

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: December 8, 2022**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a second amendment to the lease agreement with Poke House, Inc., a California corporation, for commercial/retail space in suite 127 on the first 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 16, 2020, the City and County of San Francisco issued a Shelter-in-Place (“SIP”) Order to facilitate the reduction of the impact of the virus that causes coronavirus disease (“COVID-19”). Since the original SIP Order was issued, subsequent orders have been issued by the City and County of San Francisco updating and supplementing the original order. The TJPA anticipates that future orders may be issued, 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 progress toward re-opening the economy, but 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 is roughly half of what it was pre-pandemic.

Original Lease

On November 14, 2019, the TJPA Board of Directors authorized the Executive Director to complete negotiations and execute a lease agreement with Poke House, Inc. (“Tenant”) for about 1,075 square feet of commercial/retail space on the first level of the new transit center (Suite 127) for a 10-year, 3-month term with two five-year options to renew at full market value. The lease was fully executed on February 11, 2020 (“Lease”). The initial year stated base rent of the Lease is \$81,700, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent increases 22% on the first anniversary of commencement, then 3% per year thereafter. The TJPA’s Tenant Improvement allowance is \$80,625 (\$75 per square foot). Tenant is primed to begin their Tenant Improvement project shortly with a projected opening in Spring 2023. The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant Prior Request 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.

On November 18, 2021, the TJPA Board of Directors authorized a first 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:

- Tenant's rental obligation was a common area base fee of \$2,000/month from the period November 1, 2021 through June 30, 2022;
- Tenant was to pay 10 percent of gross sales as percentage rent

Further Tenant Request for Relief

While permitted to open consistent with current Health Orders once their Tenant Improvement construction is completed, Tenant requested certain relief from its obligations to open under the economics of the original Lease until additional office workers and transit riders return to the area.

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 Tenant. Due diligence included, among other things, a review of proposed tenant improvements, and consultations with our brokerage firm as well as other brokers as to status of market conditions. As a result of that due diligence review and negotiations, a proposed Second Amendment to the Lease has been developed and executed by Tenant, enclosed herewith.

Under the negotiated Second Amendment to Lease, for the period from July 1, 2022 until June 30, 2023, Tenant's rental obligation would be a base fee of \$2,400/month plus percentage rent equal to 10% of gross revenues. This alternative rent may be extended beyond June 30, 2023 with timely request from Tenant and subject to the discretion of the TJPA Board of Directors. Should percentage rent equal or exceed the Base Rent as specified in the original Lease during the relief period, Tenant's rental amount owed would revert to contract rent per the original Lease. The value of approving the terms and conditions of the First Amendment is estimated at \$52,900. The fiscal impact can be accommodated in the adopted Fiscal Year 22-23 budget. The form of relief proposed under the First Amendment is similar to the relief the TJPA has granted other tenants materially affected by COVID-19.

The TJPA has completed all base building requirements for Suite 127 and has turned over the space to Tenant. Prior to Tenant contracting for Tenant Improvement work, however, Tenant desires to secure the negotiated Second Amendment to Lease.

RECOMMENDATION:

Authorize the Executive Director to execute the negotiated Second Amendment to Lease with Poke House, Inc., adjusting terms and conditions of the Lease as noted herein through June 30, 2023.

ENCLOSURE:

1. Resolution
2. Second Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On November 14, 2019, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA’s Executive Director to finalize negotiations and execute a lease agreement with Poke House, Inc. (“Tenant”) for about 1,075 square feet of commercial/retail space on the first level of the new transit center (Suite 127) for a 10-year, 3-month term with two five-year options to renew at full market value. A lease was fully executed on February 11, 2020 (“Lease”); 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 and County of San Francisco 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 its obligations under the Lease; and

WHEREAS, On November 18, 2021, the TJPA Board of Directors authorized an amendment to the Lease, and the TJPA and Tenant entered a First Amendment to Lease (“First Amendment”) providing certain economic relief to Tenant; and

WHEREAS, As a result of COVID-19 and continued market depression, Tenant has submitted a request for further rent relief during calendar year 2023, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a Second Amendment to Lease that provides economic relief to Tenant from the period July 1, 2022 through June 30, 2023, consistent with the guidance contained in the adopted Strategy, the form of which is presented herewith; 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 adopted budget for Fiscal Year 2022-2023 accommodates the fiscal impact of accepting this Second Amendment to the Lease; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Second Amendment to the 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 Second Amendment to the Lease with Poke House, Inc. for Suite 127 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 December 8, 2022.

