

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: July 12, 2016 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports
Submitted For: Department of Airports
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Eleventh Amendment (Amendment) to the Lease and Concession Agreement with Host International, Inc. (Host) (R-98-1293D), terminating and replacing prior version of the Eleventh Amendment (R-2015-1690) in its entirety, and providing for replacement of the California Pizza Kitchen (CPK) and Quiznos Subs (Quiznos) concepts at the Palm Beach International Airport (PBIA) and a rental credit not to exceed \$500,000 per concept to reimburse a portion of the capital costs incurred by Host.

Summary: Host provides food and beverage concession services at PBIA pursuant to a Lease and Concession Agreement (Agreement). Host is a Delaware corporation with a principal place of business in Bethesda, Maryland. This Amendment replaces the prior version of the Eleventh Amendment in its entirety. The Department of Airports (Department) has requested replacement of the CPK located in the main terminal of PBIA and CPK kiosk located on concourse B (CPK Project) and Quiznos on concourse C (Quiznos Project). The CPK and small, limited service Starbucks located in the main terminal will be replaced with a full-service Starbucks location. Host has estimated the cost of the two projects will be approximately \$1.7 Million Dollars. Host is obligated to make one additional capital investment of \$500,000 prior to the expiration of the Agreement on October 17, 2024. This Amendment provides that the County will reimburse Host up to 60% of the capital costs of the CPK Project not to exceed \$500,000. The Quiznos and CPK kiosk will be replaced with a new concept called the "PBI MKT", which will provide convenient, healthy items such as fresh sandwiches, soups and salads. Host has estimated the cost of the Quiznos Project will be approximately \$900,000. This Amendment provides that the County will reimburse Host up to 50% of the capital costs for the Quiznos Project not to exceed \$500,000. Reimbursement by the County will be in the form of rental credits against future amounts payable by Host under the Agreement. Host will be required to pay 10.1% of gross revenues from the PBI MKT locations and 15.1% of gross revenues from the expanded Starbucks. **Countywide (AH)**

Background and Justification: Host is not willing to fund the full cost of the projects unless the County agrees to extend the Agreement or participate in the cost through rental credit. As part of the airport master planning process, the Department is considering significant changes to the overall concession plan for PBIA; therefore, the Department does not recommend granting an additional extension to this Agreement. In order to provide a greater variety of food and beverage choices on the concourses, the Department is recommending the replacement of the Quiznos and CPK kiosk with the PBI MKT. The CPK has been in the main terminal since 1999 and has not been significantly renovated. The existing Starbucks located adjacent to the CPK is a small location without kitchen facilities. The Department is recommending renovating the Starbucks to provide for an expanded menu and more comfortable seating options for customers waiting for arriving passengers. The prior version of the Eleventh Amendment provided for the replacement of the CPK, but did not include the renovation of the Quiznos.

Attachments:

- 1. Eleventh Amendment (3)

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Recommended By: *[Signature]* 6/21/16
Department Director Date

Approved By: *[Signature]* 7/5/16
County Administrator Date

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>	<u>\$1,000,000</u>	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$250,000)</u>	<u>\$1,000,000</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:

All costs are reimbursed from airport revenues. No ad valorem dollars will be used. This Amendment terminates the prior version of the Eleventh Amendment, which provided for reimbursement of up to \$250,000 in capital costs for the replacement of the CPK concept. It is anticipated that the renovation projects provided in this Amendment will be completed in FY2017. This Amendment provides for reimbursement of capital costs for renovation in amount not to exceed a total of \$1,000,000. 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 Sumner

III. REVIEW COMMENTS

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

[Signature]
 OFMB 6/22

[Signature]
 Contract Dev. and Control
 6/29/16 TW

B. Legal Sufficiency:

Anne Delgado 7/1/16
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 9/03
 ADM FORM 01
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**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 _____, 2016, 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 certain food and beverage concepts at the Airport; and

WHEREAS, the parties desire to terminate that certain Eleventh Amendment to the Agreement dated December 1, 2015 (R-2015-1690) ("Eleventh Amendment") and to replace it in its entirety with this Amendment; 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 delete the California Pizza Kitchen ASAP ("CPK") and Quiznos Subs concepts and to add the following 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. **PBI MKT Construction.** CONCESSIONAIRE shall cause the design and construction of the PBI MKT on Concourse C to replace the existing Quiznos (identified as Concession Area C-2 on Exhibit "A" to the Agreement) 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 ("PBI MKT Project"). The new PBI MKT locations shall be open for business by CONCESSIONAIRE no later than November 21, 2016, unless otherwise approved in writing by the Department. The parties acknowledge and agree the PBI MKT concept will be a market style dining concept with healthy, fresh food and beverage options, including items such as salads, sandwiches and flatbreads.

