

MEDIATION TERM SHEET ADDENDUM

This Mediation Term Sheet Addendum (“Addendum”) is executed by and between the Antonio B. Won Pat International Airport Authority, Guam (“GIAA”) and Lotte Duty Free Guam, LLC (“Lotte”) (sometimes together referred to as the “Parties”) as a result of a mediation of issues and disputes between the Parties concerning GIAA’s on-going Third Floor Project and that certain Mediation Term Sheet executed between the Parties with the last signature being on April 26, 2018 (“MTS”). The purpose of the mediation and this Addendum is to resolve such issues and disputes between the Parties. Capitalized terms not defined herein shall have the meaning set forth in the MTS and the May 18, 2013 Specialty Retail Concession Agreement (“Concession Agreement”) entered into by the Parties.

WHEREAS, the Parties entered into the MTS to resolve issues and disputes between the Parties concerning impacts of the Third Floor Project, the February 2 Orders and February 5 Judgment, which at that time had not been stayed, and the status of the Concession Agreement, which at that time had been declared void;

WHEREAS, in the MTS, GIAA agreed to give Lotte certain relief from its obligations under the Concession Agreement and additional warehouse space to mitigate anticipated impacts on Lotte’s operations from the Third Floor Project and for Lotte’s confirmation and reaffirmation of its obligations under the Concession Agreement, notwithstanding the February 2 Orders and February 5 Judgment, while GIAA appealed to the Supreme Court of Guam;

WHEREAS, on July 16, 2018, the Superior Court amended its DFS MSJ Order (the “Amended Order”), issued an Amended Judgment (the “Amended Judgment”), and stayed enforcement of the Amended Judgment pending GIAA’s appeal (the “Stay Order”);

WHEREAS, on November 16, 2018, GIAA issued a written notice of default to Lotte for failure to comply with its legal fee reimbursement obligation under its duty to defend set forth in Section 14.1 of the Concession Agreement, and GIAA also communicated to Lotte GIAA’s intent to draw down on the letter of credit issued by Bank of Guam that secures Lotte’s obligations under the Concession Agreement;

WHEREAS, on November 26, 2018 and November 30, 2018, in response to GIAA’s notice of default, Lotte’s legal counsel sent letters to GIAA that asserted purported defenses and other issues (“Lotte-GIAA Letters”);

WHEREAS, on November 30, 2018, Lotte’s legal counsel sent a letter to Bank of Guam giving notice of a possible dispute between Lotte and GIAA (“BOG Letter”);

WHEREAS, on December 3, 2018, GIAA through its legal counsel in response to the Lotte-GIAA Letters and BOG Letter sent a response letter to Lotte which asserted GIAA’s position and opposing views to Lotte’s;



WHEREAS, Lotte and GIAA have agreed to withdraw their attorney letters including the notice of default by GIAA and the BOG Letter by Lotte and to affirm the validity and enforceability of the Concession Agreement and the MTS;

WHEREAS, in the MTS, GIAA and Lotte agreed to address additional direct impacts to Lotte operations that arise after the MTS;

WHEREAS, the Parties have identified additional direct impacts related to the anticipated closure of retail space that were not known at the time the Parties negotiated the MTS; and

WHEREAS, the Parties have engaged in further mediation, which has resulted in the agreements set forth herein.

NOW THEREFORE, in consideration of the above recitals, the mutual and respective agreements of the Parties as set forth herein and other good and valuable consideration, the Parties hereby agree as follows:

1. **Affirmation of Agreements.** Lotte and GIAA hereby affirm that the MTS, this Addendum, and the Concession Agreement are valid and binding agreements fully enforceable against Lotte and GIAA in accordance with their terms.

2. **Additional Construction Impacts.** Pursuant to Section 6 of the MTS, the Parties agreed “additional direct impacts to Lotte and its operations as a result of the Third Floor Project” that “adversely affect Lotte’s operations and revenues” would be “further compensated as appropriate and reasonable after further discussion and negotiation in good faith.”

a. GIAA and Lotte agree to calculate additional construction impacts under Section 6 of the MTS as follows (“Additional Construction Impact Formula”): $\$1.07 \times \text{number of square feet of impacted space (closure of space)} \times \text{number of days of impact (closure)}$.

b. The \$1.07 amount is a per square foot per day value of the concession premises and is calculated as follows: $\$15,160,000 \text{ in MAG divided by } 38,751 \text{ square feet divided by } 365 \text{ days}$.

c. The calculation of additional construction impacts shall be based on the actual square footage of impacted (closed) space and the actual number of days of impact (closure), provided, however, that the number of square feet of impacted space shall be reduced by the square footage of Lotte-accepted alternate space provided by GIAA to Lotte to mitigate impacts in accordance with section (d) below.

d. Each month after the additional construction impacts have been fully realized, Lotte shall provide in writing the exact amount of the impacts using the

Additional Construction Impact Formula (“Lotte’s Construction Impact Calculation”) within seven (7) business days of the end of the month during which Construction Impact was sustained. GIAA and Lotte operations personnel shall meet within the next seven (7) business days to review Lotte’s Construction Impact Calculation, which when agreed to by both parties in writing shall be the Verified Construction Impact Amount. GIAA and Lotte will approach this calculation in good faith.

