



City Council Agenda

To: The Honorable Mayor and City Council

Date: September 21, 2022

Subject: Lease agreement for D' Chill Spot LLC (207-211 East Thomas St)

Summary of Requested Action: Adopt resolution of intent to enter Lease Agreement for the property located at 207-211 East Thomas St.

Department Requesting Action: Finance

Budgetary Impact: \$41,800 in Revenue

City Manager's Recommendation:

It is recommended that the City Council adopt the resolution of intent to lease.
PV

MEMORANDUM



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

To: Mayor and City Council
From: Peter Varney, Interim City Manager
Date: 9/21/2022
Re: D' Chill Spot Lease

The lease with D' Chill Spot for the building at 207-211 East Thomas Street expired July 31, 2022.

The tenant has agreed to enter a two-year lease at the rate of \$11 per square foot per year. The tenant has paid the rent at this rate for the months of August and September.

It is recommended that the City Council adopt a resolution of intent to enter a lease agreement for the property at 207-211 East Thomas Street.

19-7-2022

NORTH CAROLINA

EDGECOMBE COUNTY

THIS LEASE AGREEMENT (this “Lease”) is made and entered into as of the __ day of July, 2022, by and between the **CITY OF ROCKY MOUNT**, a North Carolina municipal corporation located in Nash and Edgecombe Counties (“**Landlord**”) and **D’ CHILL SPOT LLC**, a North Carolina limited liability company located in Edgecombe County, North Carolina (“**Tenant**”);

RECITALS

A. Landlord has agreed to lease to Tenant certain space in a building containing approximately 3,800 square feet located at 207-211 East Thomas Street in the Douglas Block, in the City of Rocky Mount, Edgecombe County, North Carolina (the “Premises” or the “Building”).

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:

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 the Premises containing approximate 3,800 square feet, more or less. Tenant has inspected Premises and hereby accepts the same in its “AS IS” condition. 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.

2.

TERM

The term of this Lease shall commence the 1st day of August, 2022 (the “**Commencement Date**”) and continue for a period of two (2) years, the end on July 31, 2024 such period being the “**Expiration Date**”.

3.

RENT

Tenant shall pay rent to Landlord as follows:

1. **Rent.** Lessee shall pay annual rent to Lessor in the amount of \$41,800. The annual rent shall be payable in (12) equal monthly installments of \$3483.33 each, in advance, on or before the first day of each calendar month included in the term. The first monthly installment of rent shall be due on or before August 1, 2022.

All rental payments shall be paid without demand, deduction, or set off and delivered to Landlord’s Agent: Braddock, LLC. using property managers tenant web access portal.

4.

SECURITY DEPOSIT

Landlord acknowledges receipt of tenant deposit in the amount of \$3,167 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 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, without interest, provided Tenant shall have made such payments and performed all such covenants and agreements required of Tenant hereunder.

5.

HOLDING OVER

In the event of holding over by the Tenant after the 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.

6.

LATE CHARGES

If at any time any rent or other payment due under this Lease 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.

7.

USE OF THE PREMISES

A. The Premises are to be used and occupied by Tenant solely for the operation of a dine in/take-out authentic Jamaican restaurant, 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 or in 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.

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.

E. **Grease Disposal.** Tenant shall provide grease removal from the Premises and shall place the same in a grease tank or other legally acceptable container made for that purpose, and shall under no circumstances permit any grease to enter Landlord's storm water drainage system. Prior to the Commencement Date Tenant shall submit to Landlord a written Grease Disposal Plan (the "Plan"). Tenant shall not occupy the

Premises until Landlord has approved the Plan in writing. Tenant shall strictly comply with the Plan and any failure to do so shall be an Event of Default under this Lease and subject Tenant to termination. On or before expiration or earlier termination of the Lease Tenant shall remove all grease from the Premises.

F. Other Services. All other services, items, needs, or requirements used in, on, or about the Premises and not specifically required to be provided by Landlord in this Lease shall be the sole responsibility of Tenant.

9.

SERVICES TO BE PROVIDED BY LANDLORD

Landlord shall keep and maintain the roof and exterior walls of the Premises including the exterior windows and exterior doors. Landlord shall also keep and maintain the electrical, plumbing, and, HVAC systems, and all structural elements of the Premises and the Buildings. Landlord shall have no other responsibilities with respect to the Premises. Tenant shall promptly notify Landlord of any of the foregoing conditions 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.

