

STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: September 14, 2023

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a third amendment to the lease agreement with Venga, Inc. (dba Venga Empanadas) for commercial/retail space in suite 123 on the first floor of the transit center.

EXPLANATION:

Original Lease

Consistent with the TJPA Board retail/commercial leasing policy, adopted October 12, 2017, the Executive Director negotiated and executed a lease agreement with Venga, Inc. (Venga Empanadas) for about 691 square feet of commercial/retail space on the ground level of the new transit center (suite 123) for a 10-year term with one five-year option to renew. The lease was fully executed on August 28, 2018 (“Lease”). The initial year stated base rent of the Lease is \$65,645 (\$95 per square foot/year), expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent increases pursuant to the schedule contained in the Lease. The TJPA’s tenant improvement allowance was \$58,735 (\$85 per square foot). The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant Prior Requests for Relief

As a result of COVID-19, Tenant requested certain relief from their 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 the Tenant. Due diligence included, among other things, confirmation of Tenant’ assertions that Tenant did not receive assistance through the Small Business Administration, nor from the Payroll Protection Program (“PPP”).

On May 13, 2021, the TJPA Board of Directors authorized a First Amendment to the Lease. The key terms and conditions of the First Amendment were:

- Rental obligation of \$2,000 per month plus percentage rent equal to 8% of gross revenues until such time as the soonest to occur of (i) Base Rent is equaled or exceeded, (ii) June 30, 2022, and (iii) upon a positive net office absorption within the financial district of San Francisco (as further defined in the Amendment);
- Alternative Rent could be extended beyond June 30, 2022, with timely request from tenant and subject to TJPA Board of Directors approval in its discretion;

- Increase in Tenant Improvement Allowance to approximately \$258,735 (\$374 per square foot).

On August 8, 2022, the TJPA extended the Alternative Rent through December 31, 2022.

Tenant approached TJPA about further economic relief under its Lease. On March 9, 2023, the TJPA Board authorized a Second Amendment to the Lease. Under the Second Amendment to Lease:

- The Alternate Rent was \$2,000 per month from January 1, 2023 to June 30, 2023.
- The Percentage Rent was increased from 8% of gross revenues to 8.5% of gross revenues.

Tenant Current Request for Relief

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 of 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 at LPC seeking a further extension of economic relief.

The TJPA team again engaged in a due diligence review and negotiations with the Tenant. Due diligence included consultations with our brokerage firm as well as other brokers as to status of market conditions and overall foot traffic in downtown San Francisco.

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 Third Amendment to Lease:

- The Alternative Rent remains \$2,000 per month from July 1, 2023 to December 31, 2023. Alternative Rent could be extended beyond December 31, 2023, with timely request from tenant and subject to TJPA Board of Directors approval in its discretion;
- The Percentage Rent remains 8.5% of gross revenues.

The fiscal impact of approving this Third Amendment for the period July 1 – December 31, 2023 is estimated at \$18,267. The impact was factored into the FY23-24 Budget. 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 the Third Amendment is similar to the relief the TJPA has granted other tenants materially affected by market conditions arising after COVID-19 and reflect current market conditions for downtown San Francisco recovery.

RECOMMENDATION:

Authorize the Executive Director to execute the Third Amendment to the Lease with Venga, Inc. as presented herein, adjusting terms and conditions of the lease.

ENCLOSURES:

1. Resolution
2. Third Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, Consistent with the TJPA Board retail/commercial leasing policy, adopted October 12, 2017, the TJPA's Executive Director negotiated and executed a lease agreement with Venga, Inc. (Venga Empanadas) ("Tenant") for about 691 square feet of commercial/retail space on the ground level of the new transit center (Suite 123) for a 10-year term with one five-year option to renew. A lease was fully executed on August 28, 2018 ("Lease"); 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 ("SIP") Order to facilitate the reduction of the impact of the virus that causes coronavirus disease 2019 ("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 13, 2021, the TJPA Board of Directors authorized a First Amendment to the Lease, providing certain economic relief to Tenant; and

WHEREAS, On August 8, 2022, TJPA accepted an extension of the economic relief for an additional six months, as contemplated under the First Amendment; and

WHEREAS, On March 9, 2023, the TJPA Board of Directors authorized a Second Amendment to the Lease, providing certain economic relief to Tenant; and

WHEREAS, Tenant and the TJPA have negotiated a Third Amendment to the Lease that provides 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 has requested additional relief from its obligations under the lease, after which negotiations with Tenant ensued; 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 budget for Fiscal Year 2023-2024 assumed the fiscal impact of accepting this Third Amendment; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Third Amendment to be 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 the Lease with Venga, Inc. for Suite 123 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 September 14, 2023.

