

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.5
FOR THE MEETING OF: June 9, 2022**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a third amendment to the lease agreement with Transbay Fitness, Inc. for commercial/retail space in suites 208 and 212 on the second floor of the transit center, consistent with the previously adopted Retail/Commercial Leasing Strategy to Address COVID-19 Impacts to tenancies.

EXPLANATION:

Background

On March 4, 2020, Governor Newsom proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic. On February 25, 2020, the Mayor of the City and County of San Francisco declared a local emergency, and on March 6, 2020, the City’s Health Officer declared a local health emergency. On March 16, 2020, the City issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes COVID-19. Since these original proclamations, orders, and declarations were issued, there have been subsequent updates, supplements and refinements, guiding the City to recovery (collectively, “Health Orders”).

On June 25, 2020, the TJPA Board adopted a Retail/Commercial Leasing Strategy to Address COVID-19 Impacts (“Strategy”), providing staff with guidance on appropriate considerations for potential lease amendments of tenancies claiming to have been directly or indirectly affected by COVID-19 and the associated Health Orders. The Strategy provides, among other things, that “... retail/commercial tenants that made or make substantial changes in operations as a result of the Original Order or Subsequent Orders, may be eligible for partial rent relief or other concessions for the period from the effective date of such Order....”

As of the date of this report, San Francisco has made significant strides to re-open the economy but certain of the Health Orders remains in effect. While the Orders allow resumption of most activity, economic ramifications in downtown San Francisco remain a concern, mainly resulting from a delayed return for office workers and thus of transit riders. The economy is slowly re-opening in San Francisco, however office occupancies remain very low, and transit ridership through the Salesforce Transit Center remains less than one-third of what it was pre-pandemic.

Original Lease

On July 12, 2018, the TJPA Board authorized the Executive Director to complete negotiations and execute a lease agreement with Transbay Fitness, Inc. (“Tenant”) for about 34,508 square feet of commercial/retail space on the second level of the new transit center (suites 208 and 212) for a 15 year term with three five-year options to renew. The lease was fully executed on September 11, 2018 (“Lease”). The initial year stated base rent of the Lease was \$1,449,336, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base

rent. Base rent was scheduled to increase pursuant to the schedule contained in the Lease. The TJPA's tenant improvement allowance was \$3,450,800 (\$100 per square foot). Tenant invested a total of \$6,476,240 in improvements to the Lease premises prior to opening. The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant opened for business on December 27, 2019, following completion of tenant improvements. The SIP Order occurred three months later, allowing very little time for Tenant to ramp up membership. Tenant conducted one-on-one training for members in the Salesforce Park Amphitheater area once permitted under applicable Health Orders starting June 15, 2020. Unfortunately, these training sessions were negatively affected by the poor air quality during August 2020. Indoor fitness activities under limited capacity restrictions were permitted through subsequent Health Orders effective September 15, 2020, and Tenant immediately re-opened at that time. Capacity was limited to 25%, and given the serious erosion of this location's membership that occurred since the SIP Order, Tenant did not reach that limited capacity at this location. Subsequent Health Orders effective November 29, 2020 resulted in limiting indoor fitness to one-on-one training only, and TJPA afforded Tenant the opportunity to use open space adjacent to Natoma, consistent with Health Orders, for outdoor fitness activities, which was successfully utilized through end of January 2021. At that point, indoor fitness activities, while under certain restrictions, was permitted by Health Orders to resume.

Tenant Prior Requests for Relief

As a result of COVID-19, Tenant requested relief from its obligations under the Lease. Consistent with the Board's Strategy, TJPA staff, with the assistance of Lincoln Property, Colliers, and retail legal counsel, engaged due diligence review and negotiations with the Tenant. Due diligence included, among other things, confirmation of Tenant's assertion that Tenant did not receive assistance through the Small Business Administration, but did receive a Payroll Protection Program ("PPP") loan of \$484,000. The PPP loan was for all of Tenant's locations, thus the amount of the loan that could be legally applied toward rent for the Lease premises was only \$15,125. TJPA staff has spoken with the landlord of Tenant at other similarly affected locations to confirm the rent relief package developed here is consistent with other offerings.

