

File No. 190316

Committee Item No. 5

Board Item No. 23

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date April 10, 2019

Board of Supervisors Meeting

Date April 16, 2019

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>SFMTA Board of Directors Resolution</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PowerPoint Presentation</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Linda Wong Date April 5, 2019

Completed by: Linda Wong Date April 12, 2019

1 [Lease Termination Agreement - Tad's, Inc. - 44 Ellis Street]

2
3 **Resolution authorizing the Municipal Transportation Agency to terminate the lease**
4 **agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell**
5 **Garage.**

6
7 WHEREAS, The Ellis-O'Farrell Garage (Garage), located at 123 O'Farrell Street, is
8 owned by the City and County of San Francisco (City) and under the jurisdiction of the San
9 Francisco Municipal Transportation Agency (SFMTA), offers three retail spaces; and

10 WHEREAS, On May 6, 2015, the Board of Supervisors under Resolution No. 187-15
11 authorized the Director of Transportation of the SFMTA to execute a lease agreement with
12 Les Joulins for the retail space designated as 44 Ellis Street and comprised of approximately
13 5,368 square feet for an initial term of ten years (Lease); and

14 WHEREAS, On March 1, 2017, the Lease was assumed by Tad's Inc. (Tenant); and,

15 WHEREAS, The Lease agreement includes a rent schedule for the ten-year initial term
16 that will result in \$5,127,000 in revenue to the SFMTA and includes \$250,000 in rent credits
17 upon completion of certain pre-authorized improvements; and

18 WHEREAS, For over 20 years, no major improvements have been made to the retail
19 space at 44 Ellis Street and the Tenant has determined that the space needs additional work
20 on top of the pre-authorized improvements contemplated in the Lease in order to comply with
21 current building codes; and

22 WHEREAS, Tenant desires to enter into a new lease agreement which would allow
23 them to make investments in the necessary improvements to the space and lease the
24 property for a longer term than the six years that remain in the Lease; and

1 WHEREAS, In order to enter into a new lease agreement, SFMTA and Tenant must
2 terminate the existing Lease agreement; and

3 WHEREAS, On January 3, 2019, the SFMTA, under authority delegated by the
4 Planning Department, determined that the termination of the Lease is not defined as a
5 "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the
6 California Code of Regulations, Sections 15060(c) and 15378(b); and

7 WHEREAS, On March 5, 2019, the SFMTA Board of Directors approved Resolution
8 No. 190305-027 authorizing the Director of Transportation of the SFMTA to terminate the
9 Lease agreement and to forward to the Board of Supervisors for final approval; and

10 WHEREAS, A copy of the Lease Termination Agreement, is on file with the Clerk of the
11 Board of Supervisors in File No. 190316, which is hereby declared to be part of this motion as
12 if set forth fully herein; now, therefore, be it

13 RESOLVED, That the Board of Supervisors approves the Lease Termination
14 Agreement between the City and County of San Francisco and Tad's, Inc.; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
16 Transportation of the SFMTA to execute a Lease Termination Agreement with Tad's Inc. for
17 the Ellis-O'Farrell Garage retail space, located at 44 Ellis Street; and, be it

18 FURTHER RESOLVED, That within 30 days of the document being fully executed by
19 all parties, the final document shall be provided to the Clerk of the Board for inclusion in the
20 official file.

Items 4 and 5 Files 19-0317 and 19-0316	Department: Municipal Transportation Agency (MTA)
--	--

EXECUTIVE SUMMARY**Legislative Objectives**

- File 19-0316: The proposed resolution authorizes the Municipal Transportation Agency (MTA) to terminate the lease agreement with Tad's Inc. (Tad's) for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.
- File 19-0317: The proposed resolution authorizes the new retail lease agreement between MTA, as landlord, and Tad's, Inc. (Tad's), as tenant, for approximately 5,368 square feet of retail space at 44 Ellis Street. The proposed resolution would authorize a ten-year lease term to commence upon approval by the Board of Supervisors, from approximately May 2019 to May 2029, with two five-year extension options through approximately May 2039. Total rent to be paid by Tad's to MTA over the initial 10-year term is \$5,317,024.

