



Los Angeles World Airports

REPORT TO THE

13
November

BOARD OF AIRPORT COMMISSIONERS

Reviewed by: Dave Jones, Deputy Executive Director, Commercial Development Division

Brian C. Ostler, City Attorney

Justin Erbacci (May 13, 2022 15:19 PDT)

Justin Erbacci, Chief Executive Officer

Meeting Date

5/19/2022

Needs Council Approval: Y

Reviewed for/by	Date	Approval Status	By
Finance	4/27/2022	<input checked="" type="checkbox"/> Y <input type="checkbox"/> NA	JS
CEQA	4/26/2022	<input checked="" type="checkbox"/> Y	WW
Procurement	4/26/2022	<input checked="" type="checkbox"/> Y <input type="checkbox"/> Cond	BG
Guest Experience	4/26/2022	<input checked="" type="checkbox"/> Y	TB
Strategic Planning	5/2/2022	<input checked="" type="checkbox"/> Y	KC
City Attorney	4/27/2022	<input checked="" type="checkbox"/> Y	MT

SUBJECT

Amend Concession Agreements LAA-8586 and LAA-8587 with Host International, Inc. at Los Angeles International Airport to revise payment terms as approved for all other Concession Agreements due to the impacts of COVID-19.

RECOMMENDATIONS

Management RECOMMENDS that the Board of Airport Commissioners:

1. ADOPT the Staff Report.
2. DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2.f. of the Los Angeles City CEQA Guidelines.
3. APPROVE the proposed Amendment to Host International, Inc. Concession Agreements LAA-8586 and LAA-8587 at Los Angeles International Airport to revise rent payment terms as outlined in this report and in the proposed amendment.
4. AUTHORIZE the Chief Executive Officer or designee to execute the proposed Amendments to the Concession Agreements at Los Angeles International Airport, after approval as to form by the City Attorney and approval by the Los Angeles City Council.

DISCUSSION

1. Purpose

Extend the revised rent payment terms for Host International, Inc. (Host), for locations that are opened and operating, to require payment of percentage rent instead of Minimum Annual Guarantee rent, for the period July 1, 2021, through June 30, 2022, and establish new Minimum Annual Guarantee rents effective July 1, 2022.

2. Prior Related Actions/History of Board

- **April 16, 2020 – Resolution No. 27003**

The Board of Airport Commissioners (Board) approved revisions of payment terms of In-Terminal Concession Agreements and Rental Car Concession Agreements to require payment of percentage rent instead of Minimum Annual Guarantees through June 30, 2022 and approved deferral of payment of percentage rent from July 2020 through December 2020.

- **October 1, 2020 – Resolution No. 27118**

The Board approved Second Letter Agreements for the Concession Relief Program which included: (1) abating Minimum Annual Guarantees through June 30, 2021, for Concession Agreements; (2) deferring payment for storage fees through December 31, 2020; (3) extending current expiration dates for certain In-Terminal Concession Agreements and the Terminal Media Operating Agreement by 24 months; and (4) authorizing the CEO to have two 12-month options to delay required refurbishment dates.

- **December 10, 2020 – Resolution No. 27170**

The Board approved resubmittal of the Second Letter Agreement for Host after verified compliance with Living Wage Ordinance requirements. The Second Letter Agreements for LAA-8586 and LAA-8587 covered the Concessions Rent Relief Program including (1) abating Minimum Annual Guarantees through June 30, 2021, for Concession Agreements; (2) deferring payment for storage fees through December 31, 2020; (3) extending current expiration dates for certain In-Terminal Concession Agreements and the Terminal Media Operating Agreement by 24 months; and (4) authorizing the CEO to have two 12-month options to delay required refurbishment dates.

- **July 8, 2021 – Resolution No. 27297**

The Board authorized the acceptance of the third round of economic relief funds provided from the American Rescue Plan Act of 2021.

- **October 2, 2021 – Resolution No. 27363**

The Board approved a third rent relief package, for concessions that were opened and conducting business at LAX, to extend the revised rent payment terms to require payment of percentage rents instead of Minimum Annual Guarantee rent, for the period July 1, 2021, through June 30, 2022, and establish new Minimum Annual Guarantee rents effective July 1, 2022.

3. Background

In October 2021, the Board approved revised payment terms for Concessionaires that were opened and operating at LAX. Following Board approval, the City Council approved amendments to all of the Concession Agreements, except for Host’s two Concessions Agreements (LAA-8586 and LAA-8587), due to an open Living Wage Ordinance audit. The Bureau of Contract Administration reviewed the Living Wage Ordinance allegation and has closed the case with no finding against Host (see attached letter). There are no outstanding complaints against Host and they are in full compliance with all contractual requirements.