Secretary, Transbay Joint Powers Authority

SECOND AMENDMENT TO LEASE

This SECOND AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the ___ day of _____, 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 POKE HOUSE, INC., a California corporation, dba Poke House (“**Tenant**”), with reference to the following facts and understandings:

RECITALS

A. Landlord and Tenant entered into that certain “Salesforce Transit Center Lease” dated as of December ___, 2019 (together with all exhibits and addenda attached thereto, the “**Original Lease**”), as amended by that certain First Amendment to Lease dated _____, 2021 (the “**First Amendment**”), whereby Tenant leases from Landlord approximately 1,075 usable square feet of retail space (the “**Premises**”) known as Space Number 127, located in the retail usage area on the ground floor of the Salesforce Transit Center in San Francisco, California (the “**Center**”). The Original Lease, as amended by the First Amendment, is herein referred to as the “**Existing Lease**”. Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Pursuant to the First Amendment, Landlord agreed to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified thereto (as applicable, the “**First Amendment Alternative Rent Period**”) on account of Tenant having had to limit its restaurant operations at the Premises due to the COVID-19 pandemic. The First Amendment Alternative Rent Period ended on June 30, 2022.

C. Due to the continuation of the COVID-19 pandemic, Tenant has requested additional rent abatement from Landlord.

D. Landlord has agreed to make certain additional adjustments to the Rent payable by Tenant under the Lease, and to otherwise amend the Existing Lease, all on and subject to the terms and conditions set forth in this Amendment.

E. The parties acknowledge that this Amendment 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.

(a) Payment of Alternative Rent in lieu of Base Rent.

(i) Alternative Rent Period.

(A) General. Notwithstanding anything to the contrary contained in the Existing Lease but subject to Section 2(a)(i)(A) below, during the period (the “**Alternative Rent Period**”) commencing on July 1, 2022 and ending on the earlier of (A) the last day of the month immediately preceding the Gross Sales Rent Reversion Month (as defined in Section 2(b) below), and (B) June 30, 2023 (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 2(a)(ii)(C) below) in lieu of paying the Base Rent and the Storage Fee 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 and the Storage Fee specified in the Basic Lease Information.

(B) Potential Extension. If the Gross Sales Rent Reversion Month has not occurred prior to the original Alternative Rent Period Outside Expiration Date set forth in clause (B) above, Tenant may request an extension of the Alternative Rent Period Outside Expiration Date set forth in clause (B) above to December 31, 2023 by providing written notice of such request to Landlord on or before May 1, 2023; provided, however, that Tenant acknowledges and agrees that Landlord shall have no obligation to grant such request. If Landlord elects, in its sole and absolute discretion, to extend the Alternative Rent Period Outside Expiration Date following receipt of a request from Tenant to do so pursuant to the foregoing, then, notwithstanding anything to the contrary contained herein, the Alternative Rent Period Outside Expiration Date shall be December 31, 2023 as opposed to June 30, 2023.

(C) Effect of Assignment or Sublease. In the event that Tenant assigns the Lease or subleases all or any portion of the Premises during the Alternative Rent Period (as the same may be extended pursuant to Section 2(a)(i)(B) above) then, notwithstanding anything to the contrary contained herein, the Alternative Rent Period shall immediately terminate as of the effective date of the assignment or sublease, as applicable (the “**Transfer Effective Date**”), and Tenant shall immediately resume paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Original Lease) as of such Transfer Effective Date. If Tenant has already paid the Fixed Monthly Alternative Payment for the month in which the Transfer Effective Date occurs, Tenant shall pay the difference between the sum of the Base Rent specified in the Basic Lease Information for such month and the Fixed Monthly Alternative Payment within ten (10) days following the last day of such month.

(ii) Alternative Rent.