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 September, 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 VENGA, INC., a California corporation, dba Venga Empanadas (“**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 August 23, 2018 (together with all exhibits and addenda attached thereto, the “**Original Lease**”), as amended by that certain First Amendment to Lease dated May 13, 2021 and that certain Second Amendment to Lease dated March 9, 2023 (the “**Second Amendment**”), whereby Tenant leased from Landlord approximately 691 usable square feet of retail space (the “**Premises**”) known as Space Number 123, located in the retail usage area on the ground floor of the Salesforce Transit Center in San Francisco, California (the “**Center**”). 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 specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Pursuant to the Second Amendment, Landlord agreed, among other matters, to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified thereto (as applicable, the “**Second Amendment Alternative Rent Period**”) on account of the unprecedented circumstances surrounding the COVID-19 pandemic. The Second Amendment Alternative Rent Period ended on June 30, 2023.

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

D. Landlord has agreed to make certain additional adjustments to the Rent payable by Tenant under the Lease, and to otherwise amend the Existing Lease, all on and subject to the terms and conditions set forth in this Amendment.

E. 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.** Notwithstanding anything to the contrary contained in the Existing Lease, during the period (the “**Alternative Rent Period**”) commencing on July 1, 2023 and ending on the earlier of (A) the last day of the month immediately preceding the Threshold Rent Reversion Month (as defined in Section 2(b) below), and (B) December 31, 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. If the Threshold 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, 2024 by providing written notice of such request to Landlord on or before November 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 set forth in clause (B) above shall be June 30, 2024 as opposed to December 31, 2023. 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.

(ii) **Alternative Rent.**

(A) **Expense Contribution.** Notwithstanding anything to the contrary contained in the Existing Lease, during the Alternative Rent Period, Tenant shall pay to Landlord Tenant’s Monthly Expense Contribution (as hereinafter defined) as Tenant’s contribution towards costs relating to the operation, maintenance, repair and replacement of the Center. As used herein, “**Tenant’s Monthly Expense Contribution**” shall mean an amount equal Two Thousand and No/100 Dollars (\$2,000.00) per month. Tenant’s Monthly Expense Contribution 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, including but not limited to Section 2(c) of the Existing Lease, in addition to the payment of Tenant’s Monthly Expense Contribution and in lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Existing Lease, commencing on July 1, 2023 and for each month thereafter during the Alternative Rent Period,

Tenant shall 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 eight and one-half percent (8.5%) 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 Tenant’s Monthly Expense Contribution and Alternative Percentage Rent.

(b) Reversion to Base Rent. Notwithstanding anything to the contrary contained in Section 2(a) above, if the Alternative Rent provided for under this Amendment for any month from and after June 2023 through and including the month in which the Alternative Rent Period Outside Expiration Date occurs equals or exceeds the amount of 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 “**Threshold 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 Tenant’s Monthly Expense Contribution or Alternative Percentage Rent for the Threshold Rent Reversion Month or for any month thereafter. If Tenant has already paid Tenant’s Monthly Expense Contribution for the Threshold Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Threshold Rent Reversion Month and Tenant’s Monthly Expense Contribution within ten (10) days following the last day of the Threshold 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 (as the same may be extended in accordance with Section 2(a)(i) above), 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 the sum of Two Thousand and No/100 Dollars (\$2,000.00) plus eight and one-half percent (8.5%) 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.

(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: _____, 2023

TENANT:

VENGA, INC.,
a California corporation

By: _____
Name: _____
Its: _____

DocuSigned by:
Pablo Romano
55BE61E27368405...

Date: _____, 2023

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

DocuSigned by:
katharine allen
9D9CD616C4C6440...

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

The undersigned Guarantor hereby acknowledges and consents to the terms, conditions and provisions of this Amendment and the transactions contemplated thereby. Guarantor hereby ratifies and reaffirms the full force and effectiveness of the Guaranty and hereby confirms the continuing obligations of Guarantor under the Guaranty.

GUARANTOR:

Pablo Romano

DocuSigned by:

Pablo Romano

55BE61E27368405...

Date: _____, 2023