On December 10, 2020, the TJPA Board of Directors authorized an amendment to the Lease, and on that same day the TJPA and Tenant entered a First Amendment to Lease ("First Amendment"). The key terms and conditions of the First Amendment were:

- Suspension of rent for April through September 2020;
- Tenant's rental obligation was a common area base fee of \$5,000/month from the period October 1, 2020 through December 31, 2020;
- Tenant's rental obligation was a common area base fee of \$10,000/month from the period January 1, 2021 until June 30, 2021, plus percentage rent equal to 10% of gross revenues, unless explicitly extended by the Board, and if so, to no later than December 31, 2021;
- The 6 months of suspended rent period was deferred through an extension of the initial term by 6 months.

On May 13, 2021, the TJPA Board of Directors approved an extension of the above-described relief program through December 31, 2021.

On January 13, 2022, the TJPA Board of Directors authorized a further amendment to the Lease, and on that same day the TJPA and Tenant entered into a Second Amendment to Lease (“Second Amendment”). The key terms and conditions of the Second Amendment were:

- Tenant’s rental obligation (“Alternative Rent”) shall be a base fee of \$20,000/month from the period January 1, 2022 through the earlier of the rent reversion month or June 30, 2022, plus percentage rent equal to 10% of gross revenues.
- The initial term of the Lease was extended to March 31, 2036, allowing TJPA to financially re-capture the relief granted.

The Second Amendment contemplated that the Alternative Rent could be extended by the Board in its discretion to December 31, 2022.

Tenant Current Request for Continued Relief in 2022

Tenant recently approached TJPA staff and TJPA’s asset management team at Lincoln Property seeking a further extension of economic relief through the calendar year 2022.

Consistent with the Board’s Strategy, the TJPA team again engaged due diligence review and negotiations with Tenant. Due diligence included, among other things, a review of Tenant’s membership, and consultations with our brokerage firm as well as other brokers as to status of market conditions. Gross revenue reports provided to TJPA by Tenant clearly show a plateauing of membership since early Fall, 2021, and show payment of full contract rent at this time as economically infeasible. As a result of that due diligence review and negotiations, a proposed Third Amendment to the Lease has been developed and executed by Tenant, enclosed herewith.

Under the negotiated Third Amendment to Lease:

- The Alternative Rent is extended from June 30, 2022 to December 31, 2022.
- The initial term of the lease has been again extended to reflect the rent relief period, moving the initial termination date to September 30, 2036. This allows the TJPA to financially re-capture the relief granted.

The value of approving this Third Amendment is estimated at \$440,000 (for the period July 1, 2022 through December 31, 2022). The fiscal impact of approving the Third Amendment has already been accommodated in the proposed Fiscal Year 2022-2023 budget. The form of relief proposed under the Third Amendment is similar to the relief the TJPA has granted other tenants materially affected by COVID-19.

RECOMMENDATION:

Authorize the Executive Director to execute the Third Amendment to Lease with Transbay Fitness Inc., adjusting terms and conditions of the Lease as presented herein through December 31, 2022.

ENCLOSURE:

1. Resolution
2. Third Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On July 12, 2018, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA’s Executive Director to finalize negotiations and execute a lease agreement with Transbay Fitness, Inc. (“Tenant”) for about 34,508 square feet of commercial/retail space on the second level of the new transit center (Suites 208 and 212) for a 15 year term with three five-year options to renew (“Lease”); and

WHEREAS, Tenant occupied the Lease premises and opened for business on December 27, 2019; and

WHEREAS, On March 4, 2020, Governor Newsom proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic. On February 25, 2020, the Mayor of the City and County of San Francisco declared a local emergency, and on March 6, 2020, the City’s Health Officer declared a local health emergency. On March 16, 2020, the City issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes COVID-19, and that order generally required everyone to stay safe at home except for certain essential activities and work to provide essential businesses and government service or perform essential public infrastructure construction; and

