



ROCKY MOUNT
CITY MANAGER'S OFFICE
THE CENTER OF IT ALL

City Council Agenda

To: The Honorable Mayor and City Council

Date: June 10, 2019

Subject: Authorization to enter into Short-Term Lease and Authorization of One-Year Lease Agreement with Barbeque & Jazz, Inc., dba Deli & Coffee Shop

Summary of Requested Action: Authorize the City Manager to enter into a short-term lease agreement and authorize the one-year lease agreement with Barbeque & Jazz, Inc., dba Deli & Coffee Shop, effective May 20, 2019.

Department Requesting Action: Community & Business Development

Budgetary Impact: Rental payments of \$1,740 per month, for nine months totaling \$15,660.

General Revenue: Account# 110 0001

Douglas Block: Account# 386000

City Manager's Recommendation: Recommend authorization.

MEMORANDUM

City Council Meeting



ROCKY MOUNT
CITY MANAGER'S OFFICE
THE CENTER OF IT ALL

To: Rochelle Small-Toney, City Manager
Cc: Natasha Hampton, Assistant City Manager
From: Landis Faulcon, Director Community & Business Dev.
Date: 06/03/2019
Re: Adoption or Resolution Authorizing - Short-Term Lease
Barbeque & Jazz, Inc., dba Deli & Coffee Shop

ISSUE:

City Council approval is required authorizing the City to enter into leases of one year or less.

BACKGROUND:

In July 2015 Ed Wiley and Yalem Kiros entered into a lease agreement, securing the property at 213-219 NE Main Street, placing a \$1,183 security deposit. Since that time there have been stops and starts regarding landlord upfit for the space.

In July 2018 the City, as Landlord agreed to upfit the property to house a combined coffee shop and Deli. The arrangement required the tenant to share in the cost of upfit, as well as to fund all costs for equipment, fixtures and upfit specific to the deli and coffee shop and its operations.

The City and Tenant have agreed on the terms of a short-term, one-year lease. The lease requires \$1,740 per month, calculated as \$10 per square foot, with lease payments beginning in the fourth month. No lease payments will be required for the first three months. The effective date of the lease will be May 20, 2019.

A long-term lease is being prepared and will be presented to Council which will include tenant payback of a share of property upfit costs.

RECCOMENDATION:

The resolution authorizing lease of a property for one-year is attached, as well as the short-term lease signed by the tenant.

Staff recommends City Council approval of the resolution and one-year lease agreement.

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF ROCKY MOUNT
AUTHORIZING THE LEASE OF
PROPERTY FOR A ONE (1) YEAR TERM**

WHEREAS, the City owns a building located at 213-219 Northeast Main Street in the City of Rocky Mount (the “**Property**”) that will not be needed by the City during the term of the lease; and

WHEREAS, Barbeque & Jazz, Inc., d/b/a Deli & Coffee Shop, a North Carolina corporation (“**BBQ & Jazz**”) wishes to lease the Property for a term of one (1) year; and

WHEREAS, the City and BBQ & Jazz have agreed upon a lease under the terms of which BBQ & Jazz will lease the Property for a term of one (1) year. The term of the lease began on May 20, 2019 at a rent of \$15,660, payable as follows, no rent shall be due for the first three (3) months of the term, rent at \$1,740 per month will commence with the fourth (4th) month and continue through the end of the term; and

WHEREAS, North Carolina General Statute § 160A-272 authorizes the City to enter into leases of one year or less upon resolution of the City Council adopted at a regular meeting; and

WHEREAS, the City is convened in a regular meeting;

NOW THEREFORE, the City Council authorizes the lease of the Property described above to BBQ & Jazz and directs the appropriate city officers and officials to execute the lease and any other instruments related thereto.

Adopted this ____ day of June, 2019.

NORTH CAROLINA

EDGECOMBE COUNTY

THIS SHORT TERM LEASE AGREEMENT (this “**Lease**”) is made and entered into as of the 20th day of May, 2019, by and between the **CITY OF ROCKY MOUNT**, a North Carolina municipal corporation located in Nash and Edgecombe Counties (“**Landlord**”) and Barbeque & Jazz, Inc., d/b/a Deli & Coffee Shop, a North Carolina corporation (“**Tenant**”);

RECITALS

A. Landlord has agreed to lease to Tenant certain space in the building located at 213-219 Northeast Main Street in the Douglas Block, Rocky Mount, North Carolina (the “**Building**”).

B. Landlord and Tenant have agreed to negotiate in good faith with respect to a longer term lease during the one (1) year term of this Lease, and anticipate that lease will commence prior to the Expiration Date of this Lease in which event this Lease shall terminate.

C. Landlord has further agreed to upfit the Premises for use as a deli and coffee shop at the request of Tenant and Tenant has agreed to pay \$70,419 of the upfit cost (\$19,645 of which has been paid, leaving a balance of \$50,774 to be paid) to be added to the monthly rent if the longer term lease, as expected, is executed by the parties.

D. Ed Wiley III and wife, Yalem Kiros, principals in Tenant, have agreed to guarantee the obligations of Tenant under this Lease.

