

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3  
FOR THE MEETING OF: January 12, 2023**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute first amendments to the lease agreements with Dim Baos, Inc., a California corporation, for two commercial/retail spaces on the first floor of the transit center (Suite 125 and 129) (“Dim Baos restaurant”) and (Suite 119 and a portion of Suite 118) (“Juice Bar”), consistent with the previously adopted Retail/Commercial Leasing Strategy to Address COVID-19 Impacts to tenancies.

**EXPLANATION:**

Background

On March 16, 2020, the City and County of San Francisco issued a Shelter-in-Place (“SIP”) Order to facilitate the reduction of the impact of the virus that causes coronavirus disease (“COVID-19”). Since the original SIP Order was issued, subsequent orders have been issued by the City and County of San Francisco updating and supplementing the original order. The TJPA anticipates that future orders may be issued, guiding the City to recovery (collectively, “Health Orders”).

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

As of the date of this report, San Francisco has made significant progress toward re-opening the economy, but economic ramifications in downtown San Francisco remain a concern, mainly resulting from a delayed return for office workers and thus of transit riders. The economy is slowly re-opening in San Francisco, however office occupancies remain very low, and transit ridership through the Salesforce Transit Center is roughly half of what it was pre-pandemic.

Original Leases

- Dim Baos Restaurant Lease: On August 8, 2019, the TJPA Board of Directors authorized the Executive Director to complete negotiations and execute a lease agreement with Dim Baos, Inc. (“Tenant”) for about 1,877 square feet of commercial/retail space on the first level of the Salesforce Transit Center (Suites 125 & 129) for a 10-year, 3 month term with one five-year options to renew at full market value. The lease was fully executed on September 17, 2019 (“Dim Baos Restaurant Lease”). The initial year stated base rent of the lease is \$122,005 (\$10,167.08 per month) (\$65 per square foot per year). Starting in

year two, the rent mirrors pro forma (\$14,499.83 per month) (\$92.70 per square foot per year) and escalates at 3% every year. At the end of the tenth year, an additional three months of term is added. The rent in these last three months is increased 3% over year ten. This was done in order to compensate for the upfront three months of rent abatement. The deal was structured this way to provide Dim Baos some business ramp up time. The TJPA's Tenant Improvement allowance is \$140,775 (\$75 per square foot), same as the pro forma allowance. Finally, the base building improvement budget is \$311,951 whereas the pro forma budget was \$561,466. The business terms under the Dim Baos Restaurant Lease were within or more favorable than the proforma for the premises.

- Juice Bar Lease: Consistent with the Board's Retail Leasing Policy, the Interim Executive Director executed a lease agreement with Tenant for about 742 square feet of commercial/retail space on the first level of the Salesforce Transit Center (Suite 119) for a term co-terminus with the Dim Baos Restaurant Lease with one five-year option to renew at full market value. The lease was fully executed on April 6, 2021 ("Juice Bar Lease"). The initial year stated base rent of the lease is \$44,520. Starting in year two, the rent mirrors pro forma and escalates at 2% every year from a base of \$60.00 per square foot. The TJPA's Tenant Improvement allowance is \$37,100 (\$50 per square foot), consistent with the pro forma allowance. The business terms under the Juice Bar Lease were within or more favorable than the proforma for the premises.

#### Tenant Request for Relief Under Both Leases

In light of the pandemic, Tenant has delayed moving forward with their Tenant Improvement projects for both premises. Tenant is now committed, however, to beginning their Tenant Improvement projects for both spaces shortly with an anticipated opening for Dim Baos Restaurant in Spring 2023 and Juice Bar in Q3 2023. While permitted to open consistent with current Health Orders once their Tenant Improvement construction is completed, Tenant requested certain relief from its obligations to open under the economics of the original leases until additional office workers and transit riders return to the area.

Consistent with the Board's Strategy, TJPA staff, with the assistance of Lincoln Property, Colliers, and retail legal counsel, engaged due diligence review and negotiations with 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. As a result of that due diligence review and negotiations, a proposed first amendment to each lease has been developed and executed by Tenant, enclosed herewith.

- Amendment to Dim Baos Restaurant Lease: Under the negotiated First Amendment to the Dim Baos Restaurant Lease (enclosed), the "Commencement Date", when the Tenant is obligated to begin paying rent, would be deferred. The original lease required the Tenant to begin paying rent on the earlier of the date Tenant opened for business, or 120 days after Landlord delivered possession. Under the First Amendment, Tenant would begin paying rent on the earlier of the date on which Tenant first opens for business or 6 months after the First Amendment has been fully executed by Landlord and Tenant.

Under the First Amendment to the Dim Baos Restaurant Lease, Tenant's rental obligation would be reduced to a base fee of \$3,000/month plus percentage rent equal to 6% of gross revenues for a period of up to one year after the Commencement Date. 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.

Under the First Amendment to the Dim Baos Restaurant Lease, the Tenant Improvement Allowance would increase from \$140,775 (\$75 per square foot) to \$234,625 (\$125 per square foot) to offset escalated construction costs and to address kitchen exhaust system work.

The value of approving the terms and conditions of the First Amendment to the Dim Baos Restaurant Lease is estimated at \$248,854. The fiscal impact can be accommodated in the adopted Fiscal Year 22-23 budget and will be reflected in the draft Fiscal Year 23-24 budget that TJPA staff will present to the Board in May 2023. The form of relief proposed under the First Amendment is similar to the relief the TJPA has granted other tenants materially affected by COVID-19. Additionally, the initial term of the lease has been extended to reflect the rent relief period, moving the initial termination date to allow the TJPA to financially re-capture the relief granted.

- Amendment to Juice Bar Lease: Under the negotiated First Amendment to the Juice Bar Lease (enclosed), Tenant would expand the existing premises to include additional space consisting of approximately 296 useable square feet currently included as part of Space Number 118 in the Center and located immediately adjacent to the existing premises. Upon Tenant's request, Landlord would perform certain work to prepare the expansion space, which Tenant would be obligated to reimburse upon completion of the work. Alternatively, Tenant may elect to perform this work by timely providing an Expansion Space Work Election Notice. The expansion space is to be utilized for a walk-in cooler, which is required for fresh produce and other perishable items. This reduction in space to Suite 218 leaves it with 2,621 square feet of rentable space, which is not expected to affect TJPA's ability to lease the premises.

