

File No. 101503

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: January 26, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ethics Form 126
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

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Completed by: Victor Young

Date: January 21, 2011

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Airport Concession Lease - Books, Inc.]

2
3 **Resolution approving Amendment No. 2 to North Terminal Bookstore Lease**
4 **No. 00-0176 between Books, Inc. and the City and County of San Francisco, acting by**
5 **and through its Airport Commission.**

6
7 WHEREAS, the Airport Commission awarded the North Terminal Bookstore Lease (the
8 "Lease") to Books, Inc., pursuant to Airport Commission Resolution No. 00-0176, adopted
9 May 16, 2000; and

10 WHEREAS, The Board of Supervisors approved award of the Lease by Resolution
11 No. 667-00, adopted July 24, 2000, and ratified by the Mayor on August 3, 2000; and,

12 WHEREAS, The Airport Commission adopted Resolution No. 02-0039 on February 19,
13 2002, approving the Concession Support Program, which includes one five-year option
14 ("Option Term") exercisable by Books, Inc.; and

15 WHEREAS, The Board of Supervisors approved the implementation of the Concession
16 Support Program, issued as Amendment No. 1 to the Lease, by Resolution No. 552-02, as
17 subsequently amended on August 12, 2002, and ratified by the Mayor on August 23, 2002;
18 and

19 WHEREAS, In anticipation of the Option Term expiring on December 25, 2010, the
20 Airport commenced the competitive selection process for the Terminal 3 Bookstore Lease,
21 pursuant to Airport Commission by Resolution No. 10-0161, adopted April 20, 2010; and

22 WHEREAS, Due to the unknown schedule of the Terminal 3 security checkpoint, the
23 Airport Commission adopted Resolution No. 10-0305 on October 5, 2010 terminating the
24 Request for Proposal process for the Terminal 3 Bookstore Lease; and

1 WHEREAS, In order to continue maintaining the level of service in Terminal 3, Books,
2 Inc. will enter a month-to-month tenancy, as provided under Section 2.3 of the Lease; and

3 WHEREAS, The Airport Commission adopted Resolution No. 10-0318 on October 26,
4 2010, approving Amendment No. 2 to the Lease which (1) allows Books, Inc. to enter into a
5 month-to-month tenancy, effective December 16, 2010, for no more than fifteen (15) months;
6 (2) re-measures the premises to approximately 3,810 square feet, and (3) requires Books, Inc.
7 to make certain improvements to the premises within the first four months of the holdover
8 period; now, therefore, be it

9 RESOLVED, That the Board of Supervisors hereby approves Amendment No. 2 to
10 North Terminal Bookstore Lease No. 00-0176 with Books, Inc., copies of which are contained
11 in Board of Supervisors' File No. 101503.

Item 3
File 10-1503

Department:
San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would authorize Amendment No. 2 to the existing lease agreement between the Airport and Books, Inc. to (1) allow Books, Inc., doing business as (a) Compass Books, which sells newspapers, books, magazines, and other book-related items, and (b) Bzinc, which sells specially priced and discounted books, to continue leasing space at the Airport's Domestic Terminal 3 on a month-to-month holdover basis, retroactive to December 16, 2010, not to exceed 15 months, through March 15, 2012, (2) reflect the correct amount of the square footage of the leased premises of 3,810 square feet, (3) reduce the Minimum Annual Guarantee during the holdover period to \$400,000 and adjust the percentage rent structure to eight percent of gross revenues up to \$2,000,000, plus ten percent of gross revenues over \$2,000,000, and (4) require Books, Inc. to make certain improvements to the leased premises by April 15, 2011 or within the first four months of the holdover period.

