



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 5/25/2023

File ID: 2023-311

Department: Urban Development

Subject:

Type of Action: Unanimous Consent

Introduction of an Ordinance to declare certain property as surplus and no longer needed for a municipal purpose and authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville, Alabama, and Barracuda Restaurant, LLC.

Ordinance No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: Approximately 7000 square feet at Cleveland Avenue and Meridian Street

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

This is a Lease Agreement totaling \$17,500 per year with a 10% per annum increase every 5 years.

ORDINANCE NO. 23-_____

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, a municipal corporation within the State of Alabama, as follows:

1. That, in the judgment and opinion of the City Council of the City of Huntsville, and pursuant to its powers under Alabama Code §11-47-21, the certain parcel of land described in Exhibit "A," which is attached hereto and incorporated herein, (the "Property") is surplus to the needs of the City of Huntsville.

2. That, in the judgment and opinion of the City Council of the City of Huntsville, the Property is not needed by any department or division of the City of Huntsville for public or municipal purposes.

3. That the City desires to enter into a lease agreement with Barracuda Restaurant, LLC, for use of the Property as a restaurant. The lease will serve a valid and sufficient public purpose, notwithstanding the incidental benefit accruing to a private entity, as the same will increase sales and tax revenue, promote commerce, and serve as a catalyst for entertainment and development in the downtown area.

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into that certain Lease Agreement, by and between City of Huntsville, an Alabama municipal corporation ("Landlord"), and Barracuda Restaurant, LLC, a Louisiana limited liability company ("Tenant"), which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Lease Agreement between City of Huntsville, Alabama, Landlord, and Barracuda Restaurant, LLC, Tenant," consisting of fifteen (15) pages (including exhibits) and the date of May 25, 2023, (the "Lease Agreement") appearing on the first page thereof, together with the signature of the City Clerk, and an executed copy of said document, after being signed by the Mayor and the City Clerk, shall be permanently kept on file in the Office of the Clerk of the City of Huntsville, Alabama.

NOW, THEREFORE, BE IT FURTHER ORDAINED that the Mayor be and he is hereby authorized to execute the Lease Agreement, on behalf of the City of Huntsville, and any and all such documents relevant, required, and/or relating to effect, carry out, or complete the lease of the Property contemplated therein.

ORDINANCE NO. 23- (Cont.)

ADOPTED this the 25th day of May, 2023.

Pro Tem of the City Council
of the City of Huntsville, Alabama

APPROVED this the 25th day of May, 2023.

Mayor of the City of Huntsville,
Alabama

EXHIBIT A

PROPERTY

The Premises is a lot located near the southwest corner of Cleveland Avenue Northwest and Meridian Street North in Huntsville, Alabama and is further described as:

Being a portion of Tax Parcel No. 14-07-36-2-004-049.000 (PPIN 21908) and Tax Parcel No. 14-07-36-2-004-0050.000 (PPIN 21900) containing approximately 7,000 square feet of land, more or less, situated near the southwest corner of Cleveland Avenue Northwest and Meridian Street North in Huntsville, Alabama.

LEASE AGREEMENT

CITY OF HUNTSVILLE, ALABAMA, LANDLORD
BARRACUDA RESTAURANT, LLC, TENANT

CORNER OF CLEVELAND AVENUE AND MERIDIAN STREET
HUNTSVILLE, ALABAMA

THIS LEASE AGREEMENT (the "Lease") is made as of this 25th day of May, 2023, (the "Effective Date") by and between City of Huntsville, a municipal corporation within the State of Alabama ("Landlord"), and Barracuda Restaurant, LLC, a Louisiana limited liability company ("Tenant").

1. Demised Description

- A. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, that certain property situated at the southwest corner of Cleveland Avenue Northwest and Meridian Street North, Huntsville, Alabama, being a portion of Tax Parcel PPIN 21908 and PPIN 21900 and containing approximately 7,000 square feet of land, more or less, as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference for all purposes, together with all improvements now and hereafter located thereon (either the "Premises" or the "Property").
- B. Landlord will provide the Premises with access to power, water and sewer; Tenant shall otherwise accept the Premises "as is."

