

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: July 14, 2022**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute second amendments to the lease agreements with Philz Coffee, Inc. for commercial/retail space on the first floor of the transit center (Suites 100 and 143), consistent with the previously adopted Retail/Commercial Leasing Strategy to Address COVID-19 Impacts to tenancies.

EXPLANATION:

Background

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 issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes COVID-19. 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”).

On June 25, 2020, the TJPA Board adopted a Retail/Commercial Leasing Strategy to Address COVID-19 Impacts (“Strategy”), providing staff with guidance on appropriate considerations for potential lease amendments of tenancies claiming to have been directly or indirectly affected by COVID-19 and the associated Health Orders. The Strategy provides, among other things, that “... retail/commercial tenants that made or make substantial changes in operations as a result of the Original Order or Subsequent Orders, may be eligible for partial rent relief or other concessions for the period from the effective date of such Order...”

As of the date of this report, San Francisco has made significant strides to re-open the economy but certain of the Health Orders remain in effect. While the Orders allow resumption of most activity, economic ramifications in downtown San Francisco remain of concern, mainly resulting from a delayed return for 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 remains less than one-third of pre-pandemic levels.

Original Leases

The Executive Director was authorized to execute a lease agreement with Philz Coffee, Inc. (“Tenant”) for about 1,041 square feet of commercial/retail space on the first level of the new transit center (Suite 143) for a ten-year term with two five-year options to renew at full market value, consistent with the TJPA Board authorization of the Retail Leasing Policy on October 12,

2017. The lease is dated as of September 10, 2018 (“Suite 143 Lease”). The initial year stated base rent of the Suite 143 Lease is \$156,150, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent increases 3% annually. The TJPA’s tenant improvement allowance was \$104,100 (\$100 per square foot). Tenant invested \$920,332 into their tenant improvements. The tenant improvement allowance has not yet been provided to Tenant. The business terms under the Lease were within or more favorable than the proforma for the premises.

On July 12, 2018, the TJPA Board authorized the Executive Director to complete negotiations and execute a lease agreement with Tenant for about 2,157 square feet of commercial/retail space on the first level of the new transit center (Suite 100) for a ten-year term with two five-year options to renew at full market value. The lease is dated as of September 25, 2018 (“Suite 100 Lease”). The initial year stated base rent of the Suite 100 Lease is \$161,775, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent increases 3% annually. The TJPA’s tenant improvement allowance was \$215,700 (\$100 per square foot). Tenant invested \$1,391,030 into their tenant improvements. The tenant improvement allowance has not yet been provided to Tenant. The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant opened both locations for business on March 11, 2020, following completion of tenant improvements. The SIP Order occurred just five days later. Tenant re-opened their mobile location (Suite 143 Lease) briefly during April for a two-week period of time. Tenant found that experience to be financially infeasible, and re-closed suite 143. Tenant re-opened suite 100 on October 1, 2021, at a reduced schedule and then in early November 2021 they went to their permanent schedule of being open 7 days a week.

Tenant Prior Request for Relief

As a result of COVID-19, Tenant requested relief from its obligations under the Suite 143 Lease and Suite 100 Lease (together, the “Leases”). Consistent with the Board’s Strategy, TJPA staff, with the assistance of Lincoln Property, Colliers, and retail legal counsel, engaged due diligence review and negotiations with the Tenant. Due diligence included, among other things, confirmation of Tenant’s assertion that Tenant did not receive assistance through the Small Business Administration or Payroll Protection Program.

On December 10, 2020, the TJPA Board of Directors authorized amendments to the Leases, and on that same day the TJPA and Tenant entered First Amendments to the Leases (together, “First Amendments”). The key terms and conditions of the First Amendments were:

- Suspension of rent for ½ of March and all of April through July 2020;
- Tenant’s rental obligation was a common area base fee of \$2,000/month/location plus percentage rent equal to 6% of gross revenues for the period from August 1, 2020 until June 30, 2021, unless explicitly extended by the Board, and if so, to no later than December 31, 2021;

- Outstanding Tenant Improvement Allowance owed by TJPA to Tenant at each location was planned to be remitted to Tenant in quarterly installments beginning December 31, 2020, rather than lump sum;
- The 4.5 months of suspended rent period was deferred through an extension of the initial term by 4.5 months.

