

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: September 12, 2024**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a third amendment to the lease agreement with DAMA, LLC, a California limited liability company, dba Modi for commercial/retail space on the ground floor of the transit center (Suites 107 and 111).

EXPLANATION:

Original Lease

On August 8, 2019, the TJPA Board of Directors authorized the Executive Director to execute a lease agreement (“Lease”) with DAMA, LLC (“Tenant”) for approximately 2,073 square feet of commercial/retail space on the ground floor of the transit center (Suites 107 and 111) for a 15-year term with two five-year options to renew at full market value. The initial year stated base rent of the Lease was \$207,300 (\$100 per square foot/year), expressed as a gross lease with a percentage rent above the breakpoint of 3% owed beyond base rent. Base rent was scheduled to increase 3% on the first anniversary of commencement, then 3% per year thereafter. The TJPA’s Tenant Improvement allowance was \$182,424 (\$88 per square foot) plus landlord contribution for additional interior improvements. The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant Prior Request for Relief

As a result of COVID-19, Tenant requested certain relief from its obligations under the Lease. Consistent with the Board’s Retail/Commercial Leasing Strategy to Address COVID-19 Impacts, TJPA staff, with the assistance of Lincoln Property, 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, nor from the Payroll Protection Program (“PPP”).

On May 13, 2021, the TJPA Board of Directors authorized an amendment to the Lease, and on that same day the TJPA and Tenant entered a First Amendment to Lease (“First Amendment”). The key terms and conditions of the First Amendment were:

- Tenant’s rental obligation (“Alternative Rent”) shall be a base fee of \$5,000/month plus percentage rent equal to 6% of gross revenues until the soonest to occur of (i) Base Rent is equaled or exceeded, and (ii) June 30, 2022.

The First Amendment contemplated that the Alternative Rent could be extended by the Board in its discretion to June 30, 2023.

Tenant approached TJPA staff and TJPA’s asset management team at Lincoln Property seeking a further extension of economic relief through the calendar year 2023 and the TJPA team again

engaged due diligence review and negotiations with Tenant. Due diligence included, among other things, a review of proposed tenant improvements, and consultations with our brokerage firm as well as other brokers as to status of market conditions.

On June 9, 2022, the TJPA Board of Directors authorized a Second Amendment to the Lease, and on that same day the TJPA and Tenant entered into a Second Amendment to the Lease (“Second Amendment”). The key terms and conditions of the Second Amendment were:

- The deadline for TJPA’s delivery of the possession of the Premises to Tenant was extended to July 1, 2022.
- The Tenant Improvement Allowance increased from \$182,424 (\$88 per square foot) to \$236,322 (\$114 per square foot).
- The Alternative Rent was extended from June 30, 2022 to September 30, 2023 with the possibility to be extended again to September 30, 2024 with timely request from the Tenant and subject to the TJPA Board of Directors approval in its discretion. Should percentage rent equal or exceed the Base Rent as specified in the original Lease during the relief period, Tenant’s rental amount owed would revert to contract rent per the original Lease.
- Tenant had previously agreed to perform certain items of work previously included as part of Landlord’s work. Landlord agreed to reimburse Tenant for the cost of this work equal to the lesser of the actual cost or \$494,103, an increase of approximately \$88K due to the rise in construction costs.

Tenant Current Request for Relief

Tenant recently approached TJPA staff and TJPA’s asset management team at Lincoln Property again seeking economic relief due to unanticipated construction delays. After negotiations and due diligence, a proposed Third Amendment to the Lease has been developed and executed by the Tenant, enclosed herewith. The Third Amendment includes the following key terms:

- Reduction in the Tenant Improvement Allowance (“TIA”) of \$15,231.38, corresponding to Landlord’s cost to make certain improvements to accommodate Tenant’s use;
- Tenant has the right to request a disbursement from their TIA for Exhaust Control Work in an amount not to exceed \$89,000;
- The rent Commencement Date shall be re-set to July 1, 2024. Tenant to pay Alternative Base Rent in the amount of \$8,637.50 from the Commencement Date and ending on the earlier of (i) the last day of the month immediately preceding the Gross Sales Rent Reversion Month, and (ii) October 31, 2024;
- Rent to revert to Base Rent as specified in the original lease if Tenant’s Gross Sales for any month during the Alternative Base Rent Period equals or exceeds \$150,000;
- Sets parameters around improvements made to storage area, regarding demising walls and the TJPA option to request restoration of the space (wall removal) upon lease termination; and
- Tenant may host occasional nighttime entertainment in the premises, contingent upon securing all permits for such use by authorities having jurisdiction and adhering to other limitations as specified in the lease (including sound level limits and code of conduct related to such performances).

The fiscal impact of approving the terms and conditions of the Third Amendment for FY24-25 is \$43,971.80 and has been anticipated under the adopted FY24-25 budget.

RECOMMENDATION:

Authorize the Executive Director to execute the Third Amendment to Lease with DAMA, LLC, as presented herein.

ENCLOSURES:

1. Resolution
2. Third Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On August 8, 2019, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA's Executive Director to execute a lease agreement ("Lease") with DAMA, LLC ("Tenant") for approximately 2,073 square feet of commercial/retail space on the ground floor of the transit center (Suites 107 and 111) for a 15-year term with two five-year options to renew at full market value; 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. Since these original proclamations, orders, and declarations were issued, there have been subsequent updates, supplements, and refinements, guiding the City to recovery (collectively, "Health Orders"); and

WHEREAS, As a result of COVID-19 and the Health Orders, 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 Lease; and

WHEREAS, On May 13, 2021, the TJPA Board approved a First Amendment to Lease that provided certain economic relief to Tenant through June 30, 2022; and

WHEREAS, On June 9, 2022, the TJPA Board approved a Second Amendment to the Lease, extending certain economic relief to Tenant to September 30, 2023; and

WHEREAS, Tenant requested additional relief from its obligations under the Lease and certain other changes to the terms and conditions of the Lease, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a Third Amendment to Lease that, among other things, provides economic relief to Tenant in the form of an extended period of the alternative rent schedule and an additional Tenant Improvement Allowance; 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 2024-2025 accommodates the fiscal impact of accepting this Third Amendment to the Lease; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Third Amendment to Lease to be in the best interest of the public; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Third Amendment to Lease with DAMA, LLC for Suites 107 and 111 in the form presented herewith.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 12, 2024.

Secretary, Transbay Joint Powers Authority

THIRD AMENDMENT TO LEASE

This THIRD AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the ___ day of _____, 2024, 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 DAMA, LLC, a California limited liability company, dba Via Vai by Acquolina (“**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 _____, 2019 (together with all exhibits and addenda attached thereto, the “**Original Lease**”), as amended by that certain First Amendment to Lease dated _____, 2021 (the “**First Amendment**”) and that certain Second Amendment to Lease dated _____, 2022 (the “**Second Amendment**”), whereby Tenant leased from Landlord approximately 2,073 usable square feet of retail space (the “**Premises**”) known as Space Numbers 107 and 111, located in the retail usage area on the ground floor of the Salesforce Transit Center in San Francisco, California (the “**Center**”). The Original Lease, as amended by the Letter Agreement and the First Amendment, is hereinafter referred to as the “**Existing Lease**”. Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Landlord and Tenant have entered into that certain Addendum to Salesforce Transit Center Lease – Storage Space (the “**Storage Space Addendum**”) permitting Tenant to use certain storage space in the Center’s retail storage area described therein (as applicable, the “**Storage Space**”) for the storage of Tenant’s personal property and equipment, subject to and in accordance with the terms of the Storage Space Addendum.

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

D. The parties acknowledge that the provisions of this Amendment concerning payment of Rent have 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 adjustments to the Rent otherwise payable to Landlord under the Lease provided for hereunder.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. References. All references to the “Lease” or “lease” appearing in this Amendment or in the Existing Lease shall mean, collectively, this Amendment and the Existing Lease, as amended by this Amendment.

2. Commencement Date. Notwithstanding anything to the contrary contained in the Existing Lease, Landlord and Tenant acknowledge and agree that the Commencement Date shall occur on July 1, 2024.

