

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.4
FOR THE MEETING OF: March 14, 2024**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a first amendment to the lease agreement with Barebottle Brewing Company, Inc., a California corporation, extending the base lease term and option term and adding a Tenant Improvement Allowance for commercial/retail space in the Grand Hall of the Transit Center (Space 147).

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 1,200 square feet of commercial/retail space in Salesforce Transit Center (Space 147) 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. At the time the Original Lease was approved, no base building improvements were contemplated by the TJPA.

Tenant Current Request to Amend Lease

After evaluating the space for build-out, Tenant recently approached TJPA staff and TJPA’s asset management team, Lincoln Property Company (LPC), seeking funding to add Base Building utility connections essential for providing services, extending the base term by five years (to 15 years total), and extending the option to extend the lease term by two years (to five years total). Additionally, TJPA staff added language to this amendment making it clear that the Barebottle kiosk may need to relocate within the Grand Hall, to accommodate space plan changes for The Portal (Downtown Rail Extension).

At the time the lease was originally approved, TJPA was aware that limited infrastructure (access to power, water, and sewer) would need to be provided by TJPA for the space; the work is Base Building improvements. Costs to add utility stub outs for water, sewer, and electrical are expected not to exceed \$80,000. Under the first amendment, Tenant would perform the work and be reimbursed an amount not to exceed \$80,000.

TJPA staff and Tenant negotiated a proposed form of First Amendment to the Lease (attached), which the Tenant has executed, describing the agreement to reimburse Tenant for the Base Building work (as a Tenant Improvement Allowance) in the amount of up to \$80,000. 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 the First Amendment to the Lease with Barebottle Brewing Company, Inc., consistent with the attached documents.

ENCLOSURES:

1. Resolution
2. First Amendment to Lease (Space 147)

**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 1,200 square feet of commercial/retail space in Salesforce Transit Center (Space 147) 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 that TJPA would complete certain Base Building improvements to benefit the lease space, but offered no Tenant Improvement Allowance; and

WHEREAS, As part of the construction process, and given the nature of the space, it is evident that an expenditure of up to \$80,000 is required for Tenant to access all the necessary utilities; and

WHEREAS, TJPA staff and Tenant negotiated a proposed form of First Amendment to the Lease (“First Amendment”), describing the agreement to provide Tenant a Tenant Improvement Allowance in the amount of up to \$80,000 to perform the required utility work; and

WHEREAS, The First 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 First Amendment to the Lease; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the First Amendment to the Lease with Barebottle Brewing Company, Inc. for Space 147, 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

FIRST AMENDMENT TO LEASE

THIS FIRST 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 “**Existing Lease**”), whereby Tenant leased from Landlord approximately 1,200 usable square feet of retail space (the “**Existing Premises**”) known as Space 147 located in the retail usage area on the first floor of the Salesforce Transit Center in San Francisco, California (the “**Center**”), all as more particularly described in the Existing Lease. Capitalized terms used by not defined herein have the meanings given such terms in the Existing Lease.

B. 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 in the Existing Lease, the “Expiration Date” specified in the Basic Lease Information of the Existing Lease is hereby amended to be the last day of the one hundred eightieth (180th) 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. Utility Connection Work. For avoidance of doubt, and notwithstanding anything to the contrary contained in the Existing Lease, pulling and connecting any required utilities to the Premises and any associated structural modifications and improvements depicted on Exhibit A attached hereto (collectively, the "**Utility Connection Work**") shall be completed by Tenant as part of the Tenant Improvements to be performed by Tenant in accordance with the terms and provisions of the Work Letter attached as Exhibit B to the Existing Lease (the "**Work Letter**") and, in consideration for Landlord's agreement to provide Tenant with the Improvement Allowance pursuant to Section 4 below, Tenant acknowledges and agrees that Landlord shall not have any obligation or responsibility to perform such Utility Connection Work. Tenant agrees to use commercially reasonable efforts to minimize any noise, vibration and/or other disturbances caused by the performance of the Utility Connection 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 Utility Connection Work. Landlord acknowledges that some minor noise, vibration and disturbance may be unavoidable in performing the Utility Connection 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. Improvement Allowance.

(a) General. Tenant shall be entitled to a one-time improvement allowance (the "**Improvement Allowance**") in amount not to exceed Eighty Thousand and No/100 Dollars (\$80,000.00) for the costs relating to the initial design and construction of the Utility Connection Work and for the other Improvement Allowance Items relating to the same described in Section 4(b)(i) below.

(b) Disbursement of the Improvement Allowance.