On May 13, 2021, the TJPA Board of Directors approved an extension of the above-described relief program through December 31, 2021.

Tenant Current Request for Continued Relief in 2022

Tenant recently approached TJPA staff and TJPA's asset management team at Lincoln Property seeking a further extension of economic relief.

Consistent with the Board's Strategy, the TJPA team again engaged due diligence review and negotiations with Tenant. Due diligence included, among other things, a review of Tenant's gross revenue, and consultations with TJPA's brokerage firm as well as other brokers as to status of market conditions. Gross revenue reports provided to TJPA by Tenant do reflect an increase of sales since they've opened however, they show payment of full contract rent at this time as economically infeasible.

As a result of that due diligence review and negotiations, proposed Second Amendments to the Leases ("Second Amendments") have been developed and executed by Tenant, enclosed herewith. Under the negotiated Second Amendments to the Leases:

- Alternative Rent will be applied from January 1, 2022 to June 30, 2023, with a possibility of extending to December 31, 2023.
- Tenant's base rental obligation for Suite 100 (as a common area base fee) shall be \$5,250/month and percentage rent shall be 5% of gross revenues if sales hit \$1,000,000. Tenant's base rental obligation for Suite 143 (as a common area base fee) shall be \$3,000/month and percentage rent shall be 5% of gross revenues if sales hit \$600,000.
- Rent would revert to Base Rent under the original terms of the Leases if Tenant achieves certain economic thresholds.
- Fifty percent of outstanding Tenant Improvement Allowance owed by TJPA to Tenant for Suite 100 shall be remitted by August 15, 2022, twenty-five percent shall be remitted by September 20, 2022 and twenty-five percent shall be remitted by December 15, 2022. Once Suite 143 has been opened for three consecutive months, the outstanding Tenant Improvement Allowance owed by TJPA shall be remitted in installments of twenty-five percent quarter.
- In order to recover some of the relief, both lease terms are extended by four and a half months.

The value of approving these Second Amendments is estimated at \$148,162.50 for Suite 100 and \$180,225 for Suite 143 (for the period January 1, 2022 through June 30, 2023). The fiscal impact of approving the Second Amendments has already been accommodated in the 2022-2023

fiscal year's budget. The form of relief proposed under the Second Amendments is similar to the relief the TJPA has granted other tenants materially affected by COVID-19.

RECOMMENDATION:

Authorize the Executive Director to execute the Second Amendments to the Leases with Philz Coffee, adjusting the terms and conditions of the Leases as presented herein though June 30, 2023.

ENCLOSURE:

1. Resolution
2. Second Amendments to Leases

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On July 12, 2018, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA's Executive Director to finalize negotiations and execute a lease agreement with Philz Coffee, Inc. ("Tenant") for about 2,157 square feet of commercial/retail space on the first level of the new transit center (Suite 100) for a 10-year term with two five-year options to renew at full market value ("Suite 100 Lease"); and

WHEREAS, The TJPA's Executive Director was authorized to execute a lease agreement with Tenant for about 1,041 square feet of commercial/retail space on the first level of the new transit center (Suite 143) for a ten-year term with two five-year options to renew at full market value, consistent with the TJPA Board of Directors authorization of the Retail Leasing Policy on October 12, 2017 ("Suite 143 Lease" and, with the Suite 100 Lease", the "Leases"); and

WHEREAS, Tenant occupied the Suite 100 Lease and Suite 143 Lease premises and opened for business on March 11, 2020; 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 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; and

WHEREAS, 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, TJPA staff have received requests from retail/commercial tenants for financial relief from direct or indirect impacts on their business from the Health Orders; and

WHEREAS, On June 25, 2020, the TJPA Board of Directors adopted a Retail/Commercial Leasing Strategy ("Strategy") to respond to COVID-19 impacts to tenancies; and

WHEREAS, As a result of COVID-19 and associated closures of non-essential office buildings, including associated delayed re-occupancy of downtown office buildings and temporary but substantive reduction in transit passenger use of the transit center, Tenant requested relief from certain of its obligations under the Leases; and

WHEREAS, On December 10, 2020, the TJPA Board of Directors authorized first amendments to the Leases (together, “First Amendments”) providing certain economic relief to Tenant; and

WHEREAS, On May 13, 2021, the TJPA Board of Directors approved an extension of the First Amendments to December 31, 2021; and

WHEREAS, As a result of COVID-19 and continued market depression, Tenant has submitted a request for further rent relief, after which negotiations with Tenant ensued; and

WHEREAS, TJPA and Tenant have negotiated further amendments to the Leases (together, “Second Amendments”) with Tenant consistent with the Strategy, the form of which are presented herewith, and Tenant has executed the Second Amendments; 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 2022-2023 accommodates the fiscal impact of accepting these Second Amendments to the Leases; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the proposed Second Amendments to be consistent with the adopted Strategy and thus 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 Second Amendments to the Suite 100 Lease and the Suite 143 Lease 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 14, 2022.

