



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 3/9/2023

File ID: TMP-2683

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Lease Agreement between the City of Huntsville and Taco Mama Huntsville, LLC.

Type of Document: Resolution 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: 301 Pelham Avenue SW, Unit C8, Huntsville, Alabama

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

Additional Comments:

Tenant shall pay \$100 per year for the term of the lease.

RESOLUTION NO. 23-_____

BE IT RESOLVED 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 the CITY OF HUNTSVILLE, an Alabama municipal corporation ("Landlord"), and TACO MAMA HUNTSVILLE, LLC, an Alabama 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 the City of Huntsville and Taco Mama Huntsville, LLC," consisting of twelve (12) pages (including exhibits) and the date of March 9, 2023, appearing on the first page thereof, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and he is hereby authorized to execute the Lease Agreement, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, and the authority to execute any and all such documents relevant, required, and/or relating to effect, close, carry out, or complete the real estate transaction or closing contemplated therein.

ADOPTED this the 9th day of March, 2023.

President of the City Council of the City
of Huntsville, Alabama

APPROVED this the 9th day of March, 2023.

Mayor of the City of Huntsville, Alabama

LEASE AGREEMENT

CITY OF HUNTSVILLE, ALABAMA, LANDLORD
TACO MAMA HUNTSVILLE, LLC, TENANT

PELHAM AVENUE SW
HUNTSVILLE, ALABAMA

THIS LEASE AGREEMENT (the "Lease") is made as of this 9th day of March, 2023, (the "Effective Date") by and between **City of Huntsville**, a municipal corporation within the State of Alabama ("Landlord"), and **Taco Mama Huntsville, LLC**, an Alabama 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 on Pelham Avenue, Huntsville, Alabama, being a portion of Tax Parcel PPIN 538049 and being approximately 13 x 8 feet of land, more or less, as more particularly described in **Exhibit A** and depicted in **Exhibit B** 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 "as is."

2. Term

The term of this Lease shall commence on the Effective Date (the "Commencement Date") and expire on November 30, 2026 (the "Initial Term").

3. Rent

Beginning on the Commencement Date and continuing during the Term of the Lease, Tenant shall pay to Landlord Rent for the Premises in the amount of One Hundred Dollars (\$100.00) per year ("Rent") which shall be paid annually on the anniversary date of the Commencement Date. Provided, Rent shall not be prorated for the last payment even though such period shall not include a full twelve (12) month period.

4. Use

Tenant shall use and occupy the Premises for a walk-in refrigerator (the "Tenant Equipment") to service Tenant's restaurant operated under lease ("Tenant's Restaurant Lease") at 301 Pelham Avenue SW, Unit C8, Huntsville, Alabama (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 and permits required for its Permitted Use.

President of the City Council of the
City of Huntsville, Alabama
Date: March 9, 2023

5. Utilities and Taxes

Tenant shall pay all charges for utility services furnished to and servicing the Tenant Equipment. Tenant shall also pay all ad valorem taxes, assessments and charges which may be assessed and levied upon the Tenant Equipment.

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

Tenant shall not make any improvements to the Premises without Landlord's prior written consent, which Landlord may withhold in its sole discretion.

7. Trade Fixtures, Personal Property

The Tenant Equipment 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. If the Tenant Equipment is not so removed by Tenant within thirty (30) days of the expiration or termination of this Lease, the same shall become the property of Landlord and Landlord may dispose of same, without liability on Landlord's part to pay 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 Premises, including the Tenant Equipment.

9. Intentionally omitted

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. 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. 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 and the Tenant Equipment 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 and coverage for vandalism and malicious mischief, for the full replacement costs of said improvements. Tenant shall also obtain and keep in force a commercial general liability policy of insurance against claims for personal injury, death or property damage arising out of Tenant's use and occupancy of the Premises. Both of these insurance policies shall name Landlord and said Landlord Indemnified Parties as additional insureds and shall incorporate these Premises into their scope as covered property. The limits of these insurance policies shall mirror those required by Tenant to be maintained under Tenant's Restaurant Lease and, if permitted by Tenant's insurer, may be added to Tenant's existing policies. 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 not erect any signage upon the Premises without the prior written consent of Landlord and the Economic Development Department. Any signage shall be subject to applicable zoning and sign ordinances.

