

1 [SETTLEMENT OF UNLITIGATED CLAIM]

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3 **Ordinance approving settlement of an unlitigated claim by the City and County of San**
4 **Francisco, acting by and through its Airport Commission, against D. Mitchell**
5 **Concessions, Inc., by approving a lease of two coffee facilities in the Domestic**
6 **Terminals and the main restaurant in the International Terminal, to HMSHost**
7 **Corporation, waiving the competitive solicitation requirement in San Francisco**
8 **Administrative Code Section 2A.173, and authorizing the Airport Director to execute**
9 **agreements in furtherance of the foregoing.**

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The proposed settlement of an unlitigated claim by the City and County of
12 San Francisco, acting by and through its Airport Commission (the "Airport"), against D.
13 Mitchell Concessions, Inc. ("Mitchell"), on the following major terms, is hereby approved:

14 a) Mitchell will assign Airport Lease No. 99-0292J covering a food and beverage
15 facility (the "Restaurant") in the Airport's New International Terminal comprising
16 approximately 2,510 square feet (the "Lease") to HMSHost Corporation ("Host"),
17 and Host will assume all obligations of the tenant under the Lease. Airport will
18 consent to such assignment and assumption, subject to the conditions set forth
19 below. The term and rent of the Lease will remain the same; however, the
20 Lease may be modified in certain other respects to reflect the change in
21 restaurant concept.

22 b) Host will pay \$1,600,000 for the Restaurant, with the purchase proceeds to be
23 paid as follows: ¹ \$1,453,000 to the Bank of America (the "Bank") to pay off a

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¹ The following amounts are approximate and may be adjusted slightly to reflect other charges as they accrue, or payments made, if any.

1 loan made by the Bank to Mitchell in connection with the development of such
2 Restaurant (thereby fully and finally releasing the Letter of Credit provided by
3 the Airport securing such loan and any further liability to the Bank of America for
4 such loan); \$133,000 to Airport to cure in full the default under the Lease
5 (including rent and collection charges); \$6,700 to Eva Airlines, and the balance,
6 if any, to Mitchell.

- 7 c) Mitchell will cause the Bank to return to Airport the Letter of Credit, thereby
8 relieving Airport as contingent obligor for the Loan.
- 9 d) Host will be required to invest approximately \$325,000 to convert the Restaurant
10 to a casual dining bar concept.
- 11 e) Airport will lease to Host the Airport space no. CS20 (the "Main Restaurant") for
12 a term of approximately seven years, and space nos. T3.2.06 and F.2.084 (the
13 "Starbucks Facilities") for a term of approximately six years, such that the terms
14 expire coterminous with the Restaurant Lease, November 9, 2010. The Main
15 Restaurant will be operated as a brew-pub or other concept approved by the
16 Airport and the Starbucks Facilities will be operated as Starbucks coffee facilities
17 or other concept approved by the Airport. The lease for these facilities will
18 provide that Host will have the option to extend the term, provided that Host also
19 extends the term of the Lease, such that the terms for all three facilities are
20 coterminous on November 9, 2015.
- 21 f) The rent payable with respect to all of the facilities will be consistent with the
22 rent specified by the Airport's current rent schedule for food and beverage
23 operations, as follows:

24 **Bar/Restaurant Concept (Restaurant):**

25 Annually, the greater of:

- 1 (1) the Minimum Annual Guarantee (\$40/sq.ft.); or
2 (2) the sum of the following:
3 6% of Gross Revenues achieved up to and including \$1,000,000;
4 plus,
5 8% of Gross Revenues achieved over \$1,000,000 up to and
6 including \$1,500,000; plus,
7 10% of Gross Revenues achieved over \$1,500,000.

8 **Main Restaurant**

9 Annually, the greater of:

- 10 (1) the Minimum Annual Guarantee (\$20/sq.ft.); or
11 (2) the sum of the following:
12 4% of Gross Revenues achieved up to and including \$1,000,000;
13 plus,
14 6% of Gross Revenues achieved over \$1,000,000.

15 **Specialty Coffee Facilities**

16 Annually, the greater of:

- 17 (1) the Minimum Annual Guarantee (\$40/sq.ft.); or
18 (2) the sum of the following:
19 8% of Gross Revenues achieved up to and including \$750,000;
20 plus
21 10% of Gross Revenues achieved over \$750,000 up to and
22 including \$1,400,000; plus
23 12% of Gross Revenues achieved over \$1,400,000.

24 MAGs will be increased each year by increases in the CPI.

25 Rent during the option term will be adjusted to market rent.

- 1 g) Mitchell will provide a general release of the Airport.
- 2 h) Host will be required to abide by the Airport's "street-pricing" program for these
- 3 facilities.
- 4 i) Host will abide by the Airport's Worker Retention Policy.
- 5 j) For a period of five years, Mitchell shall not bid for, propose for, or otherwise
- 6 seek to have a role with respect to, any Airport food and beverage facility.

7 Section 2. The requirements of San Francisco Administrative Code Section 2A.173²

8 pertaining to the requirement that certain Airport concession leases be subject to a

9 competitive process and awarded to the highest or best responsible bidder or proposer are

10 hereby waived for purposes of leasing the Main Restaurant and the Starbucks Facilities to

11 Host.

12 Section 3. That the Airport Director be and hereby is authorized to take such other

13 actions as are necessary and appropriate in furtherance of this ordinance, including the

14 execution of lease agreement(s), provided all such agreement(s) are approved as to form by

15 the City Attorney.

17 APPROVED AS TO FORM
18 DENNIS J. HERRERA, City Attorney

RECOMMENDED:
San Francisco Airport Commission

19 By: _____
20 Adrienne Go
21 Deputy City Attorney

By: _____
John L. Martin
Airport Director

22 _____

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24 ² "The Commission shall also have sole power, subject to a competitive process and award to the highest or best

25 responsible bidder or proposer to lease out any concession wherein the concessionaire is to be given an exclusive right to occupy space on or in airport lands or buildings."

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Airport Commission Resolution No.

Adopted: _____

Attest: _____

Secretary
Airport Commission