

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3  
FOR THE MEETING OF: March 14, 2024**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a Third Amendment to the lease agreement with Barebottle Brewing Company, Inc., a California corporation, extending the base lease term and option term and increasing the Tenant Improvement Allowance for commercial/retail space P-02 in TJPA's Salesforce Park.

**EXPLANATION:**

Original Lease

On October 14, 2021, the TJPA Board of Directors authorized the Interim Executive Director to execute a lease agreement with Barebottle Brewing Company, Inc. ("Tenant") for approximately 1,320 square feet of commercial/retail space in Salesforce Park (Space P-02) for a 10-year term with one three-year option to renew at full market value. The lease was fully executed on October 14, 2021 ("Original Lease"). The rent structure per the Original Lease is pure percentage at 10% of Gross Sales and the lease stipulated a Tenant Improvement Allowance of \$385,000. At the time the Original Lease was approved, no base building improvements were contemplated by the TJPA.

Prior Amendments to Original Lease

As part of the construction process, and given the unique nature of the space (exterior space on the park level) and build type (modular container), it became evident that Tenant would not be able to completely access all the necessary utilities. Upon evaluation of the circumstances, staff confirmed that access to such utilities would typically be part of landlord work at landlord cost. Tenant proposed that the TJPA grant an additional Tenant Improvement Allowance in the amount of \$117,185 to compensate Tenant for performing the work. On December 8, 2022, the TJPA Board of Directors authorized the Executive Director to execute a first amendment to the Original Lease, granting Tenant an additional Tenant Improvement Allowance in the amount of \$117,185.

In the course of performing the aforementioned tenant improvement work, unanticipated conditions required additional scope and additional budget in the amount of \$62,887, and on March 9, 2023, the TJPA Board of Directors authorized the Executive Director to execute a Second Amendment to the lease granting Tenant an additional Tenant Improvement Allowance of \$62,887.

Tenant Current Request to Amend Lease

Tenant opened for business in December 2022, following completion of tenant improvements and remains open for business. Tenant recently approached TJPA staff and TJPA's asset management team, Lincoln Property Company (LPC), seeking assistance to share the costs of improving the space by adding a pergola, heat, wind protection, and fire life safety systems, extend the base term by five years (to 15 years total), and extend the option to extend the lease term by two years (five years total).

Staff and LPC believe it is reasonable for TJPA to pay the lesser of (i) 50% of the actual cost to build the improvements, or (ii) \$100,000. Staff and LPC anticipate the improvements could materially improve sales by providing patrons with a warm, wind-free environment when outside conditions are otherwise intolerable. Based on estimates provided by the Tenant, sales are expected to improve by roughly \$150,000 per year.

With the extension of the base term by five years (from 10 years to 15 years), the estimated net profit to TJPA is expected to be approximately \$135,000.

TJPA staff and Tenant negotiated a proposed form of Third amendment to the Lease (attached), which the Tenant has executed, describing the agreement to reimburse Tenant for the pergola-related work as additional Tenant Improvement Allowance in the amount of up to \$100,000. The fiscal impact can be accommodated from contingency within the overall Tenant Improvement budget and the adopted Fiscal Year 23-24 budget.

**RECOMMENDATION:**

Authorize the Executive Director to execute a Third Amendment to the Lease with Barebottle Brewing Company, Inc., consistent with the attached documents.

**ENCLOSURES:**

1. Resolution
2. Third Amendment to Lease (Space P-02)

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, On October 14, 2021, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA's Interim Executive Director to execute a lease agreement with Barebottle Brewing Company, Inc. ("Tenant") for approximately 1,320 square feet of commercial/retail space in Salesforce Park (Space P-02) for a 10-year term with one three-year option to renew at full market value. A lease was fully executed on October 14, 2021 ("Original Lease"); and

WHEREAS, The Original Lease contemplated a Tenant Improvement Allowance of \$385,000; and

WHEREAS, On December 8, 2022, the TJPA Board of Directors authorized a first amendment to the Original Lease ("First Amendment"; the Original Lease and First Amendment together, the "Lease"), providing an additional Tenant Improvement Allowance of up to \$117,185 for certain utility-related improvements; and

WHEREAS, On March 9, 2023, the TJPA Board of Directors authorized a second amendment to the Lease, providing an additional Tenant Improvement Allowance of up to \$62,887 for certain utility-related improvements; and

WHEREAS, Tenant requested assistance to improve the premises, by constructing a pergola that is capable of providing heat and protection from wind, for a total Landlord contribution of up to \$100,000; and

