Agenda Item: 3F5

### PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

## AGENDA ITEM SUMMARY

Meeting Date: November 17, 2020	[X] []	Consent Ordinance	[ ]	=======   Regular   Public H	======= earing
Submitted By: Department of Airports					
I. EXE	CUTIVI	E BRIEF			
Motion and Title: Staff recommends (Amendment) to Lease and Concession A (Host) (R-98-1293D, as amended), provid year-to-date basis, and updating stand authority approved by the Board on May 5	Agreem ding for dard fo	ent (Agreemer reconciliation orm provisions	nt) w of co , pu	ith Host Int oncession	ernational, Inc. payments on a
Summary: Under the Agreement, Host por the minimum annual guarantee (MAG) annually. Host has historically received what is actually due, because of seas payments in the first half of each fiscal Beginning in March, 2020, passenger tradeclined substantially as a result of the CH Host's gross revenues. Prior to this decline percentage payments than the year-to-damethod of reconciliation, allowing Host to MAG prior to the pandemic. The Amendother charges. The Amendment also to (AH)	a cred conal v year, affic at COVID- ne, Hos te MAC dment	ments are sub- dit each year for variations that when passence the Palm Bea 19 pandemic, st had paid sub 6 that was due be credit for pay does not chan	mitte or ar resu ger t ach I resu estan . Th ymer	d monthly mounts paralled in high raffic is type of the matternational liting in severally more a Amendments made in the MAG, or the made, or the matter made, or the matter made, or the matter mat	and reconciled id in-excess of gh percentage pically highest. All Airport (PBI) ere declines in in year-to-date ent adjusts the n excess of the
Background and Justification: Host is response to COVID-19 related economic authorized the Director of the Departme provide relief to tenants at the PBI, including The Amendment is consistent with the pro-	impact nt of A ding ch	s, on May 5, 2 airports to ente nanges to the r	020 r int neth	(R-2020-05 o certain a od of MAG	527), the Board mendments to
Attachments: One (1) Twelfth Amendme	ent				
	====:			:======	
Recommended By: Poly Departm	ent Dir	<u>Sub</u> rector		16 -	16 - 20 Date
Approved By: County A	<u>Bal</u>	strator		10	/26/22) Date

## II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fisca	al Impact:				
Fiscal Years	<u>2021</u>	2022	<u>2023</u>	<u>2024</u>	2025
Capital Expenditures Operating Costs Operating Revenues Program Income (County) In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$-0-</u>	<u>\$-0-</u>	\$-0	<u>\$-0-</u>	\$-0
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Bo Does this item include the us	udget? Yose of federal	es <u>X</u> No funds? Yes	No <u>_X</u>	_	
Budget Account No: Fund _ Reporting	Depai Category _		Unit	_ RSource _	J1 10-16-20
B. Recommended Sources	of Funds/Su	ımmary of Fi	scal Impact:		·
There is no fiscal impact reconciliation occurs and of the conciliation occurs and other conciliation.  C. Departmental Fiscal Rev	does not mod	ify the annua	amount due		
	III. <u>REVI</u>	EW COMME	NTS		
A. OFMB Fiscal and/or Col	ntract Dev. a	A	Comments:	look 10/2	70/XIX
B. Legal Sufficiency:   My Holymt  Assistant County Attor	<u>/ం/న</u> ై 2/20 ney	)			
C. Other Department Revie	<b>:</b>				
Department Director					
REVISED 11/17					

G:\AGENDA ITEMS\2020 Final Agenda Items\11-17-20\Host 12th Amend - R&F.doc

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

#### 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.

Varne 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 reelected 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

6905 Rockledge Drive

Bethesda, MD 20817

10/2/2020

Q Search	<b>⊥</b> Insured	
Insured Name		
Host International, Inc (DX00001077)	Name:	Host International, Inc
9	Account Number:	DX00001077
Host International, Inc (DX00001077)	Address:	
Active Records Only	Status:	Compliant with minor/expiring deficiencies.
Advance Search		

Insured Insured Tasks **Admin Tools** DBA Number Business Unit(s) Print Insured Info View Print Compliance Report Insured **Account Information** Notes DX00001077 Account Number: History Risk Type: Standard -General Deficiencies Services Coverages Do Not Call: Address Updated: Requirements **Address Information** Contract Screen **Mailing Address Physical Address** Add Insured: Host International, Edit Help Address 1: Video Tutorials Address 2: City: State: https://www.ebixcerts.com/EBIXCOI/InsuredManager/ViewInsured.aspx