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

**SECTION 1
DEMISE OF PREMISES**

For and in consideration of the mutual agreement of the parties, including the rental agreed to be paid by Tenant to Landlord, Landlord leases and demises to Tenant, and Tenant leases, demises and rents from Landlord space located on the first floor on the Building located at 213-219 Northeast Main Street containing approximate 2,088 square feet, more or less (the “**Premises**”). Tenant has inspected Premises hereby accepts the same in “**AS IS**” condition, subject only to Landlord’s completion of the upfit of the Premises in a manner that meets the requirement of all building and health and safety code. Neither Landlord nor its agents have made any representations with respect to the Premises, the Building or the land upon which it is erected, except as expressly set forth herein or as may be agreed to, in writing, by both parties, and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. The taking of possession of the Premises by Tenant shall be conclusive evidence that all obligations imposed upon Landlord prior the

Commencement Date under this Lease have been fully performed, and that the Premises were in good condition at the time possession was taken.

SECTION 2 TERM

The term of this Lease commenced on May 20, 2019 (the “**Commencement Date**”) and, unless less sooner terminated as herein provided, shall exist and continue for a period of one (1) year, the end of such period being the “**Expiration Date**”.

SECTION 3 RENT

Tenant shall pay rent to Landlord as follows:

A. For the first three (3) months of the term no rent shall be due and payable to Landlord for the occupancy of the Premises under this Lease.

B. For the next nine (9) months of the term Tenant shall pay Landlord rent in the amount of \$15,660, payable in nine (9) equal monthly installments of \$1,740 each, in advance, due on or before the first day of each calendar month beginning with the first day of the fourth (4th) month of the term. Since the Expiration Date will be on a date prior to the last day of the twelfth (12th) month, the rent due on the first day of that month shall be prorated based on the Expiration Date.

All rental payments shall be paid without demand, deduction, or set off and delivered to Landlord’s Agent Chambliss & Rabil Commercial Reality at _____ or to such other address specified by Landlord in writing.

SECTION 4 SECURITY DEPOSIT

Tenant shall deposit \$1,740 with Landlord as a security deposit to be held as collateral security for the payment of any rentals and other sums of money for which Tenant shall become liable to Landlord, and for the faithful performance by Tenant of all covenants and conditions herein contained. If at any time during the term of this Lease , any of the rent herein required to be paid shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid, then Landlord may, at its option, appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum. In the event of the failure of Tenant to keep and perform any of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant, then Landlord at its option may appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate the Landlord for loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the entire deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall

upon the written demand of Landlord forthwith remit to Landlord a sufficient amount to restore said security to the original sum of this Lease. Said deposit shall be returned to Tenant at the end of the term of this Lease provided Tenant shall have made such payments and performed all such covenants and agreements required of Tenant hereunder.

SECTION 5 HOLDING OVER

In the event of holding over by the Tenant after expiration or termination of this Lease without the written consent of Landlord, Tenant shall (i) pay Landlord, within thirty (30) days after Landlord's written demand therefore, all damages caused by Tenant's holding over (including, without limitation, all claims for damages by any other tenants to whom the Landlord may have leased the Premises and all losses suffered by Landlord arising out of other agreements concerning the Premises which Landlord is unable to honor, in whole or in part, as a result of Tenant's holding over) and all attorney's fees incurred by Landlord as a result of Tenant's holding over and (ii) pay to Landlord one hundred fifty percent (150%) of the monthly rent in effect immediately prior to expiration or termination, plus any other rent or penalties due under this Lease owed to Landlord in accordance with the terms of this Lease. Any holding over with Landlord's written consent shall constitute a lease from month to month under all the terms and provisions of this Lease, and unless otherwise agreed in writing, either Landlord or Tenant may terminate this Lease upon at least thirty (30) days prior written notice to the other.

SECTION 6 LATE CHARGES

If at any time any rent is not received by the Fifth (5th) day following the date on which such rent or any other amounts due under this Lease becomes due (including dishonored checks), then in addition to the amount owed, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the past due obligation. This provision shall not be deemed to condone the late payment of rent or any other monetary obligation, and shall not be construed as giving Tenant an option to pay late by paying the late charge. Instead, all funds are due at the times specified in this Lease without any grace period. Failure to pay shall subject Tenant to all applicable default provisions provided hereunder or by law, and Landlord's remedies shall not be abridged by claiming or collecting a late charge.

SECTION 7 USE OF THE PREMISES

A. The Premises are to be used and occupied by Tenant solely for the operation of a deli and coffee shop, and for no other purpose or purposes. Tenant shall at all times fully and properly comply with all laws, ordinances, and regulations governing the use of the Premises enacted or adopted by every lawful authority having jurisdiction over the same. Tenant agrees not to commit waste on the Premises and not to use the Premises in violation of any certificate of occupancy, or for any purpose that may constitute a nuisance, public or private, nor suffer any dangerous article to be brought on the Premises. Tenant agrees to reasonably, promptly, and effectively comply with all applicable statutes, regulations, rules, ordinances, orders, and

requirements of all Governmental Authorities including, but not limited to, the American with Disabilities Act of 1990. Landlord agrees to give notice promptly to Tenant of any notice from any Governmental Authorities in respect of the Premises including, without limitation, any notice pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions, and other environmental matters, and any direction of any public agency that imposes any duty upon Landlord or Tenant with respect to the use or occupancy of the Premises. Tenant may, in good faith, dispute the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, and, in good faith, and at its sole cost and expense, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Tenant agrees that any such contest shall be prosecuted to a final conclusion as speedily as possible, and Tenant will save Landlord harmless with respect to any actions taken by any Governmental Authorities with respect thereto.

B. Tenant's use of the Premises will be such as to comply with all requirements of each Mortgagee (if any), including, but not limited to, each Mortgagee's requirements with respect to Hazardous Materials and the Americans with Disabilities Act of 1990.