Under the First Amendment to the Juice Bar Lease, the "Commencement Date" when the Tenant is obligated to begin paying rent would be deferred until the earlier of (1) the date on which Tenant first opens for business in the premises or (2) 6 months after the later of (a) the expansion space is delivered to Tenant or (b) the First Amendment has been fully executed by Landlord and Tenant.

Under the First Amendment to the Juice Bar Lease. Tenant's rental obligation would be reduced to a base fee of \$1,500/month plus percentage rent equal to 6% of gross revenues for a period of up to one year after the Commencement Date. 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.

Under the First Amendment to Juice Bar Lease, the Tenant Improvement Allowance shall increase from \$37,100 (\$50 per square foot) to \$55,650 (\$75 per square foot of the existing premises and not including the expansion area).

The value of approving the terms and conditions of the First Amendment to the Juice Bar Lease is estimated at \$85,592.8 (Reduced rent of \$67,042.80 and increased Tenant Improvement Allowance of \$18,550). The fiscal impact can be accommodated in the adopted Fiscal Year 22-23 budget and will be reflected in the draft Fiscal Year 23-24 budget that TJPA staff will present to the Board in May 2023. The form of relief proposed under the First Amendment is similar to the relief the TJPA has granted other tenants materially affected by COVID-19.

**RECOMMENDATION:**

Authorize the Executive Director to execute the negotiated First Amendment to Dim Baos Restaurant Lease and First Amendment to Juice Bar Lease with Dim Baos, Inc., adjusting terms and conditions of the leases.

**ENCLOSURES:**

1. Resolution
2. First Amendment to Dim Baos Restaurant Lease
3. First Amendment to Juice Bar 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 finalize negotiations and execute a lease agreement with Dim Baos, Inc. (“Tenant”) for about 1,877 square feet of commercial/retail space on the first level of the new transit center (Suite 125 & 129) for a 10-year, 3 month term with one five-year option to renew at full market value. A lease was fully executed on September 17, 2019 (“Dim Baos Restaurant Lease”); and

WHEREAS, Consistent with the Board’s Retail Leasing Policy, on April 6, 2021, the Interim Executive Director executed a lease agreement with Tenant for about 742 square feet of commercial/retail space on the first level of the Salesforce Transit Center (Suite 119) for a term co-terminus with the Dim Baos Restaurant Lease with one five-year option to renew at full market value (“Juice Bar Lease”); and

WHEREAS, On March 4, 2020, Governor Newsom proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic. On February 25, 2020, the Mayor of the City and County of San Francisco declared a local emergency, and on March 6, 2020, the City’s Health Officer declared a local health emergency. On March 16, 2020, the City and County of San Francisco issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes COVID-19, and that order generally required everyone to stay safe at home except for certain essential activities and work to provide essential businesses and government service or perform essential public infrastructure construction; and

WHEREAS, Since these original proclamations, orders, and declarations were issued, there have been subsequent updates, supplements, and refinements, guiding the City to recovery (collectively, “Health Orders”); and

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

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

WHEREAS, As a result of COVID-19 and continued market depression, Tenant has submitted a request for rent relief from its obligations under both leases, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a First Amendment to Dim Baos Restaurant Lease and First Amendment to Juice Bar Lease that provide certain short term economic relief to Tenant, consistent with the guidance contained in the adopted Strategy, as well

as certain increased allowance for Tenant Improvements and increased premises area under the Juice Bar Lease, the forms of which are presented herewith; 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 adopted budget for Fiscal Year 2022-2023 accommodates the fiscal impact of accepting this First Amendment to the Dim Baos Restaurant Lease and First Amendment to Juice Bar Lease; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the First Amendment to Dim Baos Restaurant Lease and First Amendment to Juice Bar Lease to be consistent with the adopted Strategy and otherwise 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 First Amendment to Dim Baos Restaurant Lease with Dim Baos, Inc. for Suite 125 & 129 in the form presented herewith; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the First Amendment to Juice Bar Lease with Dim Baos, Inc. for Suite 119 and a portion of Suite 118 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 January 12, 2023.

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Secretary, Transbay Joint Powers Authority

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, by and among TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“**Landlord**”), and DIM BAOS, INC., a California corporation (“**Tenant**”), with reference to the following facts and understandings.

### RECITALS

A. Landlord and Tenant entered into that certain “Salesforce Transit Center Lease” dated as of September 6, 2019 (together with all exhibits and addenda attached thereto, the “**Existing Lease**”), whereby Tenant leased from Landlord approximately 1,877 usable square feet of retail space (the “**Premises**”) known as Space Numbers 125 and 129, located in the retail usage area on the ground level of the Salesforce Transit Center in San Francisco, California (the “**Center**”). Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. The Commencement Date under the Existing Lease has not yet occurred.

C. Tenant has requested that Landlord make certain temporary adjustments to the Rent payable by Tenant under the Lease from and after the Commencement Date as a result of the unprecedented circumstances surrounding the COVID-19 pandemic.

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

E. The parties acknowledge that this Amendment has been entered into at the request of Tenant as a result of the unprecedented circumstances surrounding the COVID-19 pandemic and that, in entering into this Amendment, Landlord is suffering an acknowledged financial loss on account of the waiver of, and adjustment to, the Base Rent otherwise payable to Landlord under the Lease provided for hereunder.

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

### AGREEMENT

1. References. All references to the “Lease” or “lease” appearing in this 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, the “Commencement Date” shall be the earlier of (a) the date on which Tenant first opens for business in the Premises or (b) the date that is six (6) months after the later of (i)

the date on which Landlord delivers possession of the Premises to Tenant with the Landlord Work (as defined in the Work Letter attached as Exhibit B to the Existing Lease) Substantially Completed (as defined in the Work Letter attached as Exhibit B to the Existing Lease) and (ii) the date on which this Amendment has been fully executed by Landlord and Tenant.

3. Alternative Rent Period.

(a) Payment of Alternative Rent in lieu of Base Rent.