Key Points

- The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and is under the jurisdiction of the San Francisco Municipal Transportation Agency (MTA). The garage provides three commercial retail spaces totaling 11,000 square feet. The retail space associated with the lease termination and proposed new lease agreement is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street.
- In May 2015, the Board of Supervisors approved a resolution authorizing a ten-year commercial lease between MTA, as landlord, and Les Joulins, USA, Inc. (Les Joulins), as tenant, for use as a restaurant and nightclub (File 15-0312). In March 2017, Tad's, Inc. (Tad's), which operates a restaurant, assumed the lease with six years remaining from the initial lease term. Tad's has not been able to open their business since assuming the current lease.
- For over 20 years, no major improvements have been made to the retail space at 44 Ellis Street, and the tenant has determined that the space needs additional work on top of the pre-authorized improvements in the proposed lease agreement in order to comply with current building codes. Both MTA and Tad's desire to terminate the existing lease agreement in order to enter into a new lease agreement that will extend the term and includes rent abatement which would allow the tenant to make the necessary capital investments.

Fiscal Impact

- Under the proposed lease agreement (File 19-0317), base rent of \$442,860 in Year 1, increasing by 4 percent per year, for total base rent over 10 years of \$5,317,025. The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.

Recommendations

- Amend File 19-0317 to revise the language on page 1, lines 6-7 from "an initial annual base rent of \$5,317,064" to "a total rent over the initial 10-year term of \$5,317,024."
- Approve the proposed resolutions.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and is under the jurisdiction of the San Francisco Municipal Transportation Agency (MTA). The garage provides approximately 950 parking spaces and three commercial retail spaces totaling 11,000 square feet. The retail space associated with the lease termination and proposed new lease agreement is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street.

In May 2015, the Board of Supervisors approved a resolution authorizing a ten-year commercial lease between MTA, as landlord, and Les Joulins, USA, Inc. (Les Joulins), as tenant, for use as a restaurant and nightclub (File 15-0312). The resolution retroactively authorized a lease term of March 1, 2015 through February 28, 2025, with two five-year options to extend the lease through 2035. In March 2017, Tad's, Inc. (Tad's); which operates a restaurant, assumed the lease¹ with six years remaining from the initial lease term. The total amount of base rent for the first ten years of the lease is \$5,127,000. The lease also includes \$250,000 in rent credits upon completion of certain pre-authorized improvements. Tad's has not been able to open their business since assuming the current lease. However, according to MTA, Tad's has consistently met its obligation to pay the rent due under the current lease, totaling \$730,791 as of February 1, 2019.

DETAILS OF PROPOSED LEGISLATION

File 19-0316: The proposed resolution authorizes the Municipal Transportation Agency (MTA) to terminate the lease agreement with Tad's Inc. (Tad's) for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

File 19-0317: The proposed resolution authorizes the new retail lease agreement between MTA, as landlord, and Tad's, Inc. (Tad's), as tenant, for approximately 5,368 square feet of retail space at 44 Ellis Street. The proposed resolution would authorize a ten-year lease term to commence upon approval by the Board of Supervisors, from approximately May 2019 to May 2029, with two five-year extension options through approximately May 2039. Total rent to be paid by Tad's to MTA over the initial 10-year term is \$5,317,024.

The current lease agreement between MTA and Tad's is in effect and the approval of the new proposed lease agreement (File 19-0317) is subject to termination of the current lease (File 19-0316). For over 20 years, no major improvements have been made to the retail space at 44 Ellis

¹ According to MTA, the assignment and assumption of the lease agreement did not require Board of Supervisors approval because Section 16.2 of the lease outlines the tenant's right to transfer the lease with a written notice and financial statement of the proposed transferee. MTA states that Tad's Inc. was the transferee who had a strong financial background. For the last two years, Tad's has consistently paid rent on time to the MTA.

Street, and the tenant has determined that the space needs additional work on top of the pre-authorized improvements in the proposed lease agreement in order to comply with current building codes. According to MTA, it is mutually beneficial to MTA and Tad's to have the retail space at 44 Ellis Street completely renovated and to retain a local business that has been operating in the greater Union Square for over 45 years. Consequently, both MTA and Tad's desire to terminate the existing lease agreement in order to enter into a new lease agreement that will extend the term and includes rent abatement which would allow the tenant to make the necessary capital investments. According to MTA, because a major portion of the work constitutes a capital investment for the Ellis O'Farrell Garage, the MTA would like to facilitate the completion of these improvements. In addition, MTA considered amending the current lease as an alternative to termination. However, the lease would require significant changes, and both parties, including the City Attorney's Office, concluded that it would be better to terminate the current lease and enter a new lease agreement.