2. Term

- A. Due Diligence Period. Tenant shall have a period of One Hundred Twenty (120) days from the Effective Date (the "Due Diligence Date") of this Lease to conduct inspections on the Premises, including but not limited to a survey, phase I environmental study, and geotechnical study, to determine whether it is suitable or economically feasible to construct the Tenant Improvements (as hereinafter defined), to obtain financing, and to obtain all regulatory approvals, permits, licenses and variances required to construct and operate the restaurant on the Premises for Tenant's Permitted Use. In the event Tenant shall determine that the Premises is not suitable and satisfactory to Tenant, Tenant shall have the right to terminate this Lease by giving written notice to Landlord on or before the Due Diligence Date. If Tenant does not terminate this Lease in accordance with this Section 2.A. on or before the Due Diligence Date, Tenant shall have no further right to terminate this Lease pursuant to this Section 2.A.
- B. Initial Term. The initial term of this Lease shall be for twenty (20) years (the "Initial Term") commencing on the Commencement Date as defined herein.

- C. Option Term. Provided Tenant is not then in default under the terms of this Lease, Tenant is hereby granted and shall have the option(s) to renew this Lease for four (4) additional terms of five (5) years each (each an “Option Term”) on the same terms, covenants and conditions (subject to escalations of Rent as set forth in Section 3) and subject to the same restrictions and exceptions herein contained. Provided Tenant is not then in default hereunder, the Lease shall automatically renew for the next Option Term unless Tenant provides Landlord with written notice of its election to not extend this Lease at least one hundred fifty (150) days prior to the expiration of the then current Term. The Initial Term and all Option Terms are hereby referred to collectively as the “Lease Term” or the “Term.”
- D. Commencement Date. The Commencement Date of this Lease (the “Commencement Date”) shall be the earliest of: (i) Two Hundred Seventy (270) days from the date Tenant obtains a building permit to commence construction of improvements on the Premises; or (ii) the day Tenant’s opens for business to the public on the Premises; or (iii) the date that is fifteen (15) months after the Effective Date (whether or not Tenant has opened for business).

3. Rent

Beginning on the Commencement Date and continuing during the Initial Term of the Lease, Tenant shall pay to Landlord Rent for the Premises (“Rent” or “Base Rent”) calculated at \$25.00 per square foot of the land herein leased with a ten percent (10%) annual return which shall be paid in equal monthly installments of 1/12 of the annual Rent in advance on the first day of each calendar month (which shall be prorated for the month of Lease commencement and the month of Lease termination, as applicable). For the first five (5) years of the Initial Term, subject to verification and adjustment by survey as set forth below, the annual Rent total shall be \$17,500.00 which is equal to \$1,458.33 per month. Every five years of the Initial Term (i.e., year 6, year 11, and year 16) and at the commencement of each Option Term, the annual Rent shall increase by 10% per annum and the monthly Rent, which shall continue to be due on the first day of each calendar month, shall increase proportionately. Any Rent payment not received by the tenth (10th) day of each month will be subject to a five (5%) percent late fee payable to Landlord. The square footage of the land leased shall be determined by survey to be procured by Tenant, at Tenant’s sole expense, prior to the Due Diligence Date, and shall be subject to the review and approval of Landlord and any adjustments to Base Rent shall be made accordingly. The Base Rent shall be set forth in a rent commencement letter (the “Rent Commencement Letter”), in substantially the form set forth in **Exhibit B**, to be signed by Tenant at the Commencement Date.

4. Use

Tenant shall use and occupy the Premises for the purpose of a restaurant serving food with both non-alcoholic and alcoholic beverages (the “Permitted Use”) and for no other purposes except those authorized in writing by Landlord. Tenant shall be responsible to obtain all applicable business licenses (including a liquor license) and permits required for its Permitted Use. Tenant may operate on the Premises, at Tenant's option, on a seven (7) days-a-week basis, and at its selected hours of operation, subject, however, to zoning and other regulatory requirements.

5. Utilities and Taxes

Tenant shall pay all charges for water, sewer, electricity, gas, telephone, internet, and other utility services furnished to the Premises for all purposes, and for all utility deposits required thereon.

Landlord and Tenant shall take all actions necessary to cause the Premises to be assessed as a separate ad valorem tax parcel from Landlord's adjacent property, with such separate assessment being completed and finalized no later than the Commencement Date. Tenant shall pay all ad valorem taxes, assessments and charges which may be assessed and levied upon (i) the Premises during the Term of this Lease and (ii) any improvements erected and/or personal property installed on the Premises by Tenant as they shall become due. Upon request of Landlord, Tenant shall provide Landlord with evidence of payment of all such taxes and assessments.