Key Points

- On July 24, 2000, the Board of Supervisors authorized the Airport to enter into a five-year lease agreement with Books, Inc. at the Airport's Domestic Terminal 3, effective from December 16, 2000 through December 15, 2005 (File 00-1050). On December 16, 2005, Books, Inc. exercised a renewal option as part of the Airport's Concession Support Program for an additional five-year term, which expired on December 15, 2010.
- On April 20, 2010, the Airport issued a Request for Proposals (RFP) for a new bookstore lease at Terminal 3. However, because of the Airport's initiative to renovate the nearby Boarding Area F security checkpoint area in Terminal 3, the Airport terminated that RFP process on October 5, 2010, and decided to amend the existing agreement with Books, Inc. (Amendment No. 2) to allow Books, Inc. to continue to lease space at the Airport under a month-to-month holdover basis until a new RFP process occurs in mid to late 2011. The Airport intends to terminate the lease with Books, Inc. prior to construction of the reconfigured security checkpoint area.

Fiscal Impact

- The proposed Amendment No. 2 would result in reduced Minimum Annual Guarantee (MAG) revenues to the Airport of \$739,851 or 64.9 percent from \$1,139,851 to \$400,000, and would also result in a reduction in the percentage rental rate as shown in Table 1 below under the Details of Proposed Legislation section of this report. The Airport estimates that Books, Inc. will pay percentage rent of \$454,406 in 2011, instead of the MAG. The estimated percentage rate of \$454,406 is \$685,445 or 60.1 percent less than the MAG rent of \$1,139,851 paid by Books, Inc. to the Airport in 2009. The attached memorandum from the Airport (Attachment II) sets forth the Airport's justification for reducing the MAG and the percentage rental rates payable by Books, Inc. to the Airport.

Recommendations

- Amend the proposed resolution to provide for retroactivity to December 16, 2010.
- Because the proposed resolution would result in a reduction in the MAG of \$739,851, a reduction of 64.9 percent, the Budget and Legislative Analyst considers approval of the proposed resolution, as amended, to be a policy matter for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with City Charter Section 9.118(c), any lease or amendment to a lease, which exceeds ten years and/or has anticipated revenue of \$1,000,000 or greater, is subject to the Board of Supervisors approval.

Background

Based on a competitive process, on July 24, 2000, the Board of Supervisors authorized the San Francisco International Airport (Airport) to enter into a lease agreement (File 00-1050) with Books, Inc. for the use of 4,056 square feet of retail space, including 987 square feet of storage and office space, at the Airport's Terminal 3 from December 16, 2000 through December 15, 2005, with no options to extend. Books, Inc., doing business as (1) Compass Books, which sells newspapers, books, magazines, and other book-related items, and (2) Bzinc, which sells specially priced and discounted books, is located in two locations in Boarding Area F of the Airport's Terminal 3, as shown in Attachment I, provided by Mr. John Reeb, Senior Principal Property Manager at the Airport.

On August 12, 2002, the Board of Supervisors approved the Airport's Concession Support Program (File 02-1230), retroactive to September 11, 2001, as Amendment No. 1 to the Books, Inc. lease, which (1) suspended the Minimum Annual Guarantee (MAG), until the MAG was reinstated,¹ (2) required payment of percentage rent instead of the MAG, and (3) included a renewal option to extend the term of the lease for one five-year period. On December 16, 2005, Books, Inc. exercised the renewal option in the Concession Support Program for an additional five-year term, which expired on December 15, 2010.

On April 20, 2010, in anticipation of the pending expiration of the lease agreement between the Airport and Books, Inc., the Airport issued a Request for Proposals (RFP) for a new bookstore lease in Boarding Area F at Terminal 3, to occupy the three spaces (see Table 2 below) leased by Books, Inc. However, according to Mr. Reeb, the Airport subsequently decided to reconfigure the Boarding Area F security checkpoint area, which is across from Compass Books in Terminal 3. Mr. Reeb states that the reconfiguration of the security checkpoint may impact the space occupied by Compass Books such that Compass Books may not be able to operate once the Airport begins construction of the reconfigured checkpoint area within the next 15 months. The space occupied by Bzinc in Boarding Area F at Terminal 3 would remain unaffected by the reconfiguration of the security checkpoint area. Therefore, the Airport terminated the RFP process on October 5, 2010, and entered into a month-to-month holdover lease, effective December 16, 2010, with Books, Inc., which is the subject of the proposed Amendment No. 2, until a new RFP process occurs in mid to late 2011. The Airport intends to

