

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.4
FOR THE MEETING OF: March 9, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a second amendment to the lease agreement with Barebottle Brewing Company, Inc., a California corporation, for an additional 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 complete negotiations and 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.

Tenant Prior Request to Amend 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 ("First Amendment"; the Original Lease and First Amendment together, the "Lease"), granting Tenant an additional Tenant Improvement Allowance in the amount of \$117,185 (for a total allowance of \$502,185).

Tenant Current Request to Amend Lease

In the course of performing the tenant improvement work, unanticipated conditions required additional scope and additional budget in the amount of \$62,887. TJPA staff and Tenant negotiated a proposed form of second amendment to the Lease (attached), describing the agreement to provide Tenant an additional Tenant Improvement Allowance in the amount of \$62,887 (for a total allowance of \$565,072). The fiscal impact can be accommodated from contingency within the overall Tenant Improvement budget and the adopted Fiscal Year 22-23 budget.

RECOMMENDATION:

Authorize the Executive Director to execute a second lease amendment with Barebottle Brewing Company, Inc., consistent with the attached documents.

ENCLOSURES:

1. Resolution
2. Second Amendment to Lease

**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 finalize negotiations and 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, As part of the construction process, and given the unique nature of the space and build type, it became evident that an additional expenditure of \$117,185 would be required for Tenant to access all the necessary utilities; 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 \$117,185; and

WHEREAS, In the course of performing the tenant improvement work, unanticipated conditions required additional scope and additional budget in the amount of \$62,887; and

WHEREAS, TJPA staff and Tenant negotiated a proposed form of second amendment to the Lease (“Second Amendment”), describing the agreement to provide Tenant an additional Tenant Improvement Allowance in the amount of \$62,887 (for a total allowance of \$565,072); 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 authorizes the Executive Director to execute the Second Amendment to the Lease with Barebottle Brewing Company, Inc., 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 9, 2023.

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 _____, 2023, 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 that certain First Amendment to Lease dated as of _____, 2022 (together with all exhibits and addenda attached thereto, the “**First 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, 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. Pursuant to the First Amendment, Tenant agreed to assume responsibility for the completion of the Utility Connection Work as part of the Tenant Improvements to be performed by Tenant under the Lease in consideration for Landlord’s agreement to provide Tenant with the Additional Improvement Allowance provided under Section 2 of the First Amendment.

C. In the course of performing the Utility Connection Work, it became evident that the preexisting utility conduits were not usable and that upgrades were needed to the mass notification system. A new fire sprinkler line also needed to be cored through the concrete structure of the Center and run to the park level in order for Tenant to complete the Utility Connection Work. All of the foregoing (collectively, the “**Unanticipated Utility Connection Work**”) resulted in the cost to complete the Utility Connection Work exceeding the initial estimates of the parties.

D. Accordingly, Landlord and Tenant now 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. Additional Improvement Allowance and Disbursements.

(a) Additional Improvement Allowance. Notwithstanding anything to the contrary contained in the Existing Lease, the Additional Improvement Allowance provided for under Section 2 of the First Amendment shall be increased to One Hundred Eighty Thousand Seventy-Two and No/100 Dollars (\$180,072.00). The additional Sixty-Two Thousand Eight Hundred Eighty-Seven and No/100 Dollars (\$62,887.00) provided as part of the Additional Improvement Allowance pursuant to the foregoing sentence (as applicable, the “**Increase Amount**”) shall be used for the costs relating to the initial design and construction of the Unanticipated Utility Connection Work and for the other Improvement Allowance Items relating to the same described in Section 2.2 of the Work Letter attached as Exhibit B to the Original Lease.

(b) Disbursement of the Additional Improvement Allowance.

(i) Landlord and Tenant acknowledge that Tenant has submitted an Allowance Request Packet with respect to the Utility Connection Work (excluding the Unanticipated Utility Connection Work) in accordance with Section 2.2.1 of the Work Letter attached as Exhibit B to the Original Lease (the “**Initial Allowance Request Packet**”). All amounts to be paid by Landlord to Tenant in connection with the Initial Allowance Request Packet will be paid in accordance with, and subject to the terms of, Section 2(b) of the First Amendment, without regard to the Increase Amount.

(ii) Promptly following the full execution and delivery of this Amendment, Tenant shall deliver to Landlord an additional Allowance Request Packet in accordance with Section 2.2.1 of the Work Letter attached as Exhibit B to the Original Lease with respect to the Unanticipated Utility Connection Work (the “**Additional Allowance Request Packet**”). Following Tenant’s delivery to Landlord of the Additional Allowance Request Packet, 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 deliver a check to Tenant in payment of the lesser of (i) the amounts so requested by Tenant, and (ii) the Increase Amount, provided that Landlord does not dispute any request for payment based on non-compliance of any work with the Approved Working Drawings, or due to any substandard work, or for any other reason. 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. Notwithstanding anything to the contrary contained in the Lease, the provisions of Section 2(b) of the First Amendment requiring Tenant to look first to the Additional Improvement Allowance for reimbursement of Improvement Allowance Items relating to the initial design and construction of the Tenant Improvements (including but not limited to the Utility Connection Work and the Unanticipated Utility Connection Work but excluding any Dedicated Restrooms, the cost of which, if applicable, is to be paid for using the Dedicated Restrooms Allowance) and second to the Improvement Allowance provided under Section 2.1.2 of the Work Letter attached as Exhibit B to the Original Lease for reimbursement of such Improvement Allowance Items in excess of the amount of the remaining available portion of the Additional Improvement Allowance (as increased hereby), subject to the limitations on the same set forth in Section 2.1.2 of the Work Letter attached as Exhibit B to the Original Lease shall continue to apply notwithstanding the increase of the Additional

Improvement Allowance by the Increase Amount as provided hereunder. In no event shall Landlord be obligated to make actual disbursements or payments pursuant to this Amendment or any other provision of the Lease in a total amount which exceeds the Additional Improvement Allowance as so increased hereunder (it being acknowledged that the Allowances currently provided under Section 2.1 of the Work Letter attached as Exhibit B to the Existing Lease are paid, if at all, by virtue of the reduction in the Percentage Rate otherwise applicable under Lease as expressly provided in Section 2.2.1 of the Work Letter attached as Exhibit B to the Existing Lease) and in no event shall Tenant be entitled to any credit for any unused portion of the Additional Improvement Allowance as so increased hereunder not used by Tenant prior to the first (1st) anniversary of the Commencement Date (as evidenced by submission to Landlord of one or more Allowance Request Packets by such date).

3. 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: _____, 2023

TENANT:

BAREBOTTLE BREWING COMPANY, INC.,
a California corporation

By:  _____
Name: _____
Its: _____

Date: 2/1/2023 | 11:08 AM PST, 2023

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA