

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4598

Authorizing the CDA to execute a lease with Taqueria Los Atlantes LLC, or its assigns, for space at The Village on Park.

Presented March 14, 2024

Referred _____

Reported Back _____

Adopted _____

Placed on File _____

Moved By _____

Seconded By _____

Yeas _____ Nays _____ Absent _____

Rules Suspended _____

Legistar File Number 82387

WHEREAS, the Community Development Authority of the City of Madison ("CDA") is the owner of The Village on Park, located at 2300 South Park Street (the "Property") ; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, Lane's Bakery vacated its former store in the Building at 2304 S. Park Street (the "Premises") and the prospective tenant Taqueria Los Atlantes LLC, or its assigns (the "Tenant") is interested in leasing the Premises; and

WHEREAS, Tenant would like to lease the Premises to operate a bakery, restaurant and offer prepared take to go food; and

WHEREAS, the parties agree to enter into a lease per the below terms and conditions.

NOW, THEREFORE, BE IT RESOLVED that the CDA hereby authorizes the execution of a lease agreement with Taqueria Los Atlantes LLC, or its assigns to lease the Premises at The Village on Park materially, though not exclusively, per the following terms and conditions on a form approved by the City Attorney:

1. Premises: 2304 S Park St. consisting of approximately 4,875 rentable square feet. See attached Exhibit A for depiction of the "Premises".

2. Storage Unit: The Landlord is marketing the 700 sq. ft. back "Storage Unit" as depicted in Exhibit B.

Tenant shall have a Right of First Refusal based on the following terms. If the Landlord receives an acceptable letter of intent to lease the Storage Unit, it will send Tenant a written notice ("Landlord Storage Notice") of said offer (the "Storage Offer"). For the Tenant to exercise its Right of First Refusal, the Tenant must not currently be in default of their Lease and have met other requirements such as of a history of paying their rent on time. Tenant will have ten (10) days after receipt of the Landlord Storage Notice (the "Acceptance Period") to accept the terms in the Storage Offer by sending the Landlord a written acceptance notice. If the tenant does not respond to the Storage Offer within the Acceptance Period, then tenant waives its rights with respect to the Storage Unit and the Landlord will proceed to lease the space to the prospective tenant.

If Tenant accepts the Storage Offer during the Acceptance Period, then Landlord will obtain the CDA Board's approval of the Offer and draft a new lease with the terms of the Storage Offer therein. A new lease will grant the Landlord an access easement through the Storage Unit to the adjacent CDA Storage Area.

3. Landlord: Community Development Authority of the City of Madison (the "CDA")
4. Tenant: Taqueria Los Atlantes LLC, or its assigns (to be approved by the CDA) to an entity controlled and operated by Felipe Falcon, Nancy Barrera and Jonathan Falcon (the "Tenant").
5. Use: Tenant shall be allowed to use Premise as a bakery and restaurant (dine-in and carry-out of premade meals and foods) and shall have the exclusive right for such uses in the Village on Park building, except for the grocery store that will have ready-made food sales and some bakery items. Said grocery store or any future grocery store is exempt from this right. It is understood and acknowledged that Tenant intends to seek a license for sale of alcohol for on-site consumption.
6. Lease Term: Commencing on the Delivery Date and ending four (4) year and six months thereafter, totaling 54 months (the "Initial Term").

The "Lease Term" is defined as the Initial Term and any exercised Renewal Option Term, as defined below.
7. Delivery Date: "Delivery Date" is targeted for 6/1/24, pending Tenant satisfying or waiving Tenant's Lease Contingencies (defined below), as well as the completion of Landlord's Work, which is defined below.
8. Base Rent: The first month of the Initial Term shall commence on the Delivery Date. The Base Rent shall be paid on a monthly basis by the first of each calendar month.

The Base rental rate shall be based on the following Base Rent schedule:
 - Months 1 – 6 (6 months): \$0.00 per month
 - Months 7 – 12 (6 months): \$4,000 per month
 - Months 13 – 18 (6 months): \$4,500 per month
 - Months 19 – 30 (12 months): \$5,675 per month
 - Months 31 – 42 (12 months): \$6,840 per month
 - Months 43 – 54 (12 months): \$7,250 per month
9. Options to Extend: Tenant shall have four (4) 3-year renewal options, each defined as a "Renewal Option" to extend the Lease term if they are not in default. Tenant must provide Landlord with no less than 120-day written notice before the expiration of the Initial Term or any exercised Renewal Option if it wants to exercise a Renewal Option.

