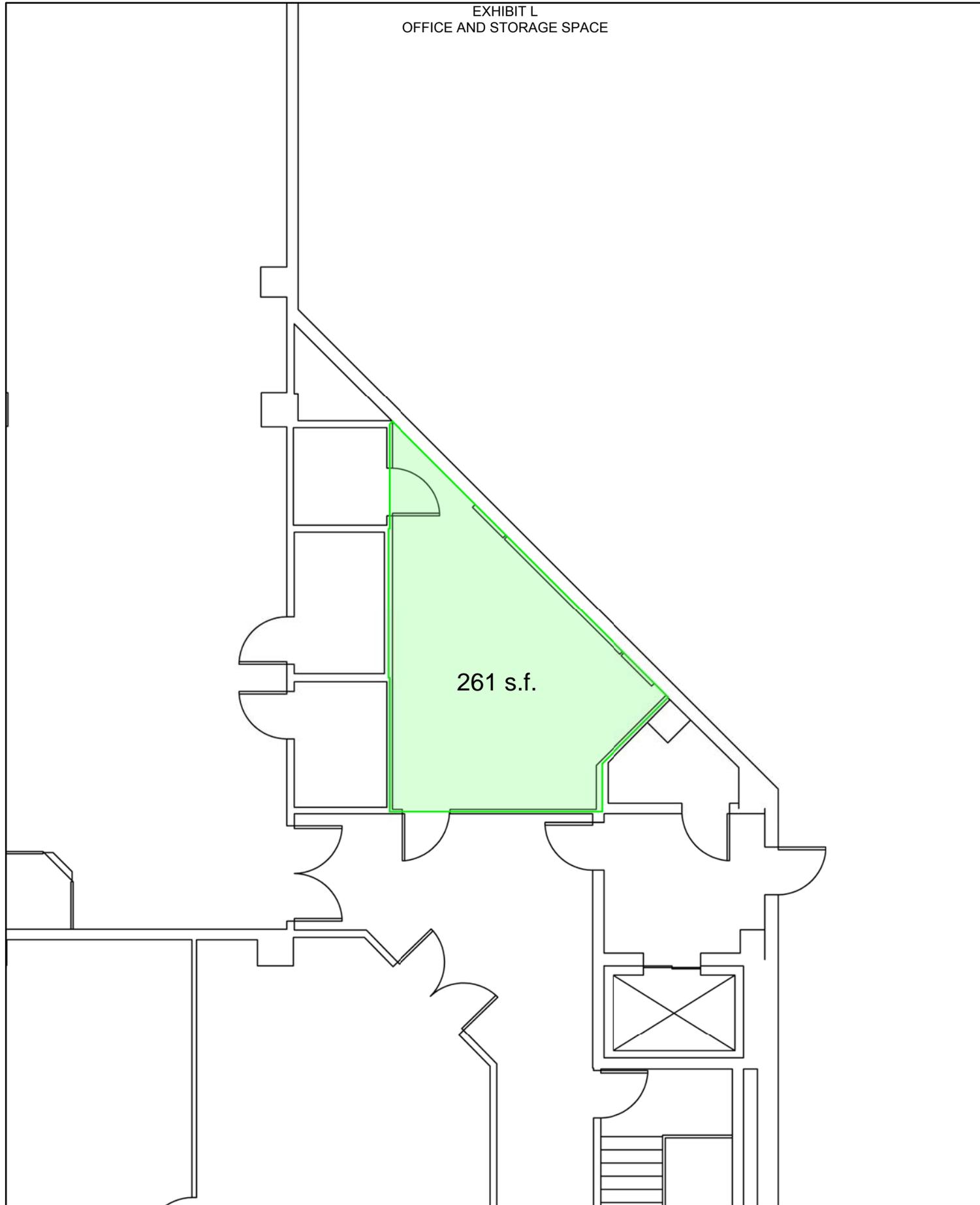
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

EXHIBIT L  
OFFICE AND STORAGE SPACE



261 s.f.

NORTH



Date: 8/30/

Clear Channel  
Terminal A Floor 2

NORMAN Y. MINETA  
SAN JOSE



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

**CORPORATE SECRETARY CERTIFICATE**

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

I, \_\_\_\_\_ certify that I  
**Name of Secretary or Assistant Secretary**

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

attached agreement; that \_\_\_\_\_  
**Name of Person that Signed Agreement**

signed the agreement on behalf of the corporation as the \_\_\_\_\_  
**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 of Secretary or Assistant Secretary**

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

\_\_\_\_\_  
Date