

AN ORDINANCE 2013-10-10-0709

AUTHORIZING THE ASSIGNMENT OF TWO AIRPORT CONCESSION AGREEMENTS WITH PROJECT HORIZON, INC. TO INMOTION ENTERTAINMENT GROUP, LLC FOR TWO INMOTION STORE LOCATIONS AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, Project Horizon, Inc. currently operates an InMotion store in each of the terminals at San Antonio International Airport; and

WHEREAS, Project Horizon and InMotion Entertainment Group, LLC have executed Assignment and Assumption Agreements for each of the store locations at the Airport whereby InMotion Entertainment assumes all of the Project Horizon's obligations and liabilities under each of the Concession Agreements; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, is hereby authorized to execute the attached Assignment & Assumption Agreements transferring obligations and liabilities in the Concession Agreements from Project Horizon, Inc. to InMotion Entertainment Group, LLC. A copy of each of the Assignment & Assumption Agreements is set out in **Attachment I** to this Ordinance.

SECTION 2. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 10th day of October, 2013.

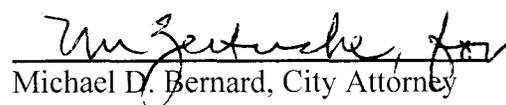

M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney

Agenda Item:	14 (in consent vote: 6, 7, 8, 9, 12, 14, 15)						
Date:	10/10/2013						
Time:	09:50:17 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance consenting to the assumption and assignment of the concession agreements for two InMotion Entertainment locations in the San Antonio International Airport from Project Horizon, Inc. to InMotion Entertainment Group, LLC. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

ASSIGNMENT AND ASSUMPTION OF LEASE WITH LANDLORD CONSENT
(San Antonio International Airport)
(Terminal 1, Space 110)

This Assignment and Assumption of Lease with Landlord Consent (this "**Assignment**") is effective as of _____, 2013 (the "**Effective Date**"), and entered into between **PROJECT HORIZON, INC.**, a Florida corporation ("**Assignor**"), and **INMOTION ENTERTAINMENT GROUP, LLC**, a Delaware limited liability company ("**Assignee**"), and acknowledged, accepted, approved, and consented to by the **CITY OF SAN ANTONIO**, a municipal corporation of the State of Texas ("**Landlord**").

RECITALS

A. Landlord and Assignor entered into that certain San Antonio International Airport Concession Agreement dated October 9, 2008 (the "**Lease**"), pursuant to which Assignor leases Terminal 1, Space 110 (the "**Premises**") at San Antonio International Airport located at 9800 Airport Blvd., San Antonio, TX 78216 (the "**Airport**") from Landlord.

B. Assignee has agreed to purchase from Assignor, and Assignor agreed to sell to Assignee, substantially all of Assignor's assets (the "**Transaction**"), including, but not limited to, all of Assignor's right, title, and interest in and to the Lease, pursuant to that certain Asset Purchase Agreement dated May 3, 2013 (the "**Purchase Agreement**").

C. Assignor desires to assign all of its right, title, and interest in and to the Lease to Assignee, Assignee desires to accept the assignment and assume all of Assignor's duties, liabilities, and obligations under the Lease from and after the Effective Date, and both Assignor and Assignee desire to obtain Landlord's consent to the assignment.

D. Landlord is willing to acknowledge, accept, approve, and consent to the assignment and assumption subject to the terms and conditions of this Assignment.

AGREEMENT

Assignor and Assignee agree as follows:

1. **Recitals**. The recitals above are true and correct and are incorporated herein by reference.
2. **Assignment**. Assignor hereby unconditionally assigns, conveys, delivers, sells, and transfers all of its right, title, and interest in and to the Lease to Assignee.
3. **Assumption**. Assignee hereby accepts Assignor's assignment of all of Assignor's right, title, and interest in and to the Lease, unconditionally assumes all of Assignor's liabilities arising under the Lease to be performed from and after the Effective Date, and agrees to perform all of Assignor's duties and obligations under the Lease from and after the Effective Date (collectively, the "**Assumed Obligations**"). Assignee shall indemnify, defend and hold Assignor harmless from and against any loss or damage occurring or related to the Assumed Obligations in accordance with the terms and conditions set forth in the Purchase Agreement. Assignor shall indemnify, defend and hold Assignee harmless from and against any loss or damage occurring or related to Assignor's liabilities and obligations under the Lease in accordance with the terms and conditions set forth in the Purchase Agreement.