4. Current Action/Rationale

To provide Host the rent relief that was originally proposed and approved by the Board in October 2021, Los Angeles World Airports (LAWA) staff is resubmitting the proposed amendments to Host’s Concession Agreements LAA-8586 and LAA-8587. The table below summarizes the proposed amendment to the concession agreements. The proposed terms are the same as the terms approved by the Board for the other concessionaires on October 21, 2021.

Description	Effective Date	Proposed Amendment
Rent	April 1, 2020 to June 30, 2022	MAG Suspension – pay percent rent only
MAG Reinstatement	July 1, 2022, until traffic reaches Pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Pro-rated MAG $\left(\frac{\Delta \text{ PAX Mar 2021 thru Feb 2022}}{\text{PAX Mar 2019 thru Feb 2020}} \right) \times \text{2019 MAG}$
Annual MAG Adjustment upon Full Recovery	After traffic levels reach/exceed Pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Prior Year MAG • Pre-COVID MAG
3% Surcharge	April 1, 2020 to June 30, 2022	Allow 3% surcharge to cover employee health premium costs paid, through the period ending June 30, 2022, or upon full recovery of costs paid, whichever is sooner.

5. Fiscal Impact

The fiscal impact of this action is projected to be an additional loss of approximately \$5.9 million, some of which may be eligible for the economic relief funds provided from the American Rescue Plan Act of 2021. Staff previously anticipated the possibility of extending

the temporary relief program through the end of FY2022 and has budgeted FY2022 revenue accordingly.

6. Alternatives Considered

- ***Proportionately Reset MAG Monthly***

Resetting the MAG amount payable every month until passenger levels reach pre-COVID levels will require consistent audit and reconciliation of accounts. This will be challenging given the limited resources and will not provide any significant addition to potential revenue to Los Angeles World Airports.

APPROPRIATIONS

No appropriations are required for this action.

STANDARD PROVISIONS

1. This action, as a continuing administrative activity, is exempt from California Environmental Quality Act (CEQA) requirements pursuant to Article II, Section 2.f. of the Los Angeles City CEQA Guidelines.
2. The proposed document(s) is/are subject to approval as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 606.
4. Host International, Inc. is required by contract to comply with the provisions of the Service Contractor Worker Retention and /or Living Wage Ordinances.
5. Procurement Services reviewed the package (File No. 4799) and set no specific ACDBE level of participation for the project as no subcontracting opportunities were identified. However, Host International, Inc. proposed 10% ACDBE participation and has achieved 10% participation to date, for Agreement LAA-8586. Host International, Inc. proposed 25% ACDBE participation and has achieved 25% participation to date, for Agreement LAA-8587.
6. Host International, Inc. is required by contract to comply with the provisions of the Affirmative Action Program.
7. All concessionaires have been assigned Business Tax Registration Certificate numbers as follows: Host International, Inc. 0000605063 -0001 -3.
8. Host International, Inc. is required by contract to comply with the provisions of the Child Support Obligations Ordinance.
9. Host International, Inc. has approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports.
10. As these are concession agreements, the CAO has determined that this action is exempt from the provisions of Charter Section 1022 (Use of Independent Contractor).

11. Host International, Inc. has submitted the Contractor Responsibility Program Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. Host International, Inc. has been determined by Public Works, Office of Contract Compliance to be in compliance with the provisions of the Equal Benefits Ordinance.
13. Host International, Inc. will be required to comply with the provisions of the First Source Hiring Program for all non - trade LAX Airport jobs.
14. Host International, Inc. has submitted the Bidder Contributions CEC Form 55 and will comply with its provisions.

Attachment

- Living Wage Ordinance Audit Closed

**BOARD OF PUBLIC WORKS
MEMBERS**

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PRESIDENT

M. TERESA VILLEGAS
VICE PRESIDENT

DR. MICHAEL R. DAVIS
PRESIDENT PRO TEMPORE

VAHID KHORSAND
COMMISSIONER

VACANT
COMMISSIONER

DR. FERNANDO CAMPOS
EXECUTIVE OFFICER

**CITY OF LOS ANGELES
CALIFORNIA**



ERIC GARCETTI
MAYOR

JOHN L. REAMER, JR.
Inspector of Public Works
and
Director

**BUREAU OF
CONTRACT ADMINISTRATION**

1149 S. BROADWAY, SUITE 300
LOS ANGELES, CA 90015
(213) 847-1922

<http://bca.lacity.org>

May 3, 2022

Darryl Franklin

HMSHost

Sent via email to (Darryl.Franklin@hmshost.com)

RE: LIVING WAGE ORDINANCE AUDIT – CLOSED

Dear Darryl Franklin

The Los Angeles City Council designated the Office of Contract Compliance (“OCC”) as the administrative agency with authority for administering and enforcing the Living Wage Ordinance (“LWO”) Los Angeles Administrative Code (“LAAC”) 10.37. Based on information OCC recently received; the OCC is closing this audit. Thank you for your cooperation.