Table 1 below summarizes the terms of the current and new proposed retail lease agreement at 44 Ellis Street.

Table 1. Terms of Current and Proposed New Lease at 44 Ellis Street

	Current Lease	Proposed New Lease
Square Footage	5,368	5,368
Term	March 1, 2015 – February 28, 2025	Approximately May 2019 to May 2029
Tenant Improvements	Up to \$250,000; Tenant will be able to use these funds for MTA-approved tenant improvement projects.	Tenant to fund and perform certain improvements to the property which include, but are not limited to, new or renovated mechanical, electrical, plumbing and ventilation systems; new or renovated fire sprinklers, monitoring system, and hood suppression; renovation of two restrooms; new or renovated interior walls, flooring and ceiling finishes; new or renovated exterior façade; new or renovated canopy; new or renovated lighting fixtures; and new paint as determined by tenant subject to terms of the lease.
Monthly Base Rent	\$47,890 (Annual \$574,680) for the lease year from March 2018 to February 2019.	\$36,905 (Annual \$442,860)
Annual Base Rent Increases	4 percent	4 percent
Utilities, Services, and Operating Costs	Tenant is responsible for the cost of all utilities and services provided to the premises.	Tenant is responsible for the cost of all utilities and services provided to the premises.
Option to Extend	Two (2) five-year options	Two (2) five-year options
Base Rent Increase on Exercise of Option	The higher of (1) the rent in year ten of the existing lease plus a 3 percent consumer price index increase, or (2) 95 percent of fair market value.	The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.
Security Deposit	\$50,000	\$50,000

Tenant Improvements

As previously mentioned, the proposed new lease agreement contemplates certain improvements to the premises and includes a list of pre-approved work such as hood ventilation replacement, and electrical, plumbing, ceiling, flooring and bathrooms upgrades.

According to MTA, when Tad's assumed the Lease, Tad's agreed the list of pre-authorized work was necessary. Tad's also determined the space needed a new mechanical system and ductwork for heating, ventilating and air conditioning, a new fire protection system for sprinkler and hood, new lighting fixtures, supply and exhaust fans, fan-coil unit, condensing heat pump unit, and new exterior façade and canopy to meet building codes.

The current lease agreement allows the tenant to apply up to \$250,000 as a rent credit against the base rent due, if the tenant completes any of the improvement projects from the pre-approved list. The rent credit is not an estimate of the total cost for the list of pre-authorized tenant improvement work. According to MTA, the agency recognized the space needed work, and the rent credit was intended to allow for some upgrades. None of the improvements that were the subject of the rent credit were completed while the former tenant, Les Joulins, occupied the space.

According to MTA, due to the extent of the work needed to bring the space up to building code and safe operating standards, Tad's has not been able to open their business since assuming the current lease. Tad's intends to completely renovate the restaurant and fund the necessary building improvements to bring the space up to code, at a reported estimated cost of \$2,700,000. According to MTA, Tad's estimates the project will take approximately nine months to complete. Consequently, to facilitate the tenant's construction of necessary improvements to the retail space, the proposed new lease agreement includes nine months of rent abatement. According to MTA, the proposed new lease agreement includes rent abatement and not rent credits because the tenant has been currently working with City departments to get permits and aims to complete the improvement work. The current lease provided rent credits because the tenant at the time (Les Joulins) did not provide any construction schedule. According to MTA, to ensure the tenant will complete the improvements, MTA staff and contractors who manage the facility will work alongside with the tenant throughout the construction process. The tenant has closed operations while awaiting building permits and will work with the Department of Building Inspection (DBI) to inspect the construction build out.

FISCAL IMPACT

Under the proposed lease agreement (File 19-0317), base rent of \$442,860 in Year 1, increasing by 4 percent per year, for total base rent over 10 years of \$5,317,025, as shown in Table 2 below. According to MTA, the rent increase percentage is based on the U.S. Department of Labor's Consumer Price Index (CPI), which is currently between 3 to 4 percent.