3. Improvement Allowance.

(a) Deduction from Improvement Allowance. Landlord and Tenant acknowledge that, in connection with Tenant's proposed use of the Patio Area, it was reasonably necessary or desirable to remove a planter that was previously located in the Patio Area. Landlord has removed the planter and incurred costs totaling Fifteen Thousand Two Hundred Thirty-One and 38/100 Dollars (\$15,231.38) to do so. Accordingly, Landlord and Tenant hereby agree that the amount of the Improvement Allowance shall be reduced by Fifteen Thousand Two Hundred Thirty-One and 38/100 Dollars (\$15,231.38).

(b) Disbursement of Improvement Allowance. Notwithstanding anything to the contrary contained in Section 2.2 of the Work Letter attached as Exhibit B to the Original Lease, Tenant shall have the right to request a disbursement from the Improvement Allowance in an amount equal to the costs incurred by Tenant to perform the kitchen exhaust control work the itemized scope of which work is described in more detail in Exhibit A attached hereto (the "**Exhaust Control Work**"), not to exceed Eighty-Nine Thousand and No/100 Dollars (\$89,000.00) (the "**Exhaust Control Work Cost Cap**"), immediately upon Tenant's completion of the Exhaust Control Work. Such request shall be accompanied by (a) invoices from all of Tenant's Agents for mobilization costs, labor rendered and materials delivered to the Premises for the performance of the Exhaust Control Work, (b) executed unconditional mechanic's lien releases from all of Tenant's Agents rendering labor or delivering materials in connection with the Exhaust Control Work which shall comply with the appropriate provisions of California Civil Code Section 8136 and Section 8138, and (c) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, Landlord shall deliver a check to Tenant in payment of the lesser of (i) the amount so requested by Tenant, (ii) the Exhaust Control Work Cost Cap, and (iii) the then remaining available portion of the Improvement Allowance, provided that Landlord does not dispute any request for payment based on non-compliance of any Exhaust Control Work with the Approved Working Drawings, or due to any substandard work, or for any other reason. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

4. Alternative Base Rent. The provisions of Section 2 of the First Amendment and Section 4 of the Second Amendment are hereby deleted and of no further force and effect.

(a) Payment of Alternative Base Rent.

(i) Alternative Base Rent Period. Notwithstanding anything to the contrary contained in the Existing Lease, during the period (the "**Alternative Base Rent Period**") commencing on the Commencement Date and ending on the earlier of (A) the last day of the month immediately preceding the Gross Sales Rent Reversion Month (as defined in Section 4(b) below), and (B) October 31, 2024 (the "**Alternative Base Rent Period Outside Expiration Date**"),

Tenant shall pay Alternative Base Rent (as defined in Section 4(a)(ii) below) in lieu of paying the Base Rent specified in the Basic Lease Information during such Alternative Base Rent Period. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternative Base Rent Period, Tenant shall be obligated to pay the Base Rent specified in the Basic Lease Information.

(ii) Alternative Base Rent. As used herein, “**Alternative Base Rent**” shall mean an amount equal to Eight Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$8,637.50) per month.

(b) Reversion to Contract Rent. Notwithstanding anything to the contrary contained in Section 4(a) above, if Tenant’s Gross Sales for any month during the Alternative Base Rent Period equal or exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (the “**Reversion Threshold**”), then commencing with such month (such month being herein referred to as the “**Gross Sales Rent Reversion Month**”), Tenant shall resume paying the Base Rent specified in the Basic Lease Information and Tenant shall not be obligated to pay Alternative Base Rent for the Gross Sales Rent Reversion Month or for any month thereafter. If Tenant has already paid Alternative Base Rent for the Gross Sales Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Gross Sales Rent Reversion Month and the Alternative Base Rent so paid within ten (10) days following the last day of the Gross Sales Rent Reversion Month. For avoidance of doubt, Tenant acknowledges and agrees that commencing on the first day immediately following the Alternative Base Rent Period Outside Expiration Date, Tenant shall be obligated to return to paying the Base Rent specified in the Basic Lease Information regardless of whether Tenant’s Gross Sales for a particular month equal or exceed the Reversion Threshold and that Tenant shall no longer be obligated to pay Alternative Base Rent from and after such date.