If you have any questions, you may contact me at (213) 847-2632 or Sophy.tzeng@lacity.org.

Sincerely,

Sophy Tzeng

Contract Compliance Analyst

Office of Contract Compliance

Bureau of Contract Administration

FOURTH AMENDMENT TO RETAIL CONCESSION AGREEMENT NO. LAA-8586
BETWEEN CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS and
HOST INTERNATIONAL, INC.

This Fourth Amendment to Retail Concession Agreement No. LAA-8586 (this “Fourth Amendment”) is made and entered into as of _____, 2021 (“Effective Date”) by and between THE CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS, a municipal corporation (“City”), acting by order of and through its Board of Airport Commissioners (“Board“), and HOST INTERNATIONAL, INC. (“Concessionaire”), with reference to the following:

RECITALS

WHEREAS, City and Concessionaire heretofore entered into that certain Los Angeles International Airport Retail Concession Agreement (Board File No. LAA-8586) dated June 24, 2011;, as amended and restated by that certain First Amended & Restated Los Angeles International Airport Retail Concession Agreement (Board File No. LAA-8586A) dated October 14, 2015 between City and Concessionaire, that second amendment in the form of a letter agreement (Board File No. LAA-8586A-1) dated April 16, 2020 between City and Concessionaire, and by that third amendment in the form of a letter amendment (Board File No. LAA-8586A-2) dated February 26, 2021 between City and Concessionaire (as amended, the “Agreement”). Unless otherwise defined in this Fourth Amendment or the context otherwise requires, the capitalized terms used in this Fourth Amendment shall have the same respective meanings as ascribed to such terms in the Agreement.

WHEREAS, in consideration of the recent decline in flight and passenger traffic at the Airport and the resulting temporary decline in airport revenue generating opportunities, the parties desire to amend the Agreement to temporarily adjust the Minimum Monthly Guaranteed Rent (sometimes also referred to as the MMG) and the Minimum Annual Guarantee on the terms and conditions set forth in this Fourth Amendment.

AGREEMENT

NOW, THEREFORE, the parties hereto, for and in consideration of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, do mutually agree that the Agreement, BE AMENDED AS FOLLOWS:

Section 1. Section 4.1.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“4.1.3. Minimum Monthly Guaranteed Rent. The Minimum Monthly Guaranteed Rent with respect to each Unit shall be the minimum amount payable to City by Concessionaire monthly as Base Rent for such Unit, as follows:_____

4.1.3.1 For purposes of this Section 4.1.3, the following capitalized terms shall have their meanings as set forth herein:

(a) "MAG Suspension Year" shall mean the Agreement Year beginning on July 1, 2021 and ending on June 30, 2022.

(b) "MAG Adjustment Year" shall mean the Agreement Year beginning on July 1, 2022 and ending on June 30, 2023.

(c) "Temporary Minimum Monthly Guaranteed Rent" shall mean an amount equal to (x) the Minimum Monthly Guaranteed Rent for such Unit set forth in the Basic Information as more particularly described on Schedule 4.1.3 of this Fourth Amendment and incorporated herein by this reference, multiplied by (y) the Recovery Ratio (as defined below) for such month.

(d) "Recovery Ratio" shall mean with respect to any month during an Agreement Year: the ratio of (x) the total passenger enplanements in the Concessionaire's terminal during the Comparison Year (as defined herein below), to (y) the total passenger enplanements in such terminal from March 1, 2019 to February 29, 2020, provided that the Recovery Ratio shall be not more than 1.0. For purposes of the Recovery Ratio, the "Comparison Year" for a particular month shall be the twelve-month period from March to February immediately preceding the Agreement Year. For the avoidance of doubt, for the period July 1, 2023 to June 30, 2024, the Comparison Year for the Recovery Ratio is March 1, 2022 to February 28, 2023, and from July 1, 2024 to June 30, 2025, the Comparison Year is March 1, 2023 to February 29, 2024. For purposes of determining the Recovery Ratio, passenger enplanements shall be as reported in the LAWA Passenger Traffic Comparison By Terminal Report on the LAWA website.

(e) "Complete Recovery" shall mean the first full calendar month after June 30, 2023 when the Recovery Ratio has reached 1.0.

4.1.3.2. Subject to Sections 4.1.3.3 through 4.1.3.7, the "Minimum Monthly Guaranteed Rent" with respect to each Unit for the Agreement Year in which the MMG Commencement Date occurs is set forth in the Basic Information. The initial Minimum Monthly Guaranteed Rent will be pro rata to the end of the month. Thereafter, the Concessionaire shall pay to City the Minimum Monthly Guaranteed Rent with respect to each Unit on the first (1st) of every month. For each Agreement Year after the first Agreement Year in which the MMG Commencement Date occurs, subject to Sections 4.1.3.1 through 4.1.3.5 below, the "Minimum Monthly Guaranteed Rent" with respect to each Unit shall be the greater of (i) the Minimum Monthly Guaranteed Rent for such Unit set forth in the Basic Information, or (ii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year. The Minimum Monthly Guaranteed Rent for the Premises shall be the sum of the Minimum Monthly Guaranteed Rent for all of the Units.