4. **Starbucks Construction.** CONCESSIONAIRE shall cause the design and construction of a new Starbucks to replace the existing Starbucks and California Pizza Kitchen located in the Main Terminal (identified as Concession Area M-4 on Exhibit “A” to the Agreement) to be completed in accordance with the plans, specifications and schedule approved by the Department (“Starbucks Project”) and shall be open for business no later than March 13, 2017, unless otherwise approved in writing by the Department.

5. **Certified Construction Cost Report.** Within (90) days after substantial completion of the PBI MKT Project and Starbucks Project, as evidenced by a certificate of occupancy for each location, CONCESSIONAIRE shall submit a Cost Report prepared in accordance with the requirements of Section 6.05(F)(2) of the Agreement detailing the actual third party costs incurred by CONCESSIONAIRE toward the design and construction of each 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 each project calculated in accordance with Section 6.06(C) of the Agreement, less the amount of rental credit contributed by COUNTY toward the cost of each project as provided in Sections 6 and 7 below. The depreciation schedule shall be delivered to COUNTY concurrent with the delivery of the Cost Report for each project. CONCESSIONAIRE may count the total cost of the each project, as detailed in the Cost Report, less the amount of the rental credit contributed by COUNTY pursuant to Sections 6 and 7 below, toward satisfaction of CONCESSIONAIRE’s Fourth Additional Investment.

6. **PBI MKT 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 PBI MKT Project as detailed in the approved Cost Report; or (ii) Five Hundred Thousand Dollars (\$500,000.00) (“PBI MKT Credit”). The PBI MKT Credit shall be applied in full against outstanding amounts payable by CONCESSIONAIRE under the Agreement until fully exhausted. PBI MKT Credit shall be issued within thirty (30) days following COUNTY’s approval of the Cost Report.

7. **Starbucks Credit.** COUNTY shall provide a rental credit to CONCESSIONAIRE in an amount not to exceed the lesser of: (i) sixty percent (60%) of the actual third party costs incurred by CONCESSIONAIRE toward the design and construction of the Starbucks Project as detailed in the approved Cost Report; or (ii) Five Hundred Thousand Dollars (\$500,000.00) (“Starbucks Credit”). The Starbucks Credit shall be applied in full against outstanding amounts payable by CONCESSIONAIRE under the Agreement until fully exhausted. Starbucks Credit shall be issued within thirty (30) days following COUNTY’s approval of the Cost Report.

8. **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 updated locations.

9. **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.

10. **Termination of Eleventh Amendment.** The parties hereby agree that the Eleventh Amendment is hereby terminated and replaced in its entirety by this Amendment.

11. **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.

12. **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.

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

14. **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.

15. **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: _____
Mary Lou Berger, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: Amne Helgent
County Attorney

By: Sam Kelly
Director - Department of Airports

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

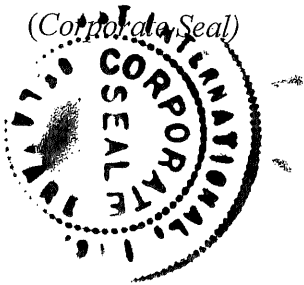
CONCESSIONAIRE:
Host International, Inc., a Delaware
Corporation

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

By: [Signature]
Name (type or print) **RICHARD KUNKL**
Authorized Signatory

[Signature]
Signature
PEBBY ROGERS
Name (type or print)

Title



Simple View

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient. Click on the Insured Name to update contact information.

Wednesday, June 01, 2016

Images

Contracts

Insured: Host International Inc. Insured ID: PBI-HI-98-01

Status: Compliant

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: 12/31/2016	Loss Payee	Loss Payee	

Notifications

C E R T I F I C A T E
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Jon W. Stentz is the Secretary of Host International Inc., a corporation organized and existing in good standing under the laws of the State of Delaware, hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 1st day of April, 2016, in accordance with the laws of the State of Delaware, the Articles of Incorporation and the By-laws of the Corporation:

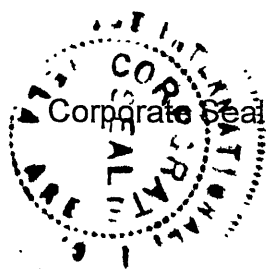
RESOLVED, that the Corporation shall enter into that certain Eleventh Amendment to Lease and Concession Agreement by and between Palm Beach County, a political subdivision of the State of Florida and the Corporation and any further amendments to the Lease and Concession Agreement as may be agreed to by the parties in the future (the "Agreement"); and be it

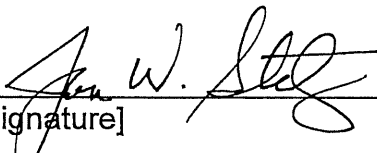
FURTHER RESOLVED, that Richard Kunkle, the Authorized Signatory of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into the Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 16TH day of JUNE, 2016.





[Signature]
Jon W. Stentz, Secretary