GIAA agrees that, as the Phase II Construction (“Phase II Construction” which is part of the “Third Floor Project”) is currently scheduled to be completed by July 31, 2019, GIAA and Lotte shall confirm the total amount of the Verified Construction Impact Amount of the Phase II Construction in August 2019, and Lotte will deduct that total amount from its monthly Rent obligation on a monthly installment basis, spread out over a period of twenty-four (24) months (“24-Month Impact Deduction Period”), commencing in September 2019.

The parties agree that if the Phase II Construction is not completed by July 31, 2019, GIAA and Lotte, upon full completion of the Phase II Construction, shall immediately confirm the total amount of the Verified Construction Impact Amount of the Phase II Construction, and Lotte will deduct that total amount from its monthly Rent obligation on a monthly installment basis, spread out over a period of time equal to the balance of months remaining in the 24-Month Impact Deduction Period (“Impact Deduction Period Balance”), commencing in the month following the month in which the Phase II Construction is completed. The 24-Month Impact Deduction Period and Impact Deduction Period Balance are referred to as the “Impact Deduction Period”.

During the Impact Deduction Period (24-months or Impact Deduction Period Balance) the total Verified Construction Impact Amount will be deducted or offset from the Rent in equal amounts each month (“Monthly Impact Deduction Amount”). However, in the event GIAA is unsuccessful in its appeal of the Protest Litigation and Lotte is required to vacate the Premises prior to the expiration of Impact Deduction Period, (i) the Monthly Impact Deduction Amount shall be adjusted in a way that the total remaining Verified Construction Impact Amount of the Phase II Construction will be fully deducted from Lotte’s monthly Rent obligation that will be negotiated on a month-to-month basis, or if this is not possible, (ii) the total remaining Verified Construction Impact Amount of the Phase II Construction shall be paid in cash to Lotte in the month following the month in which Lotte is required to vacate the Premises.

e. Lotte accepts from GIAA as alternate space provided to mitigate construction impacts the one thousand (1000) square feet of retail space identified in Attachment C, attached hereto and incorporated herein. If Lotte is unable to reasonably use any portion of this space, then such unusable space will be included in the calculation of additional construction impacts under this section 2. GIAA may present additional alternate space to mitigate construction impacts for Lotte’s reasonable consideration and acceptance, which shall only be given in writing.

f. GIAA and Lotte anticipate the following additional direct impacts (closure of space) in the year 2019 under Section 6 of the MTS: the Heritage space, jewelry and watches space, sunglasses space, and Bottega Veneta boutique. Any additional unanticipated impacts shall also be subject to this Addendum using the Additional Construction Impact Formula and shall be reported by Lotte as set forth in section (d) above.

3. **Percentage Rent.** Due to the additional direct impacts to Lotte arising from the Third Floor Project, GIAA agrees to waive the payment of Percentage Rent, if any, for the period of December 2018 through May 2019. For the purposes of calculating the payment of the Percentage Rent, the MAG amount shall be \$15,160,000, notwithstanding any Rent adjustments arising from the MTS or this Addendum, and the determination of whether MAG or Percentage Rent shall be applied shall be determined first before any deductions are taken pursuant to the MTS or this Addendum.

4. **Section 14.1 Defense Costs.** GIAA has demanded and Lotte has agreed that it will remain responsible for GIAA's attorneys' fees and costs for the Protest Litigation and related litigation. Lotte shall pay all outstanding GIAA defense fees and costs invoices as of the effective date of this Addendum. GIAA shall provide Lotte with a current litigation attorneys' fees budget ("Contract Defense Budget"). In the event that GIAA's attorneys' fees will exceed the total Contract Defense Budget, GIAA will provide notice to Lotte and the Parties agree to further discuss in good faith and use best efforts to agree on the modification and reimbursement schedule of attorneys' fees in excess of the Contract Defense Budget.

5. **All Other Terms of MTS and Concession Agreement Unmodified.** Except as expressly modified in this Addendum, all other terms and conditions of the MTS and the Concession Agreement shall continue unmodified by this Addendum and in full force and effect. Any disputes that arise out of this Addendum shall be subject to mediation within thirty (30) days of the inability to resolve any such dispute.

6. **Governing Law.** The validity of this Addendum and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to and in accordance with the laws of Guam.

7. **Subject to Approval.** This Addendum is subject to and contingent upon approval by the Board of Directors of GIAA and Lotte's authorized principals no later than 11 January 2019.

8. **Amendment.** This Addendum may not be amended or modified except by a written instrument signed by the Parties.

9. **Counterparts.** This Addendum may be executed by tele-facsimile ("fax") or email in pdf format ("pdf"), and in any number of counterparts, and each fax, pdf or counterpart

shall be deemed to be an original, but all such faxes, pdfs or counterparts together shall constitute one and the same instrument.


10. **Effective Date.** This Addendum shall be effective as of the date it is approved by the GIAA Board of Directors and Lotte's principals.

**ANTONIO B. WON PAT
INTERNATIONAL AIRPORT
AUTHORITY, GUAM**

By: 
Charles H. Ada II
Executive Manager

Date: 01/04/19


**LOTTE DUTY FREE GUAM, LLC,
a Guam Limited Liability Company**

By: 
Its LLC Manager, and duly authorized
representative

Date: 01/04/2019

APPROVED:

**ANTONIO B. WON PAT
INTERNATIONAL AIRPORT
AUTHORITY, GUAM BOARD OF
DIRECTORS**

By: 
Ricardo C. Duenas
Its Chairman

Date: 1/4/19