Table 2. 10-Year Rent Payable by Tad's to MTA

Lease Year	Price Per Square Foot/Year	Monthly Rent	Annual Rent
Year 1	\$82.50	\$36,905	\$442,860
Year 2	85.80	38,381	460,574
Year 3	89.23	39,916	478,997
Year 4	92.80	41,513	498,157
Year 5	96.51	43,174	518,084
Year 6	100.37	44,901	538,807
Year 7	104.39	46,697	560,359
Year 8	108.56	48,564	582,774
Year 9	112.91	50,507	606,084
Year 10	117.42	52,527	630,328
Total			\$5,317,024

Rent During Extension Term

The first five-year option to extend will be at 103 percent of the base rent from the lease year immediately prior. The second five-year option to extend is at the greater of 103 percent of the base rent from the lease year immediately prior or 95 percent of the market rent.

Fair Market Rent

As noted above, under the current lease, Tad's pays rent of \$47,890 per month or \$574,680 per year, equivalent to \$107.06 per square foot per year. Under the proposed new lease, Tad's pays rent of \$36,905 per month or \$442,860 per year, equivalent to \$82.50 per square foot, a reduction of 24 percent compared to the existing lease.

In November 2018, the MTA hired an independent appraiser, R. Blum+Associates (R. Blum) to appraise the market rent of the retail space at 44 Ellis Street. The appraiser used the direct comparison method and based on recent comparables, determined the range of rental rate to be between \$82.50 and \$87.50 per square foot. R. Blum determined that the market rent of the retail space as of November 15, 2018, in as-is condition, is estimated to be \$87.56 per square foot per year. With consideration of nine months of rent abatement, the market rent is adjusted upward to between \$87.50 and \$92.50 per square foot. Consequently, based on R. Blum's evaluation, the nine-month rent abatement is valued at \$5 per square foot per year.

MTA set the first year rent at \$82.50 per square foot to account for the nine-month rent abatement which is approximately \$5 per square foot below R. Blum's fair market rent estimate of \$87.50 per square foot. The value of the rent abatement over 10 years is \$322,244, which is less than the estimated tenant improvement expenditures to be incurred by Tad's. No additional rent credit for tenant improvement work is included in the proposed lease.

In December 2018, the MTA hired another independent appraiser, David Tattersall & Co. (Tattersall), to provide an appraisal review of the report by R. Blum. The report by Tattersall was in agreement with the market rental rates in the R. Blum report.

Proposed Amendment

The proposed resolution on the new lease agreement (File 19-0317) states on page 1, lines 6-7 "an initial annual base rent of \$5,317,064". However, as discussed above, the total rent to be paid by Tad's to MTA over the initial 10-year term of the proposed lease agreement is \$5,317,024. Therefore, the proposed resolution (File 19-0317) should be amended on page 1, lines 6-7 to state "a total rent over the initial 10-year term of \$5,317,024".

RECOMMENDATIONS

1. Amend File 19-0317 to revise the language on page 1, lines 6-7 from "an initial annual base rent of \$5,317,064" to "a total rent over the initial 10-year term of \$5,317,024."
2. Approve the proposed resolutions.

Lease Termination Agreement

This LEASE TERMINATION AGREEMENT (this "Agreement") is made and entered into as of March , 2019, by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA" or "Landlord") and Tad's Inc., a California corporation ("Tenant").

RECITALS

- A. SFMTA and Les Joulin, U.S.A., Inc. ("Prior Tenant") entered into that certain commercial lease, dated March 1, 2015 ("Lease"), with respect to certain premises located on the real property of Landlord commonly known as the Ellis-O'Farrell Parking Garage located at 44 Ellis Street, San Francisco, California (the "Premises").
- B. Tenant assumed the Lease on March 1, 2017 with SFMTA's consent.
- C. SFMTA and Tenant desire to terminate the Lease and cause a surrender of the Premises as set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Capitalized Terms. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superceded by the terms of this Agreement.
2. Lease Termination. Notwithstanding anything to the contrary set forth in the Lease, the Lease shall terminate at 11:59 p.m. on March , 2019 (the "Termination Date"). On the Termination Date, Tenant shall surrender possession of the Premises and all improvements, additions, alterations and fixtures thereto to Landlord in a state of good condition and repair, normal wear and tear excepted.
3. Acceptance. Subject to and conditioned upon Tenant's surrender of the Premises as set forth in Paragraph 2 above, Landlord shall accept Tenant's surrender of the Premises and the termination of the Lease on the Termination Date. From and after the Termination Date, neither Landlord nor Tenant shall have any rights or obligations under the Lease, except for any rights or obligations which, by their express term, survive the expiration or termination of the Lease. Tenant acknowledges and agrees that Landlord may immediately lease the Premises to a new tenant or tenants at its sole discretion.
4. Release. As a material part of the consideration for this Agreement, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Landlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, arising out of any acts, omissions, or matters relating to this Agreement.

