

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: December 8, 2009

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution authorizing the City Manager to sign a Lessor's Approval of Sublease by and between the City of El Paso, Host International, Inc.(Host), and Fresquez Concession, Inc., d/b/a Quiznos Subs (Fresquez Concession).

BACKGROUND / DISCUSSION:

The City and Host entered in to a Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions (Concession Agreement) effective November 22, 2006 to provide food and beverage concession services at El Paso International Airport. Host now desires to sublease a portion of the leased premises to Fresquez Concession to operate as Quiznos Subs. The location for Quiznos Subs will be at the recently constructed Food Court located in Concourse B.

The approval of this sublease shall not release Host from any of its responsibilities or duties under the Concession Agreement. Host will remain liable for the City for any defaults under the Concession Agreement, whether caused by Host or Fresquez Concession.

PRIOR COUNCIL ACTION:

Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions awarded to Host International, Inc. on October 31, 2006.

AMOUNT AND SOURCE OF FUNDING:

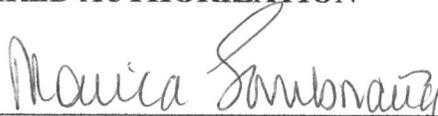
N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, City of El Paso and Host International, Inc. entered into a Lease and Concession Agreement for the Development of Food and Beverage Concessions for food and beverage concessions at the El Paso International Airport; and

WHEREAS, Host International, Inc the Concessionaire desires to sublease a portion of the Leased Premises to Fresquez Concession Inc., d/b/a Quiznos Sub; and

WHEREAS, the Concession Agreement requires the prior written consent of the Lessor for a sublease of any part of the Leased Premises; and

WHEREAS, Lessor is willing to grant the authorization required for a sublease subject to the terms and conditions set forth in the Lessor's Approval of Sublease as accepted and agreed to by Host International, Inc Concessionaire and Fresquez Concession Inc., d/b/a Quiznos Sub;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Sublease between the City of El Paso, Host International, Inc., and Fresquez Concession Inc., d/b/a Quiznos Sub for approximately 1,000 square feet in the post-security Food Court on Concourse B in the El Paso International Airport.

APPROVED this _____ day of _____ 2009.

CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

CITY CLERK DEPT.
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and providing proof to Lessor. Failure to comply with the insurance requirements may result in a revocation of the consent granted herein and termination of this Lessor's Approval of Sublease, as well as the sublease itself.

5. **Concessionaire's Obligations.** This approval shall in no way release the Concessionaire or any person or entity claiming by, through or under Concessionaire, including Sublessee, from any of its covenants, agreements, liabilities and duties under the Concession Agreement, as same may be amended from time to time, without respect to any provision to the contrary in the Sublease. Concessionaire shall remain liable to Lessor for any defaults under the Concession Agreement, whether such default is caused by Concessionaire or Sublessee or anyone claiming by or through either Concessionaire or Sublessee. The foregoing shall not be deemed to restrict or diminish any right which Lessor may have against Sublessee, in law or in equity, for violation of the Concession Agreement.
6. **Purpose.** This approval does not constitute approval by Lessor of any of the provisions of the Sublease document or agreement; nor shall the same be construed to amend the Concession Agreement in any respect. The sole purpose of the Sublease shall be to set forth the rights and obligations between Concessionaire and Sublessee. In no event, however, shall Lessor be deemed to be in privity of contract with Sublessee or owe any obligations or duty to Sublessee under the Concession Agreement or otherwise, any duties of Lessor under the Concession Agreement being in favor of, for the benefit of and enforceable solely by Concessionaire.
7. **Non-Waiver.** Nothing herein shall be deemed a waiver of any of Lessor's rights under the Concession Agreement. This approval does not end the need for Lessor's approval of any future subleases or for any other matter for which Lessor's approval is required under the Concession Agreement.
8. **Subordinate Rights.** The proposed Sublease is, in all aspects, subject and subordinated to the Concession Agreement as the same may be amended. The terms of the Concession Agreement shall prevail in the case of any conflict between the provisions of the Concession Agreement and Sublease or this approval.

If, at any time prior to the expiration of the term of the Sublease, the Concession Agreement shall terminate or be terminated for any reason (or Concessionaire's right to possession shall terminate without termination of the Concession Agreement), this Lessor's Approval of Sublease and the sublease shall each simultaneously terminate.



9. **Notices.** Any notice under the terms of this Agreement shall be in writing. If such notice is given by Concessionaire or Sublessee, it shall be submitted to the following address, or to such revised address(es) as provided in writing by Lessor:

Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091

City Clerk
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

If given by Lessor, such notice shall be submitted to the address of Concessionaire and the Sublessee at the following address, or to such revised address(es) as provided in writing by Concessionaire:

Concessionaire:

With a copy to:

Host International, Inc.
Attn: General Counsel
6905 Rockledge Drive
Bethesda, Maryland 20817

Host International, Inc.
Attn: VP Business Development
6905 Rockledge Drive
Bethesda, Maryland 20817

Sublessee:

Fresquez Concession, Inc.
8218-B Louisiana NE
Albuquerque, New Mexico 87113

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the addresses to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

10. **Authorized Parties.** The persons signing this approval on behalf of the Concessionaire and Sublessee represent and warrant that they have the authority to legally bind the Concessionaire and Sublessee to the provisions of this approval. By execution of this approval, Concessionaire and Sublessee acknowledge and agree to be bound by all the terms and conditions of this approval as set forth herein.