(i) Alternative Rent Period. Notwithstanding anything to the contrary contained in the Existing Lease, during the period (the “**Alternative Rent Period**”) commencing on 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 3(b) below), and (B) the first (1<sup>st</sup>) anniversary of the Commencement Date (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 3(a)(ii)(C) below) in lieu of paying the Base Rent specified in the Basic Lease Information for such Alternative Rent Period. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternative Rent Period, Tenant shall be obligated to pay the Base Rent specified in the Basic Lease Information. For avoidance of doubt, Tenant further acknowledges and agrees that the provisions of Section 2(b)(iii) shall not apply to any month during the Abatement Period referenced therein for which Tenant pays Alternative Rent pursuant to this Section 3 in lieu of paying the Base Rent specified in the Basic Lease Information for such month, it being agreed that Section 2(b)(iii) applies only with respect to Tenant’s obligation to pay Base Rent during the Abatement Period, if Base Rent rather than Alternative Rent is payable during all or any portion of the Abatement Period.

(ii) Alternative Rent.

(A) Fixed Monthly Alternative Payment. Notwithstanding anything to the contrary contained in the Existing Lease, in lieu of the Base Rent payments otherwise provided for in Section 2(b)(i) of the Existing Lease, during the Alternative Rent Period, Tenant shall pay to Landlord the Fixed Monthly Alternative Payment (as hereinafter defined). As used here, the “**Fixed Monthly Alternative Payment**” shall mean an amount equal Three Thousand and No/100 Dollars (\$3,000.00) per month. The Fixed Monthly Alternative Payment for each month during the Alternative Rent Period shall be paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, on or before the first (1<sup>st</sup>) day of the applicable month and otherwise in accordance with Section 2(a) of the Existing Lease.

(B) Percentage Rent. Notwithstanding anything to the contrary contained in the Existing Lease, in the event that Tenant opens for business at the Premises prior to the last day of the Alternative Rent Period then, in lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Existing Lease, during the portion of the Alternative Rent Period commencing on the date on which Tenant first opens for business at the Premises and continuing until the last day of the Alternative Rent Period, Tenant shall also pay to Landlord “**Alternative Percentage Rent**” in the manner provided under this Section 3(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period that the same is payable hereunder shall be calculated by multiplying Tenant’s Gross Sales for such month by six



percent (6%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within ten (10) days after the end of each month for which the same is due. For avoidance of doubt, the Alternative Percentage Rent payable by Tenant under this Section 3(a)(ii)(B) shall be calculated without regard to any breakpoint (including, but not limited to, the Breakpoint set forth in Section 2(c) of the Existing Lease). All references to “Percentage Rent” in Sections 2(a), 2(c)(vi), 2(d), 19(a)(i), 24(a) and 26(k) shall be deemed to include, without limitation, Alternative Percentage Rent. Tenant acknowledges and agrees that it will provide the quarterly and annual statements required under Section 2(c)(v) of the Existing Lease during the Alternative Rent Period.

(C) Alternative Rent. As used herein, “**Alternative Rent**” shall mean the Fixed Monthly Alternative Payment and, if applicable, Alternative Percentage Rent.

(b) Reversion to Contract Rent. Notwithstanding anything to the contrary contained in Section 3(a) above, if an amount equal to six percent (6%) of Tenant’s Gross Sales for any three (3) consecutive months from and after the month in which the Commencement Date occurs through and including the month in which the Alternative Rent Period Outside Expiration Date occurs equals or exceeds the Base Rent specified in the Basic Lease Information that would otherwise be payable by Tenant for such three (3) consecutive month period (without taking into account any abatement of Base Rent provided under Section 2(b)(iii) of the Existing Lease), then commencing with the first month of such three (3) consecutive month period (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, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) and Tenant shall not be obligated to pay the Fixed Monthly Alternative Payment or Alternative Percentage Rent for the Gross Sales Rent Reversion Month or for any month thereafter. If Tenant has already paid the Fixed Monthly Alternative Payment for the Gross Sales Rent Reversion Month or any month thereafter, Tenant shall pay the difference between the sum of the Base Rent specified in the Basic Lease Information for the Gross Sales Rent Reversion Month and, if applicable, such subsequent months and the Fixed Monthly Alternative Payment within ten (10) days following the last day of such three (3) consecutive month period. For avoidance of doubt, Tenant acknowledges and agrees that commencing on the first day immediately following the Alternative Rent Period Outside Expiration Date, Tenant shall be obligated to return to paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) regardless of whether six percent (6%) of Tenant’s Gross Sales for a particular month equals or exceeds the Base Rent due for such month and that Tenant shall no longer be obligated to pay Tenant’s Monthly Expense Contribution or Alternative Percentage Rent from and after such date.

#### 4. Improvement Allowance.

(a) General. Section 2.1 of the Work Letter attached as Exhibit B to the Existing Lease is hereby deleted in its entirety. Tenant shall be entitled to a one-time improvement allowance (the “**Improvement Allowance**”) in amount not to exceed Two Hundred Thirty-Four Thousand Six Hundred Twenty-Five and No/100 Dollars (\$234,625.00) (*i.e.*, \$125.00 per usable square foot of the Premises) for the costs relating to the initial design and construction of the Tenant Improvements and for the other Improvement Allowance Items

described in Section 4(b) below. In no event shall Landlord be obligated to make disbursements pursuant to the this Amendment or the Existing Lease (including, but not limited to, the Work Letter attached as Exhibit B to the Existing Lease) in a total amount which exceeds the Improvement Allowance and in no event shall Tenant be entitled to any credit for any unused portion of the Improvement Allowance not used by Tenant prior to the first (1<sup>st</sup>) anniversary of the Commencement Date.

(b) Disbursement of the Improvement Allowance. Section 2.2 of the Work Letter attached as Exhibit B to the Existing Lease is hereby deleted in its entirety.