6. Improvements, Alterations, Additions, Installations and Removal Thereof

Tenant shall provide to Landlord and to the Economic Development Department of the City of Huntsville, as part of its submission to the City of Huntsville Inspection Department for obtainment of a building permit, (i) architectural prepared plans and specifications, (ii) site plan, (iii) signage, and (iv) elevations for all intended improvements, renovations, and construction upon the Premises, to be installed for Tenant's Permitted Use, which shall include a heated and cooled building no greater than 1,000 square feet with additional covered and uncovered patio space ("Tenant Improvements"), in form as required by the City of Huntsville (the "Plans and Specifications"), subject to such review, comment, and approval (and terms of approval) of the Inspection Department, the Economic Development Department, and Landlord prior to commencing any work upon the Premises. Tenant and/or Tenant's contractor shall maintain builder's risk insurance coverage during all periods of construction upon the Premises (naming Landlord as an additional insured) and evidence of same shall be provided to Landlord prior to commencement of construction. Upon obtaining the approval of Landlord/Inspection Department/Economic Development Department, Tenant may, at its own expense, commence construction of the Premises in accordance with the Plans and Specifications. In addition, Tenant may install, at its expense, a grease trap for the Premises on or before such date that Tenant opens its business to the public in accordance with City and local health department requirements.

During the Term of the Lease, provided Tenant is not then in default, Tenant may make such alterations, repairs, installations, and structural, exterior and interior alterations to the building in such a manner as will not substantially injure the Premises provided Tenant obtains (i) Landlord's prior written consent, which consent Landlord agrees not to unreasonably withhold, delay or condition, and (ii) all required governmental approvals, if applicable.

Tenant will pay or caused to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, and for all materials furnished for or in connection with such work. Tenant will indemnify Landlord against and hold Landlord harmless from all liabilities, liens, claims and demands on account of such work. Tenant agrees to promptly remove, whether by bond or payment, (not to exceed 30 days after filing thereof), any mechanic's or materialman's lien filed against the Premises.

7. Trade Fixtures, Personal Property

All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises ("Tenant Trade Fixtures") shall be and remain the property of Tenant and may be removed by Tenant at any time during the Term of this Lease, provided Tenant is not in default hereunder past any applicable cure period and provided further that Tenant shall repair any damage caused by such removal. Any Tenant Trade Fixtures not so removed by Tenant within thirty (30) days of the expiration or termination of this Lease shall become the property of Landlord and Landlord may dispose of same, without liability on Landlord's part to Tenant for same.

8. Maintenance and Repair

Tenant shall at its sole cost and expense make all reasonable and necessary repairs and/or replacements to the building, the roof, the interior and exterior portions of the building, and all structural components and portions of the building and the Premises, including all Tenant Improvements, Tenant Trade Fixtures, plumbing, electrical, HVAC, walls, flooring, ceilings, lighting, signage, window glass and exterior doors, landscaping, parking lot, drive aisles, and curb cuts, and all plumbing, pipes, tubes, and other conduits, facilities, water quality units, and utility lines leading to and from the building, in good order and repair and free of refuse and rubbish. The parties hereby agree and confirm that Tenant may maintain, replace and repair Tenant's building on the Property in accordance herewith without any necessary approval from Landlord as long as the maintenance, replacements, and repairs comply with applicable zoning requirements and building codes.

9. Common Areas

There are no shared common areas in the Premises.

10. Indemnification

Tenant agrees to indemnify and hold Landlord and its officers, employees, servants, and agents (collectively "Landlord Indemnified Parties") harmless against all claims, demands, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from: Tenant's conduct, occupancy or management of Tenant's business; its use of the Premises; construction of improvements by Tenant; any breach on the part of Tenant of any conditions of this Lease; or any negligence or willful misconduct of Tenant, its invitees, guests, agents, servants, contractors or employees in the Premises (collectively "Tenant Parties"). Notwithstanding anything to the contrary contained herein, the foregoing provision shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries caused by any negligence or intentional misconduct of Landlord, its agents, servants, contractors or employees or from acts occurring on Landlord's adjacent property (not caused by Tenant Parties). In case of any action or proceeding brought against Landlord and/or any of the Landlord Indemnified Parties by reason of such claim as is described in the initial sentence of this Section 10, Tenant, upon notice from Landlord, covenants to defend such action or proceeding by counsel reasonably acceptable to Landlord, at Tenant's expense.