¹ Under the Airport's Concession Support Program, "once the monthly enplanements equal or exceed 85 percent of the monthly enplanements for the same month in calendar year 2000 for two consecutive months, effective as of the first day of the second month in which the 85 percent threshold is achieved, the Tenant's MAG shall be reinstated, and thereafter, Tenant shall be required to pay rent as provided in the Lease."

terminate the lease with Books, Inc. prior to construction of the reconfigured security checkpoint area.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Airport to enter into Amendment No. 2 to the existing lease agreement between the Airport and Books, Inc. to (1) allow Books, Inc. to enter into a month-to-month tenancy, retroactive to December 16, 2010, for no more than 15 months, (2) reflect the correct amount of the square footage of the leased premises from 4,056 square feet to 3,810 square feet, (3) reduce the Minimum Annual Guarantee during the holdover period by \$739,851 or a 64.9 percent reduction from \$1,139,851 to \$400,000 and reduce the percentage rental rates as detailed in Table 1 below and (4) require Books, Inc. to make certain improvements (see Capital Improvements below), to the leased premises by April 15, 2011 or within the first four months of the holdover period, with such costs borne by Books, Inc.

Table 1 below details the differences between the existing lease and the proposed Amendment No. 2.

Table 1: Comparison of the Existing Lease between the Airport and Books, Inc. and the Proposed Amendment		
	Existing Lease	Proposed Amendment No. 2
MAG	\$ 1,139,851	\$ 400,000
Percentage Rent	Higher of the MAG or Percentage Rent structured at: <ul style="list-style-type: none"> • 12% of Gross Revenues up to \$500,000; plus • 14% of Gross Revenues from \$500,000.01 up \$1,000,000; plus • 16% of Gross Revenues achieved over \$1,000,000 	Higher of the MAG or Percentage Rent structured at: <ul style="list-style-type: none"> • 8% up to \$2,000,000, plus • 10% over \$2,000,000
Capital Improvements	\$502,847 to renovate and remodel the retail space	Unknown cost for new flooring and refinishing all fixtures
Term	Five years	Month-to-month holdover
Promotional Program Fee	\$4,056 per year	\$3,810 per year
Square Footage	4,056 square feet	3,810 square feet

Lease Period: The proposed Amendment No. 2 would continue the existing lease agreement on a month-to-month basis for up to 15 months, retroactive to December 16, 2010 through March 15, 2012. The proposed resolution should be amended to be retroactive to December 16, 2010.

Annual Rent: The lessee, Books, Inc. would pay the Airport an annual rent of either the greater of (a) a percentage of gross sales, or (b) the Minimum Annual Guarantee (MAG). As shown in Table 1 above, the MAG would be reduced from \$1,139,851 to \$400,000, a reduction of \$739,851 or 64.9 percent. Under the proposed Amendment No. 2, the MAG would be subject to

an annual Consumer Price Index (CPI)² adjustment, on October 1. If the CPI decreases, the MAG will not decrease to a value less than the previous year's MAG.

Promotional Program Fee: The Airport also charges lessees a Promotional Program Fee which allows the Airport to recover a portion of the costs to advertise and promote the retail stores in the Airport's Terminals. Under the existing lease, Books, Inc. paid an annual \$1.00 per square foot Promotional Program Fee, or \$4,056 per year for 4,056 square feet. Under the proposed Amendment No. 2, Books, Inc. would be required to pay an annual \$1.00 per square foot Promotional Program Fee, or \$3,810 per year for 3,810 square feet, due to the proposed reduction in leased space as shown below in Table 2. The Promotional Program Fee is subject to an annual CPI adjustment. If the CPI decreases, the Fee will not decrease to a value less than the previous year's Fee.

