

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.4
FOR THE MEETING OF: September 14, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute second amendments to the lease agreements with Dim Baos, Inc., a California corporation, for two commercial/retail spaces (Suite 125 and 129) (“Dim Baos restaurant”) and (Suite 119) (“Juice Bar”) on the first floor of the transit center.

EXPLANATION:

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 spaces (Suites 125 & 129) on the first floor of the Salesforce Transit Center for a 10-year, 3-month term with one five-year option 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 Prior Requests for Relief

As a result of COVID-19, Tenant requested certain relief from their 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 Company (LPC), Colliers, and retail legal counsel, engaged due diligence review and negotiations with the Tenant. Due diligence included, among other things, confirmation of Tenant's assertions that Tenant did not receive assistance through the Small Business Administration, nor from the Payroll Protection Program ("PPP").

On January 12, 2023, the TJPA Board of Directors authorized an amendment to the Dim Baos restaurant Lease and to the Juice Bar lease. The key terms and conditions of the First Amendments were:

First Amendment to Dim Baos Restaurant Lease:

- Tenant to 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.
- Tenant's rental obligation 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.
- The Tenant Improvement Allowance increased 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.

First Amendment to Juice Bar Lease:

- Expanded premises by approximately 296 usable square feet to be utilized for a walk-in cooler.
- Tenant to 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.
- Tenant's rental obligation 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.
- The Tenant Improvement Allowance increased from \$37,110 (\$50 per square foot) to \$55,650 (\$75 per square foot) to offset escalated construction costs and to address kitchen exhaust system work.

Tenant Current Requests for Relief Under Both Leases

Tenant recently approached TJPA staff and TJPA's asset management team at LPC seeking a further extension of economic relief, due to higher than anticipated construction costs and the time needed to value engineer their original design concepts. As of August 31, 2023, tenant has received several construction bids and is expected to make a selection, obtain permits, and begin construction by the end of the calendar year.

The TJPA team again engaged in a due diligence review and negotiations with Tenant. Due diligence included consultations with our brokerage firm as well as other brokers as to status of market conditions and overall foot traffic in downtown San Francisco.

As a result of that due diligence review and negotiations, proposed Second Amendments to the Dim Baos Restaurant Lease and Juice Bar Lease have been developed and executed by Tenant, enclosed herewith.

Under the Second Amendment to Lease for Dim Baos Restaurant:

- The Alternate Rent to begin January 1, 2024 or when construction commences, whichever comes first

Under the Second Amendment to Lease for Juice Bar:

- The Alternate Rent to begin January 1, 2024 or when construction commences, whichever comes first

The fiscal impact of approving the terms and conditions of the Second Amendment to the Dim Baos Restaurant Lease for the period through June 30, 2024 is estimated at \$98,921 compared to the original lease terms but only about \$16,500 more than compared to the concessions already approved under the First Amendment. The fiscal impact of approving the terms and conditions of the Second Amendment to the Juice Bar Lease for the period through June 30, 2024 is estimated at \$50,685 compared to the original lease terms but only about \$8,250 more than compared to the concessions already approved under the First Amendment. These impacts were factored into the FY23-24 Budget. TJPA Staff will continue to evaluate alternatives to minimize the impacts of implementing these measures to increase revenues and decrease expenses.

RECOMMENDATION:

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

ENCLOSURES:

1. Resolution
2. Second Amendment to Dim Baos Restaurant Lease
3. Second 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 (“SIP”) 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, Tenant submitted a request for rent relief from its obligations under both leases, after which negotiations with Tenant ensued; and

WHEREAS, On January 12, 2023, the TJPA Board of Directors authorized a First Amendment to the Lease for Dim Baos Restaurant and a First Amendment to the Lease for Juice Bar, providing certain economic relief to Tenant; and

WHEREAS, Due to higher than anticipated construction costs and the time needed for tenant to value engineer its original design concepts, Dim Boas requested additional relief; and

WHEREAS, Tenant and the TJPA have negotiated a Second Amendment to Dim Baos Restaurant Lease and Second Amendment to Juice Bar Lease that provide certain short term economic relief to Tenant, 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 2023-2024 accommodates the fiscal impact of accepting this Second Amendment to the Dim Baos Restaurant Lease and Second Amendment to Juice Bar Lease; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Second Amendment to Dim Baos Restaurant Lease and Second Amendment to Juice Bar 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 Second 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 Second Amendment to Juice Bar Lease with Dim Baos, Inc. for Suite 119 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 14, 2023.

Secretary, Transbay Joint Powers Authority

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this “**Second 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, as amended by that certain First Amendment to Lease (the “**First Amendment**”) dated as of _____, 2023 (as so amended and 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**”), all as more particularly described in 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. The Commencement Date under the Existing Lease occurred on July 12, 2023.

