

**AMENDMENT NO. 1 TO
SPECIALTY COFFEE FACILITIES IN THE DOMESTIC TERMINAL BUILDINGS
LEASE NO. 03-0069
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO DOMESTIC TERMINAL SPECIALTY COFFEE FACILITIES LEASE AT THE SAN FRANCISCO AIRPORT LEASE NO. 03-0069 (“Amendment No. 1”), dated as of April 21, 2015 for reference purposes only, is entered into by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), acting by and through the SAN FRANCISCO AIRPORT COMMISSION, as landlord, and Gotham Enterprises, LLC, as tenant (“Gotham”).

RECITALS

A. Pursuant to Resolution No. 03-0069, adopted April 15, 2003, the Airport Commission (“Commission”) approved a settlement of an un-litigated claim, which included an assignment of Lease No. 99-0292J from D. Mitchell Concessions, Inc. to an entity formed by Glenn, Dayna and Garrett Meyers for Gotham’s operation of three coffee facilities at San Francisco International Airport (“Airport”). Gotham operates as Peet’s Coffee & Tea in the Domestic Terminals under Lease No. 03-0069 (“Lease”), which has a term of approximately twelve years and an option to extend the term by two years.

B. On May 22, 2009, the Commission approved the early exercise of the option term of the Lease, thus extending the Expiration Date to November 8, 2017.

C. The Airport has commenced a Terminal 1 Redevelopment Program that will require the early closure of Gotham’s Terminal 1, Boarding Area B location as shown on the drawing titled B.2.053 attached as part of Exhibit A to the Lease (“Terminal 1 Premises”), which is scheduled to occur in or around June 2016.

D. Staff has identified a suitable replacement space for the Terminal 1 Premises comprised of a comparable square footage located in the portion of Terminal 1 Boarding Area B that will remain open as described in more detail below (“Terminal 1 Replacement Premises”). The Airport expects that the Terminal 1 Replacement Premises will become available in or around June 2016.

E. The parties desire to extend the term of the Lease for the Terminal 1 Replacement Premises only, so that Gotham will operate a Peet’s Coffee & Tea in Terminal 1 Boarding Area B until it permanently closes and the newly renovated Terminal 1 opens, which is scheduled to occur in or around September 2019.

F. The Lease as amended by this Amendment No. 1 shall be referred to below as the “Lease”.

G. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Gotham hereby agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference as if fully set forth herein.
2. **Terminal 1 Replacement Premises.** The description of the Premises under the Lease is amended by deleting reference to the Terminal 1 Premises and replacing it with the Terminal 1 Replacement Premises, which shall be comprised of approximately 502 square feet of concession space located in Terminal 1 of the San Francisco International Airport in or around the location described on Attachment 1, the exact location of which shall be determined by City.
3. **Term.** Section 2.3 of the Lease [City's Right to Extend Term] is deleted in its entirety.
4. **Extension of Term for the Terminal 1 Replacement Premises.**
 - a. The term for the Terminal 1 Replacement Premises is extended and will expire in or around September 2019, provided, however, such extended term may be shortened or further extended by City, in City's sole discretion, to accommodate construction schedules.
 - b. The term for the two Terminal 3 Peet's Coffee & Tea locations will remain unchanged and expire on November 8, 2017 in accordance with the original term of the Lease.
5. **Build out of Terminal 1 Replacement Premises.** City, at City's expense, will construct Gotham's Terminal 1 Replacement Premises, which will be reasonably comparable to the existing Terminal 1 Premises while also reflecting the short term nature of the operation. City will re-use existing equipment to the greatest extent possible. Gotham will be consulted throughout the design and relocation process. Gotham will relocate all chattels and supplies to the Terminal 1 Replacement Premises and will prepare the space for opening of its business operations as soon as practicable following delivery by City. Gotham hereby agrees that upon delivery of the Terminal 1 Replacement Premises it shall accept such Terminal 1 Replacement Premises in its "as is" and "with all faults" condition and that City has not made any representations or warranties, express or implied concerning such Terminal 1 Replacement Premises. For avoidance of doubt and without limiting the applicability of other sections of the Lease, Sections 9.1 ["As Is" Condition] and 12.1 [Waiver] apply to the Terminal 1 Replacement Premises. Gotham waives all Claims against City for any delay in delivery of the Terminal 1 Replacement Premises and any such delay shall not result in a further extension of the Lease term or permit Gotham to occupy the existing Terminal 1 Premises beyond the closure of such premises as determined by City.

6. **Rent and Other Fees and Charges.** Rent and other Fees and Charges which are tied to the square footage of the premises will be adjusted based on the difference (if any) in square footage between the existing Terminal 1 Premises and the Terminal 1 Replacement Premises. Gotham's obligation to pay Rent for the Terminal 1 Replacement Premises will commence on the earlier to occur of (a) the date Gotham opens for business at the Terminal 1 Replacement Premises; and (b) seven days following City's delivery of the Terminal 1 Replacement Premises.

7. **Entire Agreement.** This Amendment No. 1 contains the entire agreement between the parties with respect to the subject matter of this Amendment No. 1. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 1 are superseded in their entirety by this Amendment No. 1. No prior drafts of this Amendment No. 1 or changes between those drafts and the executed version of this Amendment No. 1 shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment No. 1.

8. **Miscellaneous.** This Amendment No. 1 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 1 is made for the purpose of setting forth certain rights and obligations of Gotham and City, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise. Each party hereto shall execute, acknowledge, and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment No. 1. This Amendment No. 1 may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment No. 1 that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment No. 1. This Amendment No. 1 shall be governed by the laws of the State of California. Neither this Amendment No. 1 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

9. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

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IN WITNESS WHEREOF, City and Gotham execute this Amendment No. 1 to the Lease as of the last date set forth below.

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Airport Commission

John L. Martin cl
Airport Director

TENANT: Gotham Enterprises, LLC
a California Limited Liability Company

By: _____


Name: Glenn Meyers
(type or print)

Title: managing member 5/12/15

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No.
Adopted:

Attest: _____
Secretary
Airport Commission

APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: _____

Deputy City Attorney

4.21.2015
X:\TENANTS\Gotham_Meyers\Agreements\Working Docs\Amend 1 Peet's Coffee BAB 04-21-15x.docx

Attachment 1

Peet's Coffee & Tea Locations under Lease No. 03-0069