(i) Improvement Allowance Items. Except as otherwise set forth herein or in the Work Letter, the Improvement Allowance shall be disbursed by Landlord pursuant to the process set forth in Section 4(b)(ii) below for costs related to the construction of the Utility Connection Work and for the following items and costs relating to the same (collectively, the "**Improvement 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 the Construction Drawings (as defined in Section 3.1 of the Work Letter) insofar as the same relate to the Utility Connection Work; (B) the cost of permits and construction supervision fees relating to the Utility Connection Work; (C) the cost of any changes in the Base, Shell and Core required by the Construction Drawings in connection with the Utility Connection Work; and (D) the "Landlord Coordination Fee", as that term is defined in Section 4.3 of the Work Letter, attributable to the Utility

Installation Work. However, in no event shall more than Fifteen Thousand and No/100 Dollars (\$15,000.00) 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 Improvement Allowance may not be used for costs relating to any other Tenant Improvements or Alterations made by Tenant (other than the Utility Connection Work and the other Improvement 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 Tenant Improvements, Tenant shall deliver to Landlord the following (collectively, an "**Allowance Request Packet**"): (A) a request for payment of the Contractor (as defined in Section 4.1 of the Work Letter), 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 has opened for business in the Premises and 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, and (2) the Improvement 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 the Approved Working Drawings (as defined in Section 3.3 of the Work Letter) 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 Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items. All Utility Connection Work shall be deemed Landlord's property and shall be surrendered in place by Tenant along with the remainder of the Premises at the end of the Term, as may be extended; provided that Landlord shall have the right, upon written notice to Tenant, to require Tenant to remove all or any portion of the Utility Connection Work installed by Tenant above the floor of the Premises in which event Tenant shall remove the portion of the Utility Connection Work so requested by Landlord at the end of the Term, as may be extended, and repair any damage caused by such removal. If the total estimated cost of Improvement Allowance Items exceeds the Improvement Allowance, Tenant shall be required to first fund such excess prior to the commencement of Landlord's obligation to fund the Improvement Allowance and Landlord may require reasonable evidence that Tenant has funded such excess prior to Landlord's disbursement of the Improvement Allowance. Tenant shall pay for all costs and expenses associated with the Utility Connection Work when and as required by Tenant's Contractor (subject to Landlord's payment of the Improvement Allowance when and as required under the terms of this Work Letter). Subject to delays in the performance of the Tenant Improvements caused by Force Majeure Events, in no event shall Tenant be entitled to any payment or credit for any unused portion of the Improvement Allowance not used by Tenant prior to the first (1st) anniversary of the date of this Amendment (as evidenced by submission to Landlord of an Allowance Request Packet by such date).

6. Phase 2 Center Construction. Tenant acknowledges that, in connection with the commencement and performance of construction of Phase 2 of the Center, Landlord may need to adjust or move Tenant's existing retail kiosk located within the Premises (as applicable, the "**Phase 2 Relocation**") in order to accommodate an opening of the floor to install new escalators

for the Center. Landlord shall use reasonable efforts to provide Tenant with at least ninety (90) days' prior written notice of any such Phase 2 Relocation. Any such Phase 2 Relocation shall be performed by Landlord, at Landlord's sole cost and expense. Promptly following completion of construction of Phase 2 of the Center (or at such earlier time as Landlord determines, in its sole judgment, that access to the floor in connection with the same is no longer needed), Landlord shall, at Landlord's sole cost and expense, return Tenant's kiosk to their original location if possible, in Landlord's sole and absolute judgment, or if not Landlord shall place the same at such other location as is mutually agreed upon by Landlord and Tenant in good faith.

7. 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.

Remainder of page intentionally left blank.

Signatures on following page.

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

LANDLORD:

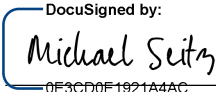
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2024

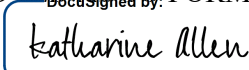
TENANT:

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.: _____

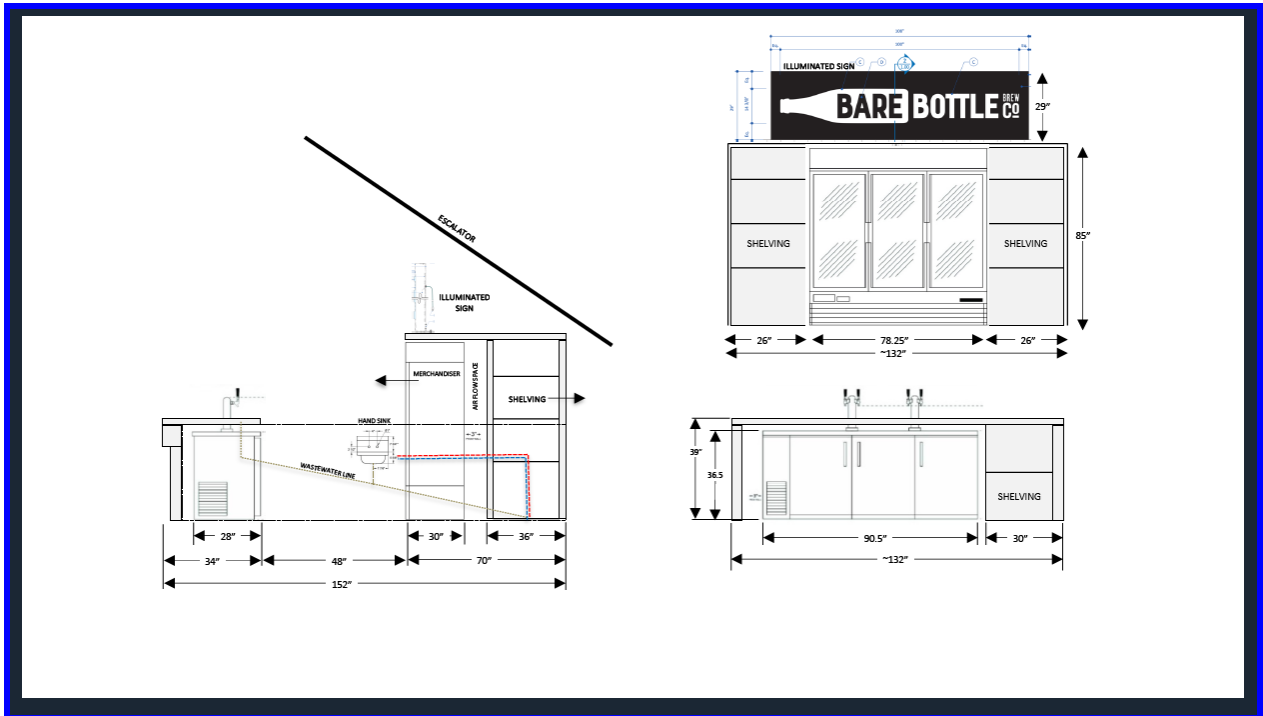
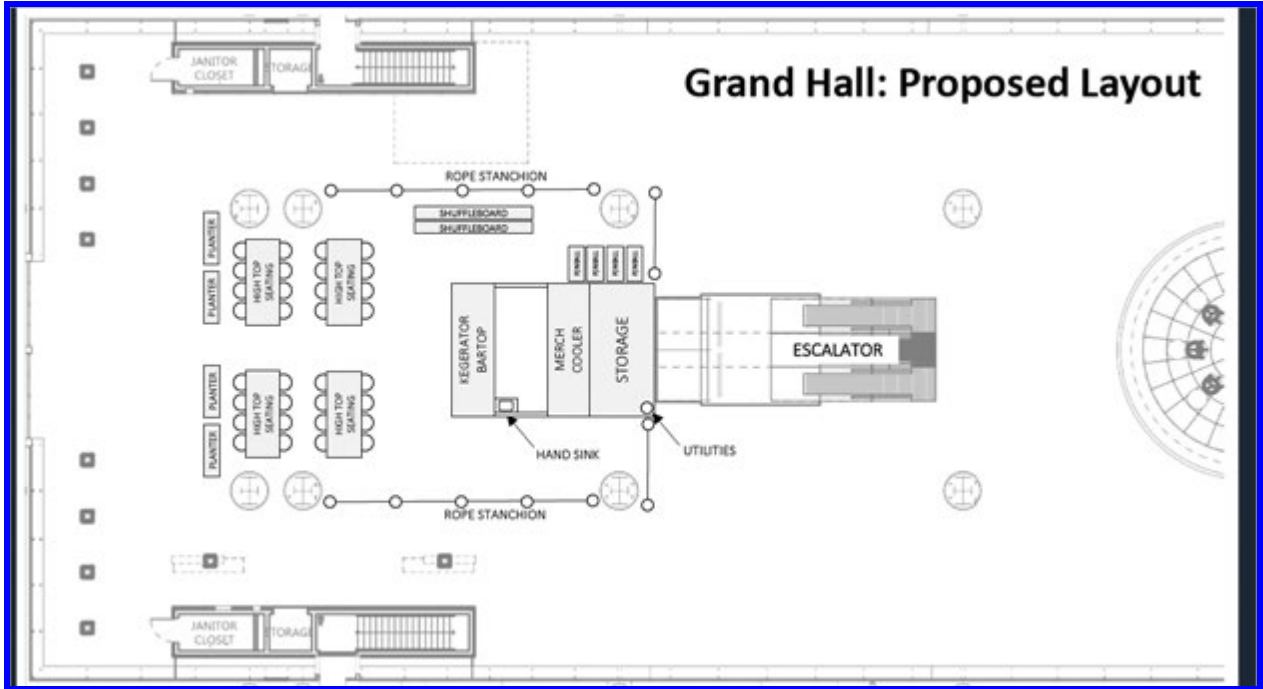
Adopted: _____

Attest: _____

Secretary, TJPA Board

EXHIBIT A

UTILITY CONNECTION WORK



Grand Hall: Proposed Additions