(i) Improvement Allowance Items. Except as otherwise set forth in this Section 4(b), the Improvement Allowance shall be disbursed by Landlord pursuant to the process set forth in Section 4(b)(ii) below for costs related to the construction of the Tenant Improvements and for the following items and costs (collectively, the “**Improvement Allowance Items**”): (a) payment of the fees of the “Architect” and the “Engineers,” as those terms are defined in Section 3.1 of the Work Letter attached as Exhibit B to the Existing Lease, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the Construction Drawings (as defined in Section 3.1 of the Work Letter attached as Exhibit B to the Existing Lease); (b) the cost of permits and construction supervision fees; (c) installing cabling in the Premises; (d) the cost of any changes in the Base, Shell and Core required by the Construction Drawings; (e) the cost to cause the Premises to comply with all Requirements, including, without limitation, Title 24 and the ADA; and (f) the “Landlord Coordination Fee”, as that term is defined in Section 4.3 of the Work Letter attached as Exhibit B to the Existing Lease. However, in no event shall more than Twelve and No/100 Dollars (\$12.00) per usable square foot of the Improvement Allowance be used for the items described in (a), (b) and (c) above and any additional amount incurred as a result of (a), (b) or (c) above shall be paid by Tenant.

(ii) Disbursement of Improvement Allowance.

(A) Disbursements. The Improvement Allowance shall be disbursed by Landlord for the benefit of Tenant for payment of Improvement Allowance Items in two (2) installments (each a “**Disbursement Payment**”). The first such Disbursement Payment shall be in an amount equal to the First Disbursement Payment (as hereinafter defined) and shall be made following completion of the Tenant Improvements and Tenant’s opening for business in the Premises and Landlord’s receipt of an Initial Disbursement Request (as hereinafter defined) relating to the same. The second such Disbursement Payment shall be in an amount equal to the Second Disbursement Payment (as hereinafter defined) and shall be made following the initial six (6) months of Tenant being continuously open for business at the Premises and Landlord’s receipt of a Final Disbursement Request (as hereinafter defined) relating to the same. As used herein (i) the “**First Disbursement Payment**” shall mean an amount equal to the lesser of One Hundred Seventy-Five Thousand Nine Hundred Sixty-Eight and 75/100 Dollars (\$175,968.75) and seventy-five percent (75%) of the total actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements and (ii) the “**Second Disbursement Payment**” shall mean an amount equal to the lesser of Fifty-Eight Thousand Six Hundred Fifty-Six and 25/100 Dollars (\$58,656.25) and twenty-five percent (25%) of the total actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements. Notwithstanding anything to the contrary

contained herein, in no event shall the Disbursement Payments exceed the actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements and if the actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements are less than the Improvement Allowance, the Disbursement Payments provided for hereunder shall be adjusted accordingly.

(B) Initial Disbursement Request. Upon completion of the Tenant Improvements, Tenant shall deliver to Landlord the following (collectively, an “**Initial Disbursement Request**”): (i) a request for payment of the Contractor (as defined in Section 4.1 of the Work Letter attached as Exhibit B to the Existing Lease), approved by Tenant, in a form to be provided by Landlord; (ii) invoices from all of Tenant's Agents (as defined in Section 4.2 of the Work Letter attached as Exhibit B to the Existing Lease) for labor rendered and materials delivered to the Premises; (iii) executed unconditional mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions of California Civil Code Section 8136 and Section 8138; and (iv) all other information reasonably requested by Landlord (including, without limitation, a certificate from the Architect, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been completed). 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 Initial Disbursement Request. Thereafter, Landlord shall deliver a check to Tenant in payment of the First Disbursement Payment, provided that Landlord does not dispute Tenant's Initial Disbursement Request based on non-compliance of any work with the Approved Working Drawings (as defined in Section 3.4 of the Work Letter attached as Exhibit B to the Existing Lease), or due to any substandard work, or for any other reason.

(C) Final Disbursement Request. On or before the date that is six (6) months after the date on which Tenant first opens for business at the Premises, Tenant shall deliver to Landlord the following (collectively, a “**Final Disbursement Request**”): (i) a request for payment of the Second Disbursement Payment, which request shall include a written certification from Tenant that Tenant has continuously operated its business in the Premises in accordance with the terms and provisions of the Lease during the immediately preceding six (6) months and (ii) all other information reasonably requested by Landlord. Thereafter, Landlord shall deliver a check to Tenant in payment of the Second Disbursement Payment, provided that Landlord does not dispute Tenant's Final Disbursement Request based on non-compliance of any work with the Approved Working Drawings, or due to any substandard work, or for any other reason (including, but not limited to, Tenant's failure to continuously operate its business at the Premises in accordance with the Lease during the immediately preceding six (6) month period).

(iii) Other Terms. Neither Landlord's payment of the First Disbursement Payment nor Landlord's payment of the Second Disbursement Payment shall be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's Initial Disbursement Request or any other matters set forth in Tenant's Final Disbursement Request. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items. All Tenant Improvements shall be deemed Landlord's property. If the total cost of Improvement Allowance Items exceeds the Improvement Allowance, Tenant shall be required to first fund such excess prior to the commencement of Landlord's obligation to fund the Improvement Allowance and Landlord may require reasonable evidence that Tenant has funded

such excess prior to Landlord's disbursement of the Improvement Allowance. Tenant shall pay for all costs and expenses associated with the Tenant Improvements when and as required by Tenant's Contractor (subject to Landlord's payment of the Improvement Allowance when and as required under the terms of this Section 4).

5. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in Section 3 of this Amendment are not made by Tenant when due and such failure remains uncured after any notice and cure period pertaining to the same pursuant to Article 19 of the Existing Lease, this Amendment shall become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if this Amendment had never been executed.

6. 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) Electronic Signatures; Counterparts. This Lease may be electronically signed pursuant to the terms of the ESIGN Act of 2000. The parties agree that any electronic signatures appearing on this Lease are the same as handwritten signatures for the purposes of validity, enforceability and admissibility and that such electronic signatures are legally binding. 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.

*Remainder of page intentionally left blank.*

*Signatures on following page.*

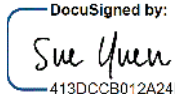

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:  
TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

TENANT:  
DIM BAOS, INC.,  
a California corporation

By:  \_\_\_\_\_  
Name:  \_\_\_\_\_  
Its: President

1/5/2023

Date: \_\_\_\_\_, 2022

APPROVED AS TO FORM.

