

**FIRST AMENDMENT TO CONCESSION AGREEMENT BETWEEN THE
CITY OF SAN JOSE
AND
HOST INTERNATIONAL, INC.**

This First Amendment to Concession Agreement is made and entered into this _____ day of _____ 2009, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and HOST INTERNATIONAL, INC., a Delaware corporation ("Concessionaire").

RECITALS

WHEREAS, on April 22, 2004, City and Concessionaire entered into that certain Concession Agreement ("Agreement") under which Concessionaire was granted exclusive rights to conduct food and beverage service operations in certain public locations at the Norman Y. Mineta San José International Airport ("Airport"); and

WHEREAS, City and Concessionaire desire to amend the Agreement, to extend the term of this Agreement and to amend the Concession Fee; and

WHEREAS, City and Concessionaire intend that the Agreement will remain in effect until the earlier of June 30, 2011, or the decommissioning of the Burger King in Terminal A.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

Section 1 Effective July 1, 2009, **SECTION 1 - "SUMMARY OF TERMS AND DEFINITIONS"** Subsection entitled "**Concession Fee**" is amended to read as follows:

“Concession Fee” (Section 6.1 – Concession Fee): Concessionaire shall pay a monthly Percentage Fee of Concessionaire’s Gross Revenues.”

Section 2 SECTION 1 - “SUMMARY OF TERMS AND DEFINITIONS” Subsection entitled **“Expiration Date”** is amended to read as follows:

“Expiration Date” (Section 2.1): the earlier of (i) June 30, 2011 or (ii) thirty (30) days after written notice of termination is provided by City, subject to earlier termination as provided in this Agreement.

Section 3 Effective July 1, 2009, **SECTION 6 – “FEES & DEPOSITS”** is amended to read as follows:

“6.1 Concession Fee. Commencing upon execution of this Agreement by City, Concessionaire agrees to pay to City a monthly Concession Fee, as defined herein. The Concession Fee is an amount equal to the amount set forth in the Summary as the Concession Fee, for each month during the term of this Agreement.

6.1.1 Monthly Fee.

6.1.1.1 Concession Fee Calculation. Commencing on July 1, 2009, Concessionaire shall pay to the City on a monthly basis the Percentage Fee, as set forth under the definition of Concession Fee in **SECTION 1 – “SUMMARY OF TERMS AND DEFINITIONS”**.

6.1.1.1.1 In accordance with Concessionaire’s Proposal, Concessionaire shall pay a Percentage Fee of eight percent (8%) of Concessionaire’s Gross Revenues up to an annual cumulative total of One Million Dollars (\$1,000,000) and twelve percent (12%) of Concessionaire’s Gross Revenues over an annual cumulative total of One Million Dollars (\$1,000,000).

For the purposes of the Percentage Fee calculation, Concessionaire's Gross Revenues shall be totaled from July 1, 2009 and continue for twelve (12) full calendar months thereafter. In accordance with Section 6.1.1.3 below, Concessionaire shall pay to City the higher Percentage Fee of twelve percent (12%) the first month that Concessionaire's annual cumulative total Gross Revenues surpasses One Million Dollars (\$1,000,000). The Percentage Fee shall revert back to the lower Percentage Fee of eight percent (8%) upon July 1st of each year of the remaining term of this Agreement and remain at eight percent (8%) until Concessionaire's cumulative Gross Revenue for the then current annual period surpasses One Million Dollars (\$1,000,000), at which time the higher Percentage Fee of twelve percent (12%) once again shall be in effect.

6.1.1.2 Payment of Concession Fee. No later than twenty (20) days after the end of each month, Concessionaire shall pay to City the Concession Fee for the preceding month.

6.1.1.3 Monthly Concession Report. No later than twenty (20) days after the end of each month, or portion thereof occurring after the Commencement Date, Concessionaire shall deliver to the City, a Concession Report for the preceding month's activity, even if no money is due.

6.1.1.3.1 If the monthly activity report is not provided on or before the twentieth (20th) day of each month as required herein, Concessionaire shall pay for administrative expenses incurred by City for delays and invoices a fee of Twenty-Five Dollars (\$25.00) per day for each day that the report is late until such date as the monthly activity report is submitted to the Director. This fee is established by City Council Resolution and may be adjusted from time to time in accordance with City Council Resolution.

6.1.1.4 Concessionaire shall be required to pay a late payment fee equal to one and a half percent (1 1/2%) per month of the amount that is late, calculated monthly, for each month that payment is not timely received by City. For any

calendar month in which Concessionaire is in possession for less than a full month, payment shall be prorated.

6.1.1.5 City assessment of the late payment shall be in addition to any other remedies City may have in law or in equity, including termination and revocation of the Concession Agreement.

6.1.1.6 Taxes and Assessments. Concessionaire shall pay, or cause the payment of, any and all other fees and charges, including, without limitation, all taxes, charges and assessments, interest payments, public agency fees and charges, insurance premiums and bond payments that are due and payable by Concessionaire under the provisions of this Agreement or under any laws.

6.2 Payment Location. The Concession Fee payable by Concessionaire shall be paid by check made payable to the "City of San José" and delivered or mailed to the following address, or to such other address as the Director may notify Concessionaire in accordance with **Section 30 - NOTICES:**

Payment Processing – Airport
Finance Department
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

6.3 Security Deposit. Concessionaire shall maintain with City a security deposit in the amount and in a form as determined by the Director and shall be payable to the "City of San José". The Director may adjust such deposit requirement from time to time upon a determination that such adjustment is warranted to protect the City and the Airport.

The Security Deposit shall be held by City and may be applied against any unpaid fees, rates or charges due and owing to City under this Agreement. If City makes such deduction, Concessionaire shall restore the Security Deposit to the full amount required by Director, within thirty (30) days of a written demand by Director. A

failure to do so shall entitle City to terminate this Agreement on thirty (30) days notice. City shall not be required to keep the Security Deposit separate from its funds, and Concessionaire shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid fees, costs, or charges as specified above) at the expiration or earlier termination of this Agreement shall be returned to Concessionaire, without interest, after a determination by the Director that all amounts owed to City under this Agreement have either been paid in full or have been deducted from the Security Deposit.”

Section 4 The term “Agreement” as used in the Agreement, shall refer to the Amended Agreement, as modified by this First Amendment.

Section 5 All of the terms and conditions of the Agreement not modified by this First Amendment shall remain in full force and effect.

Executed on the day and year first written above.

APPROVED AS TO FORM:

SANDRA LEE
Deputy City Attorney

CITY OF SAN JOSE, a municipal
corporation

By: _____
LEE PRICE, MMC
City Clerk

HOST INTERNATIONAL, INC.
a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I, _____ certify that I
Name of Secretary or Assistant Secretary

am the Secretary or Assistant Secretary of the corporation named in the

attached agreement; that _____
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the _____
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

Signature of Secretary or Assistant Secretary

Corporate Seal

Date