C. Tenant's use of the Premises will be such as to comply with all requirements of fire, public liability and other policies of insurance with respect to the Premises.

SECTION 8 SERVICES TO BE PROVIDED BY TENANT

A. **Utilities.** Tenant shall contract for in its own name and pay for all utilities including water, sewer, electricity, natural gas, telephone, communications, custodial services, and other utilities and services used at or supplied to the Premises.

B. **Janitorial Services.** Tenant shall provide all janitorial services for the Premises, including the bathroom or bathrooms located therein.

C. **Electrical Supplies.** Tenant shall supply, maintain, and replace all lamps, bulbs, starters and ballasts for all light fixtures in the Premises.

D. **Maintenance.** Tenant shall keep and maintain the interior of the Premises in a good and clean state of repair, and shall be responsible for all minor repair such as stopped up toilets, grease trap maintenance, and sink repair.

SECTION 9 SERVICES TO BE PROVIDED BY LANDLORD

Landlord shall keep and maintain the roof and exterior walls of the Premises (including the windows) and the Building in which it is located. Landlord shall also keep and maintain the electrical, plumbing and, HVAC systems, and all structural elements of the Premises and the Buildings. Tenant shall promptly notify Landlord of any condition which requires Landlord repair or maintenance. Landlord shall undertake such repairs with due diligence within a reasonable time after written notice from Tenant that such repair is needed. Tenant shall not be

required to make any of these repairs unless the repairs were necessitated by the act, omission, accident, negligence, or misconduct of Tenant or its employees, agents, invitees, licensees, subtenants or contractors, in which case such repairs shall be made at Tenant's sole cost and expense.

**SECTION 10
SIGNAGE AND GRAPHICS**

No exterior signs or graphics shall be installed without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. All signs or other graphics inside of the Premises visible from the exterior of the Premises shall be subject to Landlord's reasonable written approval which may be withheld in Landlord's sole discretion.

**SECTION 11
TRASH**

Landlord shall provide a dumpster and pad located behind the Building for the use of Tenant in common with other tenants of the Douglas Block. Tenant shall not store trash outside of the Premises, whether in trash can, carts, or other receptacle, but shall retain its trash inside the Premises until it places the same in the dumpster. No Hazardous Materials shall be disposed of or place in the dumpster.

**SECTION 12
PEACEFUL ENJOYMENT**

Landlord warrants and represents to Tenant that Tenant shall and may peacefully have, hold, and enjoy the Premises, subject to the other terms hereof. The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth, and each party covenants, as a material part of the consideration for this Lease, to keep and perform each and all of the terms, covenants, and conditions required to be kept and performed by it, and that this Lease is made upon the condition of such performance.

**SECTION 13
ENVIRONMENTAL INDEMNIFICATION**

A. Tenant covenants that the Premises shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, and Tenant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant, the release of Hazardous Materials onto the Premises or suffer the presence of Hazardous Materials on the Premises. "Hazardous Material" means any hazardous or toxic substance, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable federal, state, or local law, ordinance, or regulation including, but not limited to the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the

Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”), the Clean Air Act, and the Clean Water Act. Tenant shall comply with and ensure compliance by all licensees, guests, invitees, employees, agents and contractors with all environmental laws with respect to Hazardous Materials and shall keep, or cause to be kept, the Premises free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. In the event that Tenant receives any notice from any governmental agency with regard to Hazardous Materials on, from, or affecting the Premises, Tenant shall immediately notify Landlord. Tenant shall conduct and complete or cause there to be conducted and completed, all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies. Tenant shall provide written notice within three (3) days to any mortgagee of the Premises or its assignee of its receipt of any notice, citation, summons, complaint or other written communication alleging a violation or potential violation of any environmental law with respect to the Premises, or of any notice of other claim relating to the environmental condition of the Premises, or of its discovery of any matter which would make any of its representations, warranties or covenants with respect to the Premises to be inaccurate or misleading in any respect.

B. Tenant, on behalf of itself and its heirs, successors, and assigns, does hereby agree to defend, indemnify, and hold harmless Landlord, its employees, agents, and contractors, if any, and all of such persons’ heirs, successors, and assigns, in the event that any third party, whether public or private, asserts against Landlord any claims, demands, actions, causes of action, injunctions, orders or directives, whether at law or in equity or by administrative action, seeking redress for any environmental damage, natural resource damage, property damage, bodily injury, violation of law, or any other loss, cost, debt, damage, or liability of any and every kind or nature whatsoever arising or coming into existence at the time of or after the Commencement Date of this Lease, whether know or unknown, suspected or unsuspected, liquidated or unliquidated (collectively “Claims”), including but not limited to those arising out of:

i. Releases to or from, or contamination of, the Premises or any other area, including, without limitation, any air, water, or land, of or by any toxic, hazardous, or otherwise dangerous or harmful substance, or solid waste, used, treated, stored, disposed of, or otherwise handled at or around the Premises by any person or entity after the Commencement Date of this Lease;

ii. Violation of any laws, rules, regulations, permits, orders or directives pertaining to such activities if such violation arises out of activities performed on or conditions existing at the Premises after the Commencement Date of this Lease; and/or

iii. Any obligation of Tenant to act or refrain from acting as ordered or directed by any governmental agency or court of law including without limitation any obligation that might otherwise be imposed on Landlord because of Landlord’s possible status as operator of the Premises, or any part thereof, or as a permittee under any permit issued pursuant to any environmental law relating to the Premises, or any part thereof after the Commencement Date of this Lease.