11. Insurance

Tenant agrees that, throughout the Term of this Lease, Tenant will insure the Premises, the building, and all improvements, including any personal property of Tenant, with an all-risk policy including coverage against damage by fire, windstorm, sprinkler leakage, earthquake, water damage, and all of the risks and perils usually covered by a "special form" policy of commercial property insurance, including extended coverage, vandalism and malicious mischief, for the full replacement costs of said improvements with a deductible not exceeding \$10,000.00 per occurrence. Tenant shall also maintain flood insurance if the Premises is designated to be within a special flood hazard area. Tenant shall add Landlord and the Landlord's Indemnified Parties (defined above) as additional insureds on said insurance policies. Tenant shall also obtain and keep in force, a commercial general liability policy of insurance against claims for personal injury, death or property damage with a combined single limit in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence (bodily injury and property damage) and an aggregate limit of not less than Two Million Dollars (\$2,000,000.00), naming Landlord and said Landlord Indemnified Parties as additional insureds under such policy of insurance with respect to claims arising out of Tenant's use and occupancy of the Premises. Tenant's selection of its insurance policies shall be subject to the approval and consent of Landlord, which shall not be unreasonably withheld. Said policies shall also provide that the insurer will provide thirty (30) days' written notice to Landlord prior to cancellation. Tenant shall be responsible for payment of the premiums and to provide evidence of said policies to Landlord upon the Effective Date of this Lease and on an annual basis thereafter.

12. Signs

Tenant shall have the right to erect, affix or display on the exterior or interior walls, doors, or windows of the building and upon the Premises, such sign or signs advertising its business as Tenant may consider necessary or desirable, subject to applicable zoning and sign ordinances and the consent of Landlord and the Economic Development Department (as set forth in Section 6).

13. Casualty Loss

If, at any time during the Term, the Building shall be damaged in whole or in part by fire, the elements or other casualty, Tenant shall promptly notify Landlord thereof. In such event, Tenant, at Tenant's or its insurer's cost, shall promptly repair said damage and restore the building and any other improvements to the same condition which existed immediately prior to the occurrence of such damage. The Term shall be tolled by a period of time equal to the time between the date of the casualty and the date on which Tenant completes the repair and restoration of the building and any improvements. During the restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to Landlord's prior written approval and compliance by Tenant with all applicable laws. If there is a casualty loss to Tenant's building (of at least fifty percent (50%) of the replacement cost) which occurs during the last two (2) years of the then-current Term, then Tenant shall have the option to terminate the Lease within thirty (30) days advance written notice to Landlord, with no obligation to rebuild (other than the clearing and grading of the Property to a clean and level condition) or further obligation under this Lease other than the payment of any Rent obligations which are due and unpaid up to the effective date of termination.

14. Condemnation

In the event the Premises shall be taken in its entirety for public use by city, ~~city~~, state, federal government, public authority or other entities or corporations having the power of eminent domain, then this Lease shall terminate as of the date on which possession thereof shall be taken for such public use; provided, however, that if only a part of the Premises shall be so taken, such termination shall be at the option of Tenant. If such a taking of only a part of the Premises occurs, and Tenant elects not to terminate this Lease, there shall be a proportionate reduction of the Base Rent to be paid under this Lease from and after the date such possession is taken for public use. In the event of any taking of the Premises by eminent domain, Tenant shall be entitled to any compensation awarded for its leasehold interest as may be permitted under applicable law.

15. Compliance With Laws

Tenant acknowledges that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper, excessively noisy or offensive, or contrary to any law or any regulation, guideline, bylaw or ordinance in force in the state, city or town in which the Premises are situated.

16. Hazardous Substances

As used in this Lease, the term "Hazardous Substance" shall mean: (a) all materials and substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous waste," "toxic chemicals," "solid waste", "infectious waste," or similar terms in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq., as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613), (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq., (iii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., or (iv) Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (b) All materials and substances listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances, as the same may be amended or supplemented from time to time; (c) Any material, waste or substance that is or contains (i) petroleum or petroleum derivatives, (ii) asbestos, (iii) polychlorinated byphenals, (iv) flammable explosives, (v) radioactive materials, (vi) radon gas, (vii) lead and lead-based paint, (viii) infectious, carcinogenic or mutagenic materials, or (ix) mold in a condition, location or type that may pose a risk to human life or safety or the environment, or that may cause damage to property; and (d) such other substances, materials and wastes that are or become regulated as hazardous or toxic under applicable local, state or federal law.