∠ıμ.		
Country:		
Contract Information		
Contract Number:		
Contract Start Date:		Contract End Date:
Contract Effective Date:		Contract Expiration Date
Description of Services:	Lease and Concession Agmt	Safety Form II:
Contact Information		
Contact Name:	Tom Flynn	Misc:
Phone Number:		Alt Phone Number:
Fax Number:		
E-Mail Address:	tom.flynn@hm	shost.com
Approval Date:		
Rush:	No	
Contract on File:	No	
Certificate Received:	No	
Indemnification Agreement:	No	
Tax Id:		

This Account created by c28 on 05/19/2020.

# TWELFTH AMENDMENT TO LEASE AND CONCESSION AGREEMENT

#### 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 has represented to County that it has experienced significant impacts to its business operations directly resulting from the COVID-19 pandemic; and

WHEREAS, the County Administrator or designee, Director of the Department of Airports, has been delegated the authority by the Board of County Commissioners of Palm Beach County pursuant to County Resolution R-2020-0527 to enter into this Amendment; and

WHEREAS, the parties desire to amend the Agreement as provided for herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and 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 foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Agreement.
- 2. Warranties and Representations. As a material inducement to County to enter into this Amendment, Concessionaire hereby acknowledges, represents and warrants to the County that the following acknowledgments, representations and warranties are true and correct as of the Effective Date of this Amendment: (a) Concessionaire has experienced significant impacts to its business operations directly resulting from decline in passenger traffic as a result of the COVID-19 pandemic; and (b) the payment security in the form of Concessionaires Bond No. 017-008-690 issued by Liberty Mutual Insurance Company, in favor of Palm Beach County in the amount of \$916,682.00 is in full force and effect and has not been cancelled or otherwise

modified.

- 3. <u>Default.</u> The discovery by County that any of the warranties and representations made by Concessionaire herein as an inducement to enter into this Amendment were materially false shall constitute a material default of this Amendment by Concessionaire.
- 4. <u>Waiver.</u> Nothing in this Amendment shall be construed as waiving, reducing, abating or otherwise modifying any amounts due and payable to County under the Agreement. Furthermore, the failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions of this Amendment shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Amendment shall be affected by any previous waiver or course of dealing.
- Monthly Minimum Annual Guarantee Reconciliation. Notwithstanding any provision of this Agreement otherwise, including, but not limited to, Article 4.01(B), commencing as of October 1, 2019, Concession Fees shall be reconciled monthly, and Concession Fees shall be due and paid by Concessionaire to County as of the fifteenth (15<sup>th</sup>) day of each month, for the preceding month, in the manner set forth herein. Within fifteen (15) days after the close of each and every month throughout the Term of this Agreement, Concessionaire shall pay to County the difference between: (i) the greater of the Year-to-Date Minimum Annual Guarantee or the Year-to-Date Percentage Payment; and (ii) the Year-to-Date Concession Payments. An illustrative example of a monthly reconciliation as provided for herein is attached as Exhibit "A". Concession Fees shall be reconciled on an annual basis in accordance with the Audit Requirements provided in Article 5.02 of this Agreement. For purposes of this provision, the terms "Year-to-Date Minimum Annual Guarantee", "Year-to-Date Percentage Payment" and "Year-to-Date Concession Payments" shall have the following meanings:
  - A. Year-to-Date Minimum Annual Guarantee shall mean one-twelfth 1/12 of the Minimum Annual Guarantee multiplied by the number of months that have accrued since the beginning of the then-current fiscal year (October thru September), as provided in Article 4.01(B) of the Agreement. The Year-to-Date Minimum Annual Guarantee as of the fifteenth (15<sup>th</sup>) day of a given month shall include the Monthly Minimum Guarantee for the preceding calendar month. For example, if the Minimum Annual Guarantee is \$1,800,000.00, payable in 12 monthly installments of \$150,000.00 each, then as of August 15, 2020, ten (10) monthly installments of the Minimum Annual Guarantee would accrue from the start of the current fiscal year (October 2019 through July 2020). In this example, as of August 15, 2020, the Year-to-Date Minimum Annual Guarantee would be: \$150,000.00 x 10 = \$1,500,000.00.
  - B. <u>Year-to-Date Percentage Payment</u> shall be determined by totaling the Monthly Percentage Payments accruing from the start of the then-current fiscal year (October thru September). For example, as of August 15, 2020, the Year-to-Date Privilege Fee would be the sum of the ten (10) Monthly Privilege Fees accruing from the start of the current Lease Year (October, 2019 through July, 2020).