C. Pursuant to Section 3 of the First Amendment (the “**Existing Alternative Rent Provision**”), Landlord agreed, among other matters, to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified therein on account of the unprecedented circumstances surrounding the COVID-19 pandemic.

D. Due to the continuation of the COVID-19 pandemic, Tenant has requested further adjustments to the Rent payable by Tenant under the Lease from Landlord.

E. Landlord has agreed to make further adjustments to the Rent payable by Tenant under the Lease, and to otherwise amend the Lease, all as more particularly set forth herein.

F. The parties acknowledge that this Second Amendment has been entered into at the request of Tenant as a result of the continuation of the unprecedented circumstances surrounding the COVID-19 pandemic and that, by entering into this Second 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 Second Amendment or in the Existing Lease shall mean, collectively, this Second Amendment and the Existing Lease, as amended by this Second Amendment.

2. Alternative Rent. The Existing Alternative Rent Provision set forth in the First Amendment is hereby deleted in its entirety and shall be of no further force and effect.

(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 earlier of (A) January 1, 2024 or (B) the date on which Tenant first commences physical construction of the Tenant Improvements to be constructed in the Premises by Tenant (as applicable, the “**Alternative Rent Period Commencement Date**”) and ending on the earlier of (x) the last day of the month immediately preceding the Gross Sales Rent Reversion Month (as defined in Section 3(b) below), and (y) the first (1st) anniversary of the Commencement Date (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 2(a)(ii)(C) below). Tenant acknowledges and agrees that in the event the Alternative Rent Period Commencement Date occurs prior to the Commencement Date of the Lease, Tenant shall pay Alternative Rent as provided hereunder during the portion of the Alternative Rent Period that is prior to the Commencement Date notwithstanding anything to the contrary contained in the Existing Lease, including but not limited to the provisions of Article 2 thereof referencing Tenant’s obligation to pay rental for use and occupancy of the Premises commencing on the Commencement Date. With respect to any portion of the Alternative Rent Period occurring from and after the Commencement Date, Tenant’s payment of Alternative Rent as provided in this Section 2 shall be in lieu of paying the Base Rent specified in the Basic Lease Information for such 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) of the Existing Lease shall not apply to any month during the Abatement Period referenced therein for which Tenant pays Alternative Rent pursuant to this Section 2 in lieu of paying the Base Rent specified in the Basic Lease Information for such month, it being agreed that Section 2(b)(iii) of the Existing Lease 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, and with respect to any portion of the Alternative Rent Period occurring after the Commencement Date in lieu of the Base Rent payments otherwise provided for in the Existing Lease for such period, Tenant shall pay to Landlord during the Alternative Rent Period 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 (1st) day of the applicable month and otherwise in accordance with the provisions of Article 2 of the Existing Lease concerning the payment of Rent.

(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 2(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 2(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 2(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 Tenant opens for business at the Premises 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.

3. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in this Second 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 Second Amendment shall, at Landlord's option exercised in Landlord's sole discretion, become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if this Second Amendment had never been executed.

4. Miscellaneous.

(a) Severability. If any provision of this Second Amendment or the application of any provision of this Second Amendment to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Second 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 Second Amendment will be valid and be enforced to the fullest extent permitted by law.

(b) Entire Agreement/Modification. This Second 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 Second Amendment is ineffective to modify or amend the terms of this Second Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this Second Amendment, and specifically states that that agreement modifies this Second Amendment.

(c) Electronic Signatures; Counterparts. This Second Amendment may be electronically signed pursuant to the terms of the E-SIGN Act of 2000. The parties agree that any electronic signatures appearing on this Second Amendment are the same as handwritten signatures for the purposes of validity, enforceability and admissibility and that such electronic signatures are legally binding. This Second 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 Second Amendment shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

(e) Authority. Each individual executing this Second Amendment on behalf of his or her respective party represents and warrants that he or she is duly authorized to execute and deliver this Second Amendment on behalf of said entity in accordance with the governing

documents of such entity, and that upon full execution and delivery this Second 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 Second 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 Second Amendment.

(h) Ratification. Except as modified by this Second 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 Second 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: Sue Y. Yuen
Its: Chief Executive Officer

DocuSigned by:
Sue Yuen
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Date: _____ 9/5/2023 | 9:10 AM PDT

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

DocuSigned by:
Katharine Allen
9D9CD616C4C6440...

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 Second 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:

Sue Yuen

DocuSigned by:
Sue Yuen
413DCCB012A24E0...