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 _____, 2022, 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 PHILZ COFFEE, INC., a Delaware corporation, dba Philz Coffee (“**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 10, 2018, as amended by that certain First Amendment to Lease (the “**First Amendment**”) dated December 10, 2020 (as so amended and together with all exhibits and addenda attached thereto, the “**Existing Lease**”), whereby Tenant leased from Landlord approximately 2,157 usable square feet of retail space (the “**Premises**”) known as Space Number 100, located in the retail usage area on the ground level 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, Landlord agreed to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified therein (as applicable, the “**First Amendment Alternative Rent Period**”) on account of Tenant having had to limit operations in its retail food and beverage establishment at the Premises due to the COVID-19 pandemic. The First Amendment Alternative Rent Period ended on December 31, 2021.

C. Due to the continuation of the COVID-19 pandemic, Tenant has requested additional rent abatement from Landlord.

D. Landlord has agreed to continue to abate Base Rent due under the Lease as provided below, to make certain other 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 Second Amendment.

E. The parties acknowledge that this Second Amendment has been entered into at the request of Tenant as a result 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 adjustment to the Base 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 Second Amendment or in the Existing Lease shall mean, collectively, this Second Amendment and the Existing Lease, as amended by this Second 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 January 1, 2022 and ending on the earlier of (A) the last day of the month immediately preceding the Rent Reversion Month (as defined in Section 2(b) below) and (B) June 30, 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 Rent Reversion Month has not then occurred, Tenant may request an extension of the Alternative Rent Period Outside Expiration Date set forth in clause (B) above to December 31, 2023 by providing written notice of such request to Landlord on or before May 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, (1) notwithstanding anything to the contrary contained herein, the Alternative Rent Period Outside Expiration Date set forth in clause (B) above shall be December 31, 2023 as opposed to June 30, 2023. Tenant acknowledges and agrees that 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 an amount equal Five Thousand Two Hundred Fifty and No/100 Dollars (\$5,250.00) per month (“**Tenant’s Monthly Expense Contribution**”) as Tenant’s contribution towards costs relating to the operation, maintenance, repair and replacement of the Center. 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, Tenant shall pay to Landlord “**Alternative Percentage Rent**” during the Alternative Rent Period at the times and in the manner provided under this Section 2(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period shall be calculated by multiplying the amount by which Tenant’s Gross Sales for such month exceeds the Alternative Rent Breakpoint (as defined

below) by five percent (5%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within twenty (20) days after the end of each month for which the same is due. As used herein, the “**Alternative Rent Breakpoint**” shall mean an amount equal to One Million and No/100 Dollars (\$1,000,000.00). 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 Statements 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 an amount equal to five percent (5%) of Tenant’s Gross Sales above the Alternative Rent Breakpoint for any four (4) consecutive months commencing with January of 2022 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 “**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 Rent Reversion Month or for any month thereafter. If Tenant has already paid Tenant’s Monthly Expense Contribution for the Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Rent Reversion Month and Tenant’s Monthly Expense Contribution within twenty (20) days following the last day of the 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 five percent (5%) of Tenant’s Gross Sales above the Alternative Rent Breakpoint 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, unless extended per Section 2(a)(i) above.

3. Payment of Improvement Allowance. Section 3 of the First Amendment is hereby deleted in its entirety.

(a) Installment Payments. Notwithstanding anything to the contrary contained in the Lease, provided that Tenant has provided a Disbursement Request Packet in accordance with Section 2.2.1 of the Work Letter attached to the Existing Lease as Exhibit B and that Tenant is not then in default under the Lease, Landlord shall pay the Disbursement Amount to Tenant in three (3) installments (each an “**Installment Payment**”) as follows: (i) fifty percent (50%) of such Disbursement Amount shall be paid to Tenant on or before July 15, 2022; (ii) twenty-five percent (25%) of such Disbursement Amount shall be paid to Tenant on or before

September 20, 2022; and (iii) the remaining twenty-five percent (25%) of such Disbursement Amount shall be paid to Tenant on or before December 15, 2022.