- C. <u>Year-to-Date Concession Payments</u> shall be the sum of actual Concession Fee payments made by Concessionaire, or amounts credited to Concessionaire for such, during the then-current fiscal year (October thru September).
- 6. <u>Nondiscrimination Covenants.</u> Article 22.01, <u>Nondiscrimination</u>, of the Agreement is hereby deleted in its entirety and replaced with the following:

#### 22.01 Nondiscrimination.

- A. Nondiscrimination in County Contracts. Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Concessionaire warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.
- B. <u>Federal Nondiscrimination Covenants</u>. Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that it shall comply with the Federal Non-Discrimination Covenants attached as Exhibit "B" to this Amendment.
- 7. <u>Scrutinized Companies.</u> Article XXV, <u>Miscellaneous</u>, of the Agreement is hereby amended to add the following Article 25.23:
  - 25.23 Scrutinized Companies. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Concessionaire is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Lease may be terminated at the option of County. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, the Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria. If County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Lease may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this

Lease shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Lease renewal, if applicable.

- 8. <u>Ratification of Agreement.</u> 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. <u>Conflict.</u> 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. <u>Authorized Representatives.</u> The parties acknowledge that this Amendment has been executed by its duly authorized representatives. The parties declare and acknowledge that the terms of this Amendment have been completely read, fully understood, discussed with counsel, and voluntarily accepted by each party.
- 11. <u>Incorporation by Reference.</u> Exhibits attached hereto and referenced herein are hereby incorporated into made a part of this Amendment.
- 12. <u>Paragraph Headings.</u> 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.
- 13. <u>Effective Date.</u> This Amendment shall become effective upon execution by the parties hereto ("<u>Effective Date</u>").

{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.

Signed, sealed and delivered in the presence of two witnesses for County:	PALM BEACH COUNTY, FLORIDA
Witness Signature  Temp WALTER (Typed or Printed)  Witness Signature  Sfarm K. Schlamy (Typed or Printed)  APPROVED AS TO FORM AND LEGAL SUFFICIENCY  By: Change Obligated	By: Zu Augus Sube Director, Department of Airports
Signed, sealed and delivered in the presence of two witnesses:	CONCESSIONAIRE: Host International, Inc.  By:  Paul Mamalian President  Typed or Printed Name of Corporate Paul Mamalian Title:  President
Witness Signature  E. Jeen Hartin (Typed or Printed)  Witness Signature  Philip Fletcher (Typed or Printed)	