4.1.3.3. Conditions. The following are conditions to the MAG suspension under Section 4.1.3.4 to 4.1.3.7 and any rent credit under Section 4.1.3.8. Concessionaire's payment of reduced rent or acceptance of a rent credit pursuant to such sections shall be deemed a representation to City that these conditions have been and continue to be fulfilled. If any of these conditions fail,

then Section 4.1.3.4 through 4.1.3.8 shall have no further effect with respect to Concessionaire, and Concessionaire shall immediately notify City of the failure of the condition(s):

4.1.3.3.1. Concessionaire has not received and is not receiving a second draw or assistance for a covered loan under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)) that has been applied toward rent or the Minimum Monthly Guarantee. Concessionaire shall cooperate with City to confirm compliance with any audit to confirm compliance with applicable law including but not limited to American Rescue Plan Act (ARPA).

4.1.3.3.2. Concessionaire continues to comply with its obligation to re-employ employees under Section 4(a) of the Second Amendment.

4.1.3.3.3. Each of Concessionaire's units must be open for operations as described herein. For each unit to be considered open and to qualify for MMG suspension, the Concessionaire must demonstrate to the satisfaction of the CEO that the total worker hours at each of Concessionaire's units is proportional to the passenger traffic in Concessionaire's terminal, using December 2019 total worker hours and passenger traffic as the basis of full worker hours/sales, unless Concessionaire can demonstrate to the CEO's satisfaction that failure to achieve such staffing levels is solely due to challenges to hire employees as documented through significant, well-documented effort to do so; this provision shall not be construed in any case to require staffing levels that exceed December 2019 levels.

4.1.3.3.4. Concessionaire must consent to and approve of City's calculation of fund allocations under the American Rescue Plan Act ("Act") as described in Section 4.1.3.8 below.

4.1.3.4 During the MAG Suspension Year, and subject to the conditions in Section 4.1.3.3, there shall be no Minimum Monthly Guaranteed Rent.

4.1.3.5. During the MAG Adjustment Year, and subject to the conditions in Section 4.1.3.3, the Minimum Monthly Guaranteed Rent with respect to each Unit shall be the greater of: (i) an amount equal to either the Temporary Monthly Guaranteed Rent for such Unit or (ii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year.

4.1.3.6 Subject to the conditions in Section 4.1.3.3, for each Agreement Year after the MAG Adjustment Year through the end of the first Agreement Year during which there is a Complete Recovery, the Minimum Monthly Guaranteed Rent with respect to each Unit shall be set as the highest among: (i) the Temporary Monthly Guaranteed Rent for such Unit; or (ii) the preceding Agreement Year's Minimum Monthly Guaranteed Rent or (iii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year.

4.1.3.7 Commencing on the first Agreement Year after a Complete Recovery, the Minimum Monthly Guarantee shall be as stated in Section 4.1.3.2, and Sections 4.1.3.3 through 4.1.3.7 shall have no further effect.

4.1.3.8. To the extent that City receives funds under the American Rescue Plan Act (“Act”), City shall allocate such funds among its concessionaires in accordance with the provisions of the Act, including but not limited to Section 7102(b)(4)(C) of the Act. City shall calculate the amount of relief applied to each concessionaire as the difference between rents paid and the amount of rent that would be due if MAG was not suspended or reduced pursuant to Section 4.1.3.3 through 4.1.3.7. Commencing July 1, 2022 until the earlier of Complete Recovery or June 30, 2024 (“ARPA Completion Date”), City will notify Concessionaire annually of the amount of ARPA funds applied to date. If City determines that Concessionaire has not depleted its allocation of ARPA funding as of the ARPA Completion Date, then City shall provide Concessionaire a rent credit for the unused balance of Concessionaire’s ARPA fund allocation.