Without limiting the foregoing in any way, this agreement to defend, indemnity, and hold harmless shall include the obligation to pay reasonable attorney’s and consultant’s fees and other

legal and professional costs incurred in defense of such claims. Moreover, in the event that a party to this Lease is determined by a court of competent jurisdiction to have breached or violated the terms hereof then, in the court's discretion, the court may award any and all reasonable costs and fees including those of attorneys, consultants, and other professionals to the party substantially prevailing in the dispute and/or litigation.

With respect to the defense of any matter for which Landlord is indemnified, Tenant shall conduct such defense with counsel reasonably acceptable to Landlord. If Landlord elects to retain additional or substitute indemnification, the cost of such counsel shall be born solely by Landlord.

Tenant on its own behalf and on the behalf of its successors and assigns (if assignment is permitted), and all of its respective officers, directors, employees, agent, and contractors, does hereby forever release, discharge, and acquit Landlord, and its respective employees, agents, and contractors, and all of such person's heir's, successors, and assigns of and from any all claims, demands, obligations, liabilities, or other causes of action existing at the time of or after the Commence Date of this Lease, or hereafter arising, whether known or unknown suspected or unsuspected, liquidated or unliquidated.

The obligations, terms and provisions of the release and indemnity set forth in this Article 12 and the obligation hereunder shall remain in full force and effect for five (5) years after the Expiration Date.

SECTION 14 TENANT COVENANTS

Tenant covenants with and for the benefit of Landlord:

A. To comply with all requirements of any State and Federal statute or local ordinance or regulation applicable to Tenant and its use and occupancy of the Premises and to save Landlord harmless from penalties fines, costs, expenses or damages resulting from failure to do so;

B. To give Landlord prompt written notice of any accident, fire or damage occurring on or to the Premises;

C. To load and unload goods only at such times, in such areas and through such entrances as may be designated for such purposes by Landlord;

D. To keep the Premises sufficiently heated to prevent freezing of water in pipes and fixture;

E. To keep the outside areas immediately, adjoining the Premises clean and free of trash and rubbish and ice and snow, and not to burn, place or permit any rubbish, obstructions or merchandise in such areas;

F. To keep the Premises clean, orderly, sanitary and free from objectionable odors and from insects, vermin and other pests;

G. To use and occupy the Premises continuously and uninterrupted throughout the term of this Lease and to be open for business during such reasonable business hours as Landlord may prescribe from time to time, but at least from 10:00 a.m. to 5:00 p.m., five (5) days per week (Monday through Friday), except when prevented from so doing by casualty, strike, Act of God or other causes beyond Tenant's control;

H. To conduct its business in the Premises in all respects in an diligent and dignified manner, to refrain from using any sales promotion device that would tend to mislead or deceive the public or, directly or indirectly detract from or impair the reputation or dignity of the Douglas Block, to refrain from installing or permitting the installation of video or other electronic games, and to keep the Premises in first class condition in accordance with the highest standards of operations of similar businesses, maintaining at all times during the term of this Lease a staff of well trained and high grade personnel;

I. To comply with any and all reasonable rules and regulations of Landlord in connection with the Premises, the Building of which the Premises are a part , or the Douglas Block which are in effect at the time of the execution of this Lease as set forth in the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion;

J. To install such fire extinguishers and other safety equipment as Landlord may require and to comply with the recommendations of Landlord's insurance carriers and their rate making bodies;

K. To pay promptly to Landlord all rentals and all other charges due to Landlord pursuant to the terms of the Lease before the same shall become delinquent.

L. Subject to compliance with all Historic Preservation Certificate Standards, to paint and keep the inside of the Premises in good condition and repair and to deliver the Premises to Landlord at the end of the term of this Lease in as good condition as it was when received by Tenant, excepting only normal wear and tear and repairs required to be made by Landlord;

M. To operate a business in the Premises only as provided in the Lease;

N. To contract for termite and pest extermination services for the Premises which shall be rendered no less frequently than semi-annually and to deliver to Landlord a certificate evidencing such services;

O. To participate in any reasonable window cleaning program that may be established by Landlord for the Building;

P. To operate the heating or air conditioning facilities during all hours that Tenant is open for business, including but not limited to the minimum hours hereinabove referred to, and at such times as Tenant is using the Premises for inventory or other non-business purposes;

