

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4566

Authorizing the CDA to execute a lease with Lunas Groceries LLC for space at The Village on Park.

Presented August 10, 2023

Referred _____

Reported Back _____

Adopted _____

Placed on File _____

Moved By _____

Seconded By _____

Yeas _____ Nays _____ Absent _____

Rules Suspended _____

Legistar File Number 79229

WHEREAS, the Community Development Authority of the City of Madison ("CDA") is the owner of The Village on Park, located at 2300 South Park Street (the "Property") ; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, the owner of Yue Wah Oriental Foods is retiring and vacating its grocery store in the Building at 2328 S. Park Street (the "Premises") on August 31, 2023; and

WHEREAS, Lunas Groceries LLC would like to lease the Premises to operate a grocery store and offer prepared food; and

WHEREAS, the parties agree to enter into a lease per the below terms and conditions.

NOW, THEREFORE, BE IT RESOLVED that the CDA hereby authorizes the execution of a lease agreement with Lunas Groceries LLC to lease the Premises at The Village on Park materially, though not exclusively, per the following terms and conditions on a form approved by the City Attorney:

1. Premises: 2328 S Park St. consisting of approximately 6,497 rentable square feet.

With proper permits and permission from Landlord, Tenant may be allowed to have an area for outside seating (area to be assigned/designated by Landlord). Tenant shall present the specifications on the chairs and tables for the outdoor seating area to the Landlord for its approval. If approved, Tenant is responsible to maintain the furniture so it is in good shape, and clean up any debris from any of its' customers immediately after they are done using the outdoor seating area. No outside trash bins shall be located in the Outdoor Seating Area. If Tenant defaults on these terms, then the Landlord may revoke this provision from the Lease.

2. Landlord: Community Development Authority of the City of Madison (the "CDA")

3. Tenant: Lunas Groceries LLC (the "Tenant").

4. Use: Tenant shall be allowed to use Premise as a grocery store and restaurant (dine-in and carry-out of premade meals and foods). It is understood and

acknowledged that Tenant intends to seek a license for sale of alcohol for off-site consumption.

5. Lease Term: Commencing on the Delivery Date and ending Ten (10) years and ten (10) months, totaling 130 months thereafter (the "Initial Term"). If the Tenant is not in default, then it may exercise a one (1) five (5) year Renewal Option¹ (the "Renewal Term"). The Initial Term plus the Renewal Term if exercised is the "Lease Term".
6. Delivery Date: Delivery Date is targeted for 12/1/23. However, Delivery Date shall be the first day of the month that follows the completion of the "Landlord's Work" as defined below.
7. Parking: The public parking surface stalls are part of the common area that are non-exclusive to the customers/invitees of the Property and the adjacent two buildings ("Adjacent Buildings") that share it. The employees of the Property and Adjacent Buildings will receive parking passes to the new parking garage and shall park therein in order to keep the common area surface stalls open to their customers/invitees.

There will be five (5) grocery stalls in the new parking garage, with signage, designated for use of Tenant's customers during Tenant's operating hours. The grocery stalls are for hourly parking, and the customers will have to pay the daily parking rates after the free period designated by the Landlord (which is currently the first 45 minutes free).
8. Base Rent: The first month of the Lease Term shall commence on the Delivery Date. The Base Rent shall be paid on a monthly basis by the first of each calendar month.

The Base rental rate shall be based on the following rent schedule:

Luna's Groceries							
Rent Schedule							
Sq. Ft.	6,497				Rent	Annual	Monthly
Period					Per Sq. Ft.	Base Rent	Base Rent
Period X	Months	1	to	10	\$0.00	\$0.00	\$0.00
Year 1	Months	11	to	22	\$7.39	\$48,012.83	\$4,001.07
Year 2	Months	23	to	34	\$9.24	\$60,016.04	\$5,001.34
Year 3	Months	35	to	46	\$11.55	\$75,020.05	\$6,251.67
Year 4	Months	47	to	58	\$14.43	\$93,775.06	\$7,814.59
Year 5	Months	59	to	70	\$18.04	\$117,218.82	\$9,768.24
Year 6	Months	71	to	82	\$18.62	\$120,974.14	\$10,081.18
Year 7	Months	83	to	94	\$19.27	\$125,197.19	\$10,433.10
Year 8	Months	95	to	106	\$19.95	\$129,615.15	\$10,801.26
Year 9	Months	107	to	118	\$20.65	\$134,163.05	\$11,180.25
Year 10	Months	119	to	130	\$21.37	\$138,840.89	\$11,570.07