WHEREAS, Since these original proclamations, orders, and declarations were issued, there have been subsequent updates, supplements, and refinements, guiding the City to recovery (collectively, “Health Orders”); and

WHEREAS, TJPA staff have received requests from retail/commercial tenants for financial relief from direct or indirect impacts on their business from the Health Orders; and

WHEREAS, On June 25, 2020, the TJPA Board of Directors adopted a Retail/Commercial Leasing Strategy (“Strategy”) to respond to COVID-19 impacts to tenancies; and

WHEREAS, As a result of COVID-19 and associated closures of non-essential office buildings, including associated delayed re-occupancy of downtown office buildings and temporary but substantive reduction in transit passenger use of the transit center, Tenant requested relief from certain of its obligations under the Lease; and

WHEREAS, On December 10, 2020, the TJPA Board of Directors authorized an amendment to the Lease, and on that same day the TJPA and Tenant entered a First Amendment to Lease (“First Amendment”) providing certain economic relief to Tenant; and

WHEREAS, On May 31, 2021, the TJPA Board of Directors approved an extension of the First Amendment to December 31, 2021; and

WHEREAS, On January 13, 2022, the TJPA Board of Directors authorized a further amendment to the Lease (“Second Amendment”), extending certain economic relief to Tenant to June 30, 2022; and

WHEREAS, As a result of COVID-19 and continued market depression, Tenant has submitted a request for further rent relief during calendar year 2022, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a Third Amendment to Lease that provides economic relief to Tenant in the form of an extended period of the alternative rent schedule; and

WHEREAS, Every effort has been made to mitigate the fiscal impact of any rent relief afforded to affected tenancies through operating expense reductions and securing of unanticipated revenues; and

WHEREAS, The proposed budget for Fiscal Year 2022-2023 accommodates the fiscal impact of accepting this Third Amendment to the Lease; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Third Amendment to Lease to be consistent with the adopted Strategy and thus in the best interest of the public; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Third Amendment to Lease with Transbay Fitness, Inc. for Suites 208 and 212 in the form presented herewith.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 9, 2022.

Secretary, Transbay Joint Powers Authority

THIRD AMENDMENT TO LEASE

This THIRD AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the ___ day of ^{June} May, 2022, by and among TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. ("Landlord"), and TRANSBAY FITNESS, INC., a California corporation, dba FITNESS SF Transbay ("Tenant"), with reference to the following facts and understandings:

RECITALS

A. Landlord and Tenant are parties to that certain "Salesforce Transit Center Lease" dated as of September 11, 2018, as amended by that certain First Amendment to Lease (the "First Amendment") dated December 10, 2020 and that certain Second Amendment to Lease (the "Second Amendment") dated January 13, 2022 (together with all exhibits and addenda attached thereto and as so amended, the "Existing Lease"), whereby Tenant leases from Landlord approximately 34,508 usable square feet of retail space (the "Premises") known as Space Numbers 208 and 212, located in the retail usage area on the second (2nd) floor of the Salesforce Transit Center in San Francisco, California (the "Center"). Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Landlord has agreed to make certain adjustments to the time period applicable to payment of Alternative Rent under the Second Amendment, and to otherwise amend the Lease, all on and subject to the terms and conditions set forth in this Amendment.

C. The parties acknowledge that the provisions of this Amendment concerning payment of Alternative Rent has been entered into at the request of Tenant as a result of the unprecedented circumstances surrounding the COVID-19 pandemic and that, in entering into this Amendment, Landlord is suffering an acknowledged financial loss on account of the adjustments to the Rent otherwise payable to Landlord under the Lease provided for hereunder.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. References. All references to the "Lease" or "lease" appearing in this Amendment or in the Existing Lease shall mean, collectively, this Amendment and the Existing Lease, as amended by this Amendment.