Q. To refrain from doing each day all of the following:

- i. Using the Premises in any manner which, in Landlord's opinion, is or may be harmful to the building or disturbing to other tenants in the Douglas Block;
- ii. Installing or permitting the installation of video or other electronic games;
- iii. Placing any machines, equipment, or materials of any kind outside of the confines of the Premises;
- iv. Permitting, allowing, or causing to be used in or about Premises any phonographs, radios, public address systems, sound production or television devices, excessively bright lights, changing, flashing, flickering or moving lights or lighting devices, or any similar advertising media or devices, the effect of which shall be visible or audible from the exterior of the Premises.
- v. Causing or permitting any noxious, disturbing or offensive odors, fumes or gases, or any smoke dust, steam or vapors, or any loud or disturbing noise or vibrations to originate in or be emitted from the Premises;
- vi. Permitting any act to be performed or any practice to be adopted or followed in or about the Premises which, in Landlord's opinion, may detract from or impair the reputation of the Douglas Block;
- vii. Causing or suffering to be done, any act, matter or thing objectionable to insurance companies whereby any hazard insurance or any other insurance now in force or hereafter to be placed on the Building or on any part thereof may become void or be suspended, or whereby the insurance premiums payable by Landlord may be increased;
- viii. Conducting any auction, fire, bankruptcy, selling out, or going out of business sale on or about the Premises;
- ix. Attaching any awning, antenna or other protection to the roof or the outside walls of the Premises or the Building of which the Premises are a part;
- x. Committing or suffering to be committed by any person any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyments of any other tenant in the Building, or which may disturb the quiet enjoyment of any person within five hundred (500) feet of the boundaries of the Douglas Block;
- xi. Solicitating business for itself, or permitting its licenses, concessionaries, or subtenants to solicit business in the parking or other Common Areas of the Douglas Block and disturbing handbills or other advertising matter in or on automobiles parked in a parking area or in other Common Areas of the Douglas Block;
- xii. Vacating or abandoning the Premises or allowing the same to appear to be vacated or abandoned; or

**SECTION 15
CONDITION OF PREMISES AT END OF TERM**

At the end of the Term, by lapse of time or otherwise, Tenant shall deliver the Premises to Landlord in the same condition as on the Commencement Date, normal wear and tear excepted. Tenant shall deliver the Premises to Landlord broom clean and in good order and repair except for ordinary wear and tear. If Tenant does not so deliver the Premises, Landlord may restore the Premises to such conditions following Tenant's surrender of possession and Tenant shall pay the cost thereof, plus an administrative fee equal to fifteen percent (15%) of the cost thereof. Unless the same may be removed by Tenant without damage to the Premises (in which event Tenant may, at is option, so remove them), all installations, alterations, additions and improvements, including shelving which may have been installed by Tenant, shall remain upon the Premises and shall become Landlord's property, all without compensation, allowance or credit. Tenant's movable furniture, furnishings, and artwork shall remain Tenant's property, and Tenant shall have the right prior to the end of the Term to remove the same, if no uncured event of default then exists. Tenant's goods, effects, personal property, business and trade fixtures, and equipment not removed at the end of the Term shall be considered abandoned, and Landlord may dispose of the same in such commercially reasonable manner as Landlord deems expedient after thirty (30) days' prior written consent to Tenant.

SECTION 16 TENANT'S INDEMNIFICATION

Except when caused by the gross negligence or willful misconduct of Landlord, Tenant shall indemnify, defend, and hold Landlord and its elected officials, officers, agents, employees, and representatives harmless from and against all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including but not limited to reasonable attorneys' fees, which may be imposed upon or incurred or paid by or asserted against Landlord by reason of or in connection with any of the following:

- A. Tenant's use and occupancy of the Premises;
- B. The conduct of Tenant's business or any work or activity or other things allowed or permitted by Tenant to be done in or on the Premises;
- C. Any breach or default in the performance of any Tenant's obligations under this Lease;
- D. Any misrepresentation or breach of warranty by Tenant under this Lease;
- E. Any other acts or omission of Tenant, its agents, employees, subtenants, assignees, invitees or contractors; and/or
- F. Any bodily injury or death of a person or damage to property occurring in or about the Premises.
- G. In case any action or proceeding is brought against Landlord by reason of any claims described in this Section, Tenant, if Landlord gives Tenant prompt notice thereof, shall, at

Tenant's expense, resist or defend such action or proceeding. The terms, provisions and indemnities in this Section 15 shall survive the expiration or earlier termination of this Lease.

SECTION 17 ALTERATIONS, ADDITIONS, IMPROVEMENTS

Tenant shall have no right to make changes, additions, material repairs, improvements, or other alterations (collectively, "Alterations") in or to the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall enter into an agreement for the performance of any approved Alterations with such contractors and subcontractors selected by Tenant and approved by Landlord. Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense, all necessary governmental permits and approvals for the commencement and completion of such Alterations and Tenant shall provide true copies of same to Landlord prior to commencement of such Alterations. All Alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in good and workmanlike manner; (iii) in compliance with all laws, ordinances, rules and regulations of all governmental authorities; and (iv) in such manner so as not to materially interfere with the use or occupancy of the Building by any other tenant in the Building or its employees or invitees, nor impose any additional expenses upon, nor delay Landlord in, the maintenance and operation of the Building, nor endanger the health or safety of any party in the Building or member of the public. Tenant agrees to hold Landlord forever harmless from any and all claims and liabilities of every kind and description which may arise out of or be connected in any way with Alterations to the extent such claims and liabilities are not covered by insurance, including Landlord's attorney's fees.

SECTION 18 ASSIGNMENT OR SUBLEASE

Except with the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion, Tenant shall not voluntarily (i) assign or in any manner transfer this Lease or any estate or interest therein, (ii) permit any assignment of this Lease or any estate or interest therein by operation of law or otherwise, (iii) sublet the Premises or any part thereof, (iv) grant any license, concession or other right of occupancy of any portion of the Premises, or (v) permit the use of the Premises by any parties, other than Tenant, its managers, agents, employees, officers, licensees or invitees. Any transfer of the Lease from Tenant by merger, consolidation or dissolution or any change in ownership shall constitute an assignment for purposes of this Section. Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Premises. Consent by Landlord to one or more assignments or sublettings shall not be a waiver of Landlord's rights as to any subsequent assignments and sublettings. Any approved transfer shall be expressly subject to the terms and conditions of this Lease. In the event of any assignment or subletting, Tenant shall remain fully responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. If an event of default occurs following any approved transfer, Landlord, in addition to any other available remedies, may collect directly from Tenant's assignee or subtenant all rents becoming due to Tenant and apply such amount against any sums due to Landlord from Tenant. Tenant authorizes and directs any assignee or subtenant to pay rent directly to Landlord upon receipt of

notice of default from Landlord. No direct collection by Landlord from any assignee or subtenant shall constitute a novation or a release of Tenant from the performance of its remaining obligations under this Lease, nor shall receipt by Landlord of rent from any assignee, subtenant or occupant of the Premises be a waiver of the covenant in this Lease prohibiting assignment and subletting.