By: \_\_\_\_\_  
Legal counsel, TJPA

Transbay Joint Powers Authority Board of  
Directors

Resolution No.: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, TJPA Board

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: \_\_\_\_\_

TENANT:  
DIM BAOS, INC.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

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:

DocuSigned by:  
  
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1/5/2023

Date: \_\_\_\_\_, 2022



## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, by and among TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“**Landlord**”), and DIM BAOS, INC., a California corporation (“**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 \_\_\_\_\_, 2021 (together with all exhibits and addenda attached thereto, the “**Existing Lease**”), whereby Tenant leased from Landlord approximately 742 usable square feet of retail space (the “**Existing Premises**”) known as Space Number 119, located in the retail usage area on the ground level of the Salesforce Transit Center in San Francisco, California (the “**Center**”). Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Tenant desires to expand the Existing Premises to include additional space consisting of approximately 296 useable square feet currently included as part of Space Number 118 in the Center and located immediately adjacent to the Existing Premises (the “**Expansion Space**”).

C. Tenant has also requested that Landlord make certain temporary adjustments to the Rent payable by Tenant under the Lease as a result of the unprecedented circumstances surrounding the COVID-19 pandemic.

D. The Commencement Date under the Existing Lease has not yet occurred.

E. Landlord and Tenant desire to amend the Existing Lease to expand the Premises leased by Tenant under the Lease to include the Expansion Space, to make certain adjustments to the Rent payable by Tenant under the Lease, and to otherwise amend the Existing Lease, all as more particularly set forth herein.

F. The parties acknowledge that the provisions in this Amendment regarding the payment of Alternative Rent (as defined herein) have been included in this Amendment at the request of Tenant as a result of the unprecedented circumstances surrounding the COVID-19 pandemic and that, by including such provisions in 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. Expansion of the Existing Premises. Landlord shall lease to Tenant and Tenant shall lease from Landlord the Expansion Space on all of the terms and conditions of the Lease, as amended hereby, provided, however, that no improvement allowance provided for under the Existing Lease (as modified by this Amendment) shall apply to the Expansion Premises (it being agreed that the Improvement Allowance shall be calculated solely based on the usable square footage of the Existing Premises) and, except as set forth in Section 3 below, Landlord shall not be required to perform any work with respect to the Expansion Premises (including, but not limited to, any of the Additional Work referenced in the Existing Lease with respect to the Existing Premises) prior to delivery of the same to Tenant. Subject to the foregoing, all references in the Lease or this Amendment to the “**Premises**” shall be mean the Existing Premises and the Expansion Space. Accordingly, notwithstanding anything to the contrary contained in the Existing Lease, the Floor Area of the Premises is agreed to be 1,038 useable square feet. The Site Plan attached as Exhibit A of the Existing Lease is hereby replaced in its entirety with the Site Plan attached hereto as Exhibit A.

3. Condition of the Expansion Space.

(a) Expansion Space Work. Landlord shall construct, subject to the provisions of this Section 3, the work set forth in Schedule 1 attached hereto and incorporated herein by this reference (the “**Expansion Space Work**”). Prior to the commencement of construction of the Expansion Space Work, Landlord shall notify Tenant in writing of Landlord’s good faith estimate of the actual cost that would be incurred by Landlord to construct the Expansion Space Work (the “**Expansion Space Work Cost Estimate**”). The Expansion Space Work Cost Estimate is for informational purposes only and shall not be binding on Landlord in any way. Tenant shall have twenty-one (21) days from receipt of the Expansion Space Work Cost Estimate to notify Landlord in writing that Tenant will instead perform the Expansion Space Work (an “**Expansion Space Work Election Notice**”). In the event that Tenant timely provides an Expansion Space Work Election Notice in accordance with the foregoing, Landlord shall be relieved of any and all obligations to construction the Expansion Space Work and the provisions of Section 3(b) below regarding the same shall be of no further force and effect. Tenant’s failure to timely provide an Expansion Space Work Election Notice in accordance with the foregoing shall be deemed a waiver by Tenant of Tenant’s right to elect to perform the Expansion Space Work hereunder in which event Landlord shall construct the Expansion Space Work as originally contemplated and the provisions of Section 3(b) below shall apply.

(b) Reimbursement for Expansion Space Work. In the event that Landlord constructs the Expansion Space Work, Tenant shall reimburse Landlord for Landlord’s actual cost in constructing the Expansion Space Work (the “**Expansion Space Work Cost**”). Promptly following Substantial Completion of the Expansion Space Work and delivery of the Premises to Tenant, Landlord shall submit an invoice to Tenant setting forth the Expansion

Space Work Cost. Tenant shall pay the amount so invoiced by Landlord to Tenant within thirty (30) days following receipt of the foregoing invoice.

(c) Tenant Improvements. Upon Landlord's Substantial Completion of the Landlord Work (as defined in the Work Letter attached as Exhibit B to the Existing Lease) and, if applicable, the Expansion Space Work and delivery of the Premises to Tenant, any renovations to the improvements in the Premises desired by Tenant shall be designed and constructed by Tenant pursuant to the Work Letter attached as Exhibit B to the Existing Lease.

4. Commencement Date. Notwithstanding anything to the contrary contained in the Existing Lease, the "Commencement Date" shall be the earlier of (a) the date on which Tenant first opens for business in the Premises or (b) the date that is six (6) months after the later of (i) the date on which Landlord delivers possession of the Premises to Tenant with the Landlord Work (as defined in the Work Letter attached as Exhibit B to the Existing Lease) and, unless Tenant has timely delivered an Expansion Space Election Notice in accordance with Section 3(a) above, the Expansion Space Work Substantially Completed (as defined in the Work Letter attached as Exhibit B to the Existing Lease) and (ii) the date on which this Amendment has been fully executed by Landlord and Tenant.