4.1.3.9. For purposes of this Section 4.1.3, the determination of the total number of passenger enplanements in the commercial airline terminals at the Airport for any given period shall be made by the Chief Executive Officer, and such determination by the Chief Executive Officer shall be deemed binding and conclusive on Concessionaire. The parties acknowledge that the Chief Executive Officer has determined that the total number of passenger enplanements in the commercial airline terminals at the Airport for the March 1, 2019 to February 29, 2020 was as follows:

LAX T1	9,372,591
LAX T2	8,436,404
LAX T3	8,090,163
LAX T4	10,704,700
LAX T5	9,813,915
LAX T6	7,971,417
LAX T7	9,379,427
LAX T8	3,495,123
Remote Terminal	2,940,908
TBIT	17,565,241

Section 2. Section 13.3.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“13.3.2 If Concessionaire has previously provided such FPG to City and if, for any reason, Concessionaire’s monthly monetary obligation to City is thereafter decreased in excess of ten percent (10%), then the Chief Executive Officer may (but shall have no obligation to) reduce the amount of Concessionaire’s FPG by a corresponding amount following written request from Concessionaire to City (it being understood that any such reduction shall be in the sole and absolute discretion of the Executive Director or Chief Executive Officer of City). Such amount of Concessionaire’s FPG as so reduced shall be subject to future increase as provided in Section 13.3.1 of this Agreement.”

Section 3. The parties acknowledge that the Executive Director of the City of Los Angeles Department of Airport is presently referred to as the Chief Executive Officer. Accordingly, the final sentence of Section 1.12 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The “Delivery Date” for a Unit shall be the date specified by the Executive Director of the City of Los Angeles Department of Airports or the person or group designated by the Executive Director to take a specified action on behalf of the Executive Director (“Executive Director” or “Chief Executive Officer”) in a written notice delivered to Concessionaire (a “Delivery Notice”) as the date that Concessionaire may take possession of such Unit pursuant to the terms of this Agreement.”

Section 4. The first sentence of Section 6.b of the letter amendment (Board File No. LAA-8586A-2) dated October 1, 2021 between City and Concessionaire is hereby deleted in its entirety and replaced with the following: “Concessionaire may (in Concessionaire’s discretion) add a surcharge up to three percent (3%) on concession sales to guests to be applied to the costs of the health insurance contribution requirement as set forth in Section 6.a above, until such time as the cumulative total amount of such surcharge equals the total amount of the Health Insurance Contribution paid by Concessionaire, or if such total amount has not been reached, until June 30, 2022, whichever comes first; and provided that such health insurance contribution is being made on a current basis during the period of such surcharge (“Surcharge Period”).”

Section 5. As a material inducement to City’s entering into this Fourth Amendment, Concessionaire hereby represents, warrants and covenants to City as follows: (1) City is not in default in the performance of any of the terms or provisions of the Agreement; (2) City has duly delivered the Premises to Concessionaire in accordance with the terms of the Agreement, and there exists no unresolved disputes or claims by Concessionaire in connection with the Agreement (including, without limitation, for items of construction, repair or capital expenditure for which City is liable or obligated to pay for or to perform in connection with the Agreement); (3) Concessionaire neither has nor claims any defenses, setoffs or credits against the payment of Rent payable under the Agreement; and (4) City shall be entitled to rely on the accuracy of the foregoing representations, warranties and covenants, and Concessionaire hereby releases City from any claims relating to the foregoing matters.

Section 6. This Fourth Amendment may be executed in counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts shall constitute one amendment, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Fourth Amendment and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Fourth Amendment had been delivered that had been signed using a handwritten signature. All parties to this Fourth Amendment (i) agree that an electronic signature, whether

digital or encrypted, of a party to this Fourth Amendment is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Fourth Amendment based on the foregoing forms of signature. If this Fourth Amendment has been executed by electronic signature, all parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 (“E-SIGN”) and the California Uniform Electronic Transactions Act (“UETA”) (California Civil Code §1633.1 et seq.), that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

Section 7. Except as amended and modified as set forth in this Fourth Amendment, the terms and provisions of the Agreement remain the same and in full force and effect.

[signatures appear on following page]

IN WITNESS WHEREOF, City has caused this Fourth Amendment to be executed on its behalf by the Chief Executive Officer, or his or her authorized signatory, and Concessionaire has caused the same to be executed by its duly authorized officers, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF LOS ANGELES

MICHAEL N. FEUER,
City Attorney

By: 
Deputy/Assistant City Attorney

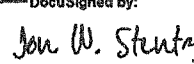
Date: 10/29/21


By: _____
Chief Executive Officer
City of Los Angeles, Department of
Airports

By: _____
Chief Financial Officer
City of Los Angeles, Department of
Airports

ATTEST:

HOST INTERNATIONAL, INC.