(b) Offset Right. Section 2.2.2 of the Work Letter attached to the Existing Lease as Exhibit B is hereby deleted in its entirety. In the event that Landlord fails to pay any Installment Payment as provided in Section 3(b) above within ninety (90) days following the last day of the calendar month in which such Installment Payment was due, then Tenant, as Tenant's sole and exclusive remedy as a result of such failure, shall have the right to offset the Installment Payment owed to Tenant hereunder against the Alternative Rent (or, if applicable, the Base Rent) thereafter due from Tenant under the Lease as the same becomes due until Tenant has received the full amount of the Installment Payment owed to Tenant hereunder by virtue of such offset or by payment thereof by Landlord to Tenant or by a combination of the foregoing. Notwithstanding anything to the contrary contained herein, (a) Tenant's right to offset the any Installment Payment owed to Tenant hereunder against Alternative Rent (or, if applicable, the Base Rent) pursuant to the foregoing sentence is expressly conditioned upon Tenant not being in default under the Lease and (b) Tenant shall have no right to offset any Installment Payment owed to Tenant hereunder against Alternative Rent (or, if applicable, the Base Rent) pursuant to the foregoing sentence if Landlord's failure to pay an Installment Payment, or any portion thereof, is due to a dispute of the request for such payment based on non-compliance of any work with the Approved Working Drawings, substandard work, or for any other reason.

4. Expiration Date. All references to the "Expiration Date" in the Existing Lease are hereby amended to be date that is one hundred twenty-nine months (129) following the month in which the Commencement Date occurs.

5. Base Rent.

(a) Previously Paid 2022 Base Rent. Landlord and Tenant acknowledge that Tenant has previously paid to Landlord an amount equal to \$85,399.34, which amount equals the Base Rent due from Tenant under the Lease pursuant to the following schedule for the months of January, February, March, April, May and June of 2022 (the "Previously Paid 2022 Base Rent") and has been instructed to pay Landlord an amount equal to \$14,302.71, which amount equals the Base Rent due from Tenant under the Lease pursuant to the following schedule for the month of July 2022 (the "July 2022 Base Rent"). The Previously Paid 2022 Base Rent and, to the extent paid by Tenant, the July 2022 Base Rent shall be applied first to Tenant's obligations to pay Alternative Rent during the Alternative Rent Period as set forth in Section 2(a) above and second to any Base Rent and Percentage Rent thereafter due under the Lease.

(b) Schedule of Base Rent. The schedule of Base Rent set forth in the Basic Lease Information is hereby amended and restated as follows:

<u>Months</u>	<u>Annual Rate per Useable Square Foot</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Base Rent</u>
1-12	\$75.00	\$13,481.25	\$161,775.00

13-24	\$77.25	\$13,885.69	\$166,628.25
25-36	\$79.57	\$14,302.71	\$171,632.49
37-48	\$81.96	\$14,732.31	\$176,787.72
49-60	\$84.42	\$15,174.50	\$182,093.94
61-72	\$86.96	\$15,631.06	\$187,572.72
73-84	\$89.57	\$16,100.21	\$193,202.49
85-96	\$92.26	\$16,583.74	\$199,004.82
97-108	\$95.03	\$17,081.65	\$204,979.71
109-120	\$97.89	\$17,595.73	\$211,148.73
121-129	\$100.83	\$18,124.19	\$217,490.31

The above schedule of Base Rent is subject to the abatement of Base Rent to the extent provided in Section 2(a) of the First Amendment, payment of “Alternative Rent” (as defined in the First Amendment) in lieu of Base Rent to the extent provided in Sections 2(b) and 2(c) of the First Amendment and payment of Alternative Rent in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of this Second Amendment.

6. 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.