5. Base Rent. The schedule of Base Rent set forth in the Basic Lease Information is hereby deleted and replaced with the following:

Base Rent:

<u>Months</u>	<u>Annual Rate per Useable Square Foot</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Base Rent</u>
1 – 12	\$60.00	\$5,190.00	\$62,280.00
13-24	\$61.20	\$5,293.80	\$63,526.60
25-36	\$62.43	\$5,400.20	\$64,802.34
37-48	\$63.68	\$5,508.32	\$66,099.84
49-60	\$64.96	\$5,619.04	\$67,428.48
61-72	\$66.26	\$5,731.49	\$68,777.88
73-84	\$67.59	\$5,846.54	\$70,158.42
85-96	\$68.95	\$5,964.18	\$71,570.10
97-108	\$70.33	\$6,083.55	\$73,002.54
109-Expiration Date	\$71.74	\$6,205.51	\$74,466.12

6. Advance Rent. Landlord and Tenant acknowledge that Tenant has previously paid to Landlord an amount equal to Three Thousand Seven Hundred Ten and No/100 Dollars (\$3,710.00) as “Advance Rent” in accordance with Section 2(b)(ii) of the Existing Lease. Upon execution of this Amendment, Tenant shall pay to Landlord an additional amount equal to One Thousand Four Hundred Eighty and No/100 Dollars (\$1,480.00) so as to increase the amount of Advance Rent paid by Tenant to a total of Five Thousand One Hundred Ninety and No/100 Dollars (\$5,190.00). The Advance Rent, as so increased, shall be applied to Tenant’s obligation to pay Base Rent for the first month or months for which Base Rent is due in accordance with Section 2(b)(ii) of the Existing Lease.

7. Security Deposit. Landlord and Tenant acknowledge that Tenant has previously paid to Landlord an amount equal to Seven Thousand Four Hundred Twenty and No/100 Dollars (\$7,420.00) as a “Deposit” in accordance with Article 3 of the Existing Lease. Upon execution of this Amendment, Tenant shall pay to Landlord an additional amount equal to Two Thousand Nine Hundred Sixty and No/100 Dollars (\$2,960.00) so as to increase the amount of the Deposit paid by Tenant to a total of Ten Thousand Three Hundred Eighty and No/100 Dollars (\$10,380.00). The Deposit, as so increased, shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of the Lease in accordance with Article 3 of the Existing Lease.

8. Alternative Rent Period.

(a) Payment of Alternative Rent in lieu of Base Rent.

(i) Alternative Rent Period. Notwithstanding anything to the contrary contained in the Existing Lease, during the period (the “**Alternative Rent Period**”) commencing on 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 8(b) below), and (B) the first (1<sup>st</sup>) anniversary of the Commencement Date (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 8(a)(ii)(C) below) in lieu of paying the Base Rent specified in the Basic Lease Information for such Alternative Rent Period. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternative Rent Period, Tenant shall be obligated to pay the Base Rent specified in the Basic Lease Information.

(ii) Alternative Rent.

(A) Fixed Monthly Alternative Payment. Notwithstanding anything to the contrary contained in the Existing Lease, in lieu of the Base Rent payments otherwise provided for in Section 2(b)(i) of the Existing Lease, during the Alternative Rent Period, Tenant shall pay to Landlord the Fixed Monthly Alternative Payment (as hereinafter defined). As used here, the “**Fixed Monthly Alternative Payment**” shall mean an amount equal One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month. The Fixed Monthly Alternative Payment for each month during the Alternative Rent Period shall be paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, on or before the first (1<sup>st</sup>) day of the applicable month and otherwise in accordance with Section 2(a) of the Existing Lease.

(B) Percentage Rent. Notwithstanding anything to the contrary contained in the Existing Lease, in the event that Tenant opens for business at the Premises prior to the last day of the Alternative Rent Period then, in lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Existing Lease, during the portion of the Alternative Rent Period commencing on the date on which Tenant first opens for business at the Premises and continuing until the last day of the Alternative Rent Period, Tenant shall also pay to Landlord “**Alternative Percentage Rent**” in the manner provided under this Section 8(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period that the same is payable hereunder shall be calculated by multiplying Tenant’s Gross Sales for such month by six percent (6%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within ten (10) days after the end of each month for which the same is due. For avoidance of doubt, the Alternative Percentage Rent payable by Tenant under this Section 8(a)(ii)(B) shall be calculated without regard to any breakpoint (including, but not limited to, the Breakpoint set forth in Section 2(c) of the Existing Lease). All references to “Percentage Rent” in Sections 2(a), 2(c)(vi), 2(d), 19(a)(i), 24(a) and 26(k) shall be deemed to include, without limitation, Alternative Percentage Rent. Tenant acknowledges and agrees that it will provide the quarterly and annual statements required under Section 2(c)(v) of the Existing Lease during the Alternative Rent Period.

(C) Alternative Rent. As used herein, “**Alternative Rent**” shall mean the Fixed Monthly Alternative Payment and, if applicable, Alternative Percentage Rent.

(b) Reversion to Contract Rent. Notwithstanding anything to the contrary contained in Section 8(a) above, if an amount equal to six percent (6%) of Tenant’s Gross Sales for any three (3) consecutive months from and after the month in which the Commencement Date occurs through and including the month in which the Alternative Rent Period Outside Expiration Date occurs equals or exceeds the Base Rent specified in the Basic Lease Information that would otherwise be payable by Tenant for such three (3) consecutive month period, then commencing with the first month of such three (3) consecutive month period (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, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) and Tenant shall not be obligated to pay the Fixed Monthly Alternative Payment or Alternative Percentage Rent for the Gross Sales Rent Reversion Month or for any month thereafter. If Tenant has already paid the Fixed Monthly Alternative Payment for the Gross Sales Rent Reversion Month or any month thereafter, Tenant shall pay the difference between the sum of the Base Rent specified in the Basic Lease Information for the Gross Sales Rent Reversion Month and, if applicable, such subsequent months and the Fixed Monthly Alternative Payment within ten (10) days following the last day of such three (3) consecutive month period. For avoidance of doubt, Tenant acknowledges and agrees that commencing on the first day immediately following the Alternative Rent Period Outside Expiration Date, Tenant shall be obligated to return to paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) regardless of whether six percent (6%) of Tenant’s Gross Sales for a particular month equals or exceeds the Base Rent due for such month and that Tenant shall no longer be obligated to pay Tenant’s Monthly Expense Contribution or Alternative Percentage Rent from and after such date.