DocuSigned by:

By: _____
Name: Jon W. Stentz
Title: Secretary / CFO / Asst. Sec. /
Asst. Treas.
SECRETARY

DocuSigned by:

By: _____
Name: Paul Mamalian
Title: Chairman / CEO / Vice-President
PRESIDENT

Schedule 4.1.3

EXHIBIT A

Schedule 4.1.3 - Minimum Monthly Guaranteed Rent

LAA-8586

Unit	Category	Minimum Annual Guarantee (MAG)	Minimum Monthly Guarantee (MMG)
4B	Food Court/Café Concept	\$ 3,782,082	\$ 315,173
4L	Café Concept	\$ 342,918	\$ 28,577
	Total	\$ 4,125,000	\$ 343,750

**FIFTH AMENDMENT TO RETAIL CONCESSION AGREEMENT NO. LAA-8587
BETWEEN CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS and
HOST INTERNATIONAL, INC.**

This Fifth Amendment to Retail Concession Agreement No. LAA-8587 (this “Fifth Amendment”) is made and entered into as of _____, 2021 (“Effective Date”) by and between THE CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS, a municipal corporation (“City”), acting by order of and through its Board of Airport Commissioners (“Board”), and HOST INTERNATIONAL, INC. (“Concessionaire”), with reference to the following:

RECITALS

WHEREAS, City and Concessionaire heretofore entered into that certain Los Angeles International Airport Retail Concession Agreement (Board File No. LAA-8587) dated June 24, 2011, as amended and restated by that certain First Amended & Restated Los Angeles International Airport Retail Concession Agreement (Board File No. LAA-8587A) dated October 14, 2015 between City and Concessionaire, that second amendment dated August 19, 2016 (Board File No. LAA-8587A-1), that third amendment in the form of a letter agreement (Board File No. LAA-8587A-2) dated April 16, 2020 between City and Concessionaire, and by that fourth amendment in the form of a letter amendment (Board File No. LAA-8587A-3) dated February 25, 2021 between City and Concessionaire (as amended, the “Agreement”). Unless otherwise defined in this Fifth Amendment or the context otherwise requires, the capitalized terms used in this Fifth Amendment shall have the same respective meanings as ascribed to such terms in the Agreement.

WHEREAS, in consideration of the recent decline in flight and passenger traffic at the Airport and the resulting temporary decline in airport revenue generating opportunities, the parties desire to amend the Agreement to temporarily adjust the Minimum Monthly Guaranteed Rent (sometimes also referred to as the MMG) and the Minimum Annual Guarantee on the terms and conditions set forth in this Fifth Amendment.

AGREEMENT

NOW, THEREFORE, the parties hereto, for and in consideration of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, do mutually agree that the Agreement, BE AMENDED AS FOLLOWS:

Section 1. Section 4.1.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“4.1.3. Minimum Monthly Guaranteed Rent. The Minimum Monthly Guaranteed Rent with respect to each Unit shall be the minimum amount payable to City by Concessionaire monthly as Base Rent for such Unit, as follows:

4.1.3.1 For purposes of this Section 4.1.3, the following capitalized terms shall have their meanings as set forth herein:

(a) "MAG Suspension Year" shall mean the Agreement Year beginning on July 1, 2021 and ending on June 30, 2022.

(b) "MAG Adjustment Year" shall mean the Agreement Year beginning on July 1, 2022 and ending on June 30, 2023.

(c) "Temporary Minimum Monthly Guaranteed Rent" shall mean an amount equal to (x) the Minimum Monthly Guaranteed Rent for such Unit set forth in the Basic Information as more particularly described on Schedule 4.1.3 of this Fifth Amendment and incorporated herein by this reference, multiplied by (y) the Recovery Ratio (as defined below) for such month.

(d) "Recovery Ratio" shall mean with respect to any month during an Agreement Year: the ratio of (x) the total passenger enplanements in the Concessionaire's terminal during the Comparison Year (as defined herein below), to (y) the total passenger enplanements in such terminal from March 1, 2019 to February 29, 2020, provided that the Recovery Ratio shall be not more than 1.0. For purposes of the Recovery Ratio, the "Comparison Year" for a particular month shall be the twelve-month period from March to February immediately preceding the Agreement Year. For the avoidance of doubt, for the period July 1, 2023 to June 30, 2024, the Comparison Year for the Recovery Ratio is March 1, 2022 to February 28, 2023, and from July 1, 2024 to June 30, 2025, the Comparison Year is March 1, 2023 to February 29, 2024. For purposes of determining the Recovery Ratio, passenger enplanements shall be as reported in the LAWA Passenger Traffic Comparison By Terminal Report on the LAWA website.

(e) "Complete Recovery" shall mean the first full calendar month after June 30, 2023 when the Recovery Ratio has reached 1.0.

4.1.3.2. Subject to Sections 4.1.3.3 through 4.1.3.7, the "Minimum Monthly Guaranteed Rent" with respect to each Unit for the Agreement Year in which the MMG Commencement Date occurs is set forth in the Basic Information. The initial Minimum Monthly Guaranteed Rent will be pro rata to the end of the month. Thereafter, the Concessionaire shall pay to City the Minimum Monthly Guaranteed Rent with respect to each Unit on the first (1st) of every month. For each Agreement Year after the first Agreement Year in which the MMG Commencement Date occurs, subject to Sections 4.1.3.1 through 4.1.3.5 below, the "Minimum Monthly Guaranteed Rent" with respect to each Unit shall be the greater of (i) the Minimum Monthly Guaranteed Rent for such Unit set forth in the Basic Information, or (ii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year. The Minimum Monthly Guaranteed Rent for the Premises shall be the sum of the Minimum Monthly Guaranteed Rent for all of the Units.