WHEREAS, TJPA staff and Tenant negotiated a proposed form of Third Amendment to the Lease ("Third Amendment"), describing the agreement to provide Tenant an additional Tenant Improvement Allowance of up to \$100,000 to perform the pergola-related work; and

WHEREAS, The Third Amendment would also extend the base term of the Lease by five years (from 10 years to 15 years) and extend the option to extend the term of the lease by two additional years (from three years to five years); and

WHEREAS, The adopted budget for Fiscal Year 2023-2024 accommodates the fiscal impact of accepting this Third Amendment to the Lease; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the Third Amendment to the Lease with Barebottle Brewing Company, Inc. for Space P-02, consistent with the form presented to the Board.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 14, 2024.

\_\_\_\_\_  
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 \_\_\_\_\_, 2024, 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 BAREBOTTLE BREWING COMPANY, INC., a California corporation (“**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 \_\_\_\_\_, 2021 (together with all exhibits and addenda attached thereto, the “**Original Lease**”), as amended by (i) that certain First Amendment to Lease dated as of \_\_\_\_\_, 2022 (together with all exhibits and addenda attached thereto, the “**First Amendment**”) and (ii) that certain Second Amendment to Lease dates as of \_\_\_\_\_, 2023 (together with all exhibits and addenda attached thereto, the “**Second Amendment**”), whereby Tenant leased from Landlord approximately 1,320 usable square feet of retail space (the “**Premises**”) known as Space P02 on the park level of the Salesforce Transit Center in San Francisco, California (the “**Center**”), together with the area surrounding the same identified as the “**Primary Premises**” in the location generally depicted on the Site Plan attached as Exhibit A to the Original Lease. The Original Lease, as amended by the First Amendment and the Second Amendment, is herein referred to as the “**Existing Lease**”. Capitalized terms used but not defined herein have the meanings given such terms in the Existing Lease.

B. Tenant desires to install a pergola to be affixed to the existing pre-fabricated shipping container units located upon the Premises as shown on the layout attached hereto as Exhibit A (the “**Pergola**”).

C. Landlord and Tenant desire to amend the Existing Lease as more particularly set forth herein.

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. Term. Notwithstanding anything to the contrary contained herein, the “Expiration Date” specified in the Basic Lease Information is hereby amended to be the last day of the one hundred eightieth (180<sup>th</sup>) month following the month in which the Commencement Date occurs.

3. Option to Extend. The Addendum to Salesforce Transit Center Lease attached to the Existing Lease is hereby deleted and shall be of no further force and effect. Tenant is given

the option to extend the Term of the Lease for one (1) additional consecutive five (5) year period (the “**Option Term**”) following expiration of the initial term stated in the Basic Lease Information, as amended herein (the “**Initial Term**”), by giving written notice of exercise of such option (the “**Option Notice**”) to Landlord not less than eighteen (18) but not more than twenty-four (24) months before the expiration of the Initial Term. The option to extend the Term under this Section 3 is personal to the original Tenant named in the Existing Lease and may be exercised only by the original Tenant named in the Existing Lease while occupying the Premises without the intent to thereafter effect a Transfer and may not be exercised or assigned, voluntarily or involuntarily, to any person or entity. Notwithstanding the foregoing, if Tenant is in default under the Lease either on the date of giving an Option Notice or on the date the Option Term is to commence, then, at Landlord’s option, Tenant shall have no right to extend the Term and the Lease shall expire at the end of the Initial Term. The Option Term, if exercised, shall be on the same terms and conditions contained in the Lease, including without limitation, the Rent specified therein; provided, however, that Tenant shall have no further option to extend the Term of the Lease and, for avoidance of doubt, Landlord shall not be required to perform any tenant improvement work or provide any tenant improvement allowances in connection with the same.

4. Installation of Pergola. Tenant shall have the right to install the Pergola in the Premises as depicted in the layout attached hereto as Exhibit A (the “**Pergola Improvement Work**”), subject to and in accordance with the terms and provisions of this Amendment and the Lease, including, but not limited to, the provisions of Section 10(b) of the Original Lease concerning Alterations, to the extent applicable. Notwithstanding anything to the contrary contained in the Lease, the Pergola, together with the pre-fabricated shipping containers installed in the Premises by Tenant in accordance with the Existing Lease, shall become the property of Landlord and shall be surrendered with the Premises upon the expiration or sooner termination of the Term, as may be extended. Tenant agrees to use commercially reasonable efforts to minimize any noise, vibration and/or other disturbances caused by the performance of the Pergola Improvement Work and Landlord and Tenant agree to reasonably cooperate in order to minimize any such impacts on the Center resulting from the performance of the Pergola Improvement Work. Landlord acknowledges that some minor noise, vibration and disturbance may be unavoidable in performing the Pergola Improvement Work and that, so long as Tenant complies with the foregoing sentence, Tenant shall not be deemed to have breached its obligations under the Lease as a result of the generation of any such unavoidable minor noise, vibration and disturbance.