For avoidance of doubt, the provisions of this Section 4 only apply with respect to Tenant’s obligations to pay Base Rent under the Lease during the Alternative Base Rent Period. Nothing in this Section 4 shall affect Tenant’s obligations to pay Percentage Rent in accordance with Section 2(c) of the Existing Lease during the Alternative Base Rent Period or otherwise to the extent the same is otherwise due in accordance with Section 2(c) of the Existing Lease.

5. Storage Space. Subject to any Tenant Staging Delay (as hereinafter defined), Landlord shall deliver the Storage Space to Tenant no later than forty-five (45) days prior to the date on which Tenant first opens for business to the public at the Premises (the “**Anticipated Storage Space Delivery Date**”), provided that Tenant has given Landlord at least fifty-two (52) days’ prior written notice of Tenant’s opening date. Tenant acknowledges that Tenant is currently using the Storage Space as a staging location for Tenant’s construction of the Tenant Improvements. Tenant shall cease use of the Storage Space for such purpose as promptly as possible and in no event later than the date that is forty-five (45) days prior to the date on which Tenant first opens for business to the public at the Premises. Notwithstanding anything to the contrary contained herein or in the Storage Space Addendum, Landlord shall not be subject to any liability whatsoever to Tenant on account of any delay in delivery of the Storage Space to Tenant due to the continued use of the same by Tenant for staging purposes (including, but not limited to, Tenant’s failure to remove any supplies, materials, equipment or other property stored in the Storage Space by Tenant following completion of the Tenant Improvements) (as applicable, a

“**Tenant Staging Delay**”). Furthermore, Tenant agrees that, in the event Landlord is delayed in delivering the Storage Space to Tenant on account of any Tenant Staging Delay then, notwithstanding anything to the contrary contained in the Storage Space Addendum, the commencement date for the obligation to pay the Storage Fee (as defined in the Storage Space Addendum) for the Storage Space shall be calculated as if the Landlord had delivered the Storage Space to Tenant on the Anticipated Storage Space Delivery Date. Prior to the date hereof, Tenant constructed a demising wall within the Storage Space with Landlord’s approval (the “**Wall**”). Landlord shall have the right to require Tenant to remove the Wall on expiration or any earlier termination of the Lease and restore the Storage Space to its original condition existing as of the date on which the Storage Space was first made available to Tenant for use as a staging location for Tenant’s construction of the Tenant Improvements. Tenant acknowledges that, pursuant to the existing Addendum to Salesforce Transit Center Lease – Storage Space attached to the Existing Lease, Tenant does not have the right to make any further alterations or improvements to the Storage Space. If, notwithstanding the foregoing, Tenant makes any additional alterations, improvements or cosmetic changes to the Storage Space (either with or without Landlord’s approval) then, without limiting any of Landlord’s other rights and remedies on account of the same under the Lease, at law or in equity, Landlord shall have the right to require Tenant to remove the same on expiration or any earlier termination of the Lease and restore the Storage Space to its original condition prior to the making of the same.

6. Patio Area Plan. Pursuant to Section 1(e)(ii) of the Existing Lease, Landlord hereby approves the plan attached hereto as Exhibit B specifying the number and location of the proposed tables, chairs and other items to be placed by Tenant in the Patio Area.