# EXHIBIT "A" ILLUSTRATIVE EXAMPLE OF A MONTHLY RECONCILIATION

Part																																					
Part	Concession Reversi HMS Hest	• Aculysis	-							_	F-	_				=																		+			
1					-																											1					
1	For the Period 1001	(19-09/30/2020		+	+			-			+					-					<del></del>	-			<del> </del>				(A)	(th)		oneth ton	(6)				<del></del>
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Section   Sect													134 50	2,591 40	1 012 47	13 354 84	320 56	9 059 04		<del>`</del>	18 503 49	12 033 43	159,405,78		3,425.56				\$152,740.20	\$155,405.76	1158,4057	150,405 7	<u> </u>				
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1	December 6	8,019 53 27,07 8,559 87 4,08	1 14 4,222 4 8 04 426.4	49,457 at 7 4,894.20	24,750 95 5 3,737 30	64,115.25 9,631.40	178,003.27 28,578.48	187,701,48 28,342,92	72,110 6 7,210 2	4 74,983.14 5 11,31943	132,748.7 13,407.6	185,555.98 18,741.15						43,349.10 12,545.71	94,575.38 9,552.11	85,775.77 13,103.14	280,407.91 28,321.20	103,735.64 16,419.05	1,828,751.82 229,224.87	152,780.20	1,828,751.82 78,444,87	229,224.87	December	JAHUARY 15	\$458,340 60	1578 205 40	1570,2054	578,205 4					
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1.37601   1.37	% due		124.6	-	<u>-</u>				<del></del>		4,055.7	1,316 48		<u>.</u>		<u> </u>	<u> </u>				Ė		6,970.65	152,780.20					31,222,241 60	\$1,194,841.14	\$1,222,241 6	\$1,191,711.5	(\$30,530,02				
157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,157,007   1,14411   1,147,007   1,14411	X due		+			·			<u> </u>			<del></del>		·		<b>!</b>	<u> </u>		=:	<u> </u>	·			152,780.20	<del>- :</del>				\$1,375,021 60	\$1,184,941 14	11,375,021 6	9 11,191,711 5	d 183,310 22	0			
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PANEZ OJY PANE 3 mg 4 page 4 mg 4																								1,833,392.40	275,030.34	1,191,711.58		(A) (B) (C)	Total of munity Granter of the st Total of actual p	Provinge Fee am mount in (A) or (8 ayments made ye	nanta dua Yaur-Ti	end (OTO) skd-	reing of the currer he beginning of th	ni Lease Year (Octob se current Lease Yea	ber 1) thru the end o or (October 1) thru th	f the prior month, e end of the prior ma	seth.
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Concession Re	venue Analysi	s		t	<u>-</u>						r				<del></del>
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October	49,817.78		3,652.44	43,890,67	23,452,70	39,849,74	127,561,34	154,510,67	44.757.26	55,311.11	90,792,68	118,189,76	890.74	25,657,38	
% due	5,031.60	3,401.30	368.90	4,432.96	3,541.36	6,017.31	19,261.76	23,331.11	4,757.26	8,351.98	9,170.06	11,937,17	134.50	25,057.30	10,024.47 1,012.47
76 due	3,031.00	3,401.30	300.90	4,432.90	3,341.30	0,017.31	19,201.76	23,331.11	4,320.40	0,351.90	9,170.00	11,937.17	134.30	2,591.40	1,012.47
November	58,451.54	24,528,95	3,318.39	49,627,13	27,457.27	49,418.66	147.921.32	175,446.58	57,609.01	62,374.75	107,380,67	153,318,25	1,528.68	35,480,14	11,216,13
% due	5,903.61	3,703.87	335.16	5,012.34	4,146.05	7,462.22	22,336.12	26,492.43	5,818.51	9,418.59	10,845.45	15,485,14	230.83	3,583.49	1,132.83
	-,	-11			,,				-,			1511111	2		
December	68,018.53	27,073.14	4,222.48	48,457.93	24,750.95	64,115.25	176,003.27	187,701.48	72,180.68	74,963.14	132,748.71	185,555.98	2,050.45	40,505.52	7,016.25
% due	6,869.87	4,088.04	426.47	4,894.25	3,737.39	9,681.40	26,576.49	28,342.92	7,290.25	11,319.43	13,407.62	18,741.15	309.62	4,091.06	708.64
January	72,655.90		5,081.54	52,111.97	25,455.32	58,797.11	183,803.38	191,839.22	71,179.30		131,739.22	198,024.38	1,954.97	46,179.25	7,543.49
% due	7,338.25	4,359.50	513.24	5,263.31	3,843.75	8,878.36	27,754.31	28,967.72	7,189.11	10,521.94	13,305,66	20,000.46	295.20	4,664.10	761,89
February	72,062.64		4,693.46	52,142.53	26,445.99	60,021.22	178,153.87	189,635.54	68,765.86	70,609.17		185,605.93	2,034.48	49,411.39	7,376.97
% due	7,278.33	4,868.17	474.04	5,266.40	3,993.34	9,063.20	26,901.23	28,634.97	6,945.35	10,661.98	13,094.81	18,746.20	307.21	4,990.55	745.07
March	34,961.45	15,816.74	3,589.70	26,229,00	15,128.85	37,728.75	117,253.79	102 100 07	40,577.48	55,179.18	90,860,49	111,281.75	4 864 00	26,522.04	3,885,12
% due	3,531.11	2,388,33	362.56	2,649,13	2,284.46	5,697.04	17,705.32	18,438,47	4,098.33	8,332.06	9,176.91	11,239,46	1,861.90 281.15	2,678.73	392.40
70 due	3,331.11	2,000,00	302.00	2,045.13	2,204.40	3,037,04	(1,105.52	10,430,47	4,030.00	0,332.00	5,170.51	11,235,40	201.13	2,070.73	332,40
April			1,799.24			7,007.30					16,516.51	15,382,01	3,209.37		i
% due	-	-	181,72	-	-	1,058.10	-	-	-	-	1,668.17	1,553,58	484.61	-	-
May			1,233.66			6,254.93					40,155.96	13,034.49	3,505.42		
% due		-	124.60	-	-	944.49		-	-	-	4,055.75	1,316.48	529.32	-	
June															ı
% due	-		-		-				-	-				-	
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July % due															ì