During the Term of this Lease, Tenant shall comply with all applicable federal, state, and local laws, regulations, administrative rulings, orders, ordinances, and the like, pertaining to the protection of the environment, including, but not limited to, those regulating the handling and disposal of Hazardous Substances ("Environmental Laws"). Further, during the Term of this Lease, neither Tenant nor any agent or party acting at the direction or with the consent of Tenant shall manufacture, use, treat, store, or dispose of any Hazardous upon the Premises.

Without limiting any other indemnities contained in this Lease, Tenant agrees to indemnify and defend Landlord and the Landlord Indemnified Parties against, and to hold Landlord and the Landlord Indemnified Parties harmless from, any and all claims, demands, losses, liabilities, damages, injuries, costs and expenses (including, but not limited to, fees and disbursements of attorneys, experts and consultants) paid or incurred by, or asserted against, Landlord and/or the Landlord Indemnified Parties for the escape, seepage, leakage, spillage, discharge, emission or release onto or from the Premises, of any Hazardous Substance placed on or under the Premises by Tenant during the Term of this Lease and until possession of the Premises is returned to Landlord. Tenant's obligations under this Section shall survive for a period of 365 days after the expiration or earlier termination of this Lease.

17. Default

In the event that Tenant shall fail to perform any covenant required to be performed Tenant under the terms and provisions of this Lease, including Tenant's covenant to pay Rent, and such failure shall continue unremedied or uncorrected for a period of thirty (30) days (except as to the non-payment of Rent (which shall be cured within ten (10) calendar days from written notice by Landlord) or in the event of emergency self-help exercised by Landlord under Section 22, or such additional time as is reasonably required to correct any such default after the service of written notice upon Tenant by Landlord hereto, specifying such failure, Landlord shall, at its option, have, in addition to any other right or remedy available to Landlord by law or in equity, the right (i) to terminate this Lease at the expiration of such thirty (30) day period without liability to Tenant, (ii) to exercise the right of self-help under Section 22, or (ii) to pursue any other lawful or equitable remedy permitted by applicable law (including but not limited to the recovery of possession of the Premises and the collection of attorney's fees and costs incurred by Landlord as a result of such default by Tenant).

Tenant's obligation to pay the Rent and other charges under this Lease shall survive any termination of this Lease due to Tenant's default. In the event of any default, and upon termination of this Lease by Landlord, Landlord shall be entitled to recover all unpaid Rent for the periods prior to the date of recovery of possession. In addition, Landlord shall be entitled to damages caused by Tenant's default, which damages may, at Landlord's election, be determined on the basis of the present value of all future Rent that would have become payable under this Lease for the the next three (3) years of the then current Term, less the present value of rent payments that Landlord receives by re-letting the Premises, if any. The parties agree that any damages to Landlord for default by Tenant shall **not** exceed the total of three (3) years of annual Rent payments, calculated at the then current annual rental rate at the time of Tenant's breach. Furthermore, Landlord agrees to take commercially reasonable efforts to re-let the Premises for the remainder of the current Term, upon such terms and conditions as Landlord may determine in its sole discretion.

In the event that Landlord shall fail to perform any covenant required to be performed by Landlord under the terms and provisions of this Lease, and such failure shall continue unremedied or uncorrected for a period of thirty (30) days, or such additional time as is reasonably required to correct same after service of written notice upon Landlord by Tenant hereto, specifying such failure, Tenant shall have, at its option and as its sole and exclusive remedy hereunder, the right to cure such default of Landlord (upon an additional three (3) business days' written notice to Landlord of Tenant's intent to cure such default, without such cure by Landlord during the three (3) business day period) and

offset the actual and verifiable costs of same against the future Rent due and payable by Tenant hereunder.

18. Landlord's Right To Enter the Premises

Tenant shall permit Landlord or its contractor, employee or agent to enter the Premises at all reasonable times and upon reasonable notice (and in case of emergency, at any time) to inspect the Premises as may be necessary for the safety or the preservation thereof, or for any other reasonable purposes.

19. Assignment and Subletting

Tenant shall not assign this Lease or sublet the whole or any part of the Premises without the prior written consent of Landlord. In the event of any such assignment (after approval of Landlord), Tenant shall deliver to Landlord, a written agreement from the assignee (in form acceptable to Landlord) agreeing with Landlord to perform the terms, covenants, and conditions of Tenant contained in this Lease. Any and all assignments or sublets in violation of this provision shall be null and void and of no force and effect.

