

STAFF REPORT FOR CALENDAR ITEM NO.: 8.2
FOR THE MEETING OF: August 10, 2023

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to execute an extension of the alternate rent period contemplated under the first amendment to the lease agreement with Ugochukwu Ihenacho and Carlynn Ihenacho, dba Charleys Philly Steaks, a California corporation, for commercial/retail space on the first floor of the transit center (Suite 139).

EXPLANATION:

Original Lease

On November 8, 2018, the TJPA Board of Directors authorized the Executive Director to execute a lease agreement (“Lease”) with Ugochukwu Ihenacho and Carlynn Ihenacho, dba Charleys Philly Steaks (“Tenant”) for about 971 square feet of commercial/retail space on the first level of the new transit center (Suite 139) for a 15-year term with one five-year option to renew at full market value. The initial year stated base rent of the Lease is \$145,650, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent increases 3% on the first anniversary of commencement, then 3% per year thereafter. The TJPA’s Tenant Improvement allowance is \$97,100 (\$100 per square foot) plus landlord contribution for additional interior improvements. The business terms under the Lease were slightly under net present value revenue of the proforma for the premises over a 15-year term.

Tenant Prior Request for Relief

As a result of COVID-19, Tenant requested certain relief from its obligations under the Lease. Consistent with the Board’s Retail/Commercial Leasing Strategy to Address COVID-19 Impacts, TJPA staff, with the assistance of Lincoln Property Company (LPC), 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.

On May 12, 2022, the TJPA Board authorized a First Amendment to the Lease (attached). Under the First Amendment, for the period from the rent commencement date until June 30, 2023, Tenant’s rental obligation was a base fee of \$2,000/month plus percentage rent equal to 6% of gross revenues. 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 First Amendment contemplated that the alternative rent could be extended an additional six months, from July 1, 2023 through December 31, 2023, with timely request from Tenant and subject to the TJPA Board approval in its discretion.

Tenant Current Request for Relief

Tenant opened for business on January 25, 2023, following completion of tenant improvements and remains open for business. As of the date of this report, San Francisco has made significant progress toward re-opening the economy after the conclusion of the COVID-19 public health emergency, 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.

Tenant recently approached TJPA staff and TJPA's asset management team, LPC, seeking economic relief by extending the alternate rent under the First Amendment through December 31, 2023. As explained above, such an extension is contemplated under the First Amendment.

Staff and LPC have confirmed that the percentage rent Tenant has been required to pay during the current alternative rent period is less than the base rent under the Lease as originally executed. Staff have been monitoring transit ridership and commercial business activity in the Transbay neighborhood and throughout the City. While indicators generally are improving, they have not yet rebounded to pre-COVID levels. Staff and LPC believe that the requested extension of the alternative rent period is consistent with the commercial leasing market.

The fiscal impact of approving the terms and conditions of the alternate rent period extension is estimated at \$48,348. While the overall impact to the FY23-24 Budget is minimal (less than 1% of the Budgeted Revenue in FY23/24), TJPA staff will continue to evaluate alternatives to minimize the impacts of implementing these measures to increase revenues and decrease expenses. The form of relief proposed under this extension is similar to the relief the TJPA has granted other tenants materially affected by COVID-19 and reflect current market conditions for downtown San Francisco recovery.

RECOMMENDATION:

Authorize the extension of the alternate rent period contemplated under the First Amendment to the Lease with Charleys Philly Steaks through December 31, 2023.

ENCLOSURE:

1. Resolution
2. First Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On November 8, 2018, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA’s Executive Director to execute a lease agreement (“Lease”) with Ugochukwu Ihenacho and Carlynn Ihenacho, dba Charleys Philly Steaks (“Tenant”) for about 971 square feet of commercial/retail space on the first level of the new transit center (Suite 139) for a 15-year, term with one five-year option to renew at full market value; 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. 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, As a result of COVID-19 and the Health Orders, Tenant requested relief from its obligations under the Lease. On May 12, 2022, the TJPA Board approved a First Amendment to Lease that, among other things, provided economic relief to Tenant in the form of base rental rate adjustment from the period October 1, 2022 through June 30, 2023; and

WHEREAS, The First Amendment to Lease may be extended to December 31, 2023 if timely requested by Tenant and if approved by the TJPA Board, and Tenant has submitted such a request; and

WHEREAS, While the COVID-19 emergency and associated Health Orders have been lifted, as a result of COVID-19, including associated delayed re-occupancy of downtown office buildings and temporary but substantive reduction in transit passenger use of the transit center, Tenant requested an extension of the alternative rent period under the First Amendment to Lease; 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 fiscal impact of accepting this extension of the alternate rent period in the overall adopted budget for Fiscal Year 2023-2024 is minimal; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the First Amendment to Lease in the best interest of the public; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the extension of the First Amendment to Lease with Ugochukwu Ihenacho and Carlynn Ihenacho, dba Charleys Philly Steaks for Suite 139 through December 31, 2023.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of August 10, 2023.

Secretary, Transbay Joint Powers Authority

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "Amendment") is made and entered into as of the 21 day of April, 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 UGOCHUKWU IHENACHO and CARLYNN IHENACHO, husband and wife, dba Charleys Philly Steaks ("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 September 12, 2018 (together with all exhibits and addenda attached thereto, the "Existing Lease"), whereby Tenant leased from Landlord approximately 971 usable square feet of retail space (the "Premises") known as Space Number 139, located in the retail usage area on the ground 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 Rent payable by Tenant under the Lease, 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 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, during the period (the "Alternative Rent Period") commencing on the Commencement Date 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 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.

(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.

(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 Existing 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 and No/100 Dollars (\$2,000.00) 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 Existing 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 Existing 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 Existing Lease). All references to "Percentage Rent" in Sections 2(a), 2(c)(vi), 2(d), 19(a)(i), 24(a) and 26(k) 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 Existing 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 Existing 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 Existing 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. Improvement Allowance. Notwithstanding anything to the contrary contained in the Existing Lease, including but not limited to Section 2.1 of the Work Letter attached to the Existing Lease as Exhibit B, the one-time Improvement Allowance to which Tenant is entitled to under the Lease shall be in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

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.

(i) Joint and Several Liability. If Tenant consists of more than one individual, partnership, corporation or other legal entity, then all such individuals, partnerships, corporations and/or entities shall be jointly and severally liable as Tenant hereunder.

(Signature Page to Follow) □

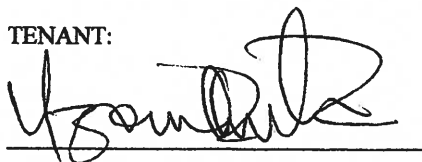
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:



UGOCHUKWU IHENACHO



CARLYNN IHENACHO

Date: 21/April, 2022

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

-S- First Amendment to Lease
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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: [Signature]
Name: Adam VAN BENTHE
Its: _____

Date: May 13, 2022

TENANT:

UGOCHUKWU IHENACHO

CARLYNN IHENACHO

Date: _____, 2022

APPROVED AS TO FORM.

By: [Signature]
Legal counsel, TJPA

Transbay Joint Powers Authority Board of Directors

Resolution No.: 22-021

Adopted: May 12, 2022

Attest: [Signature]
Interim Secretary, TJPA Board