Tenant acknowledges that the release contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant realizes and acknowledges that it has entered into this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law no or later in effect.

5. Miscellaneous.

(a) This Agreement may be amended or modified only by a writing signed by SFMTA and Tenant.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement.

(c) This instrument contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

(d) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

(e) Time is of the essence in all matters relating to this Agreement.

(f) This Agreement shall be governed by California law and the City and County of San Francisco's Charter and Administrative Code.

(g) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of SFMTA shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the SFMTA's use of attorneys from the San Francisco City Attorney's Office.

(h) If Tenant consists of more than one person, then the obligations of each person shall be joint and several.

(i) This Agreement is binding upon, and shall inure to the benefit and burden of, the parties and their respective heirs, successors and assigns.

(j) This Agreement is entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be entitled to a direct or indirect cause of action or claim in connection with this Agreement.

TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

SIGNATURES ON FOLLOWING PAGE

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
Municipal Transportation Agency

By: _____
Edward D. Reiskin
Director of Transportation

Authorized By:

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Stephanie Stuart
Deputy City Attorney

n:\ptc\as2018\1000449\01323122.docx

TENANT:

TAD'S Inc., a California corporation

By: PHILIPAS NG
Its: OWNER, TAD'S, INC.

By: STEPHAN NG
Its: OWNER, TAD'S, INC.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 190305-027

WHEREAS, The Ellis-O'Farrell Garage (Garage), located at 123 O'Farrell Street, is owned by the City and County of San Francisco (City) and under the jurisdiction of the SFMTA; and,

WHEREAS, On May 17, 2013, the SFMTA issued a Request for Proposal for the retail space designated as 44 Ellis Street and comprised of approximately 5,368 square feet, and only received one response from Les Joulins USA Inc. (Les Joulins); and,

WHEREAS, On March 1, 2015, the SFMTA entered into a lease agreement with Les Joulins for an initial term of ten years (Lease); and,

WHEREAS, On March 1, 2017, the Lease was assumed by Tad's Inc. (Tenant); and,

WHEREAS, The Lease agreement includes a rent schedule for the ten-year initial term that will result in \$5,127,000 in revenue to the city and includes \$250,000 in rent credits upon completion of pre-authorized improvements; and,

WHEREAS, For over 20 years, the retail space has been occupied and no major improvements have been performed. When Tenant assumed the Lease, Tenant determined the space needed additional work on top of the pre-authorized work in order to comply with current building codes. The rent credits in the Lease anticipated some tenant improvements but did not contemplate the investment cost it now requires; and,

WHEREAS, Tenant desires to enter into a new lease agreement which allows them to make investments in the necessary improvements to the space and lease the property for a longer term than the six years that remain in the Lease; and,

WHEREAS, In order to enter into a new lease agreement with Tenant, SFMTA and Tenant must terminate the existing Lease agreement; and,

WHEREAS, On January 3, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the termination of the Lease is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Lease Termination Agreement with Tad's Inc. for the Ellis-O'Farrell Garage retail space, located at 44 Ellis Street; and be it further,

RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors' approval of the Lease Termination Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 5, 2019.

R. Brown

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



Lease Termination Agreement with Tad's Inc., for the Ellis-O'Farrell Garage Retail Space

The San Francisco Municipal Transportation Agency (SFMTA) proposes to authorize the Director of Transportation to execute a Lease Termination Agreement with Tad's Inc., - a retail space located on the ground floor of the City-owned Ellis-O'Farrell Garage (Garage) at 123 O'Farrell Street. In 2013 the SFMTA assumed responsibility for managing all Garage operations, including for retail leases. SFMTA entered a lease agreement in 2015 with Les Joulins USA Inc., for their tenancy in the ground floor retail space at 44 Ellis Street.

Not a "project" pursuant to CEQA as defined in CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

Handwritten signature of Alex Ryder in black ink.