The Base Rent rate shall increase 3% annually from the preceding ending Base Rent paid in the Initial Term or exercised Renewal Option period. For the Tenant to exercise a Renewal Option, the Tenant must not currently be

in default of their Lease and have met other requirements such as of a history of paying their Base Rent on time.

10. Operating Expenses:

Lease shall be a Modified Gross Lease, whereby Landlord is responsible for real estate taxes (excluding taxes on leasehold improvements, as addressed below), common area maintenance, and building insurance.

Tenant is responsible for paying all municipal, county and state or federal taxes assessed against any leasehold improvements of Tenant or any fixtures, furnishings, equipment, merchandise, improvements, alterations, stock-in-trade or other personal property of any kind owned, installed or upon the Premises. Tenant shall reimburse the Landlord for any leasehold improvement taxes sent to the Landlord.

Tenant is responsible for utility expenses that services the Premises.

Tenant is responsible to carry, at its cost, commercial general liability insurance, umbrella liability, property insurance and worker's compensation per the CDA standard lease terms, which are approved by the City's Risk Manager and City Attorney's office.

11. Utilities &
Additional Costs:

Tenant shall be solely responsible for telephone, internet and data, and any other services needed to conduct business.

Tenant shall be responsible for in-suite janitorial and shall be responsible for its own trash and recycle dumpsters, as well as oil/grease drums – of which Landlord shall assign a designated area for such dumpsters and bins.

Tenant shall be responsible for metered utilities to the Premises as of the Delivery Date. Landlord shall be responsible for utilities that are not separately metered.

12. Condition of Premises:

Tenant shall have until March 15 days to enter and evaluate the Condition of the Premises.

The Premises is being delivered on an "as- is" basis, except for the Landlord's Work, on the Delivery Date. Tenant cannot occupy the Premises until the Delivery Date.

13. Landlord's Work:

Prior to the Delivery Date, Landlord will complete the following work at Landlord's expense (collectively "Landlord's Work") to the Premises:

- Tune up HVAC units, and repair/replace any if needed.
- Remove any furniture, fixtures, and equipment (personal or business related) of former occupant's, less items that Tenant desires to have remain in the Premises.
- General cleaning of Premises.
- Patch/repair damages walls, texture, and ready for Tenant to paint.

14. Tenant Improvement

Allowance:

Landlord shall award Tenant a Tenant Improvement Allowance ("TIA") of Twenty Thousand Dollars (\$20,000) towards the following improvement items (collectively the "TIA Work") in or serving the Premises:

- Flooring
- Lights
- Paint
- Electrical work to be used for new outlets or wiring for FF&E.
- Plumbing work to be used for new water supply or drain for FF&E
- New hood, or expanding existing hood, or increasing functionality of existing hood.

Tenant must submit to Landlord for its approval any plans or specifications for the TIA Work. The TIA Work is considered an Alteration (as defined below) and shall remain in the Premises at the end of the Lease Term.

Disbursement of the TIA maybe conducted per the following methods (independent of each other):

- Tenant showing paid invoices and lien waivers from Tenant's contractor to the Landlord.
- Tenant's contractor invoicing Landlord directly.

15. Tenant Improvements:

After the Delivery Date, Tenant may install,* at its cost, tenant improvements, furniture, fixtures and equipment into the Premises as Tenant sees necessary for Tenant's use of the Premises to conduct Tenant's desired business.

* Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, make any alterations, improvements, additions or utility installations upon the Premises (collectively, "Alterations"). The term "utility installations," as used herein, shall include without limitation power panels, electrical distribution system, heating, air conditioning and ventilation/exhaust systems, plumbing, space heaters, light fixtures, conduits and wiring. Tenant shall provide Landlord with reasonably detailed architectural plans and specifications relating to any desired Alterations at the time of Tenant's request for consent. Regardless of the foregoing, Tenant shall have the right to install furniture in the Premises without obtaining Landlord's consent.