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) 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)

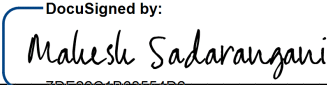
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:
PHILZ COFFEE, INC.,
a Delaware corporation

By:  _____
Name: Mahesh Sadarangani
Its: CEO

Date: 6/24/2022 | 1:38 PM PDT, 2022

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

SECOND AMENDMENT TO LEASE

This SECOND AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the ___ day of _____, 2022, 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 PHILZ COFFEE, INC., a Delaware corporation, dba Philz Coffee (“**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 25, 2018, as amended by that certain First Amendment to Lease (the “**First Amendment**”) dated December 10, 2020 (as so amended and together with all exhibits and addenda attached thereto, the “**Existing Lease**”), whereby Tenant leased from Landlord approximately 1,041 usable square feet of retail space (the “**Premises**”) known as Space Number 143, located in the retail usage area on the ground level 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, Landlord agreed to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified therein (as applicable, the “**First Amendment Alternative Rent Period**”) on account of Tenant having had to limit operations in its retail food and beverage establishment at the Premises due to the COVID-19 pandemic. The First Amendment Alternative Rent Period ended on December 31, 2021.

C. Due to the continuation of the COVID-19 pandemic, Tenant has requested additional rent abatement from Landlord.

D. Landlord has agreed to abate Base Rent due under the Lease as provided below, to make certain other 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 Second Amendment.

E. The parties acknowledge that this Second Amendment has been entered into at the request of Tenant as a result 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 adjustment to the Base 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 Second Amendment or in the Existing Lease shall mean, collectively, this Second Amendment and the Existing Lease, as amended by this Second 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 January 1, 2022 and ending on the earlier of (A) the last day of the month immediately preceding the Rent Reversion Month (as defined in Section 2(b) below) and (B) June 30, 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 Rent Reversion Month has not then occurred, Tenant may request an extension of the Alternative Rent Period Outside Expiration Date set forth in clause (B) above to December 31, 2023 by providing written notice of such request to Landlord on or before May 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, (1) notwithstanding anything to the contrary contained herein, the Alternative Rent Period Outside Expiration Date set forth in clause (B) above shall be December 31, 2023 as opposed to June 30. Tenant acknowledges and agrees that 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 an amount equal Three Thousand and No/100 Dollars (\$3,000.00) per month (“**Tenant’s Monthly Expense Contribution**”) as Tenant’s contribution towards costs relating to the operation, maintenance, repair and replacement of the Center. 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, Tenant shall pay to Landlord “**Alternative Percentage Rent**” during the Alternative Rent Period at the times and in the manner provided under this Section 2(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period shall be calculated by multiplying the amount by which Tenant’s Gross Sales for such month exceeds the Alternative Rent Breakpoint (as defined

below) by five percent (5%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within twenty (20) days after the end of each month for which the same is due. As used herein, the “**Alternative Rent Breakpoint**” shall mean an amount equal to Six Hundred Thousand and No/100 Dollars (\$600,000.00). 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 Statements 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(b) above, if an amount equal to five percent (5%) of Tenant’s Gross Sales above the Alternative Rent Breakpoint for any four (4) consecutive months commencing with January of 2022 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 “**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 Rent Reversion Month or for any month thereafter. If Tenant has already paid Tenant’s Monthly Expense Contribution for the Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Rent Reversion Month and Tenant’s Monthly Expense Contribution within twenty (20) days following the last day of the 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 five percent (5%) of Tenant’s Gross Sales above the Alternative Rent Breakpoint 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, unless extended per Section 2 (a)(i) above.

3. Payment of Improvement Allowance. Section 3 of the First Amendment is hereby deleted in its entirety.

(a) Installment Payments. Notwithstanding anything to the contrary contained in the Lease, provided that Tenant has provided a Disbursement Request Packet in accordance with Section 2.2.1 of the Work Letter attached to the Existing Lease as Exhibit B, Tenant has been open for business to the public at the Premises for three (3) consecutive months (the “**Operating Requirement**”) and Tenant is not then in default under the Lease, Landlord shall pay the Disbursement Amount to Tenant in four (4) installments (each an “**Installment Payment**”), commencing on the last day of the calendar quarter in which the Operating Requirement has been satisfied, as follows: (i) twenty-five percent (25%) of such Disbursement

Amount shall be paid to Tenant on or before the last day of the calendar quarter in which the Operating Requirement has been satisfied; (ii) twenty-five percent (25%) of such Disbursement Amount shall be paid to Tenant on or before the last day of the calendar quarter immediately following the calendar quarter referenced in clause (i); (iii) twenty-five percent (25%) of such Disbursement Amount shall be paid to Tenant on or before the last day of the calendar quarter immediately following the calendar quarter referenced in clause (ii); and (iv) the remaining twenty-five percent (25%) of such Disbursement Amount shall be paid to Tenant on or before the last day of the calendar quarter immediately following the calendar quarter referenced in clause (iii).