Renewal Option*				Rent Per Sq. Ft.	Annual Base Rent	Monthly Base Rent
Year 11	Months	131	to 142	\$22.87	\$148,559.75	\$12,379.98
Year 12	Months	143	to 154	\$24.01	\$155,987.74	\$12,998.98
Year 13	Months	155	to 166	\$25.21	\$163,787.13	\$13,648.93
Year 14	Months	167	to 178	\$26.47	\$171,976.48	\$14,331.37
Year 15	Months	179	to 190	\$27.79	\$180,575.31	\$15,047.94

9. Operating Expenses:

Lease shall be a Modified Gross Lease, whereby Landlord is responsible for real estate taxes (excluding taxes on leasehold improvements, as addressed below), common area maintenance, and building insurance.

Tenant is responsible for paying all municipal, county and state or federal taxes assessed against any leasehold improvements of Tenant or any fixtures, furnishings, equipment, merchandise, improvements, alterations, stock-in-trade or other personal property of any kind owned, installed or upon the Premises. Tenant shall reimburse the Landlord for any leasehold improvement taxes sent to the Landlord.

Tenant is responsible for utility expenses that services the Premises.

Tenant is responsible to carry, at its cost, commercial general liability insurance, umbrella liability, property insurance and worker's compensation per the CDA standard lease terms, which are approved by the City's Risk Manager and City Attorney's office.

10. Utilities &
Additional Costs:

Tenant shall be solely responsible for telephone, internet and data, and any other services needed to conduct business.

Tenant shall be responsible for in-suite janitorial, and shall be responsible for its own trash and recycle dumpsters, as well as oil/grease drums – of which Landlord shall assign a designated area for such dumpsters and bins.

Tenant shall be responsible for metered utilities to the Premises as of the Delivery Date.

11. Condition of Premises:

The Premises is being delivered on an "as- is" basis on the Delivery Date.

12. Landlord's Work:

Prior to the Delivery Date, Landlord will complete the following work at Landlord's expense (collectively "Landlord's Work") to the Premises:

- Tune up HVAC units, and repair/replace any if needed.
- Remove any furniture, fixtures, and equipment (personal or business related) of former occupant's, less items that Tenant desires to have remain in the Premises.

- Completion of the structural roof support, and restoration of disturbed ceiling areas.
- Installation of new entrance door and lock and related improvements to install it/close existing entrance door.

13. Tenant Improvement Allowance:

Landlord shall award Tenant a Tenant Improvement Allowance ("TIA") of Fifty Thousand Dollars (\$50,000) towards the following improvement items in or serving the Premises:

- Flooring
- Lights
- Paint
- Grease Trap

Disbursement of the TIA maybe conducted per the following methods (independent of each other):

- Tenant showing paid invoices and lien waivers from Tenant's contractor to the Landlord;
- Tenant's contractor invoicing Landlord directly.

A personal guarantee of the Lease from Mariam Maldonado (the "Guaranty") is required; the Guaranty shall have a maximum ceiling amount of Fifty Thousand Dollars (\$50,000) until the end of the 46th month of the Lease Term. The issuance of a Lease to the Tenant is subject to the receipt of Mariam Maldonado's and the Tenant's financial statements, and the underwriting and analysis by City staff.

14. Tenant Improvements:

Tenant may install,* at its cost, tenant improvements, furniture, fixtures and equipment into the Premises as Tenant sees necessary for Tenant's use of the Premises to conduct Tenant's desired business.

* Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, make any alterations, improvements, additions or utility installations upon the Premises (collectively, "Alterations"). The term "utility installations," as used herein, shall include without limitation power panels, electrical distribution system, heating, air conditioning and ventilation/exhaust systems, plumbing, space heaters, light fixtures, conduits and wiring. Tenant shall provide Landlord with reasonably detailed architectural plans and specifications relating to any desired Alterations at the time of Tenant's request for consent. Regardless of the foregoing, Tenant shall have the right to install furniture in the Premises without obtaining Landlord's consent.

