

**AMENDMENT NO. 5 TO
BOARDING AREAS "B" AND "C" PRINCIPAL CONCESSION RETAIL
LEASE NO. 98-0228
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 5 TO BOARDING AREAS "B" AND "C" PRINCIPAL CONCESSION RETAIL LEASE AT THE SAN FRANCISCO AIRPORT LEASE NO. 98-0228 ("Amendment No. 5"), dated as of _____, for reference purposes only, is entered by and between the between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Airport Commission ("City"), as landlord, and PACIFIC GATEWAY CONCESSIONS, LLC ("Tenant"), as tenant.

RECITALS

A. City and Tenant entered into Lease No. 98-0228, dated September 15, 1998 (the "Lease") for those certain retail spaces located in Boarding Area "B" and Boarding Area "C" of Terminal 1 (the "Premises") at the San Francisco International Airport (the "Airport"). The Lease was previously approved by the Airport Commission pursuant to Resolution No. 98-0228 adopted on September 15, 1998, and by Board of Supervisors Resolution No. 1005-98 adopted on December 7, 1998.

B. The Lease was subsequently amended pursuant to Amendment No. 1 approved by Airport Commission Resolution No. 02-0039 adopted February 19, 2002, and by Board of Supervisors Resolution No. 552-02 adopted on August 12, 2002, which authorized the Director to implement the Concession Support Program giving Tenant one option to extend the Lease term by five years ("CSP Option Term"). Tenant exercised the CSP Option Term, which expired on June 17, 2009.

C. The Lease was further amended pursuant to Amendment No. 2 approved by Airport Commission Resolution No. 03-0164 adopted on September 16, 2003, and by Board of Supervisors Resolution No. 65-04 adopted on February 3, 2004, which adjusted the Premises.

D. The Lease was further amended pursuant to Amendment No. 3 approved by Airport Commission Resolution No. 09-0132 adopted May 22, 2009, and by Board of Supervisors Resolution No. 344-09 adopted on August 11, 2009, which extended the Lease to June 17, 2012, adjusted the Minimum Annual Guarantee ("MAG"), and further modified the Premises.

E. The Lease was further amended pursuant to Amendment No. 4 approved by Airport Commission Resolution No. 11-0151 adopted on June 30, 2011, and by Board of Supervisors Resolution No. 462-11 adopted on November 1, 2011, which extended the Lease to June 17, 2014 and provided two one-year option periods thereafter.

F. The Lease, as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4 shall be referred to below as the "Lease".

G. Currently, the Premises consist of the following four locations: (1) B1 Specialty Shop; (2) B6 Newsstand; (3) B2.2 Newsstand Kiosk; and (4) C-5 Candy Cart.

H. The first one-year option to extend was previously exercised and the Lease currently expires on June 17, 2015 for all four Lease locations.

I. In order to accommodate the Terminal 1 Redevelopment Program, City desires to extend the Term of the Lease until approximately September 2019 for the B1 Specialty Shop and the C-5 Candy Cart and extend the Term of the Lease until approximately June 2016 for the B2.2 Newsstand Kiosk. The Term of the Lease as it relates to the B6 Newsstand would expire as originally contemplated under the Lease on June 17, 2015.

J. 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 this Amendment No. 5 shall be the date the Airport Director executes this Amendment No. 5.
3. **Term.** The Term of the Lease is amended as follows:
 - a. The Term for the B1 Specialty Shop and the C5 Candy Cart 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. City will endeavor to provide Tenant with not less than sixty (60) days' advance notice of the actual Expiration Date.
 - b. The Term for the B2.2 Newsstand Kiosk is extended and will expire in or around June 2016, provided, however, such extended term may be shortened or further extended by City, in City's sole discretion, to accommodate construction schedules. City will endeavor to provide Tenant with not less than sixty (60) days' advance notice of the actual Expiration Date.
 - c. The Term for the B6 Newsstand is not extended and will expire as contemplated under the Lease on June 17, 2015.
 - d. City will not exercise the final option to extend and there shall be no further options to extend under the Lease.

4. **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 in square footage between the original premises and the adjusted premises.

5. **Entire Agreement.** This Amendment No. 5 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 this Amendment No. 5 are superseded in their entirety by this Amendment No. 5. No prior drafts of this Amendment No. 5 or changes between those drafts and the executed version of this Amendment No. 5 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. 5.

6. **Miscellaneous.** This Amendment No. 5 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 5 is made for the purpose of setting forth certain rights and obligations of Tenant 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. 5. This Amendment No. 5 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. 5 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. 5. This Amendment No. 5 shall be governed by the laws of the State of California. Neither this Amendment No. 5 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

7. **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 parties have executed this Agreement as of the date first set forth above.

TENANT: Pacific Gateway Concessions, LLC,
a limited liability company

By: 

Name: JAVIER VEGA
(type or print)

Title: MANAGING MEMBER

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. _____

Adopted: _____

Attest: _____
Secretary
Airport Commission

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

By: _____
Deputy City Attorney

10.7.2015
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