Capital Improvements: Under the proposed Amendment No. 2, Books, Inc. would be required to install new flooring and refinish all fixtures no later than April 15, 2011, or within the first four months of the holdover period. Mr. Reeb states that the existing flooring and fixtures are showing wear and tear since their original installation ten years ago. Books, Inc. will pay an unspecified amount for the costs of such improvements. Mr. Reeb advises that Books, Inc. will consult the Airport on the proposed improvements, as all improvements must meet the Airport's design guidelines.

Square Footage: As shown in Table 2 below, Books, Inc., doing business as Compass Books and Bzinc, has an existing total of 4,056 square feet, including 987 square feet for storage and office space. The proposed Amendment No. 2 re-measures the retail space that Books, Inc. is leasing to accurately reflect the amount of space that Books, Inc. actually occupies in Terminal 3. Mr. Reeb states that when the RFP was issued in April 2010 the Airport re-measured the Compass Books, Bzinc, and storage/office space and discovered that these premises consisted of 3,810 square feet, or approximately 246 square feet less than the previous square foot measurement of 4,056 square feet.

Table 2: Comparison of Retail Space Square Footage		
	Existing Lease Agreement (Square Feet)	Proposed Amendment No. 2 (Square Feet)
Compass Books	2,782	2,743
Bzinc	287	252
Storage/Office Space	987	815
Total Leased Space	4,056	3,810

² The Consumer Price Index represents changes in the prices of all good and services for All Urban Consumers in the San Francisco-Oakland-San Jose area and is published by the Bureau of Labor Statistics under the United States Department of Labor.

FISCAL IMPACT

The proposed Amendment No. 2 would reduce the MAG and percentage rent paid by Books, Inc. to the Airport. As shown in Table 1 above, under the proposed lease Amendment No. 2, the MAG would be reduced by \$739,851 or 64.9 percent from the existing MAG of \$1,139,851 to the proposed MAG of \$400,000. Also, Books, Inc. would pay reduced percentage rental rates as detailed in Table 1 above.

As shown in Table 3 below³, gross sales at Books, Inc. have decreased from \$6,624,891 in 2006 to \$5,502,891 in 2009, a reduction of \$1,122,000 or 16.9 percent. Table 3 below also reflects that because percentage rent was less than the MAG, Books, Inc. paid the MAG in each year between 2006 and 2009.

Table 3: Rent Paid by Books Inc. to the Airport from 2006 to 2009			
Year	Gross Sales	Percentage Rent	MAG or Rent Paid to the Airport
2006	\$6,624,891	\$1,029,983	\$1,139,851
2007	6,670,996	1,037,359	1,139,851
2008	6,420,963	997,354	1,139,851
2009	5,502,891	850,463	1,139,851

The January 14, 2011 memorandum (Attachment II), as provided by Ms. Cheryl Nashir, Associate Deputy Airport Director, sets forth the Airport's justification for reducing the MAG by 64.9 percent under the proposed Amendment No. 2.

The Airport projects gross sales of an estimated \$4,944,055 in 2011. As shown in Table 4 below, based on projected 2011 revenues of \$4,944,055, Books, Inc. would pay the Airport percentage rent of \$454,406, instead of the MAG.

Table 4: Projected First Year Annual Rent of Books, Inc.					
	Minimum Annual Guarantee	Projected Gross Sales	Projected Percentage Sales Rent		Total Annual Rent Payments to the Airport
			8% up to \$2,000,000	10% of over \$2,000,000	
Books, Inc.	\$ 400,000	\$ 4,944,055	\$ 160,000	\$ 294,406	\$ 454,406