All Alterations and other improvements by Tenant shall become the property of Landlord and shall not be removed from the Premises, unless request is made by Landlord to Tenant to remove the same. In the event the Tenant installs a range hood that is approved by the Landlord, then said improvements are considered an Alteration for the purposes of this paragraph.

All trade fixtures, furniture, furnishings and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed upon the expiration or termination of the Lease; provided that: (i) any of such items that are affixed to the Premise can be removed without doing material damage to the Premises, and may be removed only if Tenant repairs any damage caused by such removal to restore the affected area to the condition it existed at the Delivery Date; and (ii) that

Tenant shall have fully performed all of the terms, conditions and covenants to be performed by Tenant under the Lease.

16. Repairs & Maintenance:

Landlord shall be responsible for the maintenance, repair and replacement of the roof, exterior building walls, all plumbing and sewer systems that may run above or below the Premises, the fire protection system, the fire and life safety system, foundation during the Lease Term. The Landlord is responsible for the inspections of the fire protection system and fire and life safety system in the Premises.

During the Lease Term, Tenant shall keep the Premises and every part thereof and any fixtures, facilities or equipment contained within or serving the Premises, in good condition and repair, including, but not limited to electrical, lighting, plumbing and sewer systems within the interior of the Premises (but excluding all plumbing and sewer systems that may run above or below the Premises), exterior doors, columns, nonstructural walls, and partitions, and shall make any replacements thereof and of all broken and cracked glass which may become necessary during the Lease Term.

During the Lease Term, Tenant shall have an annual (based on Lease Year) HVAC expense cap of \$2,000 for any HVAC repairs and replacements. Any amount over \$2,000, the Landlord shall be responsible. Tenant will be responsible for routine maintenance of the HVAC systems that service the Premises.

During the Lease Term, Tenant shall have an annual (based on Lease Year) water heater and water softener expense cap of \$1,500 for any water heater and water softener repairs and replacements. Any amount over \$1,500, the Landlord shall be responsible for the costs.

Tenant shall be responsible for replacing any damaged and any non-functioning ceiling tile, light fixtures and bulbs, and floor coverings during Tenant's tenancy; unless damage was caused by roof leak, sprinkler system failure, or leaky pipes in/near the ceiling. Tenant is responsible for the fire extinguishers in the Premises and required inspections.

17. Signage:

At Tenant's expense, and with Landlord's and City's approval, Tenant may install Tenant's trade name onto the Village on Park's building façade, at such location on building façade directly above the Premises on the east side of the building, and on the monument sign, if any panel space is available. Tenant may also install window decals and on-glass coverings, related to its business in accordance with the Property's Rules.

18. Security Deposit:

\$5,000 upon the execution of the Lease.

19. Lease Contingencies:

Tenant shall have the right to terminate the Lease based on the two below listed contingencies:

- Tenant shall have 60 days after signed Lease to obtain financing and/or grant programs that total \$125,000. If Tenant is unable to obtain the aforementioned amount, with written notice, Tenant may null and void the Lease and have Security Deposit returned and released of any and all liabilities associated with the Lease.

- Tenant shall have 45 days after signed Lease to obtain construction/remodeling estimates that are acceptable to Tenant. If Tenant is unable to obtain acceptable remodeling estimates, with written notice, Tenant may null and void the Lease and have Security Deposit returned and released of any and all liabilities associated with the Lease.

If no written notice is provided to Landlord per the above terms, then Tenant will have been deemed to waive Tenant's ability to terminate the Lease under these contingency clauses.

20. Review of Tenant's Financials:

Lease shall be contingent on Landlord's review of Tenant's and Guarantor's financials.

21. Property Rules:

The Lease will be subject to the Property's Rules.

22. Personal Guaranty:

A personal guarantee of the Lease from Felipe Falcon and Jonathan Falcon (the "Guaranty") is required; the Guaranty shall have a maximum ceiling amount of Eighteen Thousand Dollars (\$18,000) until the end of the 18th month of the Lease Term.

BE IT RESOLVED that the Chair and the Executive Director of the CDA are hereby authorized to execute, deliver and record the Lease agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution in a Lease and Guaranty form approved by the City Attorney.