9. Permitted Use. As part of the Permitted Use described in the Basic Lease Information, Tenant shall be permitted to sell light alcoholic drinks at the Premises, subject to Tenant obtaining and maintaining, at Tenant's sole cost and expense, all necessary licenses, permits and approvals required from applicable governmental authorities in connection with the same.

10. Improvement Allowance.

(a) General. Section 2.1 of the Work Letter attached as Exhibit B to the Existing Lease is hereby deleted in its entirety. Tenant shall be entitled to a one-time improvement allowance (the "**Improvement Allowance**") in amount not to exceed Fifty-Five Thousand Six Hundred Fifty and No/100 Dollars (\$55,650.00) (*i.e.*, \$75.00 per usable square foot of the Existing Premises) for the costs relating to the initial design and construction of the Tenant Improvements and for the other Improvement Allowance Items described in Section 10(b) below. In no event shall Landlord be obligated to make disbursements pursuant to the this Amendment or the Existing Lease (including, but not limited to, the Work Letter attached as Exhibit B to the Existing Lease) in a total amount which exceeds the Improvement Allowance and in no event shall Tenant be entitled to any credit for any unused portion of the Improvement Allowance not used by Tenant prior to the first (1<sup>st</sup>) anniversary of the Commencement Date.

(b) Disbursement of the Improvement Allowance. Section 2.2 of the Work Letter attached as Exhibit B to the Existing Lease is hereby deleted in its entirety.

(i) Improvement Allowance Items. Except as otherwise set forth in this Section 10(b), the Improvement Allowance shall be disbursed by Landlord pursuant to the process set forth in Section 10(b)(ii) below for costs related to the construction of the Tenant Improvements and for the following items and costs (collectively, the "**Improvement Allowance Items**"): (a) payment of the fees of the "Architect" and the "Engineers," as those terms are defined in Section 3.1 of the Work Letter attached as Exhibit B to the Existing Lease, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the Construction Drawings (as defined in Section 3.1 of the Work Letter attached as Exhibit B to the Existing Lease); (b) the cost of permits and construction supervision fees; (c) installing cabling in the Premises; (d) the cost of any changes in the Base, Shell and Core required by the Construction Drawings; (e) the cost to cause the Premises to comply with all Requirements, including, without limitation, Title 24 and the ADA; and (f) the "Landlord Coordination Fee", as that term is defined in Section 4.3 of the Work Letter attached as Exhibit B to the Existing Lease. However, in no event shall more than Twelve and No/100 Dollars (\$12.00) per usable square foot of the Improvement Allowance be used for the items described in (a), (b) and (c) above and any additional amount incurred as a result of (a), (b) or (c) above shall be paid by Tenant.

(ii) Disbursement of Improvement Allowance.

(A) Disbursements. The Improvement Allowance shall be disbursed by Landlord for the benefit of Tenant for payment of Improvement Allowance Items in two (2) installments (each a "**Disbursement Payment**"). The first such Disbursement Payment

shall be in an amount equal to the First Disbursement Payment (as hereinafter defined) and shall be made following completion of the Tenant Improvements and Tenant's opening for business in the Premises and Landlord's receipt of an Initial Disbursement Request (as hereinafter defined) relating to the same. The second such Disbursement Payment shall be in an amount equal to the Second Disbursement Payment (as hereinafter defined) and shall be made following the initial six (6) months of Tenant being continuously open for business at the Premises and Landlord's receipt of a Final Disbursement Request (as hereinafter defined) relating to the same. As used herein (i) the "**First Disbursement Payment**" shall mean an amount equal to the lesser of Forty-One Thousand Seven Hundred Thirty-Seven and 50/100 Dollars (\$41,737.50) and seventy-five percent (75%) of the total actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements and (ii) the "**Second Disbursement Payment**" shall mean an amount equal to the lesser of Thirteen Thousand Nine Hundred Twelve and 50/100 Dollars (\$13,912.50) and twenty-five percent (25%) of the total actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements. Notwithstanding anything to the contrary contained herein, in no event shall the Disbursement Payments exceed the actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements and if the actual Improvement Allowance Items incurred by Tenant for the Tenant Improvements are less than the Improvement Allowance, the Disbursement Payments provided for hereunder shall be adjusted accordingly.

(B) Initial Disbursement Request. Upon completion of the Tenant Improvements, Tenant shall deliver to Landlord the following (collectively, an "**Initial Disbursement Request**"): (i) a request for payment of the Contractor (as defined in Section 4.1 of the Work Letter attached as Exhibit B to the Existing Lease), approved by Tenant, in a form to be provided by Landlord; (ii) invoices from all of Tenant's Agents (as defined in Section 4.2 of the Work Letter attached as Exhibit B to the Existing Lease) for labor rendered and materials delivered to the Premises; (iii) executed unconditional mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions of California Civil Code Section 8136 and Section 8138; and (iv) all other information reasonably requested by Landlord (including, without limitation, a certificate from the Architect, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been completed). 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 Initial Disbursement Request. Thereafter, Landlord shall deliver a check to Tenant in payment of the First Disbursement Payment, provided that Landlord does not dispute Tenant's Initial Disbursement Request based on non-compliance of any work with the Approved Working Drawings (as defined in Section 3.4 of the Work Letter attached as Exhibit B to the Existing Lease), or due to any substandard work, or for any other reason.

(C) Final Disbursement Request. On or before the date that is six (6) months after the date on which Tenant first opens for business at the Premises, Tenant shall deliver to Landlord the following (collectively, a "**Final Disbursement Request**"): (i) a request for payment of the Second Disbursement Payment, which request shall include a written certification from Tenant that Tenant has continuously operated its business in the Premises in accordance with the terms and provisions of the Lease during the immediately preceding six (6) months and (ii) all other information reasonably requested by Landlord. Thereafter, Landlord shall deliver a check to Tenant in payment of the Second Disbursement Payment, provided that Landlord does not dispute Tenant's Final Disbursement Request based on non-compliance of any

work with the Approved Working Drawings, or due to any substandard work, or for any other reason (including, but not limited to, Tenant's failure to continuously operate its business at the Premises in accordance with the Lease during the immediately preceding six (6) month period).

