

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.3**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to terminate the lease agreement with Tad's Inc. for retail space located at 44 Ellis Street in the Ellis-O'Farrell Garage.

**SUMMARY:**

- The Ellis-O'Farrell Garage (Garage), located at 123 O'Farrell Street, is owned by the City and County of San Francisco (City) and is under the jurisdiction of the SFMTA.
- On March 1, 2015, the SFMTA entered into a lease agreement (Lease) with Les Joulins USA Inc. (Les Joulins) for the retail space of approximately 5,368 square feet that operated as a restaurant at 44 Ellis Street. Two years later, Tad's Inc. (Tad's) assumed the Lease.
- The Lease includes a rent schedule for the initial term that will result in \$5,127,000 in revenue and rent credits up to \$250,000 for tenant improvements. Six years remain from the initial Lease term.
- There have been no major improvements to the retail space for over 20 years. The Lease was meant to address certain improvements. After assuming the Lease in 2017, Tad's determined that even more work was needed, including a new mechanical system and ductwork, a new fire protection system for sprinkler and hood, new lighting fixtures, and new exterior façade and canopy.
- The rent credits included in this Lease are insufficient for the additional work that is required and Tad's would like to terminate this Lease in order to enter into a new lease agreement that extends the term and includes rent abatement which would allow them to make the necessary capital investments.
- Tad's has been closed while awaiting building permits to begin construction and has consistently met its obligation to pay the rent due.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Lease Termination Agreement

**APPROVALS:**

**DATE**

DIRECTOR 

February 25, 2019

SECRETARY 

February 25, 2019

**ASSIGNED SFMTAB CALENDAR DATE:** March 5, 2019

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### **PURPOSE**

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

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action is consistent with the SFMTA Strategic Plan.

Goal 3: Improve the quality of life and environment in San Francisco and the region.  
Objective 3.5: Achieve financial stability for the agency.

This item does not directly address any Transit First Policy Principles, but this action does ensure the economic health in San Francisco to support and facilitate projects that enhance safety and public transportation.

### **DESCRIPTION**

The Ellis-O'Farrell Garage, located at 123 O'Farrell Street, is owned by the City and under the jurisdiction of the SFMTA, and 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 foot space that operated as a restaurant at 44 Ellis Street.

On May 17, 2013, the SFMTA issued a Request for Proposal (RFP) 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.

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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 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.

### **STAKEHOLDER ENGAGEMENT**

Tad's has been fully engaged. No additional stakeholder engagement was done for this Lease Termination 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.

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**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.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Board of Supervisors approval is required pursuant to Charter Section 9.118 (c) for any lease for a period of ten or more years, including options to renew, or has anticipated revenue of \$1,000,000 or more.

The City Attorney has reviewed this report.

**RECOMMENDATION**

Staff recommends authorizing the Director of Transportation to terminate the lease with Tad's Inc. for the retail space at 44 Ellis Street in the Ellis-O'Farrell Garage.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

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,

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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.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

## 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

TENANT:

TAD'S Inc., a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**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