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Temo Bar B	Blu2o Bar - Conc C	Blu2o Bar - Conc C	Stinger Rey's CancB	Stinger Ray's Concis	Chili's - C	hili's To Go	Total % Due	Minimum Guarantee	Excess Over Minimum Due (excluding sales tax - Host pays separately)	Amount Paid (MAG + excess over MAG) excluding taxes
Alcohol	Food	Alcohol	Food	Alcohol	Food	Alcohol				excitating flacts
(0.151)	(0.101)	(0.151)	(0.101)	(0.151)	(0,101)	(0.151)				
88,641.32	3,173.85	59,993.63	(01.0.7)	(0.101)	183,202.91	79,691.92	1,225,587.54		1,225,587.54	
13,384.84	320.56	9,059.04			18,503.49	12,033,48	156,405,76	152,780.20		156,405,76
13,304.04	320.30	9,059.04			10,503.49	12,033,46	150,405.76	152,780.20	3,625.56	156,405.76
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88,451.51	4,009.02	69,524.96	29,178.74	26,016.74	230,771.38	94,207.21	1,507,237.03		1,507,237.03	L
13,356.18	404.91	10,498.27	2,947.05	3,928.53	23,307.91	14,225.29	190,574.77	152,780.20	37,794.57	190,574.77
54,900.93	4,643.15	83,349.10	94,575.36	86,775.77	280,407.91	108,735.64	1,828,751.62		1,828,751.62	
8,290.04	468.96	12,585.71	9,552.11	13,103,14	28,321.20	16,419.08	229,224.87	152,780.20	76,444.67	229,224.87
55,502.38	4,754.49	80,400.79	112,945.60	90,372.09	255,863.47	95,953.52	1,840,709.95		1,840,709.95	
8,380.86	480.20	12,140.52	11,407.51	13,646,19	25,842.21	14,488.98	230,043.27	152,780.20	77,263.07	230,043.27
58,323.89	5,187.80	84,493.30	112,012.74	93,864.32	268,713.21	105,931.48	1,857,376,89		1,857,376,89	
8,806.91	523.97	12,758.49	11,313.29	14,173.51	27,140.03	15,995.65	232,682.70	152,780.20	79,902.50	232,682,70
0,000.01	020,01	12,730,40	11,010.25	14,110.01	27,140.00	10,000.00	202,002.70	102,700.20	10,302,00	202,002,70
33,836.63	2,542.05	51,820.12	64,553.56	66,372.39	150,953,99	65,285.35	1,138,349.40		1,138,349.40	
5,109.33	256.75	7,824.84	6,519.91	10,022,23	15,246.35	9,858.09	144,092.93	152,780.20	, 1,150,545.40	152,780.20
3,103.33	230.73	7,024.04	0,319.91	10,022.23	15,240.33	9,030.09	144,092,93	152,7 60.20		152,760.20
							10.044.10		10.011.10	
							43,914.43		43,914.43	1
		<del></del>					4,946.19	152,780.20		
							64,184.46		64,184.46	1
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							9,506,111.32	1,833,362.40		1,191,711.58
							1,194,941.14	1,833,362.40	275,030.38	1,191,711.58
							9,506,111.32			
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	1	t .	lllustrati	on of YTD Recon	ciliation					
		(A)	(B)	(C)	(D)	(E)			<del> </del>	
	DATE STATEMENT	(~)	(5)	(0)	12/	(2)				
	OF GROSS								}	
	REVENUES AND	l		Greater of YTD		YTD				
	APPLICABLE YTD	Year to Date	Year to Date	MAG or YTD		Over(Under)		}		Ì
	PAYMENT IS DUE	MAG	Privilege Fee		YTD Payments	Payments				
	TATMENT IS DOL	IIIAG	Filvilege i ee	r iivilege i ee	1 1D rayments	rayments				
	ì									
October	NOVEMBER 15	1								
October	MOATHIDEK 12	\$152,780,20	\$156,405.76	\$156,405.76	156,405,76	-				
		\$102,700.20	\$130,403.70	\$130,403.70	130,403.10					
November	DECEMBER 15	l							<del></del>	
HOTOHIDE	DEOLINDER 10	\$305,560.40	\$346,980.53	\$346,980.53	346,980,53	_			<u> </u>	
	<b> </b>	ψ303,300.40	4040,000.03	\$540,500.55	340,000,00			<del> </del>		
December	JANUARY 15							<b> </b>		
_ 50011,561	JANUARITY 13	\$458,340,60	\$576,205.40	\$576,205.40	576,205.40	_		<del></del>		
		\$450,540.00	\$370,203.40	4510,205.40	570,203.40					
January	FEBRUARY 15									
January	/ LB/(G/(K) (G	\$611,120,80	\$806,248.67	\$806,248.67	806,248,67	_		<del>                                     </del>		
		<b>40111120.00</b>	4000 JE 10.01	4000,2,70.07	000,210,01					
February	MARCH 15	l								
		\$763 901 00	\$1,038,931.38	\$1,038,931,38	1,038,931.38	_				
		***************************************		1						
March	APRIL 15									
	1	\$916.681.20	\$1,183,024.30	\$1.183.024.30	\$1,191,711.58	\$8,687,27				
April	MAY 15	1								
	1	\$1,069,461.40	\$1,187,970.50	\$1,187,970.50	\$1,191,711.58	\$3,741.08				
May	JUNE 15	Į.								
	l	\$1,222,241.60	\$1,194,941.14	\$1,222,241.60	\$1,191,711.58	(\$30,530.02)				
June	JULY 15									
		\$1,375,021.80	\$1,194,941.14	\$1,375,021.80	\$1,191,711.58	(\$183,310.22)				
July	AUGUST 15									
		\$1,527,802.00	\$1,194,941.14	\$1,527,802.00	\$1,191,711.58	(\$336,090.42)				
		1								
August	SEPTEMBER 15	l						ļ		
		\$1,680,582.20	\$1,194,941.14	\$1,680,582.20	\$1,191,711.58	(\$488,870.62)	l			
		<b>.</b>								<u> </u>
September	OCTOBER 15	l					ļ	l		
		\$1,833,362.40	\$1,194,941.14	\$1,833,362.40	\$1,191,711.58	(\$641,650.82)	L			
								L <del></del>		
	Column Legend									
	(A)								of the prior month.	
	(B)			unts due Year-To	-Date (YTD) from t	he beginning of t	he current Lease Ye	ar (October 1) thr	the end of the prior	month.
	(C)		nount in (A) or (B.							
ļ	(D)		yments made yea							
L	(E)	Amount of year-t	o-date overpayme	int or (underpaym	ent)					