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.

11.

TRASH

Landlord shall provide a dumpster and pad 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 receptacles, but shall retain its trash inside the Premises until it places the same in the dumpster. No Hazardous Materials shall be disposed of or placed in the dumpster.

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.

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" as used in this Lease 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 (provided Landlord has furnished Tenant written notice of the same) 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 material respect.

B. Tenant, on behalf of itself and its successors and assigns (if assignment is permitted), 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 owner 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.

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 counsel, the cost of such counsel shall be born solely by Landlord.

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 fixtures;

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 11:00 a.m. to 6:00 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, 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 quarterly 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 Premises;
- 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 Premises 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 mechanical or electrical device, apparatus, or instrument to amplify, intensify, or reproduce the human voice, or to produce, reproduce, intensify, or amplify any other sound when the sound from such activity is clearly audible more than fifty (50) feet from the Premises, or is likely to disturb the peaceful enjoyment of the residential tenants of the Douglas Block.
 - 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 Premises 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 enjoyment of any other tenant in the Douglas Block, 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 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

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, broom clean and in good order and repair, and with all grease removed. 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.

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 16 shall survive the expiration or earlier termination of this Lease.

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 may be withheld in Landlord's sole discretion. Tenant shall enter into an agreement for the performance of any approved Alterations with such contractors and subcontractors selected by Tenant and approved in writing 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 a 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 any other

buildings or tenant in the Douglas Block or their employees or invitees, nor impose any additional expenses upon, nor delay Landlord in the maintenance and operation of the exterior of the Premises, nor endanger the health or safety of any person in the Douglas Block 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.

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.

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 contract. 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.

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, if less than ninety (90) days (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.

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.

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). Reentry 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 a 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.

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.

24.

FORCE MAJEURE

Whenever a period of time is prescribed for the taking of any action (except the payment of rent) 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 Lease as "Force Majeure") excluding however the financial condition or the unavailability or cost of funds of either party.

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.

26.

NOTICES

All notices given hereunder shall be made in writing. Such notice shall be deemed given when delivered in person (by hand, Federal Express, or other recognized courier service) 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: City of Rocky Mount
Attn: Property Manager
Post Office Drawer 1180
Rocky Mount, North Carolina 27802

If to Tenant: _____

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.

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.

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.

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.

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.

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.

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 both parties.

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.

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. Any action on this Lease shall be venued in the Superior Court of Edgecombe County, North Carolina.

36.

LIMITS ON CERTAIN LIABILITIES

Notwithstanding any other provision of this Lease, neither Landlord nor Tenant, nor any manager, 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 Douglas Block.

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.

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: _____

D' CHILL SPOT LLC

By:  _____

Name: GABRIEL DEWAR

Title: OWNER / CEO

Date: July 19, 2022



D Chill Spot
207E Thomas St
Rocky Mount NC
27801

To: Michael Baughn
Property and Risk Division Manager
City Of Rocky Mount

Subject: Grease Disposal Plan for 207E Thomas St

All grease from the fryers will be poured directly in the outdoor grease container which will be picked by contracted company Valley Proteins on a bi-weekly basis.

Grease from the pots go into a grease bucket and transferred to said outdoor grease container at the end of each day.

Grease from sinks go in an above ground filter which are cleaned weekly on Prep Days/

Z. Dewar
Zabdiel Dewar
Owner and CEO
D Chill Spot LLC

RESOLUTION OF INTENT TO LEASE OR RENT PROPERTY

WHEREAS, the City Council of the City of Rocky Mount has determined that the real property of the City described below will not be needed by the City for a period of two (2) years from the date the City Council approves the lease:

- **Approximately 3,800 square feet located at 207-211 East Thomas Street (in the Thorpe Building of the Douglas Block)**

WHEREAS, the City Council desires to lease or rent the real property of the City described above; and

WHEREAS, the terms of the lease are as follows:

Two (2) year lease @ \$41,800 annually; 3,483.33/month

WHEREAS, the City Council intends to consider authorizing such lease or rental at its regular scheduled meeting to be held on the 14th day of November 2022;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rocky Mount that:

1. The City Clerk shall cause to be published at least 30 days prior to November 14, 2022, a notice as required by G. S. 160A-272.
2. At its regular scheduled meeting on the 14th day of November 2022, the City Council intends to authorize the lease or rental of the real property of the City described above.

Adopted this 26th day of September 2022.

City Clerk