5. Pergola Allowance.

(a) General. Tenant shall be entitled to a one-time improvement allowance (the “**Pergola Allowance**”) in amount equal to the lesser of (i) an amount equal to fifty percent (50%) of the actual costs incurred by Tenant for the fabrication and installation of the Pergola and for the other Pergola Allowance Items relating to the same described in Section 4(b)(i) below and (ii) One Hundred Thousand and No/100 Dollars (\$100,000.00).

(b) Disbursement of the Pergola Allowance.

(i) Pergola Allowance Items. The Pergola Allowance shall be disbursed by Landlord pursuant to the process set forth in Section 4(b)(ii) below for costs related to the fabrication

and installation of the Pergola and for the following items and costs relating to the same (collectively, the “**Pergola Allowance Items**”): (A) payment of the fees of the “Architect” and the “Engineers,” as those terms are defined in Section 3.1 of the Work Letter, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord’s consultants in connection with the preparation and review of any Construction Drawings (as defined in Section 3.1 of the Work Letter) insofar as the same relate to the Pergola Improvement Work; (B) the cost of permits and construction supervision fees relating to the Pergola Improvement Work; (C) the cost of any changes in the Base, Shell and Core required by the Construction Drawings in connection with the Pergola Improvement Work; and (D) the “Landlord Coordination Fee”, as that term is defined in Section 4.3 of the Work Letter, attributable to the Pergola Installation Work. However, in no event shall more than Five Thousand and No/100 Dollars (\$5,000.00) of the Improvement Allowance be used for the items described in (A) and (B) above and any additional amount incurred as a result of (A) or (B) above shall be paid by Tenant. For avoidance of doubt, the Pergola Allowance may not be used for costs relating to any other Tenant Improvements or Alterations made by Tenant (other than the Pergola Improvement Work and the other Pergola Allowance Items relating to the same) or for any costs of Tenant’s furniture, fixtures, equipment or décor at the Premises, all of which shall be paid by Tenant, at Tenant’s sole cost and expense.

(ii) Disbursement. Promptly following completion of the Pergola Improvement Work, Tenant shall deliver to Landlord the following (collectively, a “**Pergola Allowance Request Packet**”): (A) a request for payment of Tenant’s contractor, approved by Tenant, in a form to be provided by Landlord; (B) invoices from all of Tenant's Agents (as defined in Section 4.2 of the Work Letter) for labor rendered and materials delivered to the Premises; (C) executed unconditional mechanic’s lien releases from all of Tenant’s Agents which shall comply with the appropriate provisions of California Civil Code Section 8136 and Section 8138; and (D) all other information reasonably requested by Landlord. Tenant’s request for payment shall be deemed Tenant’s acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant’s payment request. Thereafter, provided that Tenant is continuously operating its business at the Premises, subject to the terms and provisions of the Lease, Landlord shall pay to Tenant the lesser of (1) the amount so requested by Tenant (which, for avoidance of doubt, may not exceed fifty percent (50%) of the actual costs incurred by Tenant for the fabrication and installation of the Pergola and the other Pergola Allowance Items), and (2) the Pergola Allowance, provided that no unresolved dispute exists between Landlord and Tenant with respect to any request for payment based on material non-compliance of any work with any plans, specifications and drawings for the same approved by Landlord or due to any substandard work. Landlord’s payment of such amounts shall not be deemed Landlord’s approval or acceptance of the work furnished or materials supplied as set forth in Tenant’s payment request.

(iii) Other Terms. Landlord shall only be obligated to disburse the Pergola Allowance to the extent costs are actually incurred by Tenant for Pergola Allowance Items. Tenant acknowledges and agrees that Tenant is responsible for any costs associated with the construction of the Pergola above and beyond the Pergola Allowance and Tenant shall be required to first fund such excess prior to the commencement of Landlord's obligation to fund the Pergola Allowance and Landlord may require reasonable evidence that Tenant has funded such excess prior to Landlord’s disbursement of the Pergola Allowance. Tenant shall pay for all costs and expenses associated with the fabrication and installation of the Pergola when and as required by Tenant’s contractor (subject to Landlord’s payment of the Pergola Allowance when and as required under the terms of this Amendment). Subject to delays in the performance of the Pergola Improvement Work caused by Force Majeure Events, in no event shall Tenant be entitled to any payment or credit for any unused portion of the Pergola Allowance not used by Tenant prior to the first (1<sup>st</sup>) anniversary of the date of this Amendment (as evidenced by submission to Landlord of a Pergola Allowance Request Packet by such date).