Date: _____, 2023 9/5/2023 | 9:10 AM PDT

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this “**Second 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, as amended by that certain First Amendment to Lease (the “**First Amendment**”) dated as of _____, 2023 (as so amended and together with all exhibits and addenda attached thereto, the “**Existing Lease**”), whereby Tenant leases from Landlord approximately 1,038 usable square feet of retail space (the “**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**”), all as more particularly described in 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. The Commencement Date under the Existing Lease occurred on July 12, 2023.

C. Pursuant to Section 8 of the First Amendment (the “**Existing Alternative Rent Provision**”), Landlord agreed, among other matters, to make certain adjustments to the Rent payable by Tenant under the Lease during the “Alternative Rent Period” specified therein on account of the unprecedented circumstances surrounding the COVID-19 pandemic.

D. Due to the continuation of the COVID-19 pandemic, Tenant has requested further adjustments to the Rent payable by Tenant under the Lease from Landlord.

E. Landlord has agreed to make further 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 this Second Amendment has been entered into at the request of Tenant as a result of the continuation of the unprecedented circumstances surrounding the COVID-19 pandemic and that, by entering into this Second 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 Second Amendment or in the Existing Lease shall mean, collectively, this Second Amendment and the Existing Lease, as amended by this Second Amendment.

2. Alternative Rent. The Existing Alternative Rent Provision set forth in the First Amendment is hereby deleted in its entirety and shall be of no further force and effect.

(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 earlier of (A) January 1, 2024 or (B) the date on which Tenant first commences physical construction of the Tenant Improvements to be constructed in the Premises by Tenant (as applicable, the “**Alternative Rent Period Commencement Date**”) and ending on the earlier of (x) the last day of the month immediately preceding the Gross Sales Rent Reversion Month (as defined in Section 2(b) below), and (y) the first (1st) anniversary of the Commencement Date (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 2(a)(ii)(C) below). Tenant acknowledges and agrees that in the event the Alternative Rent Period Commencement Date occurs prior to the Commencement Date of the Lease, Tenant shall pay Alternative Rent as provided hereunder during the portion of the Alternative Rent Period that is prior to the Commencement Date notwithstanding anything to the contrary contained in the Existing Lease, including but not limited to the provisions of Article 2 thereof referencing Tenant’s obligation to pay rental for use and occupancy of the Premises commencing on the Commencement Date. With respect to any portion of the Alternative Rent Period occurring from and after the Commencement Date, Tenant’s payment of Alternative Rent as provided in this Section 2 shall be in lieu of paying the Base Rent specified in the Basic Lease Information for such 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, and with respect to any portion of the Alternative Rent Period occurring after the Commencement Date in lieu of the Base Rent payments otherwise provided for in the Existing Lease for such period, Tenant shall pay to Landlord during the Alternative Rent Period 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 (1st) day of the applicable month and otherwise in accordance with the provisions of Article 2 of the Existing Lease concerning the payment of Rent.

(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 2(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 2(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 2(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 Tenant opens for business at the Premises 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.

3. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in this Second 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 Second Amendment shall, at Landlord's option exercised in Landlord's sole discretion, 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.

4. Miscellaneous.

(a) Severability. If any provision of this Second Amendment or the application of any provision of this Second Amendment to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Second 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 Second Amendment will be valid and be enforced to the fullest extent permitted by law.

(b) Entire Agreement/Modification. This Second 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 Second Amendment is ineffective to modify or amend the terms of this Second Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this Second Amendment, and specifically states that that agreement modifies this Second Amendment.

(c) Electronic Signatures; Counterparts. This Second Amendment may be electronically signed pursuant to the terms of the E-SIGN Act of 2000. The parties agree that any electronic signatures appearing on this Second Amendment are the same as handwritten signatures for the purposes of validity, enforceability and admissibility and that such electronic signatures are legally binding. This Second 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 Second Amendment shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

(e) Authority. Each individual executing this Second Amendment on behalf of his or her respective party represents and warrants that he or she is duly authorized to execute and deliver this Second Amendment on behalf of said entity in accordance with the governing documents of such entity, and that upon full execution and delivery this Second 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 Second 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 Second Amendment.

(h) Ratification. Except as modified by this Second 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 Second 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: Sue Y. Yuen
Its: Chief Executive Officer

DocuSigned by:
Sue Yuen
413DCCB012A24E0...

Date: _____ 9/5/2023 | 9:10 AM PDT

APPROVED AS TO FORM.

By: _____
Legal counsel, TJPA

DocuSigned by:
Katharine Allen
9D9CD616C4C6440...

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 Second 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:

Sue Yuen

DocuSigned by:
Sue Yuen
413DCCB012A24E0...

Date: _____, 2023 9/5/2023 | 9:10 AM PDT