4. Consent to Assignment. Landlord hereby acknowledges, accepts, approves, and consents to this Assignment.

5. Assignor's Representations and Warranties. Assignor represents and warrants to Assignee and Landlord that: (a) the Lease constitutes the entire agreement between Assignor and Landlord concerning the Premises and there are no other agreements between Assignor and Landlord relating to the Premises or the Lease; (b) Assignor has complied with all terms and conditions of the Lease and the Lease is in full force and effect; (c) Landlord is not in default under any of the terms, conditions, or covenants of the Lease; (d) Assignor does not have any rights to any credit, claim, cause of action, offset, or similar charge against Landlord or the rent due under the Lease, or any setoffs, counterclaims, or defenses against Landlord with respect to any matter arising under or related to the Lease from the commencement of the Lease to the Effective Date of this Assignment; (e) Assignor has not encumbered, hypothecated, assigned, or otherwise transferred the Lease; (f) Assignor has not sublet the Premises or any portion of the Premises to any person or entity; (g) Assignor has not granted to any person or entity any use or occupancy rights regarding the Premises other than any use or occupancy rights that Landlord may have under the Lease; (h) Assignor's execution and delivery of this Assignment has been fully authorized by all necessary corporate action; and (i) the person signing this Assignment on behalf of Assignor has the requisite authority to do so and the power and authority to bind Assignor.

6. Assignee's Representations and Warranties. Assignee represents and warrants to Assignor and Landlord that: (a) Assignee shall comply with all terms, covenants, and conditions of the Lease from and after the Effective Date; (b) Assignee does not have any setoffs, counterclaims, or defenses against Landlord with respect to any matter arising under or related to the Lease from the commencement of the Lease to the Effective Date of this Assignment; (c) Assignee's execution and delivery of this Assignment has been fully authorized by all necessary corporate action; and (d) the person signing this Assignment on behalf of Assignee has the requisite authority to do so and the authority and power to bind Assignee.

7. Third Party Beneficiary. Assignor and Assignee acknowledge and agree that Landlord is a third party beneficiary of this Assignment and of each covenant, representation, and warranty made by Assignor or Assignee.

8. Release. As a material inducement for Landlord to consent to this Assignment, Assignor, on its own behalf and on behalf of its respective predecessors, hereby releases Landlord and its parents, subsidiaries and affiliated entities, its agents, partners, officers, directors and employees, and the heirs, executors, administrators, successors, and assigns of any of the foregoing (collectively, the "**Landlord Parties**") from any and all liabilities, claims, damages, causes of action, and any other form of relief, whether legal or equitable, that are, have been, or could have been asserted in any way against the Landlord Parties with respect to the Lease, Landlord's performance under the Lease, or the Premises from the commencement of the Lease to the Effective Date of this Assignment; provided, however, that nothing in this Assignment shall release the Landlord Parties from their obligations to be performed under the Lease from and after the Effective Date.

9. Brokers. Assignor and Assignee agree that Landlord shall not be liable for any brokerage commission in connection with this Assignment and each agree to indemnify, defend, and hold Landlord harmless from and against any such claims for a commission and any costs or expenses incurred by Landlord defending any claim for such a commission.

10. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas without regard for conflict of laws principles.

11. Amendments. This Assignment shall not be amended or modified except by a written document signed by all of the parties.

12. Entire Agreement. This Assignment, the Purchase Agreement, and the documents concerning the Transaction executed in connection with or contemplated by the Purchase Agreement constitute all of the agreements between Assignor and Assignee concerning the subject matter of this Assignment and supersede all prior agreements, whether written or oral, concerning the subject matter of this Assignment.

13. Conflicts. If this Assignment conflicts with the Lease, the conflicting provision of this Assignment shall control with respect to the conflicting matter.

14. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

15. Further Assurances. In addition to this Assignment, promptly upon request from time to time, the parties shall execute and deliver such other documents and shall take such other actions as may be reasonably requested by the other parties to effectuate, carry out, and comply with all of the terms of this Assignment and to effectuate this Assignment.

16. Counterparts. This Assignment may be executed in any number of counterparts delivered by e-mail, fax, or other electronic means. Counterpart signature pages transmitted via e-mail, fax, or other electronic means shall be deemed to be originals and shall collectively constitute one, original Assignment for all purposes.

[Remainder of Page Intentionally Left Blank - Signatures Follow]

Assignor, Assignee, and Landlord have executed this Assignment and Assumption of Lease with Landlord Consent as of the Effective Date.