20. Force Majeure

In any case where either party hereto is required to do any act, any delays caused by or resulting from acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortages of labor, materials or equipment, unusual government regulations, pandemic, unusually severe weather, or other causes beyond such party's reasonable control ("Force Majeure") shall not be counted in determining the time during which such act shall be completed, whether such time be designated by a fixed date, a fixed time, or "a reasonable time," and such time shall be deemed to be extended by the period of such delay, except that Tenant shall not be relieved of its obligation to pay Rent due to matters of Force Majeure.

21. Quiet Enjoyment

Landlord agrees that if Tenant pays the Rent and performs and observes the agreements, conditions and other provisions on its part to be performed and observed in this Lease, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises during the Term of this Lease and any extensions thereof without any manner of hindrance from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.

22. Notice

Whenever in this Lease it is provided that notice shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice with respect to this Lease or the Premises, each such notice shall be in writing and, except as may be otherwise required by law or statute, shall be given or served as follows:

- A. If given or served by Landlord, by mailing the same to Tenant by registered or certified mail, return receipt requested, or by overnight courier, addressed to Brett Jones as Manager of Tenant at 1800 Second Street, New Orleans, Louisiana 70113 or such other address as Tenant may from time to time designate in written notice to Landlord; additionally, as a supplement to (but not a substitute for) the notice described above, Landlord also agrees to send a copy of the notice via email to brett@eatbarracuda.com; or
- B. If given or served by Tenant, by mailing the same to Landlord by registered or certified mail, return receipt requested, or by overnight courier, addressed to Landlord at City of Huntsville, Department of Urban Development, Attn: Jim McGuffey, 320 Fountain Circle, Huntsville, Alabama 35801, or such other address as Landlord may from time to time designate in written notice given to Tenant.

23. Self-Help

If Tenant shall default in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed, other than an obligation to pay money, and shall not cure such default as provided herein, Landlord may, at its option, without waiving any claim for damages for breach of this Lease, at any time thereafter, cure such default for the account of Tenant and any amount paid or any liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant, and Tenant agrees to reimburse Landlord within fifteen (15) days after receipt of an invoice from Landlord therefore and save Landlord harmless therefrom. Notwithstanding the cure periods set forth in Section 16, in the event of an emergency, Landlord shall have the right to exercise its remedy of self-help immediately without providing a thirty (30) day notice of default to Tenant.

24. Parking. Landlord agrees and confirms that Tenant, its employees, patrons and vendors may have access to the adjacent City parking lot at no additional cost to Tenant, in accordance with the City rules and regulations related thereto. While Tenant acknowledges and confirms that nothing herein shall be construed to provide, and Landlord specifically disclaims, any specific guaranteed or reserved parking spaces for Tenant, Landlord confirms that during the Term of this Lease, there shall be a minimum of twenty (20) non-exclusive public parking spaces, either in the adjacent parking lot or streetside, located within a 500 ft. radius of the Premises.

25. Surrender. At the expiration of the Term of this Lease, Tenant shall yield the Premises, including any improvements, additions and other improvements made by Tenant (other than Tenant's property and Tenant Trade Fixtures) to Landlord, in reasonable condition, ordinary wear and tear and damage by casualty excepted. Tenant shall remove all of Tenant's property, including Tenant Trade Fixtures, from the Premises and repair any damage to the Premises caused by the removal of such property. Any property of Tenant and Tenant Trade Fixtures not so removed by Tenant within thirty (30) days of the expiration or termination of this Lease shall become the property of Landlord and Landlord may dispose of same, without liability on Landlord's part to Tenant for same.

26. Holding Over. A holding over beyond the expiration of any Term of this Lease shall operate as an extension of this Lease on a month-to-month basis except that Rent shall increase to 110% of the Rent then in effect. The holding over may be terminated by either party at the end of any month by giving thirty (30) days' written notice of termination to the other party and, upon such notice, the Lease shall terminate and Tenant shall vacate the Premises in accordance with Section 25.