SECTION 19 INSURANCE

A. **Casualty Insurance.** During the Term, Landlord shall insure the Building against loss or damage by fire, or other insurable hazards and contingencies, including fire and extended coverage, in the amount of full replacement value, with such coverages and deductibles as are commercially reasonable. Landlord shall not be obligated to insure any furniture, equipment, machinery, goods or supplies which Tenant may bring or have in the Premises or any leasehold improvements, lighting, partition walls and floor covering which Tenant may construct. If the premiums for any casualty insurance exceed the standard rates because Tenant's operations result in increased premiums, then Tenant shall, promptly upon receipt of appropriate invoices, reimburse Landlord for same. Tenant shall maintain at its expense, in an amount equal to full replacement cost, fire and extended coverage insurance on all leasehold improvements and on all of its personal property, including removable trade fixtures, located in the Premises plus such additional insurance as may be required to meet Tenant's obligations under this Section.

B. **Liability Insurance.** During the Term, Landlord shall obtain and keep in force comprehensive general liability insurance against claims for personal and bodily injury, death, or property damage occurring upon, in or about the Building with combined single limits of not less than \$2,000,000 for bodily injury and property damage. During the Term, Tenant shall obtain and keep in force, comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring upon, in or about the Premises with combined single limits of not less than \$2,000,000.

A. **Insurance Standards; Waiver of Subrogation.** All such policies and renewals thereof as are required in this Section shall name Landlord and Tenant as additional insureds. All policies of insurance shall provide (i) that no material change or cancellation of said policies shall be made without thirty (30) days's prior written notice to Landlord and Tenant, and (ii) that the insurance company issuing any policies of casualty insurance shall have waived any right of subrogation against Landlord or Tenant. All policies of insurance which are secured by Landlord and Tenant as required by this Lease shall include appropriate deductible amounts so that insurance premiums therefor are commercially reasonable. Before Tenant's initial entry into the Premises and thereafter at least thirty (30) days prior to the expiration dates of said policy or policies, Tenant shall provide Landlord copies of policies or certificates of insurance evidencing all coverages required by Tenant under this Lease. All the insurance required under this Lease shall be primary and non-contributory, issued by companies which are rated at least A in Best's Insurance Reports and authorized to do business in North Carolina. Insurance requirements may be reasonably increased from time to time by Landlord in order to protect its interest. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to the Premises, the

Building or other tangible property of Landlord or Tenant, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents, employees, invitees or contractors, if and to the extent that any such loss or damage is covered by insurance benefiting the party suffering such loss, or the damage or loss was covered by insurance pursuant to this Lease and proceeds from insurance are collectible.

SECTION 20 CASUALTY DAMAGE

If the Premises shall be damaged by fire or other casualty, Tenant shall give prompt written notice to Landlord. If the Building or any part thereof or access thereto shall be so damaged or destroyed by fire or other casualty such that substantial alteration or reconstruction of the Building and access thereto shall, in the good faith and reasonable determination of Landlord's Architect, be required with such repair taking longer than ninety (90) days or the remainder of the term (whether or not the Premises shall have been damaged by such casualty), or in the event of any material uninsured loss to the Building, Landlord may, at its option, terminate this Lease by notifying Tenant in writing thirty (30) days after the date of such damage. In case the Premises or access to the Premises shall be so damaged by fire or other casualty such that substantial alterations or reconstruction of the Premises shall, in the good faith and reasonable determination of Landlord's Architect, be required, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to Landlord if Landlord (i) has not completed, (ii) cannot complete or (iii) in the opinion of Landlord's Architect, cannot reasonably be expected to complete substantially the making of any required repairs and restorations within ninety (90) days from the date of such damage or destruction. Rent shall abate and be prorated as of the date such damage occurs and during any period of repair and restoration to the extent the Premises or any material part thereof are rendered unusable or access thereto is denied Tenant. If neither Landlord nor Tenant elect to terminate this Lease, Landlord shall commence and diligently proceed to restore and repair the Building and the Premises to substantially the same condition in which it was immediately prior to the happening of the casualty, except that Landlord's obligation to restore shall not exceed the amount Landlord expended to purchase and restore the Building. When Landlord's work with respect to such reconstruction or restoration has been completed, Tenant shall complete the restoration of the Premises, including the reconstruction of all leasehold improvements and the restoration of Tenant's furniture and equipment. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or repair, except that Landlord shall allow Tenant a fair diminution of rent during the time and to the extent the Premises or any material portion thereof are unfit for occupancy. If the casualty results from the gross negligence or intentional misconduct of Tenant or any of Tenant's agents, employees or invitees, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair and restoration of the Building to the extent such cost and expense is not covered by insurance proceeds.