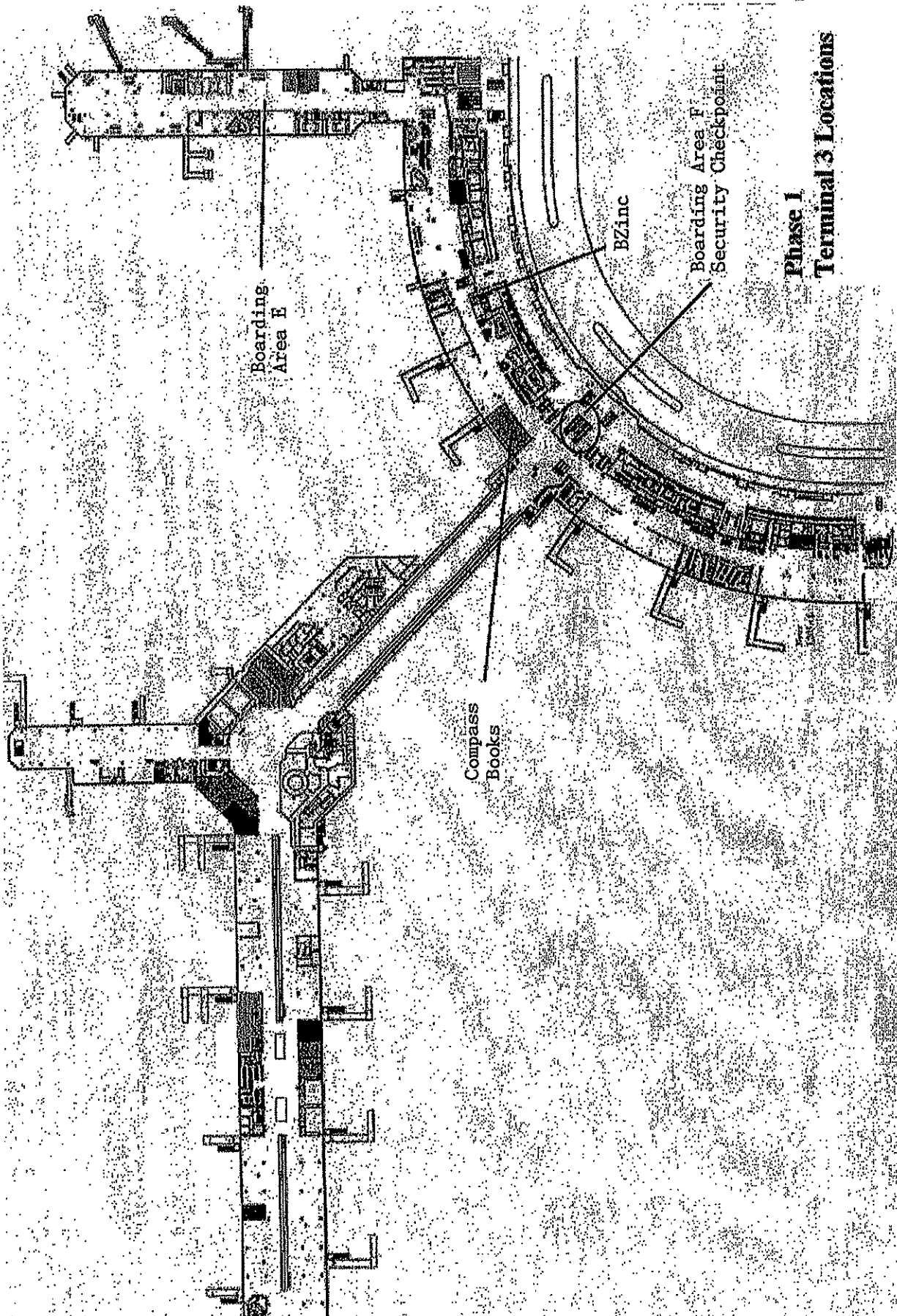
Therefore, under the proposed Amendment No. 2, Books, Inc. will pay estimated percentage rent to the Airport, as shown in Table 4 above, of \$454,406 in 2011, which is \$685,445 or 60.1 percent less than the MAG rent of \$1,139,851 paid by Books, Inc. to the Airport in 2009.

³ Calendar year 2010 gross receipts are not yet available.

Under the Airport's residual rate setting methodology (break-even policy), the reduction of \$685,445 or 60.1 percent projected rent revenues paid by Books, Inc. to the Airport in 2011 would not directly impact the Airport's budget. Under the Airport's residual rate setting methodology, any decreases in non-airline revenues (including concession lease revenues and parking revenues) are automatically offset by increasing the total rent payable by the airlines operating at the Airport, through the Airport's formula specified in each airline's lease that recalculates the rental rates, landing fees, and related fees charged to airlines. This break-even policy of the Airport requires that the total revenues paid to the Airport by all airlines in the upcoming year is sufficient to balance the Airport's budget.