27. Miscellaneous

- A. This Lease shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of law provisions, and if any provisions of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby.
- B. There are no oral or written agreements between Landlord and Tenant affecting this Lease. This Lease may be amended only by instrument in writing executed by Landlord and Tenant.
- C. The titles of the several paragraphs contained herein are for convenience only and shall not be considered in construing this Lease.
- D. Unless repugnant to the context, the words "Landlord" and "Tenant" appearing in this Lease shall be construed to mean those named above and their respective heirs, executors, administrators, successors and assigns and those claiming through or under them respectively.
- E. The failure of either party to this Lease to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies that party may have and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants, or conditions.
- F. Landlord and Tenant each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, except Crunkleton Commercial Real Estate ("Broker"). The parties acknowledge that Broker will be paid a commission by Tenant as set forth by separate agreement. Landlord and Tenant hereby represent to each other that they know of no other real estate broker or agent, other than Broker, who is entitled to a commission or finder's fee in connection with this Lease. Each party shall indemnify, protect, defend, and hold harmless the other party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses for any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than Broker. The terms of this Section 27.F. shall survive the expiration or earlier termination of this Lease.

- G. The execution and delivery of the Lease by Landlord is contingent upon approval of this Lease by the City Council of the City of Huntsville.

The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.

[SIGNATURE PAGE TO FOLLOW]

WITNESS our hands and seals as of the 25th day of May, 2023, being the effective date of this instrument for all purposes.

LANDLORD:

CITY OF HUNTSVILLE
a municipal corporation in the State of
Alabama

Attest:

By: _____
Printed Name: **Shaundrika Edwards**
Title: **City Clerk**

By: _____
Printed Name: Tommy Battle
Title: Mayor

TENANT:

BARRACUDA RESTAURANT, LLC,
a(n) Louisiana limited liability company

Witness:

By: Anusha Davis
Printed Name: anusha Davis

By: [Signature]
Printed Name: Brett Jones
Title: MANAGER

Acknowledgement by City of Huntsville, as Landlord.

State of Alabama)
County of Madison)

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Tommy Battle and ~~Kenneth Benson~~^{**}, whose names as Mayor and City Clerk ; respectively, of **CITY OF HUNTSVILLE**, a municipal corporation in the State of Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said municipal corporation as of the day the same bears day. ****Shaundrika Edwards**

Given under my hand and seal, this the 25th day of May, 2023.

Notary Public
My Commission Expires _____

Acknowledgement by Barracuda Restaurant, LLC, as Tenant.

State of Alabama)
County of Madison)

I, the undersigned, a Notary Public in and for said County or and State, do hereby certify that Brett Jones, whose name as Manager of Barracuda Restaurant, LLC, a Louisiana limited liability company, is signed to the foregoing instrument, and who are known to me, acknowledged before me that, being informed of the contents of the instrument, they, as such Manager and with full authority, executed the same voluntarily for and on behalf of said company on the day the same bears date.

Given under my hand and seal, this the 18 day of April, 2023.

Anusha Alapati Davis
Notary Public

My Commission Expires 7/25/24

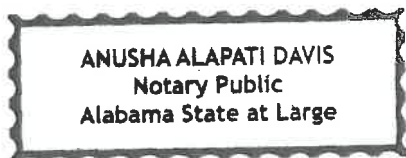


Exhibit A: Description of Premises

The Premises is a lot located near the southwest corner of Cleveland Avenue Northwest and Meridian Street North in Huntsville, Alabama and is further described as:

Being a portion of Tax Parcel No. 14-07-36-2-004-049.000 (PPIN 21908) and Tax Parcel No. 14-07-36-2-004-0050.000 (PPIN 21900) containing approximately 7,000 square feet of land, more or less, situated near the southwest corner of Cleveland Avenue Northwest and Meridian Street North in Huntsville, Alabama.

Exhibit B: Form of Rent Commencement Letter

LEASE TERM COMMENCEMENT AND EXPIRATION DATES

Executed this _____ day of _____, 20__ by and between _____, as "Landlord" and _____, as "Tenant."
Capitalized terms not defined herein shall have the meaning as set forth in the Lease to which this is an exhibit.

WHEREAS, the parties have previously entered into a Lease Agreement dated _____ whereby Landlord leased to Tenant certain property located at _____ and more particularly described therein;

WHEREAS, the Commencement Date is now specifically identifiable; and

WHEREAS, the parties have agreed to specifically define the Commencement Date and the expiration date of the Initial Term of the Lease;

NOW, THEREFORE, the parties hereby agree.

1. That the Commencement Date of the Initial Term of the Lease shall be the _____ day of _____, 20_____.
2. That the expiration date of the Initial Term of the Lease shall be the ___day of _____, 20_____.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above mentioned.

LANDLORD:

TENANT:

By: _____
Its: _____

By: _____
Its: _____