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) Electronic Signatures; Counterparts. This Lease may be electronically signed pursuant to the terms of the ESIGN Act of 2000. The parties agree that any electronic signatures appearing on this Lease are the same as handwritten signatures for the purposes of validity, enforceability and admissibility and that such electronic signatures are legally binding. 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.

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

LANDLORD:

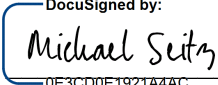
TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2024

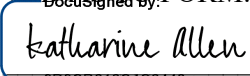
TENANT:

BAREBOTTLE BREWING COMPANY, INC.,  
a California corporation

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2024

APPROVED AS TO FORM.

By:  \_\_\_\_\_  
Legal counsel, TJPA

Transbay Joint Powers Authority Board of  
Directors

Resolution No.: \_\_\_\_\_

Adopted: \_\_\_\_\_

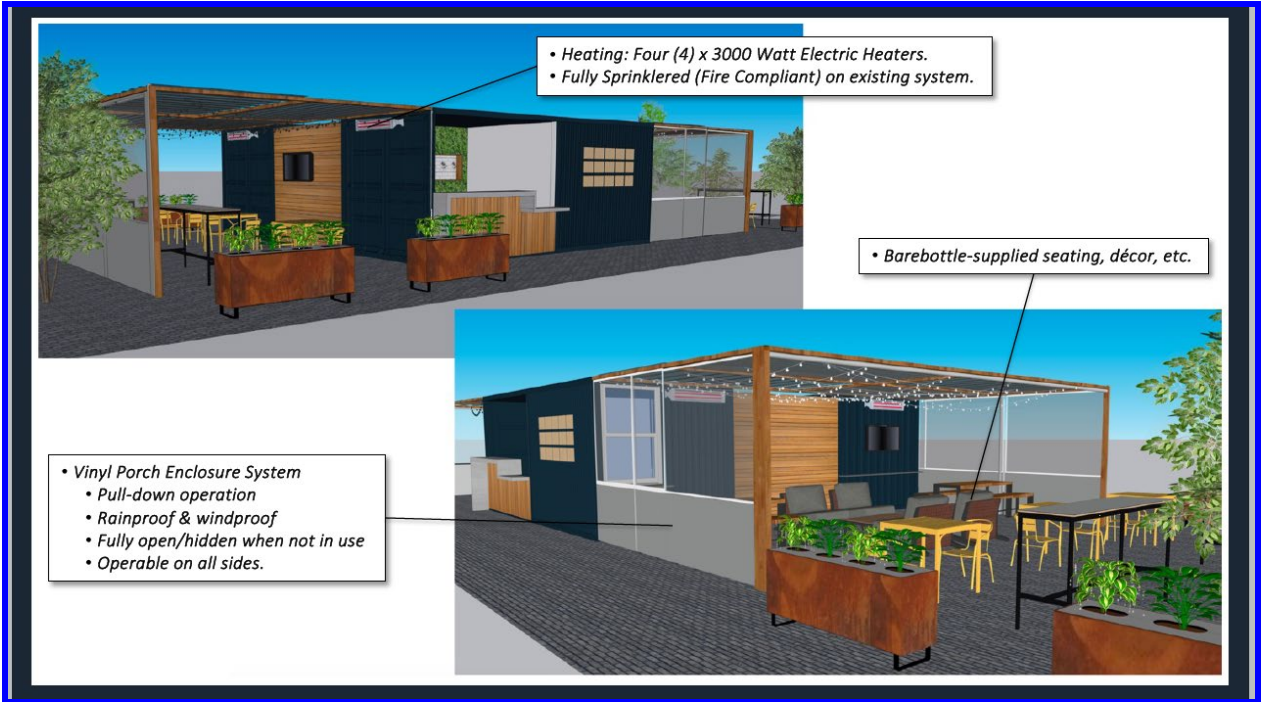
Attest: \_\_\_\_\_

Secretary, TJPA Board



Exhibit A

Layout of Pergola





### Rooftop Additions - Layout