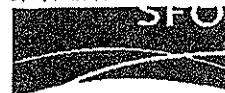
RECOMMENDATIONS

- 1.Amend the proposed resolution to provide for retroactivity to December 16, 2010.
- 2.Because the proposed resolution would result in a reduction in the Minimum Annual Guarantee (MAG) of \$739,851, a reduction of 64.9 percent, the Budget and Legislative Analyst considers approval of the proposed resolution, as amended, to be a policy matter for the Board of Supervisors.



Phase I
Terminal 3 Locations

Attachment II
Page 1 of 2



San Francisco International Airport

January 14, 2011

BY FACSIMILE TO 415-252-0461

Office of the Budget Analyst
Attn: Harvey Rose
1390 Market Street, Suite 1025
San Francisco, CA 94102

Subject: Books, Inc. - Amendment No. 2
File No. 10-1504

Dear Mr. Rose:

The following is offered in response to Jonathan Tang's request via email on January 6, 2010.

- 1. Gross sales have decreased from \$6,624,891 in 2006 to \$5,502,891 in 2009, a reduction of \$1,122,000 or 16.9 percent. Under the proposed Amendment No. 2, the MAG would be reduced by \$739,851 or 64.9 percent, from \$1,139,851 in the current lease to \$400,000 in the proposed Amendment No. 2. Please explain how the 16.9 percent decrease in gross sales justifies the 64.9 percent decrease in the MAG.***

As previously stated to Mr. Tang in an email dated January 4, 2011:

- The Airport sets MAGs slightly below "projected sales X percentage rent". The percentage rents reflect market rent based upon a review of tenant profit and loss statements and industry research.
- Sales for the most recent fiscal year were approximately \$5.4M; applying the adjusted (new) market percentage rent structure would result in rent at \$500,000. We set the adjusted MAG at \$400,000 to allow for the tenant to reasonably find itself in percentage rent and to allow the tenant slight downside protection should sales continue to decline.
- Sales have dropped 12% and 7.7% the last two fiscal years as compared to the immediately previous fiscal years.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM
MAYORLARRY MAZZOLA
PRESIDENTLINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

Post Office Box 8097 San Francisco, California 94128 Tel 650.821.5000 Fax 650.821.5005 www.flysfo.com

Office of the Budget Analyst
Attn: Harvey Rose
Page 2
January 14, 2011

Attachment II
Page 2 of 2


- During the last year of Compass Book's lease, their rent as a percentage of sales (effective rent) was nearly 21%. It is our expectation that successful tenants will be paying us percentage rent. It is our policy not to set MAGs so high that effective rent exceeds the top tier of the percentage rent structure.
- The Airport can no longer command the same type of MAG today that we did 10 years ago for a bookstore concept. This is due to competition from online book sellers such as Amazon and an increase in e-book sales. Therefore, the MAG was decreased due to market rent for a bookstore concept in today's economy.

Additionally:

- Because of the Boarding Area F checkpoint reconfiguration, it is anticipated that sales will decline for the BZinc location as well as the bookstore location due to a change in the flow of traffic in late 2011.
- A further decline in sales at the BZinc location is anticipated due to the closure of Boarding Area E for renovation following the departure of American Airlines to Terminal 2 in April of 2011.
- Based on an analysis of the cost structure of the book business (on flat or slightly declining sales), the cost of sales is in a range of approximately 56-62% of gross sales, with other operating costs between 20-25%, and payroll between 13-16%.
- Increasing the MAG above \$400,000 (escalating from 8-10%) on flat or slightly decreased sales would create a situation where the business would no longer be profitable. The rent factor as it exists today at 21% is no longer feasible.

As always, do not hesitate to contact me at 650.821.4500 should you have further questions.