Jan 3, 2019

Alex Ryder

Date

San Francisco Municipal Transportation Agency



London Breed, Mayor

Malcolm Heinicke, Chair
Gwyneth Borden, Vice Chair
Cheryl Brinkman, Director
Amanda Eaken, Director

Lee Hsu, Director
Cristina Rubke, Director
Art Torres, Director

Edward D. Reiskin, Director of Transportation

March 11, 2019

The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102

*Subject: Request to enter into a Lease Termination Agreement with Tad's, Inc.
for SFMTA retail space at 44 Ellis Street, San Francisco*

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) request that the San Francisco Board of Supervisors authorize the SFMTA to terminate the lease agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

Background

The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and is under the jurisdiction of the SFMTA. The garage provides approximately 950 parking spaces and three commercial retail spaces totaling 11,000 square feet. The retail space associated with the subject lease is a 5,368 square feet space that operated as a restaurant at 44 Ellis Street.

On May 17, 2013, the SFMTA issued a Request for Proposal for the lease of the retail space at 44 Ellis Street and only received one response from the then-current tenant, Les Joulins. Les Joulins had been a tenant in the retail space since April 1997, and because of their long tenure, the SFMTA accepted their proposal.

The SFMTA entered into a new lease agreement with Les Joulins on March 1, 2015. Two years later, on March 1, 2017, Tad's assumed the Lease. The Lease has an initial term of ten years. Six years remain from the initial Lease term. The total amount of base rent for the first ten years of the Lease is \$5,127,000. The Lease includes \$250,000 in rent credits upon completion of certain pre-authorized improvements.

For over 20 years, the retail space has been occupied with no major improvements. The Lease contemplates certain improvements to the premises and includes a list of pre-approved work such as hood ventilation replacement, and electrical, plumbing, ceiling, flooring and bathrooms upgrades. When Tad's assumed the Lease, Tad's agreed the list of pre-authorized work was necessary. Tad's also determined the space needed a new mechanical system and ductwork, a new fire protection system for sprinkler and hood, new lighting fixtures, and new exterior façade and canopy to meet building codes.

The Lease allows the tenant to apply up to \$250,000 as a rent credit against the base rent due, if tenant completes any of the improvement project from the pre-approved list. The rent credit is not an estimate of the total cost for the list of pre-authorized tenant improvement work. The SFMTA recognized the space needed work, and the rent credit was intended to allow for some upgrades. None of the improvements that were the subject of the rent credit were completed while Les Joulins occupied the space.

Due to the extent of the work needed to bring the space up to building code and safe operating standards, Tad's has not been able to open their business since assuming the Lease. Nevertheless, Tad's has consistently met its obligation to pay the rent due, totaling \$730,791 as of February 1, 2019. Tad's intends to completely renovate the restaurant and make the necessary building improvements to bring the space up to code, at a reported cost of \$2,700,000. This Lease did not contemplate the high capital investment cost.

It is mutually beneficial to the SFMTA and Tad's to have the retail space at 44 Ellis Street completely renovated, and to retain a local business that has been operating in the greater Union Square for over 45 years. Tad's would like to terminate the existing Lease and enter into a new lease agreement that extends the term and includes rent abatement which would allow them to make the necessary capital investments. Considering that a major portion of the work constitutes a capital investment for the Ellis-O'Farrell Garage, the SFMTA would like to facilitate the completion of these improvements.

The SFMTA and Tad's desire to terminate the existing Lease in order to enter into a new lease agreement. The new lease agreement will be restructured in the range of market rate with a steady four percentage annual increase in base rent and nine months of rent abatement in exchange for a longer lease term. In December 2019, the SFMTA and Tad's finalized the terms for the proposed new lease agreement. The proposed new lease will result in a small net positive revenue increase to the SFMTA over the current Lease.

Public Outreach

Tad's has been fully engaged. No other additional public outreach was done for this Commercial Lease Agreement.

Alternatives Considered

The SFMTA considered keeping the current Lease and leaving the space in its current condition, however, that approach does not facilitate a good business relationship with the tenant considering the substantial improvements that must be made by the tenant to bring the space up to current building codes. A second alternative considered was to amend the current Lease, however, the Lease would require significant changes and both parties agreed

it is better to terminate the current Lease and enter a new lease agreement. The SFMTA wants to retain this local small business in the greater Union Square for the long term.

