

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	<u>\$250,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$250,000</u></u>	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____
 Budget Account No: Fund 4111 Department 121 Unit A212 Object 6211
 Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The Amendment provides for reimbursement of capital costs for the renovation of the CPK locations at PBIA up to \$250,000. Additional revenues to the County will be based on sales of food and beverages from the updated locations and cannot be estimated at this time.

C. Departmental Fiscal Review: CM Scinner

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Sherry Br...
 5/13 11/13
 10/30 10/30 OFMB # 1112

Dr. J. Jacobson 11/6/15
 Contract Dev. and Control
 B. Wheeler 11-5-15

B. Legal Sufficiency:

Anne Delmont 11-9-15
 Assistant County Attorney

C. Other Department Review:

 Department Director

**ELEVENTH AMENDMENT TO LEASE AND CONCESSION AGREEMENT
BETWEEN PALM BEACH COUNTY AND HOST INTERNATIONAL, INC.**

THIS ELEVENTH AMENDMENT TO LEASE AND CONCESSION AGREEMENT (this "Amendment") is made and entered into this ____ day of _____, 2015, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Host International, Inc., a corporation organized under the laws of the State of Delaware, authorized to do business in the State of Florida, and having its office and principal place of business at 6905 Rockledge Drive, Bethesda, MD 20817 ("CONCESSIONAIRE").

WITNESSETH:

WHEREAS, COUNTY, by and through its Department of Airports ("Department"), owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida ("Airport"); and

WHEREAS, CONCESSIONAIRE, under that certain Lease and Concession Agreement between the parties dated August 18, 1998 (R-98-1293D), as amended ("Agreement"), operates the food and beverage concession at the Airport; and

WHEREAS, CONCESSIONAIRE is obligated to make an additional capital investment in the construction of improvements at the Airport on or before September 30, 2019 pursuant to the Agreement; and

WHEREAS, the parties desire to re-brand the existing California Pizza Kitchen ASAP ("CPK") concept to a new restaurant concept; and

WHEREAS, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for such other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. **Concept Rebranding.** Article 4.01(B)(1) of the Agreement is hereby amended to replace the California Pizza Kitchen ASAP concept in the Main Terminal and Concourse B with a new concept to be known as "PBI MKT":

<u>Facility Type</u>	<u>Facility Name</u>	<u>Percentage Payment</u>
Fast Food	PBI MKT & PBI MKT Kiosk	10.1 %

3. **Construction.** CONCESSIONAIRE shall cause the design and construction of the PBI MKT and rebranding of the CPK Kiosk located on Concourse B to the PBI MKT concept to be completed in accordance with the plans, specifications and schedule approved by the Department ("Project") no later than July 1, 2016, unless otherwise approved in writing by the Department. The PBI MKT and PBI MKT Kiosk shall be open for business within ten (10) days of issuance of the certificate of occupancy for the PBI MKT.

4. **Certified Construction Cost Report.** Within (90) days after substantial completion of the Project, as evidenced by a certificate of occupancy for the PBI MKT, CONCESSIONAIRE shall submit a Cost Report prepared in accordance with Section 6.05(F)(2) of the Agreement detailing the actual third party costs incurred by CONCESSIONAIRE toward the design and construction of the Project for COUNTY's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. In addition to the Cost Report,

CONCESSIONAIRE shall deliver to COUNTY a depreciation schedule for all Leasehold Improvements associated with the Project calculated in accordance with Section 6.06(C) of the Agreement, less the amount of Rental Credit (as hereinafter defined) contributed by COUNTY toward the cost of the Project. The depreciation schedule shall be delivered to COUNTY concurrent with the delivery of the Cost Report. CONCESSIONAIRE may count the total cost of the Project, as detailed in the Cost Report, less the amount of the Rental Credit contributed by COUNTY toward satisfaction of CONCESSIONAIRE's Fourth Additional Investment.

5. **Rental Credit.** COUNTY shall provide a rental credit to CONCESSIONAIRE in an amount not to exceed the lesser of: (i) fifty percent (50%) of the actual third party costs incurred by CONCESSIONAIRE toward the design and construction of the Project as detailed in the approved Cost Report; or (ii) Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Rental Credit"). The Rental Credit shall be applied in full against outstanding amounts payable by CONCESSIONAIRE under the Agreement until fully exhausted. Rental Credit shall be issued within thirty (30) days following COUNTY's approval of the Cost Report.

6. **Minimum Annual Guarantee.** Nothing in this Amendment shall be construed as resulting in an immediate adjustment in the Minimum Annual Guarantee; provided, however, the CONCESSIONAIRE acknowledges that the Minimum Annual Guarantee shall be subject to adjustment as provided in Section 4.01(B)(2) of the Agreement, which shall include Gross Revenues generated from the sale of food and beverages from the PBI MKT and PBI MKT Kiosk.

7. **Non-Discrimination.** Section 22.01, Non-discrimination, of the Agreement is hereby deleted and replaced with the following:

22.01 Non-Discrimination.

A. Non-Discrimination in County Contracts. CONCESSIONAIRE warrants and represents to COUNTY that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. CONCESSIONAIRE has submitted to COUNTY a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if CONCESSIONAIRE does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to COUNTY affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

B. Federal Non-Discrimination Covenants.

(1) CONCESSIONAIRE, for its 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:

(a) In the event facilities are constructed, maintained, or otherwise operated on the Assigned Premises 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, CONCESSIONAIRE will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), 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) 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 COUNTY property, including, but not limited to, the Assigned Premises.