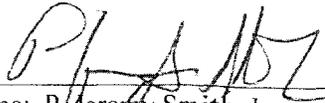
ATTEST:



Print Name: Allan Ghelester

ASSIGNOR:

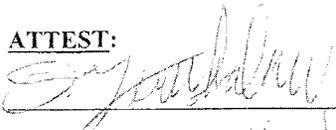
PROJECT HORIZON, INC., a Florida
corporation

By: 

Name: P. Jeremy Smith, Jr.

Title: President

ATTEST:



Print Name: Oren Yenshulov

ASSIGNEE:

**INMOTION ENTERTAINMENT GROUP,
LLC**, a Delaware limited liability company

By: InMotion Entertainment Holdings, LLC, its
Sole Member

By: 

Name: Tony Worey

Title: co-secretary

Landlord hereby acknowledges, accepts, approves, and consents to Assignor's assignment of the Lease to Assignee; provided, however, that Landlord's consent to this Assignment and acceptance of rent from Assignee shall not be construed as (1) Landlord's consent to any subsequent assignment or transfer of the Lease, (2) a waiver of any of the terms or conditions of the Lease, or (3) any release of Assignor from any of Assignor's obligations under the Lease arising prior to the Effective Date of this Assignment.

ATTEST:

By: _____
City Clerk

LANDLORD:

CITY OF SAN ANTONIO, a municipal corporation of the State of Texas

APPROVED AS TO FORM:

City Attorney

By: _____
Name: _____
Title: _____

ASSIGNMENT AND ASSUMPTION OF LEASE WITH LANDLORD CONSENT
(San Antonio International Airport)
(Terminal B, Space TS-205)

This Assignment and Assumption of Lease with Landlord Consent (this "**Assignment**") is effective as of _____, 2013 (the "**Effective Date**"), and entered into between **PROJECT HORIZON, INC.**, a Florida corporation ("**Assignor**"), and **INMOTION ENTERTAINMENT GROUP, LLC**, a Delaware limited liability company ("**Assignee**"), and acknowledged, accepted, approved, and consented to by the **CITY OF SAN ANTONIO**, a municipal corporation of the State of Texas ("**Landlord**").

RECITALS

A. Landlord and Assignor entered into that certain San Antonio International Airport Concession Agreement dated June 3, 2010 (the "**Lease**"), pursuant to which Assignor leases Terminal B, Space TS-205 (the "**Premises**") at the San Antonio International Airport located at 9800 Airport Blvd., San Antonio, TX 78216 (the "**Airport**") from Landlord.

B. Assignee has agreed to purchase from Assignor, and Assignor agreed to sell to Assignee, substantially all of Assignor's assets (the "**Transaction**"), including, but not limited to, all of Assignor's right, title, and interest in and to the Lease, pursuant to that certain Asset Purchase Agreement dated May 3, 2013 (the "**Purchase Agreement**").

C. Assignor desires to assign all of its right, title, and interest in and to the Lease to Assignee, Assignee desires to accept the assignment and assume all of Assignor's duties, liabilities, and obligations under the Lease from and after the Effective Date, and both Assignor and Assignee desire to obtain Landlord's consent to the assignment.

D. Landlord is willing to acknowledge, accept, approve, and consent to the assignment and assumption subject to the terms and conditions of this Assignment.

AGREEMENT

Assignor and Assignee agree as follows:

1. **Recitals**. The recitals above are true and correct and are incorporated herein by reference.
2. **Assignment**. Assignor hereby unconditionally assigns, conveys, delivers, sells, and transfers all of its right, title, and interest in and to the Lease to Assignee.
3. **Assumption**. Assignee hereby accepts Assignor's assignment of all of Assignor's right, title, and interest in and to the Lease, unconditionally assumes all of Assignor's liabilities arising under the Lease to be performed from and after the Effective Date, and agrees to perform all of Assignor's duties and obligations under the Lease from and after the Effective Date (collectively, the "**Assumed Obligations**"). Assignee shall indemnify, defend and hold Assignor harmless from and against any loss or damage occurring or related to the Assumed Obligations in accordance with the terms and conditions set forth in the Purchase Agreement. Assignor shall indemnify, defend and hold Assignee harmless from and against any loss or damage occurring or related to Assignor's liabilities and obligations under the Lease in accordance with the terms and conditions set forth in the Purchase Agreement.