4.1.3.3. Conditions. The following are conditions to the MAG suspension under Section 4.1.3.4 to 4.1.3.7 and any rent credit under Section 4.1.3.8. Concessionaire's payment of reduced rent or acceptance of a rent credit pursuant to such sections shall be deemed a representation to City that these conditions have been and continue to be fulfilled. If any of these conditions fail,

then Section 4.1.3.4 through 4.1.3.8 shall have no further effect with respect to Concessionaire, and Concessionaire shall immediately notify City of the failure of the condition(s):

4.1.3.3.1. Concessionaire has not received and is not receiving a second draw or assistance for a covered loan under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)) that has been applied toward rent or the Minimum Monthly Guarantee. Concessionaire shall cooperate with City to confirm compliance with any audit to confirm compliance with applicable law including but not limited to American Rescue Plan Act (ARPA).

4.1.3.3.2. Concessionaire continues to comply with its obligation to re-employ employees under Section 4(a) of the Second Amendment.

4.1.3.3.3. Each of Concessionaire's units must be open for operations as described herein. For each unit to be considered open and to qualify for MMG suspension, the Concessionaire must demonstrate to the satisfaction of the CEO that the total worker hours at each of Concessionaire's units is proportional to the passenger traffic in Concessionaire's terminal, using December 2019 total worker hours and passenger traffic as the basis of full worker hours/sales, unless Concessionaire can demonstrate to the CEO's satisfaction that failure to achieve such staffing levels is solely due to challenges to hire employees as documented through significant, well-documented effort to do so; this provision shall not be construed in any case to require staffing levels that exceed December 2019 levels.

4.1.3.3.4. Concessionaire must consent to and approve of City's calculation of fund allocations under the American Rescue Plan Act ("Act") as described in Section 4.1.3.8 below.

4.1.3.4 During the MAG Suspension Year, and subject to the conditions in Section 4.1.3.3, there shall be no Minimum Monthly Guaranteed Rent.

4.1.3.5. During the MAG Adjustment Year, and subject to the conditions in Section 4.1.3.3, the Minimum Monthly Guaranteed Rent with respect to each Unit shall be the greater of: (i) an amount equal to either the Temporary Monthly Guaranteed Rent for such Unit or (ii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year.

4.1.3.6 Subject to the conditions in Section 4.1.3.3, for each Agreement Year after the MAG Adjustment Year through the end of the first Agreement Year during which there is a Complete Recovery, the Minimum Monthly Guaranteed Rent with respect to each Unit shall be set as the highest among: (i) the Temporary Monthly Guaranteed Rent for such Unit; or (ii) the preceding Agreement Year's Minimum Monthly Guaranteed Rent or (iii) one-twelfth (1/12) of eighty-five percent (85%) of the actual Base Rent payments for such Unit for the immediately prior Agreement Year.

4.1.3.7 Commencing on the first Agreement Year after a Complete Recovery, the Minimum Monthly Guarantee shall be as stated in Section 4.1.3.2, and Sections 4.1.3.3 through 4.1.3.7 shall have no further effect.

4.1.3.8. To the extent that City receives funds under the American Rescue Plan Act (“Act”), City shall allocate such funds among its concessionaires in accordance with the provisions of the Act, including but not limited to Section 7102(b)(4)(C) of the Act. City shall calculate the amount of relief applied to each concessionaire as the difference between rents paid and the amount of rent that would be due if MAG was not suspended or reduced pursuant to Section 4.1.3.3 through 4.1.3.7. Commencing July 1, 2022 until the earlier of Complete Recovery or June 30, 2024 (“ARPA Completion Date”), City will notify Concessionaire annually of the amount of ARPA funds applied to date. If City determines that Concessionaire has not depleted its allocation of ARPA funding as of the ARPA Completion Date, then City shall provide Concessionaire a rent credit for the unused balance of Concessionaire’s ARPA fund allocation.

4.1.3.9. For purposes of this Section 4.1.3, the determination of the total number of passenger enplanements in the commercial airline terminals at the Airport for any given period shall be made by the Chief Executive Officer, and such determination by the Chief Executive Officer shall be deemed binding and conclusive on Concessionaire. The parties acknowledge that the Chief Executive Officer has determined that the total number of passenger enplanements in the commercial airline terminals at the Airport for the March 1, 2019 to February 29, 2020 was as follows:

LAX T1	9,372,591
LAX T2	8,436,404
LAX T3	8,090,163
LAX T4	10,704,700
LAX T5	9,813,915
LAX T6	7,971,417
LAX T7	9,379,427
LAX T8	3,495,123
Remote Terminal	2,940,908
TBIT	17,565,241

Section 2. Section 13.3.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“13.3.2 If Concessionaire has previously provided such FPG to City and if, for any reason, Concessionaire’s monthly monetary obligation to City is thereafter decreased in excess of ten percent (10%), then the Chief Executive Officer may (but shall have no obligation to) reduce the amount of Concessionaire’s FPG by a corresponding amount following written request from Concessionaire to City (it being understood that any such reduction shall be in the sole and absolute discretion of the Executive Director or Chief Executive Officer of City). Such amount of Concessionaire’s FPG as so reduced shall be subject to future increase as provided in Section 13.3.1 of this Agreement.”