13. Casualty Loss

Tenant shall be solely responsible for the security of its Tenant Equipment and protecting the same against loss, including theft and vandalism. If, at any time during the Term, the Tenant Equipment shall be damaged in whole or in part by fire, the elements, theft, vandalism, or other casualty, Tenant shall be solely responsible for repair and/or replacement of the same.

14. Condemnation

In the event the Premises shall be taken in its entirety for public use by 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.

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 biphenyls, (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.

16. 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).

Additionally, a default under Tenant's Restaurant Lease shall constitute a default under this Lease. Tenant agrees to provide notice to Landlord of any default notice received by Tenant under Tenant's Restaurant Lease and/or any correspondence related to the termination or expiration of Tenant's Restaurant Lease. Should Tenant's Restaurant Lease be terminated for default or for any other reason, or should the same expire prior to this expiration of the Term of this Lease, then this Lease shall automatically terminate upon such termination or expiration of Tenant's Restaurant Lease and Tenant shall thereafter surrender the Premises in accordance with Section 24.

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 the right, at its option and as its sole and exclusive remedy hereunder, to terminate the Lease, but without any further liability of Landlord hereunder.

17. 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.

18. 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.

19. 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.

20. 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 without any manner of hindrance from Landlord or anyone claiming under Landlord, subject, however, to the terms of this Lease.

21. 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 Tenant at the Premises or such other address as Tenant may from time to time designate in written notice to Landlord; 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.

22. 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 but without obligation, 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.

23. Intentionally omitted.

24. Surrender. At the expiration of the term of this Lease, Tenant shall yield the Premises (other than the Tenant Equipment) to Landlord, in reasonable condition, ordinary wear and tear and damage by casualty excepted. Tenant shall remove the Tenant Equipment and repair any damage to the Premises caused by the removal of such property. Any property of Tenant,

including the Tenant Equipment, 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 pay Tenant for same.

25. 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.

26. 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. 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.
- 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.

[Signatures on Following Pages]

WITNESS our hands and seals as of the 9th day of March, 2023, being the effective date of this instrument for all purposes.

LANDLORD:

CITY OF HUNTSVILLE
a municipal corporation in the State
Alabama

of

Attest:

By: _____
Printed Name: Shaundrika Edwards
Title: Clerk-Treasurer (Interim)

By: _____
Printed Name: Tommy Battle
Title: Mayor

TENANT:

TACO MAMA HUNTSVILLE, LLC,
an Alabama limited liability company

Witness:

By: Caroline N. Walker
Printed Name: Caroline N. Walker

By: Christian D. Brown
Printed Name: Christian D. Brown
Title: MEMBER

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~~^{Interim}, whose names as Mayor and Clerk-Treasurer, 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 9th day of March, 2023.

Notary Public

My Commission Expires _____

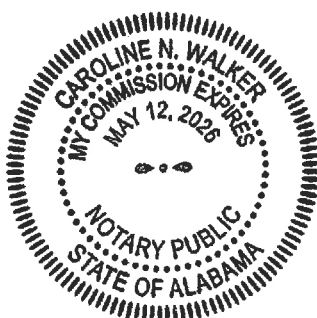
Acknowledgement by Taco Mama Huntsville, LLC, as Tenant.

State of Alabama)

County of Madison)

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Christian D. Brown, whose name as MEMBER of Taco Mama Huntsville, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of the instrument, he, as such MEMBER 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 17th day of FEBRUARY, 2023.



Caroline N. Walker
Notary Public

My Commission Expires 5/12/26

Exhibit A: Description of Premises

The Premises is a 13 x 8 foot parcel located at Pelham Avenue, Huntsville, Alabama, and is further described as:

A portion of Lot 4A Twickenham Square Subdivision Phase II as recorded in Plat Book 20120905000567540, in the Office of the Judge of Probate of Madison County, Alabama.

Being a portion of Tax Parcel No. 17-01-01-2-000-019.004 (PPIN 538049)

