

**FIRST AMENDMENT TO
SHARED USE LOUNGE CONCESSION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
ALD DEVELOPMENT CORP.**

This FIRST AMENDMENT TO SHARED USE LOUNGE CONCESSION AGREEMENT is entered into this ____ day of _____, 2019, by the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and ALD DEVELOPMENT CORP., a Delaware corporation authorized to do business in the State of California as ALD DEVELOPMENT CORP., WHICH WILL DO BUSINESS IN CALIFORNIA AS THE CLUB AT SJC ("Concessionaire").

RECITALS

WHEREAS, on November 28, 2017, City and Concessionaire entered into an agreement entitled "SHARED USE LOUNGE CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND ALD DEVELOPMENT CORP DBA THE CLUB AT SJC ("Agreement"); and

WHEREAS, City and Concessionaire desire to amend the Agreement to retroactively and temporarily increase the Percentage Fee, provide for a one time payment to the City in the amount of \$34,150, revise the Joint Marketing Fund Fee to increase the scope of the marketing and service program, and add provisions required under federal law and regulations;

NOW, THEREFORE, effective upon full execution, the parties agree to amend the Agreement as follows:

SECTION 1. As consideration to the City for this Amendment, and in addition to Concession Fees due to City commencing October 1, 2019, upon execution of this

Amendment, Concessionaire shall pay to City the amount of \$34,150, which is equal to three twelfths (3/12) of the Minimum Annual Guarantee under the Agreement.

SECTION 2 “SUMMARY OF TERMS AND DEFINITIONS” is hereby amended to revise the following definitions:

“**Commencement Date**” (**SECTION 2.1 – Term**) means October 1, 2019.

“**Percentage Fee**” means fifteen percent (15%) of Concessionaire’s Gross Revenues retroactive effective from the Commencement Date through July 31, 2020. Commencing August 1, 2020, the Percentage Fee shall mean thirteen percent (13%) of Concessionaire’s Gross Revenues.”

SECTION 3. SECTION 6, “FEES & DEPOSITS”, subsection 6.1.1.1 entitled “Concession Fee Calculation” is hereby amended to read as follows:

“6.1.1.1 Concession Fee Calculation

From the Commencement Date, Concessionaire shall pay to the City on a monthly basis the Concession Fee consisting of the greater of: (a) one-twelfth (1/12) of the MAG of One Hundred Thirty-Six Thousand Six Hundred Dollars (\$136,600.00), or (b) a Percentage Fee, as defined in **Section 1.**”

SECTION 4. Section 6, “Concession Fee”, subsection 6.1.4, entitled “Joint Marketing Fund Fee” is hereby amended to read as follows:

“6.1.4 Joint Marketing and Customer Service Fund Fee

A concession marketing and customer service fee of one half of one percent (.5%) of Gross Revenues shall be paid monthly to the City no later than the twentieth (20th) of each month for the preceding month’s activity in conjunction

with the Monthly Concession Report, to be used for marketing the concessions interest at the airport. Concessionaire shall deliver to the City the Joint Marketing and Customer Service Fund Fee in accordance with Section 6.1.2.1 above.”

SECTION 5. SECTION 36, entitled “GENERAL CIVIL RIGHTS PROVISIONS” is hereby amended and restated in its entirety to read as follows:

“The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.”

SECTION 6. SECTION 37, entitled “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is hereby added to the Agreement to read as follows:

“A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.”

SECTION 7. SECTION 38, entitled “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is hereby added to the Agreement to read as follows:

“A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in

compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.”

SECTION 8. All of the terms and conditions of the Agreement not modified by this First Amendment shall remain in full force and effect.

[remainder of page intentionally left blank]

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

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

KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date: _____

“CONCESSIONAIRE”

ALD DEVELOPMENT CORP.,
a Delaware corporation authorized to do
business in the State of California as ALD
DEVELOPMENT CORP., WHICH WILL
DO BUSINESS IN CALIFORNIA AS THE
CLUB AT SJC

Signature

Print Name

Title

Date

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 on 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