(iii) Other Terms. Neither Landlord's payment of the First Disbursement Payment nor Landlord's payment of the Second Disbursement Payment shall be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's Initial Disbursement Request or any other matters set forth in Tenant's Final Disbursement Request. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items. All Tenant Improvements shall be deemed Landlord's property. If the total cost of Improvement Allowance Items exceeds the Improvement Allowance, Tenant shall be required to first fund such excess prior to the commencement of Landlord's obligation to fund the Improvement Allowance and Landlord may require reasonable evidence that Tenant has funded such excess prior to Landlord's disbursement of the Improvement Allowance. Tenant shall pay for all costs and expenses associated with the Tenant Improvements when and as required by Tenant's Contractor (subject to Landlord's payment of the Improvement Allowance when and as required under the terms of this Section 10).

11. Brokers. Landlord and Tenant warrant and represent that they have not had negotiations with or dealt with any realtor, broker, agent or other person or entity in connection with the negotiation and execution of this Amendment, except Colliers International ("**Landlord's Broker**"), as agent for Landlord, and Kidder Mathews ("**Tenant's Broker**" and, together with Landlord's Broker, the "**Brokers**"), as agent for Tenant. Landlord shall be solely responsible for any brokerage commission payable to the Brokers on account of this Amendment, if any, pursuant to and in accordance with a separate written agreement between Landlord and Landlord's Broker. Each of Landlord and Tenant shall pay and hold the other harmless from any cost, expense or liability (including cost of suit and reasonable attorneys' fees) for any compensation, commissions or charges claimed by any other realtor, broker, agent or other person or entity with respect to this Lease and the negotiation thereof and arising out of the actions of said party.

12. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in Section 8 of this Amendment are not made by Tenant when due and such failure remains uncured after any notice and cure period pertaining to the same pursuant to Article 19 of the Existing Lease, the provisions of Section 8 of this Amendment shall become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if the same had never been included herein.

13. 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) Electronic Signatures; Counterparts. This Lease may be electronically signed pursuant to the terms of the ESIGN Act of 2000. The parties agree that any electronic signatures appearing on this Lease are the same as handwritten signatures for the purposes of validity, enforceability and admissibility and that such electronic signatures are legally binding. 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.

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*Signatures on following page.*

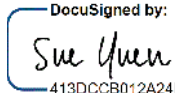

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:  
TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

TENANT:  
DIM BAOS, INC.,  
a California corporation

By:  \_\_\_\_\_  
Name:  Sue Yuen \_\_\_\_\_  
Its: \_\_\_\_\_  
President

1/5/2023

Date: \_\_\_\_\_, 2022

APPROVED AS TO FORM.

By: \_\_\_\_\_  
Legal counsel, TJPA

Transbay Joint Powers Authority Board of  
Directors

Resolution No.: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, TJPA Board

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TENANT:  
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a California corporation

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

Date: \_\_\_\_\_

APPROVED AS TO FORM.

By:   
\_\_\_\_\_  
Legal counsel, TJPA

Transbay Joint Powers Authority Board of  
Directors

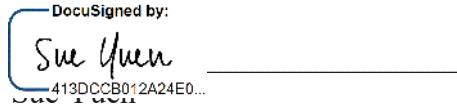
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The undersigned Guarantor hereby acknowledges and consents to the terms, conditions and provisions of this Amendment and the transactions contemplated thereby. Guarantor hereby ratifies and reaffirms the full force and effectiveness of the Guaranty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

GUARANTOR:

DocuSigned by:  
  
413DCCB012A24E0...

1/5/2023

Date: \_\_\_\_\_, 2022

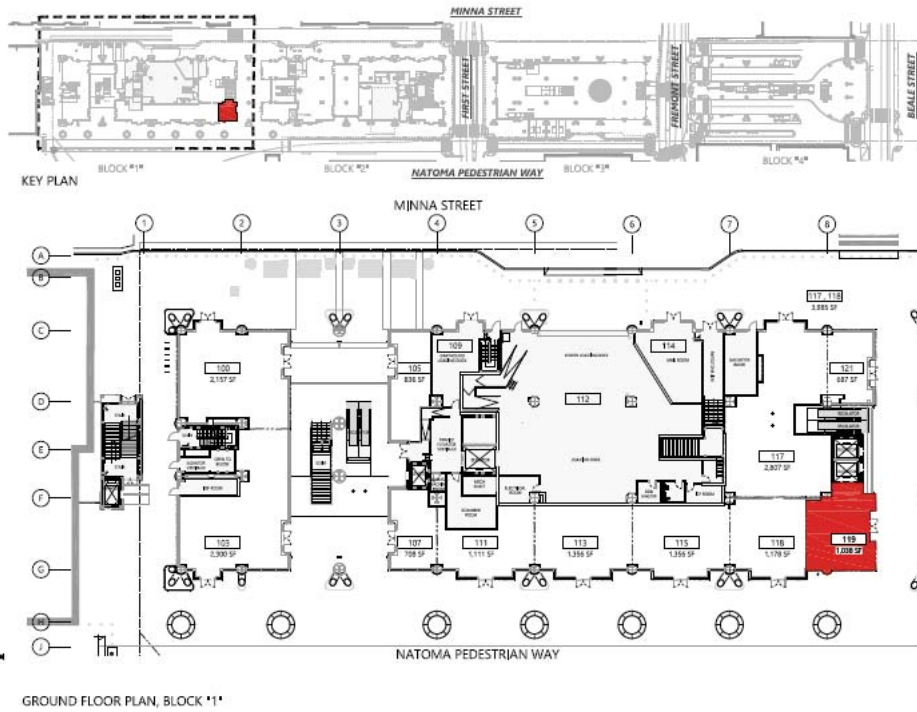
**Schedule 1**

**Expansion Space Work**

1. Remove the existing wall between Suites 119 and 118.
2. Build a new wall to capture the useable square footage being relocated from Suite 118 to Suite 119.
3. Relocate the existing ducting, heat pumps and other equipment and systems as necessary do to adjustment of wall between Suites 119 and 118.

# Exhibit A

## Site Plan



salesforce TRANSIT CENTER

TENANT SPACE: 119 | AREA: 1,038 S.F. | DATE: APR 20, 2022