Sincerely,



Cheryl Nashir
Associate Deputy Airport Director
Revenue Development and Management

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information (Please print clearly.)	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors

Contractor Information (Please print clearly.)	
Name of contractor: Books, Inc.	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> (2) Michael Tucker, President; Nikolai Grant, Vice President-Operations; Margie Scott Tucker, Secretary/Marketing and Human Resources; Kwok Chan, CFO/Controller. (3) Nikolai Grant (49%) and Steven Mayer (31%).	
Contractor address: 1501 Vermont St., San Francisco, CA 94107	
Date that contract was approved: Lease approved on 05/16/2000; Lease Amendment 1 approved: 02/19/2001 (Concession Support Program) Lease Amendment 2 approved: 10/07/2010 (Holdover)	Amount of contract: Higher of the MAG or tiered percentage rent. MAG during the holdover period: \$400,000 Percentage rent: - 8% of gross revenues achieved up to \$2M; plus - 10% of gross revenues achieved over \$2M.
Describe the nature of the contract that was approved: Lease was awarded through a Request for Proposal process	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☒ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board of Supervisors	Contact telephone number: (415) 554-5184
Address: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 10-0318

**APPROVAL OF AMENDMENT NO. 2 TO BOOKS, INC.'S NORTH TERMINAL BOOKSTORE
LEASE NO. 00-0176**

WHEREAS, by Resolution No. 00-0176, the Airport Commission awarded the North Terminal Bookstore Lease (the "Lease") to Books, Inc.; and

WHEREAS, the Original Lease was subsequently amended by Amendment No. 1 pursuant to Resolution No. 02-0039, adopted February 19, 2002, authorizing the Airport Director to implement the Airport Concession Support Program; and

WHEREAS, staff has negotiated the terms and conditions for Amendment No. 2 to the Lease with Books, Inc.; now, therefore, be it

RESOLVED, that this Commission hereby approves Amendment No. 2 to the North Terminal Bookstore Lease No. 00-0176 on the terms and conditions specified on Attachment 1, containing such other terms and conditions as are consistent with the foregoing, including: (1) a holdover period of not more than fifteen (15) months, extended on a month to month basis, commencing December 16, 2010, (2) a re-measurement of the lease premises to approximately 3,810 square feet, (3) a reduction, effective during the holdover period, of the Minimum Annual Guarantee to \$400,000 and an adjustment to the percentage rent structure, as follows:

- 8% of Gross Revenues achieved up to and including \$2,000,000.00, plus;
- 10% of Gross Revenues achieved over \$2,000,000.00; and

(4) a requirement for Tenant to improve its facilities by installing new flooring and refinishing all fixtures within the first four (4) months of the holdover period, at the Tenant's sole expense; and, be it further

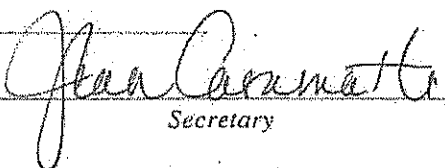
RESOLVED, that the Airport Commission authorizes the Airport Director to enter into any modifications to the Lease that the Airport Director determines, in consultation with the City Attorney, are in the best interests of the City and County of San Francisco ("City"), do not otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease or this Resolution, and are in compliance with all applicable laws, including the City's Charter; and, be it further

RESOLVED, that the Commission Secretary is hereby directed to request approval of this Amendment No. 2 by Resolution from the Board of Supervisors pursuant to Section 9.118 of the City Charter.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of

OCT 26 2010


Secretary

**AMENDMENT NO. 2 TO
NORTH TERMINAL BOOKSTORE LEASE NO. 00-0176
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 2 TO NORTH TERMINAL BOOKSTORE LEASE NO. 00-0176 AT THE SAN FRANCISCO AIRPORT ("Amendment No. 2"), dated as of October 26, 2010, for reference purposes only, is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the "Airport"), as landlord, and Books, Inc., as tenant ("Tenant").