Funding Impact

The proposed termination of the Lease and subsequent consideration of a new lease with Tad's will result in a net positive revenue increase to the SFMTA of \$190,024 between the two agreements when compared over a ten-year term. The current Lease generates \$5,127,000 in total base rent over the ten-year term of the lease. The proposed terms of the new lease agreement will have a ten-year term, and the lease will generate \$5,317,024 in total base rent. The new lease structure will enable Tad's to make necessary building improvements thereby strengthening efforts for small business retention.

Environmental Review

On January 3, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Lease Termination Agreement is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

SFMTA Board Action

On March 5, 2019, the SFMTA Board of Directors approved Resolution 190305-027 which authorized the Director of Transportation the SFMTA to terminate the lease agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

Recommendation

The SFMTA requests that the San Francisco Board of Supervisors authorize the SFMTA to terminate the lease agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

Thank you for your time and consideration of this Lease Termination Agreement. Should you have any questions or require more information, please do not hesitate to contact me at any time.

Sincerely,



Edward D. Reiskin
Director of Transportation

OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR

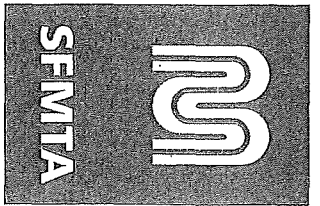
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Kanishka Karunaratne Cheng *KKC*
RE: Lease Termination Agreement – Tad's, Inc. – 44 Ellis Street
DATE: March 19, 2019

Resolution authorizing the San Francisco Municipal Transportation Agency to terminate the lease agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAR 15 PM 2:59
BY: AK

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141



**Lease Termination Agreement
(190316) and Proposed New Lease
(190317) for Tad's, Inc.**

Budget and Finance Sub-Committee

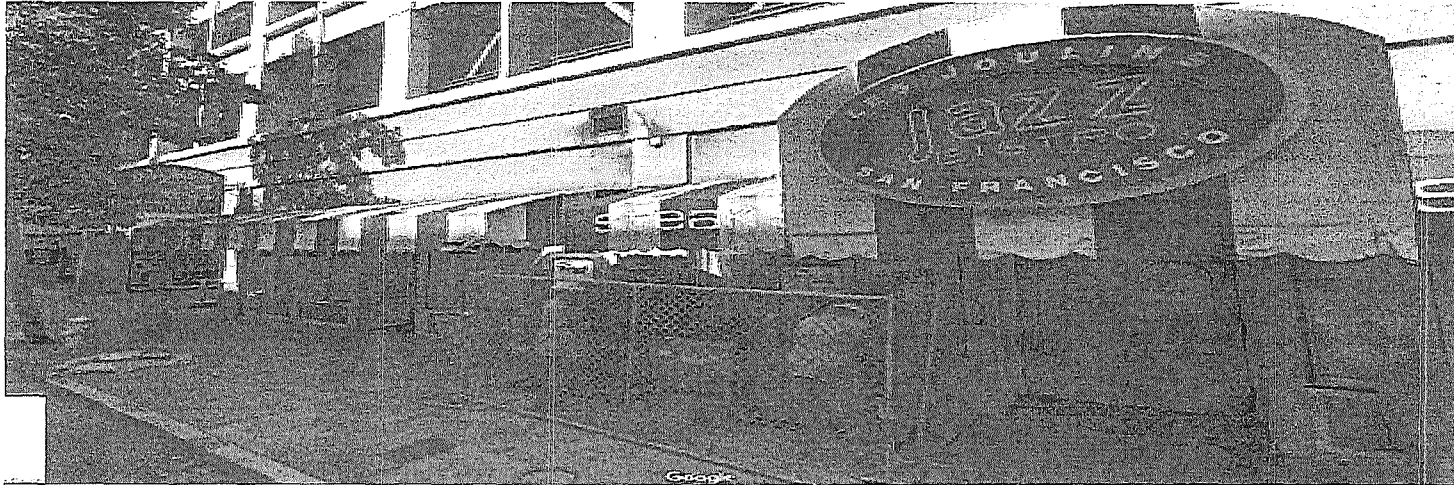
April 10, 2019

Retail Space at 44 Ellis Street



- The two items for consideration include:
 - Lease termination with the current tenant (Tad's Inc.)
 - New lease agreement with the current tenant (Tad's Inc.)
- Tad's leases 5,368 square feet retail space which has operated as a restaurant at 44 Ellis St. in the Ellis-O'Farrell Garage
 - Owned by the City and is under the jurisdiction of the SFMTA
- The garage was built in 1965 and is comprised of 950 parking spaces and three commercial retail spaces totaling 11,000 square feet

Lease Termination Agreement (190316)



The current lease was approved by the BOS on March 1, 2015, with Les Joulins, USA.