All Alterations and other improvements by Tenant shall become the property of Landlord and shall not be removed from the Premises, unless request is made by Landlord to Tenant to remove the same. In the event the Tenant installs a range hood and connected ducting/system that is approved by the Landlord, then said improvements are considered an Alteration for the purposes of this paragraph.

All trade fixtures, furniture, furnishings and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed upon the expiration or termination of the Lease; provided that: (i) any of such items that are affixed to the Premise can be removed without doing material damage to the Premises, and may be removed only if Tenant repairs any damage caused by such removal to restore the affected area to the condition it existed at the Delivery Date; and (ii) that Tenant shall have fully performed all of the terms, conditions and covenants to be performed by Tenant under the Lease.

15. Repairs & Maintenance:

Landlord shall be responsible for the maintenance, repair and replacement of the roof, exterior building walls, all plumbing and sewer systems that may run above or below the Premises, the fire protection system, the fire and life safety system, foundation during the Lease Term. The Landlord is responsible for the inspections of the fire protection system and fire and life safety system in the Premises. Landlord shall also repair, maintain and replace as necessary the parking lot, including snow removal and resurfacing and restriping.

During Tenant's Lease Term, Tenant shall keep the Premises and every part thereof and any fixtures, facilities or equipment contained within or serving the Premises, in good condition and repair, including, but not limited to electrical, lighting, plumbing and sewer systems within the interior of the Premises (but excluding all plumbing and sewer systems that may run above or below the Premises), exterior doors, columns, nonstructural walls, and partitions, and shall make any replacements thereof and of all broken and cracked glass which may become necessary during the term of the Lease.

HVAC:

- Tenant will be responsible for routine maintenance of the HVAC systems that service the Premises.
- From Year 1 to the end of Year 5 of the lease, Tenant shall have an HVAC repair expense cap of \$4,000 per Lease Year whereby should Tenant, during a given Lease Year, incur a cumulative HVAC repair expenses (to not include the hood system, or any Tenant-installed equipment, if any) of greater than \$4,000, Landlord shall be responsible for the amounts over the \$4,000 benchmark. Tenant shall show to Landlord Tenant's paid repair invoices. In addition, Tenant shall notify Landlord of any repair estimates that exceed \$4,000.
- From Year 6 to the end of Year 10 of the lease, Tenant shall have an HVAC repair expense cap of \$5,000 per Lease Year whereby should Tenant, during a given Lease Year, incur a cumulative HVAC repair expenses (to not include the hood system, or any Tenant-installed equipment, if any) of greater than \$5,000, Landlord shall be responsible for the amounts over the \$5,000 benchmark. Tenant shall show to Landlord Tenant's paid repair invoices. In addition, Tenant shall notify Landlord of any repair estimates that exceed \$5,000.
- If during the Lease Term, no less than two (2) independent HVAC

contractors recommend the replacement of the HVAC unit, Tenant shall be responsible for 50% of the HVAC replacement costs, but not to exceed \$7,500. After the HVAC is replaced, Tenant shall be fully (100%) responsible for HVAC related repairs and replacements thereafter, and Tenant's HVAC expense cap shall be removed.

- In the event that there is a repair where Landlord views such repair as financially excessive, at Landlord's option, Landlord may require that the subject HVAC unit be replaced.

Tenant shall be responsible for replacing any damaged and any non-functioning ceiling tile, light fixtures and bulbs during Tenant's tenancy. Tenant is responsible for the fire extinguishers in the Premises and required inspections.

16. Signage: At Tenant's expense, and with Landlord's and City's approval, may install Tenant's trade name onto the building's façade and monument sign, if any, at such location on building façade directly above the Premises on the east side of the Building. . Tenant may also install window decals and on-glass coverings, related to its business.
17. Security Deposit: \$5,000 upon the execution of the Lease.
18. Lease Contingency: Tenant shall have the right to terminate the Lease at any time on or before October 1, 2023 if Tenant is unable to obtain the financing it is seeking for its business. After October 1, 2023, Tenant will have been deemed to waive Tenant's ability to terminate the Lease under this contingency clause.
19. Brokerage: Tenant has not engaged a broker. Landlord shall be solely responsible for payment of any real estate commissions or other broker fees arising out of the Lease.
20. Property Rules: The Lease will be subject to the Property's rules.

BE IT RESOLVED that the Chair and Deputy Director of the CDA are hereby authorized to execute, deliver and record the Lease agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution in a lease form approved by the City Attorney.