

FOURTH AMENDMENT TO CONCESSION AGREEMENT

THIS FOURTH AMENDMENT TO CONCESSION AGREEMENT (Contract No. C84-61), is made and entered into this 15<sup>TH</sup> day of January, 1996, by and between the CITY OF ALHAMBRA, a municipal corporation, hereinafter called CITY, and ALMANSOR COURT, INC., hereinafter called CONCESSIONAIRE.

W I T N E S S E T H:

For and in consideration of the premises and of the mutual covenants and agreements herein contained, said parties hereby agree as follows:

1. RECITALS. This FOURTH AMENDMENT TO CONCESSION AGREEMENT is made and entered into with respect to the following facts:

- (a) That on October 8, 1984, CITY and CONCESSIONAIRE entered into that certain Concession Agreement whereby CITY, which owns the Almansor Court Clubhouse restaurant facility (hereinafter called "Concession"), granted CONCESSIONAIRE the exclusive right and privilege to operate and maintain the Concession at the Alhambra Municipal Golf Course, as more particularly described in said Concession Agreement; and
- (b) That on January 26, 1987, CITY and CONCESSIONAIRE entered into that certain Revocable Permit Agreement granting

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permission to CONCESSIONAIRE to construct at its sole expense a freeway sign on City-owned property advertising said concession; and

- (c) That on or about January 5, 1990, CITY and CONCESSIONAIRE entered into an Agreement of Compromise, Settlement and Release, hereinafter collectively called "Settlement Agreement", which provided for the expansion of the Concession to include a Lakeview Banquet Room; and
- (d) That on August 9, 1993, CITY and CONCESSIONAIRE entered into a Second Amendment to Concession Agreement ("Second Amendment") which set forth the responsibilities and financial obligations of both CITY and CONCESSIONAIRE for the construction of the Lakeview Banquet Room; and
- (e) On October 14, 1994, the CITY and CONCESSIONAIRE entered into a Third Amendment to Concession Agreement ("Third Amendment") for the Lakeview Banquet Room expansion; and
- (f) That CONCESSIONAIRE desires to construct, renovate and improve (hereinafter referred to as "Improvements", as more fully described in the attached Contract Documents) the cocktail lounge and adjacent patio area (hereinafter referred to as "Facility") as set forth in the attached floor plan, ceiling plan, concept rendering and floor samples attached hereto and incorporated herein by this reference; and

- (g) Said Improvements would allow CONCESSIONAIRE to expand its market and increase its gross volume, thereby increasing the rent paid by CONCESSIONAIRE to the CITY; and
- (h) That it is in the best economic, health, safety and welfare interests of the CITY and the public it serves to delegate the CITY's authority and responsibility to construct said Improvements to CONCESSIONAIRE; and
- (i) That CONCESSIONAIRE is qualified to construct and oversee the construction of said Improvements to the Facility; and
- (j) That CITY has elected to authorize CONCESSIONAIRE to construct and oversee the construction of said Improvements and to enter upon the CITY's property for the purpose of constructing said Improvements pursuant to the terms and conditions as hereinafter set forth.

2. AUTHORIZATION. CITY hereby authorizes CONCESSIONAIRE and its qualified contractors to construct and oversee the construction of said Improvements and to enter upon the CITY's property for such purpose, in consideration for which, CONCESSIONAIRE hereby agrees to and shall perform those duties and services set forth hereinbelow in accordance with the terms and conditions hereinafter set forth.

3. SERVICES AND SCOPE. Said Concession Agreement dated October 8, 1984 is hereby amended by adding thereto a new Paragraph 24, to read as follows:

24. COCKTAIL LOUNGE AND PATIO IMPROVEMENTS

A. Concessionaire's Responsibilities for Construction of Improvements.

(1) CONCESSIONAIRE hereby agrees to pay the CITY a one-time additional rent payment of One Hundred Fifty Thousand Dollars (\$150,000.00) by April 1, 1996.

(2) CONCESSIONAIRE agrees to construct and oversee the construction of all Improvements as outlined in the floor plan, ceiling plan and concept rendering attached hereto and incorporated herein by this reference.

(3) Any and all portions of the Concession damaged as a result of construction shall be restored by CONCESSIONAIRE to the level existing prior to commencement of construction.

(4) CONCESSIONAIRE agrees to expend approximately Four Hundred Fifty Thousand Dollars (\$450,000.00) for said Improvements.

(5) All Improvements shall be completed within six (6) months of the commencement of construction of said Improvements.

(6) CONCESSIONAIRE shall pay all other costs and expenses related to the Improvements over the initial \$150,000.00 contributed by the CITY, as more fully described in Section 3B(1) of this Agreement.