(A) Fixed Monthly Alternative Payment. Notwithstanding anything to the contrary contained in the Existing Lease, in lieu of the Base Rent payments otherwise provided for in Section 2(b)(i) of the Original Lease, during the Alternative Rent Period, Tenant shall pay to Landlord the Fixed Monthly Alternative Payment (as hereinafter defined). As used here, the “**Fixed Monthly Alternative Payment**” shall mean an amount equal Two Thousand Four Hundred and No/100 Dollars (\$2,400.00) per month. The Fixed Monthly Alternative Payment for each month during the Alternative Rent Period shall be paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, on or before the first (1st) day of the applicable month and otherwise in accordance with Section 2(a) of the Original Lease.

(B) Percentage Rent. Notwithstanding anything to the contrary contained in the Existing Lease, in the event that Tenant opens for business at the Premises prior to the last day of the Alternative Rent Period then, in lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Original Lease, during the portion of the Alternative Rent Period commencing on the date on which Tenant first opens for business at the Premises and continuing until the last day of the Alternative Rent Period, Tenant shall also pay to Landlord “**Alternative Percentage Rent**” in the manner provided under this Section 2(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period that the same is payable hereunder shall be calculated by multiplying Tenant’s Gross Sales for such month by six percent (6%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within ten (10) days after the end of each month for which the same is due. For avoidance of doubt, the Alternative Percentage Rent payable by Tenant under this Section 2(a)(ii)(B) shall be calculated without regard to any breakpoint (including, but not limited to, the Breakpoint set forth in Section 2(c) of the Original Lease). All references to “Percentage Rent” in Sections 2(a), 2(c)(vi), 2(d), 19(a)(i), 24(a) and 26(k) of the Original Lease shall be deemed to include, without limitation, Alternative Percentage Rent. Tenant acknowledges and agrees that it will provide the quarterly and annual statements required under Section 2(c)(v) of the Original Lease during the Alternative Rent Period.

(C) Alternative Rent. As used herein, “**Alternative Rent**” shall mean the Fixed Monthly Alternative Payment and, if applicable, Alternative Percentage Rent.

(b) Reversion to Contract Rent. Notwithstanding anything to the contrary contained in Section 2(a) above, if an amount equal to six percent (6%) of Tenant’s Gross Sales for any month from and after the month in which the Commencement Date occurs through and including the month in which the Alternative Rent Period Outside Expiration Date occurs equals or exceeds the Base Rent specified in the Basic Lease Information that would otherwise be payable by Tenant for such month, then commencing with such month (such month being herein referred to as the “**Gross Sales Rent Reversion Month**”), Tenant shall resume paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Original Lease) and Tenant shall not be obligated to pay the Fixed Monthly Alternative Payment or Alternative Percentage Rent for the Gross Sales Rent Reversion Month or for any month thereafter. If Tenant has already paid the Fixed Monthly Alternative Payment for the Gross Sales Rent Reversion Month, Tenant shall pay the difference between the sum of the Base Rent specified in the Basic Lease Information for the Gross Sales

Rent Reversion Month and the Fixed Monthly Alternative Payment within ten (10) days following the last day of the Gross Sales Rent Reversion Month. For avoidance of doubt, Tenant acknowledges and agrees that commencing on the first day immediately following the Alternative Rent Period Outside Expiration Date, Tenant shall be obligated to return to paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Original Lease) regardless of whether six percent (6%) of Tenant's Gross Sales for a particular month equals or exceeds the Base Rent due for such month and that Tenant shall no longer be obligated to pay Tenant's Monthly Expense Contribution or Alternative Percentage Rent from and after such date.

3. Construction Drawings. Tenant agrees to demonstrate good faith efforts in making progress with Tenant's construction plans and drawings relating to the Premises by January 31, 2023.

4. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in 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.

5. 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:

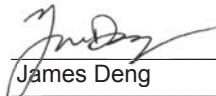
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:

POKE HOUSE, INC.,
a California corporation

By:  _____
Name: James Deng
Its: CEO

By: _____
Name: _____
Its: _____

Date: 8/30 _____, 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:
POKE HOUSE, 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

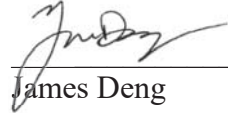
Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

The undersigned Guarantor hereby acknowledges and consents to the terms, conditions and provisions of this Amendment and the transactions contemplated thereby. Guarantor hereby ratifies and reaffirms the full force and effectiveness of the Guaranty and hereby confirms the continuing obligations of Guarantor under the Guaranty.

GUARANTOR:



Date: 8/30, 2022