SECTION 21 APPLICATION OF INSURANCE PROCEEDS

If this Lease is terminated by reason of casualty, damage or destruction, each party shall be entitled to retain the insurance proceeds awarded to such party by that party's insurer. If this Lease is not terminated by reason of any such damage or destruction, then all insurance proceeds payable by reason of damage or destruction to the Building or Premises, or access thereto, shall be disbursed to the party making such repairs in a manner reasonably satisfactory to Landlord and Tenant, for use in reconstruction of the Building or Premises, or access thereto. Upon completion of the repairs or reconstruction of such building, any remaining insurance proceeds shall be paid to the parties whose policies provided such proceeds. Landlord's obligations to repair or reconstruct the Building shall be contingent upon whether adequate insurance proceeds are made available under the policies of insurance that Landlord is required to maintain under this Lease.

SECTION 22 DEFAULT

A. Each of the following occurrences relative to Tenant shall constitute an "Event of Default":

(i) The failure or refusal by Tenant to make the timely payment of rent or other sums payable under this Lease when and as the same shall become due and payable; or

(ii) The failure or refusal by Tenant to maintain the insurance coverage required hereunder; or

(iii) The abandonment or vacating a portion or all of the Premises; or

(iv) The filing or execution or occurrence of a petition in bankruptcy or other insolvency proceeding by or against Tenant; or petition or answer seeking relief under any provision of the Bankruptcy Act; or an assignment for the benefit of creditors or composition; or a petition or other proceeding by or against the Tenant for the appointment of a trustee, receiver, or liquidator of Tenant or any of Tenant's property; or a proceeding by any governmental authority for the dissolution or liquidation of Tenant; or

(v) Failure by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions provided in this Lease, other than those referred to in (i.), (ii.), (iii.) or (iv.) above, for a period of ten (10) days after notice from Landlord to Tenant specifying the items in default; or

(vi) Without the consent of Landlord Tenant assigns or grants any security interest in, or otherwise encumbers this Lease, its interest under this Lease or any rents payable hereunder; or

(vii) Tenant allows Tenant's leasehold estate to be taken under any writ of execution and such writ is not vacated or set aside within thirty (30) days; or

(viii) The occurrence of any other event herein provided to be an event of default.

B. This Lease and Term are hereby made subject to the limitation that if and whenever any Event of Default shall occur, Landlord may, at Landlord's option and without order of any court or further written notice to Tenant, in addition to all other remedies given hereunder or by law or equity, do any one or more of the following:

- (i) Terminate this Lease in which event Tenant shall immediately surrender possession of the Premises to Landlord;
- (ii) Enter upon or take possession of the Premises, securing it against unauthorized entry and expel or remove Tenant and any other occupant therefrom with or without having terminated the Lease;
- (iii) Alter locks and other security devices at the Premises.

C. Exercise by Landlord of any one or more remedies shall not constitute an acceptance of surrender of the Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be affected only by the written agreement of Landlord and Tenant.

D. If Landlord repossesses the Premises without terminating the Lease, then Tenant shall pay to Landlord all rent and other indebtedness accrued to the date of such repossession, which is hereby accelerated at such time, plus rent and any other sums required to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided below). Re-entry by Landlord will not affect the obligations of Tenant for the unexpired Term. Tenant shall not be entitled to any excess of any rent obtained by reletting over the rent herein reserved. Actions to collect amounts due by Tenant may be brought on one or more occasions, without the necessity of Landlord's waiting until expiration of the Term.

E. Upon the occurrence of an Event of Default, to the extent the same were not deducted under subparagraph D. above, Tenant shall also pay to Landlord: the cost of removing from the Premises and storing Tenant's or any other occupant's property; the cost of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; and all reasonable expenses incurred by Landlord in enforcing Landlord's remedies, including reasonable attorney's fees and court costs.

F. Upon termination or repossession of the Premises for an Event of Default, Landlord shall not be obligated to relet or attempt to relet the Premises, or any portion thereof, or to collect rent after reletting, but Landlord shall have the option to relet or attempt to relet. In the event of reletting, Landlord may relet the whole or any portion of the Premises for any period, to any tenant and for any use or purpose.

G. If Tenant should fail to make any payment, perform any obligation, or cure any default hereunder, Landlord, without obligation to do so and without thereby waiving such failure or default, may make such payment, perform such obligation, and/or remedy such other default for the account of Tenant (and enter the Premises for such purpose), and Tenant shall pay upon demand all costs, expenses and disbursements (including reasonable attorney's fees) incurred by Landlord in taking such remedial action.

SECTION 23 CONDEMNATION

If all or any portion of the Building or Premises or a substantial portion of the Building or Premises is taken under the power of eminent domain, sold under the threat of the exercise of said power, or disposed of to satisfy federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

Any award or payment made upon condemnation of all or any part of the Building or Premises shall be the property of Landlord, whether such award or payment is made as compensation for the taking of the fee or as severance or other damages; provided, however, Tenant shall be entitled to the portion of any such award or payment for loss of, or damage to, Tenant's trade fixtures and removable personal property.

Landlord shall give notice to Tenant within thirty (30) days after receipt of notification from any condemning authority of its intention to take all or a portion of the Premises. Tenant, at its own expense, may in good faith contest any such award for loss of or damage to Tenant's trade fixtures or removable personal property.

SECTION 24 FORCE MAJEURE

Whenever a period of time is prescribed for the taking of any action by Landlord or Tenant, neither Landlord nor Tenant shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, fire, earthquakes, floods, acts of Nature, governmental regulations, shortages or delay of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Landlord or Tenant, as applicable (all of which are sometimes referenced collectively in this Agreement as "Force Majeure") excluding however the financial condition or the unavailability or cost of funds of either party.