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# EXHIBIT "B" FEDERAL NONDISCRIMINATION COVENANTS

For purposes of this Exhibit, the term "CONTRACTOR" means Concessionaire and the term "Agreement" means the Agreement more particularly described in the preamble of this Amendment.

- A. <u>Title VI Clauses for Compliance with Nondiscrimination Requirements.</u> During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees as follows:
  - 1. Compliance with Regulations: CONTRACTOR will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
  - 2. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. CONTRACTOR will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by CONTRACTOR of CONTRACTOR's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  - 4. Information and Reports: CONTRACTOR will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  - 5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    - a. Withholding payments to CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
    - b. Cancelling, terminating, or suspending a contract, in whole or in part.
  - 6. Incorporation of Provisions: CONTRACTOR will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. CONTRACTOR will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR may request the United States to enter into the litigation to protect the interests of the United States.
- B. <u>Title VI List of Pertinent Nondiscrimination Acts and Authorities.</u> During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:
  - Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964):
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex):
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seg).
- C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.
  - CONTRACTOR for itself and its 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) 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 CONTRACTOR will use the CONTRACTOR Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
  - In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the CONTRACTOR Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or

D. <u>Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.</u>
CONTRACTOR for itself and its 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:

- 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 CONTRACTOR will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and 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.
- In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.
- Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

#### General Civil Rights Provision.

CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR 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.