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been approved on this _____ day of _____ 2009.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Assistant City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2009, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso** (Lessor).

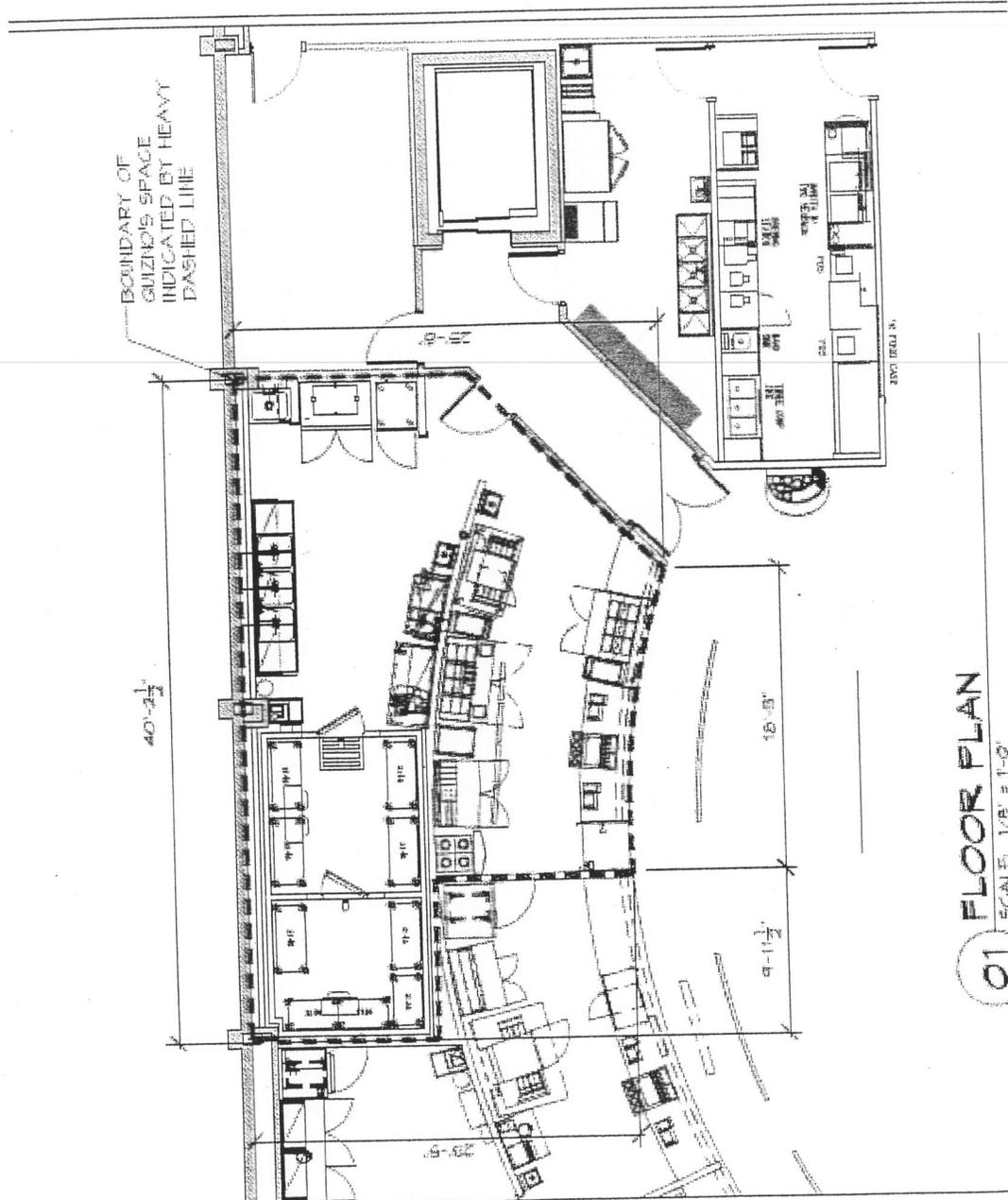
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

WF

EXHIBIT A

DESCRIPTION OR DEPICTION OF PREMISES



01 FLOOR PLAN
SCALE: 1/8" = 1'-0"

<p>HMS FACILITY DESIGN & DEVELOPMENT</p>	<p>QUIZNO'S EL PASO INTERNATIONAL AIRPORT EL PASO, TEXAS</p>	<p>● CARRELL ■ POOLE ▼ & YOST ARCHITECTURE</p>	<p>5646 Milton Street, Suite 888 Dallas, Texas 75206 214.953.0042 PH, 214.953.0702 FAX apys@pysarch.com</p>			
			<p>DATE: 10/25/08</p>	<p>JOB NO: 05050</p>	<p>DRAWN BY: JR</p>	<p>SHEET NO: 001</p>

LEGEND
■ FACILITIES