Section 3. The parties acknowledge that the Executive Director of the City of Los Angeles Department of Airport is presently referred to as the Chief Executive Officer. Accordingly, the final sentence of Section 1.12 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The “Delivery Date” for a Unit shall be the date specified by the Executive Director of the City of Los Angeles Department of Airports or the person or group designated by the Executive Director to take a specified action on behalf of the Executive Director (“Executive Director” or “Chief Executive Officer”) in a written notice delivered to Concessionaire (a “Delivery Notice”) as the date that Concessionaire may take possession of such Unit pursuant to the terms of this Agreement.”

Section 4. The first sentence of Section 6.b of the letter amendment (Board File No. LAA-8542A-2) dated October 1, 2020 between City and Concessionaire is hereby deleted in its entirety and replaced with the following: “Concessionaire may (in Concessionaire’s discretion) add a surcharge up to three percent (3%) on concession sales to guests to be applied to the costs of the health insurance contribution requirement as set forth in Section 6.a above, until such time as the cumulative total amount of such surcharge equals the total amount of the Health Insurance Contribution paid by Concessionaire, or if such total amount has not been reached, until June 30, 2022, whichever comes first; and provided that such health insurance contribution is being made on a current basis during the period of such surcharge (“Surcharge Period”).”

Section 5. As a material inducement to City’s entering into this Fifth Amendment, Concessionaire hereby represents, warrants and covenants to City as follows: (1) City is not in default in the performance of any of the terms or provisions of the Agreement; (2) City has duly delivered the Premises to Concessionaire in accordance with the terms of the Agreement, and there exists no unresolved disputes or claims by Concessionaire in connection with the Agreement (including, without limitation, for items of construction, repair or capital expenditure for which City is liable or obligated to pay for or to perform in connection with the Agreement); (3) Concessionaire neither has nor claims any defenses, setoffs or credits against the payment of Rent payable under the Agreement; and (4) City shall be entitled to rely on the accuracy of the foregoing representations, warranties and covenants, and Concessionaire hereby releases City from any claims relating to the foregoing matters.

Section 6. This Fifth Amendment may be executed in counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts shall constitute one amendment, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Fifth Amendment and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Fifth Amendment had been delivered that had been signed using a handwritten signature. All parties to this Fifth Amendment (i) agree that an electronic signature, whether digital or encrypted, of a party to this

Fifth Amendment is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Fifth Amendment based on the foregoing forms of signature. If this Fifth Amendment has been executed by electronic signature, all parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and the California Uniform Electronic Transactions Act ("UETA") (California Civil Code §1633.1 et seq.), that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

Section 7. Except as amended and modified as set forth in this Fifth Amendment, the terms and provisions of the Agreement remain the same and in full force and effect.

[signatures appear on following page]

IN WITNESS WHEREOF, City has caused this Fifth Amendment to be executed on its behalf by the Chief Executive Officer, or his or her authorized signatory, and Concessionaire has caused the same to be executed by its duly authorized officers, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF LOS ANGELES

MICHAEL N. FEUER,
City Attorney

By: 
Deputy/Assistant City Attorney

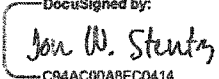
Date: 10/29/21


By: _____
Chief Executive Officer
City of Los Angeles, Department of
Airports

By: _____
Chief Financial Officer
City of Los Angeles, Department of
Airports

ATTEST:

HOST INTERNATIONAL, INC.

DocuSigned by:

By: _____
Name: Jon W. Stentz
Title: Secretary / CFO / Asst. Sec. /
Asst. Treas.
SECRETARY

DocuSigned by:

By: _____
Name: Paul Mamalian
Title: Chairman / CEO / Vice-President
PRESIDENT

Schedule 4.1.3

EXHIBIT A

Schedule 4.1.3 - Minimum Monthly Guaranteed Rent

LAA-8587

Unit	Category	Minimum Annual Guarantee (MAG)	Minimum Monthly Guarantee (MMG)
7C	Food Court	\$ 1,297,636	\$ 108,136
8D	Café Concept	\$ 402,364	\$ 33,530
	Total	\$ 1,700,000	\$ 141,667