

STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: July 17, 2024

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Third Amendment to the lease agreement with Ugochukwu Ihenacho and Carlynn Ihenacho, husband and wife, dba Charleys Philly Steaks, for commercial/retail space on the ground 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. 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. On August 10, 2023, the TJPA Board authorized an extension of six months, through December 31, 2023, as contemplated under the First Amendment.

On December 14, 2023, the TJPA Board authorized a Second Amendment to the Lease. Under the Second Amendment, for the period from January 1, 2024 until June 30, 2024, 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.

Tenant Current Request for Continued Relief

Tenant recently approached TJPA staff and TJPA's asset management team, LPC, seeking a further extension of economic relief.

Staff have been monitoring tenant's revenues, transit ridership and commercial business activity in the 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 proposed Third Amendment to the Lease is consistent with the commercial leasing market.

As a result of that due diligence review and negotiations, a proposed Third Amendment to the Lease has been developed and executed by the Tenant, enclosed herewith. Under the negotiated Third Amendment to Lease:

- The Alternative Rent remains \$2,000 per month from July 1, 2024 to no later than December 31, 2024.
- The Percentage Rent component of the Alternative Rent shall remain at 6% of gross revenues.

The fiscal impact of approving the Third Amendment for the period January 1, 2024 to June 30, 2024 is estimated at \$52,185 when comparing the projected Third Amendment revenue versus the original lease revenue during the six-month timeframe. The Fiscal Year 24-25 Budget contemplated the continuation of rent relief. 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 reflects current market conditions for downtown San Francisco recovery.

RECOMMENDATION:

Authorize the Executive Director to execute the Third Amendment to the Lease with Charleys Philly Steaks adjusting the terms and conditions of the Lease.

ENCLOSURE:

1. Resolution
2. Third 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; and

WHEREAS, On May 12, 2022, the TJPA Board approved a First Amendment to Lease that, among other things, provided economic relief to Tenant; and

WHEREAS, On August 10, 2023, the TJPA Board authorized an extension of the economic relief for an additional six months, as contemplated under the First Amendment; and

WHEREAS, On December 14, 2023, the TJPA Board approved a Second Amendment to Lease that, among other things, provided economic relief to Tenant; and

WHEREAS, Tenant requested additional relief from its obligations under the Lease, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a Third Amendment to the Lease that provides certain economic relief to Tenant in the form of an extended period of the alternative rent schedule; 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 additional relief under the 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 Year 24-25 Budget contemplated the continuation of rent relief; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Third Amendment to Lease 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 Ugochukwu Ihenacho and Carlynn Ihenacho, husband and wife, dba Charleys Philly Steaks for Suite 139 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 July 17, 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 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, as amended by that certain First Amendment to Lease (the “**First Amendment**”) dated May 12, 2022 and that certain Second Amendment to Lease (the “**Second Amendment**”) dated December 14, 2023 (as so amended and, 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. Pursuant to the First Amendment and the Second Amendment, Landlord previously agreed to make certain adjustments to the Rent payable by Tenant under the Lease as a result of the unprecedented circumstances surrounding the COVID-19 pandemic.

C. Due to the continuation of the COVID-19 pandemic, Tenant has requested additional adjustments to the Rent payable by Tenant under the Lease and Landlord has agreed to make further 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.

D. The parties acknowledge that this Amendment has been entered into at the request of Tenant as a result of the continuation 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 July 1, 2024 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) December 31, 2024 (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 June 30, 2025 by providing written notice of such request to Landlord on or before November 1, 2024; 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 June 30, 2025 as opposed to December 31, 2024.

(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 lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Existing Lease, during 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 including June 2024 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. 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.

4. 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: _____, 2024

TENANT:

DocuSigned by:

79355AF8DCE047C

UGOCHUKWU IHENACHO

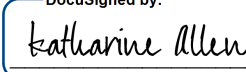
DocuSigned by:

38F1A3092E7D48F

CARLYNN IHENACHO

Date: 5/21/2024 | 8:44 AM PDT
_____, 2024

APPROVED AS TO FORM.

By: 
9D9CD616C4C6440

Legal counsel, TJPA

Transbay Joint Powers Authority Board of Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board