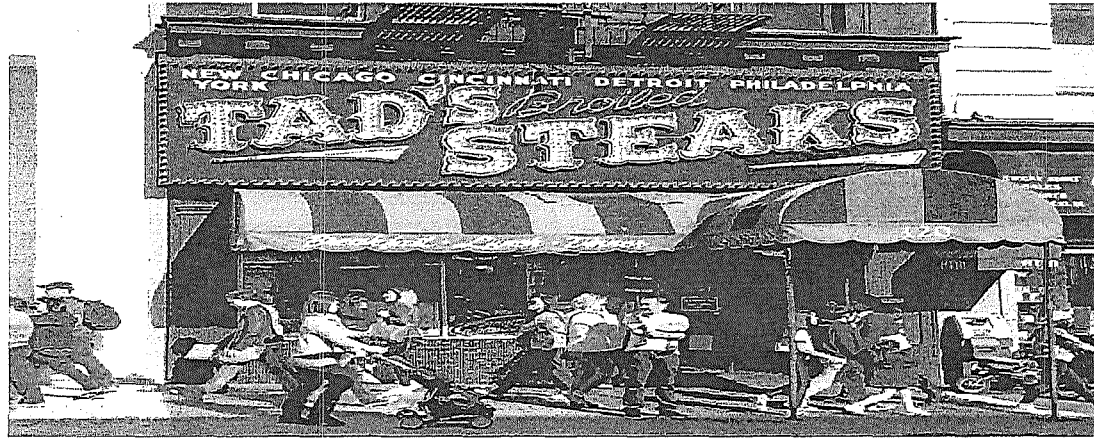
- Tad's Inc. assumed the lease from Les Joulins in 2017 as part of a business acquisition.
- The original lease has a 10-year term (6 years remain)
 - Rent credits up to \$250,000 for tenant improvements
- In the initial ten years of the lease \$5,127,000 in rent would be realized
- The subject retail space has not had any major improvements for over 20 years
 - With a new lease - Tad's will make a significant investment to improve the retail space
 - The cost of the required improvements is well beyond the existing rent credits

Proposed New Lease (190317)



- Proposed new lease includes a fresh 10-year term with two five-year options
 - Nine months of rent abatement as an offset for tenant paid improvements of approximately \$2.7M
- The lease will generate \$5,317,024 in revenues to the City during the initial ten year term
- The rent for the proposed lease starts at \$82.50 per square foot per year
- The proposed rent is within a reasonable range of the appraised rental range of \$82.50 – \$87.56 SF when factoring in the tenant improvement investment of approx. \$2.7M
- The lease escalates at 104% of the base rent annually during the initial 10 year term; 103% during the first extension and 103% or 95% of MV in the second extension period

Tad's Inc.



- Tad's has been operating in the greater Union Square area for over 45 years
- Tad's will pay for the cost of all upgrades and improvements, estimated at \$2.7M, those include:
 - Hood ventilation replacement; Electrical, plumbing, ceiling, flooring and bathroom upgrades
 - New mechanical system; New fire protection system
 - Lighting fixtures; Exterior façade and canopy
- Tad's has not been able to open their business since assuming the Lease, but has consistently paid the rent due, totaling \$730,791 as of February 1, 2019
- Retaining this local small business contributes to a proper public purpose
- Responsible economic development business retention action

Thank You



SEMTA

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Tad's, Inc.	
<i>Please list the names of</i> (1) members of the contractor's board of directors: Stephen Ng, President (2) the contractor's chief executive officer, chief financial officer and chief operating officer: None (3) any person who has an ownership of 20 percent or more in the contractor; Phineas Ng, Secretary (4) any subcontractor listed in the bid or contract; None (5) any political committee sponsored or controlled by the contractor. None	
Contractor address: 44 Ellis Street, San Francisco, CA	
Date that contract was approved:	Amount of contract: \$0 - Lease Termination

Describe the nature of the contract that was approved: Lease Termination Agreement with City and County of San Francisco, by and through San Francisco Municipal Transportation Agency (SFMTA) as landlord, and Tad's Inc. as tenant, for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.
Comments:

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415)554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