SECTION 25 SALE OF THE BUILDING

Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder, and the Building and leasehold improvements, and upon the transferee's assumption of Landlord's obligations hereunder, no further liability or obligations shall accrue against Landlord. Any and all covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its and their respective ownerships of Landlord's interest hereunder.

SECTION 26 NOTICES

All notices given hereunder shall be made in writing. Such notice shall be deemed given when delivered or deposited in the United States mail, certified, or registered, postage prepaid, addressed to the respective parties at the address shown below unless a different address shall have been provided in writing:

If to Landlord: _____

If to Tenant: _____

**SECTION 27
NO WAIVER**

Neither Landlord's nor Tenant's failure to enforce or delay in exercising any of the provisions, rights or remedies in this Lease shall be a waiver, nor in any way affect the validity of this Lease or any part hereof, or the respective right of Landlord or Tenant to enforce each and every provision, right or remedy. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach. The receipt by Landlord of rent, or any other payment by Tenant to Landlord at a time when the rent or the payment of any other sum hereunder is in default shall not be construed as a waiver of such default. The receipt by Landlord of a lesser amount than the rent, or any other sum due, shall not be construed to be other than a payment on account which may be applied in such manner as Landlord deems appropriate. No act or thing done by Landlord or its agents or employees during the Term, including acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless signed by Landlord.

**SECTION 28
COMMISSIONS**

Landlord and Tenant shall indemnify and hold each other harmless against any loss, claim, expense or liability with respect to any commissions or brokerage fees claimed on account of the execution of this Lease due to any action of the indemnifying party.

**SECTION 29
SEVERABILITY**

If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is invalid or enforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

**SECTION 30
RECORDATION**

Landlord and Tenant agree not to record this Lease. At Tenant's request and sole cost and expense, the parties shall prepare, execute and record a memorandum hereof which shall include a summary of such terms of this Lease as the Landlord and Tenant deem appropriate. This Lease is subject to the North Carolina Public Records Law (Chapter 132 of the North Carolina General Statutes) and to the requirements of North Carolina General Statute §160A-272 with regard to the lease or rental of property.

**SECTION 31
BINDING EFFECT**

This Lease, including any exhibits attached hereto, shall be binding upon and shall inure to the benefits of the Landlord, its successors and assigns, and Tenant, and to the extent assignment and subletting may be approved by Landlord hereunder, Tenant's successors, assignees, and subtenants. Each individual executing this Lease on behalf of the respective parties represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said party in accordance with the duly adopted resolution of the governing body or board of directors of said party and that this Lease is binding upon said party in accordance with its terms.

**SECTION 32
ENTIRE AGREEMENT**

This Lease and any attached exhibits set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. Tenant agrees that Landlord and its agents made no representations or promises with respect to the Premises or the Building, except as herein expressly set forth. Tenant shall make no claim on account of any representations, whether made by any renting agent, broker, officer or other representative of Landlord, or which may be contained in prior discussions, correspondence or other documents.

**SECTION 33
AMENDMENTS**

No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

**SECTION 34
COUNTERPARTS**

This Lease may be executed in counterparts. Each fully executed counterpart shall be an original and it shall not be necessary in making proof of this Lease to produce or account for more than one such counterpart.

**SECTION 35
GOVERNING LAW**

This Lease is declared to be a North Carolina contract, and all of the terms hereof shall be governed by, construed and enforced according to the laws and judicial decisions of the State of North Carolina.

**SECTION 36
LIMITS ON CERTAIN LIABILITIES**

Notwithstanding any other provision of this Lease, neither Landlord nor Tenant, nor any director, officer, elected official, agent or employee of Landlord or Tenant shall be liable for claims caused by or arising from the actions or omissions of other tenants in or about the Building.

**SECTION 37
DRAFTING**

Landlord and Tenant acknowledge that this Lease was negotiated by the parties themselves at arm's length, and that no presumptions in favor of or against either party shall apply to the interpretation of this Lease.

**SECTION 38
TIME IS OF THE ESSENCE**

Time is of the essence of this Lease and the performance of all obligations hereunder.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first written above.

CITY OF ROCKY MOUNT

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

(SEAL)

BARBEQUE & JAZZ, INC. d/b/a DELI &
COFFEE SHOP

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Secretary

(CORPORATE SEAL)

We the undersigned personally guarantee the payment of all rent coming due under the foregoing Lease, the payments of all other sums required to paid thereunder, and the performance of any and all other obligations of the Lease.

Ed Wiley III

Yalem Kiros

§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 30 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

- (1) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.
- (2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.
- (3) For the operation and use of components of a wired or wireless network, for a term up to 25 years; provided, however, that the lease is entered into with a private broadband provider or a cooperative in connection with a grant agreement pursuant to G.S. 143B-1373 and is for a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served.

(d) Notwithstanding subsection (a) of this section, any lease by a city of any duration for components of a wired or wireless network shall be entered into on a competitively neutral and nondiscriminatory basis and made available to similarly situated providers on comparable terms and conditions and shall not be used to subsidize the provision of competitive service. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 26; 2009-149, ss. 2, 3; 2010-57, s. 2; 2010-63, s. 2(b); 2011-150, s. 1; 2014-120, s. 34; 2015-246, s. 9; 2018-5, s. 37.1(c).)