CONCESSIONAIRE is solely responsible for any and all

payments to any contractors or suppliers over the required \$150,000.00 initial CITY contribution, including all change orders required during construction and those initiated by the CITY Building Département.

(7) CONCESSIONAIRE agrees to indemnify, defend and hold CITY and any of its elected or appointed officers, agents or employees harmless against any contractor, supplier, person or entity which makes any claim, demand, liability, loss, cost, expense, lien or judgment for any damage whatsoever, including but not limited to death or injury occurring by reason of any acts or omissions on the part of CITY, seeking any amount from the CITY in excess of the \$150,000.00 CITY contribution.

(8) Performance of the work specified in this Paragraph 24(A) is made an obligation of CONCESSIONAIRE under this Fourth Amendment to Concession Agreement, subject to any changes subsequently made upon the mutual written agreement of the parties hereto. CONCESSIONAIRE shall not be responsible for delays in performance or inability to perform resulting from any nonperformance or hindrance by CITY or any other third party not under the control or supervision of CONCESSIONAIRE.

(9) In the event that CONCESSIONAIRE determines in its sole discretion that it is not financially feasible to

construct the Improvements, or fails to advance to CITY the one-time additional rent payment of \$150,0000, this FOURTH AMENDMENT TO CONCESSION AGREEMENT shall be of no force or effect and neither party shall have any claim or obligation upon or to the other party.

B. City's Responsibilities.

(1) CITY shall pay One Hundred Fifty Thousand Dollars (\$150,000.00) to be applied toward the Improvement construction materials such as concrete, steel and drywall, up to a maximum of One Hundred Fifty Thousand Dollars (\$150,000.00). CITY shall not be responsible for any other monetary or in-kind contribution for the Improvements or restoration of damaged portions of the CONCESSION except as provided in Section 24.B.(3) of this Amendment.

(2) The bills for said materials shall be submitted by CONCESSIONAIRE to the CITY for payment directly to CONCESSIONAIRE's suppliers and/or contractors, and CITY shall make payment within five (5) days of submittal. CONCESSIONAIRE shall pay all other Improvement costs and expenses over the CITY's \$150,000.00 contribution, as set forth more fully in Section 24A of this Amendment.

(3) CITY shall provide plan checking, CITY permits, CITY inspections, CITY hookup and CITY connection fees at no charge to CONCESSIONAIRE. CITY shall not be responsible for payment of any other

school or outside agency's fees. CITY has determined that school fees will be charged at \$.28 per square foot (for an estimated total of \$280.00) and that a sewer connection fee would not apply. CITY is not aware of any other applicable fees. CITY shall provide said services on a fast track basis in order to assist CONCESSIONAIRE in expediting the construction of the Improvements.

4. TERM. Section 7 of the Concession Agreement dated October 8, 1984 is hereby amended by extending the original 25-year term of the Agreement by an additional twenty-five (25) years, to read as follows:

"Except as provided in Paragraphs 6 and 12, the term of the Concession Agreement shall be fifty (50) years. This Concession Agreement shall become effective on the date the CITY is issued a Certificate of Occupancy, and shall expire on January 1, 2037. At the expiration of such terms of this Concession Agreement, all terms and conditions shall remain in full force and effect, except that the Concession Agreement may be cancelled by either party by giving one hundred eighty (180) days notice by registered mail to the other party. At any time prior to the

expiration of said term, this Concession Agreement may be cancelled by mutual consent. In the event the facility is not constructed, this Concession Agreement shall be of no force or effect and neither party shall have any claim or obligations upon or to the other party."

5. All other provisions of the Concession Agreement dated October 8, 1984, assignment and assumption thereof dated September 17, 1986, Amendment to Concession Agreement dated January 5, 1990, Second Amendment to Concession Agreement dated August 9, 1993, and Third Amendment to Concession Agreement dated

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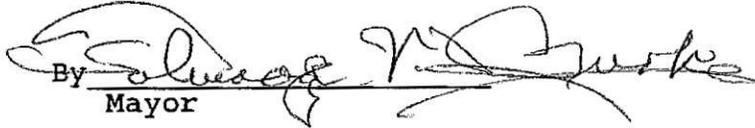


October 14, 1994, and not inconsistent with the terms of this Fourth Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment on the date first above written by their respective officer duly authorized in that behalf.

CITY OF ALHAMBRA ("CITY")

ALMANSOR COURT, INC.  
("CONCESSIONAIRE")

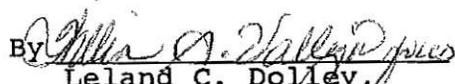
By   
Mayor

By   
President

ATTEST:

By   
Frances A. Moore, CMC,  
City Clerk

APPROVED AS TO FORM:

By   
Leland C. Dolley,  
City Attorney