- (c) In the construction of any improvements on, over, or under the Assigned Premises 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.
 - (d) CONCESSIONAIRE shall comply with, and use the Assigned Premises in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.
- (2) In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate this Agreement and to enter, re-enter, and repossess the Assigned Premises, and hold the same as if this Agreement had never been made or issued. This Agreement shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
 - (3) For purposes of this Article, the term “Non-Discrimination Authorities” includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix “E” of Appendix “4” of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.

8. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

9. **Conflict.** In the event of a conflict between any provision of this Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Amendment shall control.

10. **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

11. **Paragraph Headings.** The heading of the various sections of this Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Amendment or the Agreement.

12. **Effective Date.** This Amendment shall be considered effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:
Sharon R. Bock, Clerk and Controller

**PALM BEACH COUNTY, a political
subdivision of the State of Florida, by its
Board of County Commissioners**

By: _____
Deputy Clerk

By: _____
Mayor

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: [Signature]
Director - Department of Airports

**Signed, sealed and delivered in the
presence of two witnesses for
CONCESSIONAIRE:**

**CONCESSIONAIRE:
Host International, Inc., a Delaware
Corporation**

[Signature]
Signature
Philip Fletcher
Name (type or print)

By: [Signature]
Bernard N. Brown
Name (type or print) Vice President

[Signature]
Signature
A. DAWSON
Name (type or print)

Title

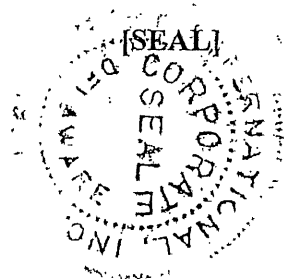


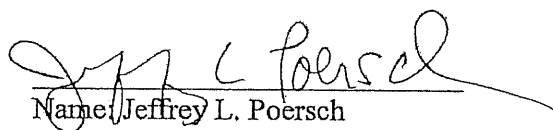
SECRETARY'S CERTIFICATE

I, Jeffrey L. Poersch, hereby certify that:

I am the Secretary of Host International, Inc. (the "Company"). As such, I hereby certify, represent and warrant on behalf of the Company that the attached resolutions are and remain in effect and constitute the officers and directors and authorized signatories of the Company, and that these resolutions are true and accurate to the best of my knowledge and belief. As Secretary I can also certify that each officer listed has been given authority to enter into agreements and act on behalf of the Company. I further certify that the address for each Director is 6905 Rockledge Drive, Bethesda, MD 20817 USA.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of HMSHost Corporation this 7th day of April, 2014.




Name: Jeffrey L. Poersch
Title: Secretary

Host International, Inc.

**WRITTEN CONSENT
OF THE
DIRECTORS
OF**

Host International, Inc.

June 1, 2013

Pursuant to Section 142 of the
General Corporation Law of the State of Delaware

The undersigned, being the Directors of Host International, Inc., a Delaware corporation (the "Corporation"), hereby consents to the adoption of the following resolutions (the "Written Consent"):

RESOLVED, that each of the following individuals be, and hereby is, elected or re-elected as an officer of the Corporation, each to serve until a successor shall have been duly elected and qualified or until such officer's earlier resignation, removal or death.

Paul Mamalian, President

Charles E. Powers, Vice President

Bernard N. Brown, Vice President

Mark T. Ratych, Treasurer

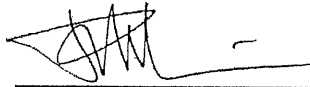
Jeffrey L. Poersch, Secretary

RESOLVED, that the above duly elected officers have the authority to enter into contracts or execute and deliver any instrument(s) in the name of and on behalf of the Corporation; and

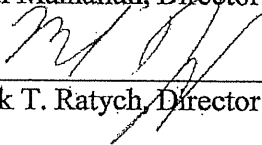
RESOLVED, that this Written Consent may be signed in one or more counterparts each of which shall be deemed an original, and all of which shall constitute one instrument; and

RESOLVED, that a copy of this Written Consent be filed in the minute book of the Corporation.

IN WITNESS WHEREOF, the undersigned directors of the Corporation have executed this Written Consent.



Paul Mamalian, Director



Mark T. Ratych, Director

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Thursday, October 22, 2015

[Images](#)

[Contracts](#)

Insured: Host International Inc.

Insured ID: PBI-HI-98-01

Status: Compliant (with overrides)

ITS Account Number: PLC801

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u>	Occurrence Form	Occurrence Form	
Expiration: 9/1/2016			
General Aggregate:	\$1,000,000	\$2,000,000	
Products - Completed Operations Aggregate:	\$1,000,000	\$4,000,000	
Personal And Advertising Injury:	\$1,000,000	\$2,000,000	
Each Occurrence:	\$1,000,000	\$2,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>		Any Auto	
Expiration: 9/1/2016	All Owned Autos	not provided	X
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
Combined Single Limit:	\$1,000,000	\$2,000,000	
<u>Excess/Umbrella Liability</u>			
Expiration: 9/1/2015			
Each Occurrence:	\$0	\$25,000,000	
Aggregate Limit:	\$0	\$25,000,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 9/1/2016			
Each Accident:	\$100,000	\$2,000,000	
Disease - Policy Limit:	\$500,000	\$2,000,000	
Disease - Each Employee:	\$100,000	\$2,000,000	
<u>Property Insurance</u>	All-Risk and Replacement Cost	All-Risk and Replacement Cost	
Expiration: 12/31/2015	Loss Payee	Loss Payee	

Notifications

There were no deficiency letters issued.