RECITALS

A. The Airport and Tenant entered into Lease No. 00-0176, dated August 14, 2000 (the "Lease") for that certain retail space located at the Airport in Terminal 3 (the "Premises"). The Lease was previously approved by the Airport Commission pursuant to Resolution Number 00-0176, and by the Board of Supervisors pursuant to Resolution Number 667-00.

B. The Lease was subsequently amended pursuant to Amendment No. 1, approved by Airport Commission Resolution No. 02-0039, adopted February 19, 2002, which authorized the Director to implement the Concession Support Program ("CSP") giving Tenant one option to extend the Lease term by five (5) years ("CSP Option Term"). Books, Inc. exercised the CSP Option Term, which will expire on December 15, 2010.

C. A Request for Proposal process commenced for the re-leasing of the Terminal 3 Bookstore Lease. In response to the Airport's new initiative to renovate the nearby security checkpoint, the process was terminated pursuant to Resolution No. 10-0305, adopted October 5, 2010. The impact of a reconfigured checkpoint on the bookstore space has yet to be determined and it was, therefore, practical to delay re-leasing efforts.

D. The Airport and Tenant did not want to terminate the Lease in order to maintain the high level of service in Terminal 3 and sought to preserve the option to holdover the lease on a month-to-month basis not to exceed fifteen (15) months.

E. The Airport and Tenant have agreed to modify the certain terms of the lease during the holdover period, as set forth below.

F. All capitalized terms not otherwise defined herein shall have the same 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 Tenant hereby agree to amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Effective Date.** The effective date of the modifications to the Lease contained in shall be December 16, 2010.

3. **Premises.** Section 1.1 of the Lease referencing Exhibit A is hereby deleted in its entirety and replaced with the following:

“Exhibit A - Premises. A total of three facilities, comprising approximately 3,810 square feet located in Terminal 3, as shown in the attached drawing, broken down as follows:

- Compass Books 2,743 square feet
- Bzinc 252 square feet
- Storage/Office 815 square feet

4. **Holdover Status.** Section 2.5 of the Lease is hereby amended to reflect that the Minimum Annual Guarantee during the holdover period shall be Four Hundred Thousand Dollars (\$400,000.00).

5. **Base Rent.** Section 4 of the Lease is hereby amended to define the Base Rent as the greater of the Minimum Annual Guarantee of Four Hundred Thousand Dollars (\$400,000.00) per annum, subject to the adjustments specified in Lease Section 4, or the sum of the following:

8% of Gross Revenues achieved up to and including \$2,000,000.00, plus
10% of Gross Revenues achieved over \$2,000,000.00.

6. **Investment; Alterations.** Section 7.7 is hereby added to the Lease, as follows:

“7.7 **Facilities Improvement Requirement.** Tenant agrees to install new flooring and refinish all fixtures within the first four (4) months of holdover period.”

7. **Promotional Program.** Section 11 of the Lease shall define the Promotional Charge as:

"Three Thousand Eight Hundred Ten Dollars (\$3,810.00), per annum based on One Dollar (\$1.00) a square foot, subject to the adjustments specified in Lease Section 11."

8. **Entire Agreement.** This Amendment No. 2 contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 2 are superseded in their entirety by this Amendment No. 2. No prior drafts of this Amendment No. 2 or changes between those drafts and the executed version of this Amendment No. 2 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. 2.

9. **Miscellaneous.** This Amendment No. 2 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 2 is made for the purpose of setting forth certain rights and obligations of Tenant and the Airport, 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. 2. This Amendment No. 2 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. 2 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. 2. This Amendment No. 2 shall be governed by the laws of the State of California. Neither this Amendment No. 2 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

10. **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, the Airport and Tenant execute this Amendment No. 2 to the Lease as of the last date set forth below.

TENANT: Books, Inc.
a California corporation

By: _____

Name: Michael Tucker

Title: President

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

John L. Martin
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. 10-0318
Adopted: October 26, 2010

Attest: _____

Secretary
Airport Commission

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

By: _____
Deputy City Attorney

11.04.2010
X:\TENANTS\Books Inc\Agreements\NT Books Amend 2.doc