7. Entertainment Use. Subject to this Section 7 and Tenant’s compliance with any applicable Requirements (including, but not limited to, any Requirements necessitating that Tenant obtain a permit or other governmental or quasi-governmental approval and any Requirements imposing restrictions on decibel level or hours), Tenant shall have the right to host occasional nighttime entertainment in the Premises (“**Entertainment Events**”) during the hours in which Tenant is open for business at the Premises; provided that any such Entertainment Events shall cease no later than 2:00 a.m. PT or such earlier time as may hereafter be requested by Landlord from time to time. Tenant shall be solely responsible for obtaining, at Tenant’s sole cost and expense, all permits and other governmental or quasi-governmental approvals required in order for Tenant to host Entertainment Events at the Premises, including, but not limited to, a Place of Entertainment permit from the City and County of San Francisco (collectively, “**Entertainment Permits**”). Tenant shall be solely responsible for complying with all requirements of any such Entertainment Permits, at Tenant’s sole cost and expenses, and shall pay all fees, costs and expenses charged in connection with any inspections required by the City and County of San Francisco or other governmental or quasi-governmental agency in connection with any Entertainment Events and/or any Entertainment Permits. Tenant shall provide, at Tenant’s sole cost and expense, any security required under any such Entertainment Permits and/or applicable Requirements and shall further provide, at Tenant’s sole cost and expense, any additional security reasonably requested by Landlord in connection with any such Entertainment Events. Tenant acknowledges and agrees that Landlord shall have no responsibility whatsoever for the provision of any security services in connection with any such Entertainment Events and is in no way responsible for the conduct of patrons or attendees of such Entertainment Events. All music and other sounds associated with any such Entertainment Events shall be kept at reasonable sound levels only and in such a manner as to not disturb any other tenants at the Center. Without limiting the foregoing, no music or other sounds associated with any such Entertainment Events shall be audible (including, but not limited to, through sound reverberations or base) within any adjacent premises occupied by other tenants at the Center. In addition to music and sound levels, conduct resulting

from such Entertainment Events shall be kept at a reasonable level, and in such a manner as to not disturb any other tenant at the Center or the public. In the event Landlord receives any complaints from neighbors or other tenants at the Center relating to music in the Premises or conduct within the immediately proximity, then, as a condition to Tenant's continued right to host Entertainment Events in the Premises under this Section 7, Tenant shall, at Tenant's sole cost and expense, undertake all such actions as may be requested by Landlord in order to minimize any disturbance caused by such activities to neighbors or any other tenants of the Center. If Tenant fails to comply with the provisions of this Section 7 and such failure is not remedied by Tenant within five (5) days after written notice to Tenant specifying the condition Tenant needs to correct, or if Landlord receives more than six (6) complaints from other tenants at the Center relating to conduct, music or other sounds associated with any such Entertainment Events within any consecutive twelve (12) month period, Landlord shall have the sole and absolute right to revoke Tenant's right to host Entertainment Events in the Premises.

8. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in Section 4 above, are not made by Tenant, the provisions of Section 4 above shall become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if Section 4 above had not been included in this Amendment.

9. 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: _____, 2024

TENANT:
DAMA, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

Date: _____, 2024

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board

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

GUARANTOR:

Dario Nicotra

Date: _____, 2024

Exhibit A

Itemized Scope of Exhaust Control Work

JOHNSON CONTROLS Metasys® BACnet SCOPE OF WORK:

- JCI will provide Metasys controls engineered documents, programming, start up, commissioning, and graphics.
- (1) Motorized Balance Damper (provided by others)
 - Furnish & Install Modulating Actuator (1)
 - Install wiring to tie back to existing FEC controller
- Hoods 1,2,3 & Existing MELINK Panel & SF-1
 - Install Existing Melink Touch Screen (1)
 - Furnish & Install Melink Hood Controller (1)
 - Furnish & install infrared Optical Sensor inside Hood (1)
 - Furnish & Install Exhaust Air Temperature Sensors inside Hood (3)
 - Furnish & Install SS pass-thru fitting
 - Interlock wiring of SF-1 MUA VFD to Melink Panel (VFD by others)
 - Single point interface from Melink Panel to CaptiveAire Control panel (CaptiveAire scope by others)
- Hood 4 & EF-2
 - EF-2 Fan operation interlocked with H-4
- WSHP-1, WSHP-2 & SF-2
 - SF-2 Fan operation interlocked with WSHP-1 & WSHP-2CI BMS Proposal – Via Vai at Transbay STC
- Ansul Alarm
 - Dry contact from Ansul to Melink Panel for Alarm

Exhibit B
Patio Area Plan