(b) Offset Right. Section 2.2.2 of the Work Letter attached to the Existing Lease as Exhibit B is hereby deleted in its entirety. In the event that Landlord fails to pay any Installment Payment as provided in Section 3(b) above within ninety (90) days following the last day of the calendar quarter on which such Installment Payment was due, then Tenant, as Tenant's sole and exclusive remedy as a result of such failure, shall have the right to offset the Installment Payment owed to Tenant hereunder against the Alternative Rent (or, if applicable, the Base Rent) thereafter due from Tenant under the Lease as the same becomes due until Tenant has received the full amount of the Installment Payment owed to Tenant hereunder by virtue of such offset or by payment thereof by Landlord to Tenant or by a combination of the foregoing. Notwithstanding anything to the contrary contained herein, (a) Tenant's right to offset the any Installment Payment owed to Tenant hereunder against Alternative Rent (or, if applicable, the Base Rent) pursuant to the foregoing sentence is expressly conditioned upon Tenant not being in default under the Lease and (b) Tenant shall have no right to offset any Installment Payment owed to Tenant hereunder against Alternative Rent (or, if applicable, the Base Rent) pursuant to the foregoing sentence if Landlord's failure to pay an Installment Payment, or any portion thereof, is due to a dispute of the request for such payment based on non-compliance of any work with the Approved Working Drawings, substandard work, or for any other reason.

4. Term. All references to the "Expiration Date" in the Existing Lease are hereby amended to be date that is one hundred twenty-nine (129) months following the month in which the Commencement Date occurs.

5. Base Rent.

(a) Previously Paid 2022 Base Rent. Landlord and Tenant acknowledge that Tenant has previously paid to Landlord an amount equal to \$82,429.98, which amount equals the Base Rent due from Tenant under the Lease pursuant to the following schedule for the months of January, February, March, April, May and June of 2022 (the "Previously Paid 2022 Base Rent") and has been instructed to pay Landlord an amount equal to \$13,805.10, which amount equals the Base Rent due from Tenant under the Lease pursuant to the following schedule for the month of July 2022 (the "July 2022 Base Rent"). The Previously Paid 2022 Base Rent and, to the extent paid by Tenant, the July 2022 Base Rent shall be applied first to Tenant's obligations to pay Alternative Rent during the Alternative Rent Period as set forth in Section 2(a) above and second to any Base Rent and Percentage Rent thereafter due under the Lease.

(b) Schedule of Base Rent. The schedule of Base Rent set forth in the Basic Lease Information is hereby amended and restated as follows:

<u>Months</u>	<u>Annual Rate per Useable Square Foot</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Base Rent</u>
1-12	\$150.00	\$13,012.50	\$156,150.00
13-24	\$154.50	\$13,402.88	\$160,834.50
25-36	\$159.14	\$13,805.40	\$165,664.74
37-48	\$163.92	\$14,220.06	\$170,640.72
49-60	\$168.84	\$14,646.87	\$175,762.44
61-72	\$173.90	\$15,085.83	\$181,029.90
73-84	\$179.12	\$15,538.66	\$186,463.92
85-96	\$184.50	\$16,005.38	\$192,064.50
97-108	\$190.04	\$16,485.97	\$197,831.64
109-120	\$195.75	\$16,981.32	\$203,775.75
121-129	\$201.62	\$17,490.54	\$209,886.42

The above schedule of Base Rent is subject to the abatement of Base Rent to the extent provided in Section 2(a) of the First Amendment, payment of “Alternative Rent” (as defined in the First Amendment) in lieu of Base Rent to the extent provided in Sections 2(b) and 2(c) of the First Amendment and payment of Alternative Rent in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of this Second Amendment.

6. 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.

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) 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)

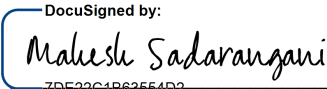
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2022

TENANT:
PHILZ COFFEE, INC.,
a Delaware corporation

By:  _____
Name: Mahesh Sadarangani
Its: CEO

Date: 6/24/2022 | 1:37 PM PDT, 2022

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board