2. Alternative Rent Period. Section 2(a)(i) of the Second Amendment is hereby amended and restated in its entirety as follows:

"(i) Alternative Rent Period. Notwithstanding anything to the contrary contained in the Existing Lease but subject to Section 5 below, during the period (the "Alternative Rent Period") commencing on January 1, 2022 and ending on the earlier of

(A) December 31, 2022 (the “**Alternative Rent Period Outside Expiration Date**”) and (B) the last day of the month immediately preceding the Rent Reversion Month (as defined in Section 2(b) below), Tenant shall pay Alternative Rent (as defined in Section 2(b)(ii)(C) below) in lieu of paying the Base Rent specified in the Basic Lease Information for such Alternative Rent Period. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternative Rent Period, Tenant shall be obligated to pay the Base Rent specified in the Basic Lease Information.”

3. **Expiration Date.** All references to the “Expiration Date” in the Existing Lease are hereby amended to be September 30, 2036.

4. **Schedule of Base Rent.** The schedule of Base Rent set forth in the Basic Lease Information is hereby amended and restated as follows:

<u>Months</u>	<u>Annual Rate per Useable Square Foot</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Base Rent</u>
January 2020 – March 2020	\$42.00	\$120,778.00	\$1,449,336.00
April 2020 – September 2020	Waived by Landlord pursuant to Section 2(a) of the First Amendment.		
October 2020 – December 2021*	\$42.00*	\$120,778.00*	\$1,449,336.00*
January 2022 – September 2023**	\$42.00**	\$120,778.00**	\$1,449,336.00**
October 2023 – September 2025	\$44.00	\$126,529.34	\$1,518,352.00
October 2025 – September 2030	\$49.28	\$141,712.86	\$1,700,554.24
October 2030 – September 2035	\$55.19	\$158,708.05	\$1,904,496.52
October 2035 – September 2036	\$61.82	\$177,773.72	\$2,133,284.56

* Subject to payment of “Alternative Rent” (as defined in the First Amendment) in lieu of Base Rent to the extent provided in Sections 2(b) and 2(c) of the First Amendment.

** Subject to payment of Alternative Rent in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of the Second Amendment.

5. **Preservation of Claims and Defenses.** Landlord and Tenant acknowledge and agree that if the payments set forth in Section 2 of the Second Amendment, as amended by Section 2 above, are not made by Tenant, this Amendment shall become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if this Amendment had never been executed.

6. **Miscellaneous.**

(a) **Severability.** If any provision of this Amendment or the application of any provision of this Amendment to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Amendment or the application of that provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each provision of this Amendment will be valid and be enforced to the fullest extent permitted by law.

(b) **Entire Agreement/Modification.** This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Except for any subsequent amendments or modifications to the Lease made in accordance with the terms thereof, any agreement made after the date of this Amendment is ineffective to modify or amend the terms of this Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this Amendment, and specifically states that that agreement modifies this Amendment.

(c) **Counterparts.** This Amendment may be executed in any number of counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

(d) **Heirs and Successors.** This Amendment shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

(e) **Authority.** Each individual executing this Amendment on behalf of his or her respective party represents and warrants that he or she is duly authorized to execute and deliver this Amendment on behalf of said entity in accordance with the governing documents of such entity, and that upon full execution and delivery this Amendment is binding upon said entity in accordance with its terms.

(f) **Drafting.** In the event of a dispute between any of the parties hereto over the meaning of this Amendment, both parties shall be deemed to have been the drafter hereof, and any applicable law that states that contracts are construed against the drafter shall not apply.

(g) **Headings.** Captions used herein are for convenience and reference only, and shall in no way be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Amendment.

(h) **Ratification.** Except as modified by this Amendment, the Existing Lease shall continue in full force and effect and Landlord and Tenant do hereby ratify and confirm all of the terms and provisions of the Existing Lease, subject to the modifications contained herein.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:

TRANSBAY FITNESS, INC.,
a California corporation

By: Scott Janowski
Name: Scott Janowski
Its: President

By: _____
Name: _____
Its: _____

DocuSigned by:
[Signature]
Date: 5/26/2022

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:


TRANSBAY FITNESS, INC.,
a California corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Date: _____, 2022

APPROVED AS TO FORM.

By: 
Legal counsel, TJPA

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board