4. Consent to Assignment. Landlord hereby acknowledges, accepts, approves, and consents to this Assignment.

5. Assignor's Representations and Warranties. Assignor represents and warrants to Assignee and Landlord that: (a) the Lease constitutes the entire agreement between Assignor and Landlord concerning the Premises and there are no other agreements between Assignor and Landlord relating to the Premises or the Lease; (b) Assignor has complied with all terms and conditions of the Lease and the Lease is in full force and effect; (c) Landlord is not in default under any of the terms, conditions, or covenants of the Lease; (d) Assignor does not have any rights to any credit, claim, cause of action, offset, or similar charge against Landlord or the rent due under the Lease, or any setoffs, counterclaims, or defenses against Landlord with respect to any matter arising under or related to the Lease from the commencement of the Lease to the Effective Date of this Assignment; (e) Assignor has not encumbered, hypothecated, assigned, or otherwise transferred the Lease; (f) Assignor has not sublet the Premises or any portion of the Premises to any person or entity; (g) Assignor has not granted to any person or entity any use or occupancy rights regarding the Premises other than any use or occupancy rights that Landlord may have under the Lease; (h) Assignor's execution and delivery of this Assignment has been fully authorized by all necessary corporate action; and (i) the person signing this Assignment on behalf of Assignor has the requisite authority to do so and the power and authority to bind Assignor.

6. Assignee's Representations and Warranties. Assignee represents and warrants to Assignor and Landlord that: (a) Assignee shall comply with all terms, covenants, and conditions of the Lease from and after the Effective Date; (b) Assignee does not have any setoffs, counterclaims, or defenses against Landlord with respect to any matter arising under or related to the Lease from the commencement of the Lease to the Effective Date of this Assignment; (c) Assignee's execution and delivery of this Assignment has been fully authorized by all necessary corporate action; and (d) the person signing this Assignment on behalf of Assignee has the requisite authority to do so and the authority and power to bind Assignee.

7. Third Party Beneficiary. Assignor and Assignee acknowledge and agree that Landlord is a third party beneficiary of this Assignment and of each covenant, representation, and warranty made by Assignor or Assignee.

8. Release. As a material inducement for Landlord to consent to this Assignment, Assignor, on its own behalf and on behalf of its respective predecessors, hereby releases Landlord and its parents, subsidiaries and affiliated entities, its agents, partners, officers, directors and employees, and the heirs, executors, administrators, successors, and assigns of any of the foregoing (collectively, the "**Landlord Parties**") from any and all liabilities, claims, damages, causes of action, and any other form of relief, whether legal or equitable, that are, have been, or could have been asserted in any way against the Landlord Parties with respect to the Lease, Landlord's performance under the Lease, or the Premises from the commencement of the Lease to the Effective Date of this Assignment; provided, however, that nothing in this Assignment shall release the Landlord Parties from their obligations to be performed under the Lease from and after the Effective Date.

9. Brokers. Assignor and Assignee agree that Landlord shall not be liable for any brokerage commission in connection with this Assignment and each agree to indemnify, defend, and hold Landlord harmless from and against any such claims for a commission and any costs or expenses incurred by Landlord defending any claim for such a commission.

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[Remainder of Page Intentionally Left Blank - Signatures Follow]

Assignor, Assignee, and Landlord have executed this Assignment and Assumption of Lease with Landlord Consent as of the Effective Date.

ATTEST:

By: Allan Ghelester
Name: Allan Ghelester
Title: VP of IT

ASSIGNOR:

PROJECT HORIZON, INC., a Florida corporation

By: [Signature]
Name: R. Jeremy Smith, Jr.
Title: President

ATTEST:

By: [Signature]
Name: Alan Weinstein
Title: Associate

ASSIGNEE:

**INMOTION ENTERTAINMENT GROUP,
LLC**, a Delaware limited liability company

By: InMotion Entertainment Holdings, LLC, its
Sole Member

By: [Signature]
Name: Tony Pearce
Title: Co-Secretary

Landlord hereby acknowledges, accepts, approves, and consents to Assignor's assignment of the Lease to Assignee; provided, however, that Landlord's consent to this Assignment and acceptance of rent from Assignee shall not be construed as (1) Landlord's consent to any subsequent assignment or transfer of the Lease, (2) a waiver of any of the terms or conditions of the Lease, or (3) any release of Assignor from any of Assignor's obligations under the Lease arising prior to the Effective Date of this Assignment.

ATTEST:

By: _____
City Clerk

LANDLORD:

CITY OF SAN ANTONIO, a municipal
corporation of the State of Texas

APPROVED AS TO FORM:

City Attorney

By: _____
Name: _____
Title: _____