



City of Chicago



SO2019-1528

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 3/13/2019

Sponsor(s): Emanuel (Mayor)

Type: Ordinance

Title: Lease agreement with Baron Partnership Corp. for operation of Culver's Restaurant at 4301 W Chicago Ave

Committee(s) Assignment: Committee on Housing and Real Estate

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City, through its Department of Fleet and Facility Management ("DFFM") and its Department of Planning and Development ("DPD"), is in the process of developing a new, state-of-the-art Joint Public Safety Training Academy (the "JPSTA") located at 4301 W. Chicago Avenue, Chicago, Illinois (the "Property") as part of the City's continued efforts to provide the best tools, technology and training for its first responders; and

WHEREAS, a secondary goal of the City's development of the JPSTA is to serve as an anchor for economic development in the community; and

WHEREAS, in furtherance of this secondary goal, the development of the Property includes a retail component; and

WHEREAS, Baron Partnership Corporation ("Tenant"), an Illinois corporation and African-American-owned franchisee of a Culver's Restaurant operates successful franchises elsewhere in the City and was attracted to the JPSTA campus because of the 1,500 first responders that will be in the area each day once the JPSTA is open; and

WHEREAS, DFFM and DPD have determined that it is in the City's best interests to enter into a lease with Tenant to open and operate a Culver's Restaurant at the Property (City as landlord), subject to the terms set forth in the Exhibit A attached hereto (the "Term Sheet"); *now, therefore,*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The recitals set forth above are incorporated herein by reference and made a part hereof.

SECTION 2. The Commissioner of DFFM or any successor department ("DFFM Commissioner"), or a designee of the DFFM Commissioner, and the Commissioner of DPD or any successor department ("DPD Commissioner" and together with the DFFM Commissioner, "Commissioners"), or a designee of the DPD Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a lease with Tenant substantially in accordance with the terms set forth in the Term Sheet, and such additional terms and conditions as shall be approved by the Commissioners, including, without limitation, indemnification. The Commissioners, or the designee(s) of the Commissioner(s), is each hereby further authorized to negotiate, execute and deliver such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of this ordinance.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall take effect immediately upon its passage and approval.

EXHIBIT A

LEASE TERM SHEET – CULVER’S RESTAURANT

Address: 4301 W. Chicago Avenue

Premises: Newly constructed single-story restaurant building consisting of approximately 4,300 square feet (the “Building”) with an outdoor patio, a drive-thru to accommodate 10-12 cars, a parking lot for 50 vehicles and associated outdoor space on Lot 2 of the preliminary site plan attached hereto as **Schedule 1**. The Premises will front West Chicago Avenue and will include space for a monument sign along Chicago Avenue.

Tenant: Baron Partnership Corporation
609 Wysteria Drive
Olympia Fields, Illinois 60461

Permitted Use: Operation of Culver’s restaurant with drive-thru, which use may be modified with the City’s prior written consent.

Minimum Operating Hours: 10:00 a.m. to 10:00 p.m. Monday through Sunday.

Restrictive Covenant: During the term of the Lease, so long as and only if Tenant is operating a Culver’s restaurant at the Premises, the City agrees not to lease the restaurant to be constructed on the adjacent outlot to any tenant that operates a competing business (national restaurant chain with hamburger sales as its primary business) without Tenant’s prior written consent, which consent may be withheld in Tenant’s sole and absolute discretion. Tenant acknowledges and agrees that the foregoing restriction does not apply to Peach’s. Tenant further acknowledges and agrees that the foregoing restriction will terminate to the extent Tenant is not operating a Culver’s restaurant at the Premises.

Initial Term: 15 years from the Commencement Date

Renewal Option: Tenant shall have one (1) option to renew and extend for ten (10) years for a potential total Lease term of 25 years.

Commencement Date: The earlier of (i) the date Tenant opens to the public for business or (ii) one (1) month after substantial completion of the City's Work.

Rent: Years 1-5: \$10 per square foot of the Building
Years 6-15: \$15 per square foot of the Building
Years 16-25: \$15 per square foot of the Building, with annual increases of 2.5% for the remaining option years

Triple Net Lease All rent to be paid to City shall be absolutely net to City so that the Lease shall yield net to City the rent to be paid each month during the term of the Lease, and Tenant shall pay either directly or as reimbursement to City for all costs, expenses and obligations of every kind or nature whatsoever relating to the Premises which may arise or become due during the term of the Lease, including, without limitation, all costs and expenses of operation, maintenance, ownership, repairs (including capital repairs), replacements (including capital replacements), utilities, insurance and taxes (including real estate taxes and assessments) relating to the Premises.

Utilities: City shall deliver all utility services to the Premises adequate for Tenant's needs and provide separate meters for such utility services, including but not limited to, water, sewage, electricity, gas, grease trap and telephone.

Tenant shall pay for any connection charges at the Premises, security deposits required by such utility companies and charges for use of the utility services.

Taxes: Tenant shall pay when due any leasehold taxes assessed or levied on the Premises.

City's Work: The City shall construct, at its sole cost and expense, in accordance with Tenant's plans and specifications and in compliance with all applicable laws, codes and regulations: (a) the core and shell of the restaurant building for use as a Culver's restaurant seating approximately 104-128 indoors and 16 outdoors; (b) a parking lot for 50 vehicles; and (c) the interior work specified in **Schedule 2** attached hereto and incorporated herein. As used in this Term Sheet, the term "core and shell" means a structure with bare stud walls and unfinished floors.

City's Budget

In no event shall the City be obligated to spend more than \$1,000,000 for interior build-out, as outlined in Schedule 2. Tenant shall be responsible for any overage.

Tenant's Work:

Tenant shall install, at its sole cost and expense, all necessary furniture, fixtures, lighting and equipment and any Culver's brand specific items to operate the restaurant. These items include, without limitation, indoor and outdoor seating, painting, tiles, wall paper, light fixtures, awnings, and signage. Tenant is responsible for applying for and obtaining all necessary permits and approvals for Tenant's Work, signage and special use permit for the drive-thru.

Tenant Financing:

None

Assignment:

Tenant may not assign, sell, convey, encumber, transfer, or pledge the Lease or any of Tenant's interests therein, and Tenant may not sublet or license any portion of the Premises, without the prior written consent and approval of City. Tenant may not change, amend, modify, issue, sell, transfer, convey, encumber, or pledge (or permit to be changed, amended, modified, issued, sold, transferred, conveyed, encumbered, or pledged) any ownership, management, or voting right or interest in Tenant, by operation of law or otherwise, without the prior written consent and approval of City. Notwithstanding the foregoing, the City may not unreasonably withhold, condition or delay consent to assign the Lease to another Culver's operator, however, such assignment will not serve as a release of Tenant, unless the City expressly agrees to such release.

City Repairs:

The City shall not be required to maintain or make any improvements, replacements or repairs of any kind or character to the Premises during the Lease Term.

Tenant Repairs:

Tenant shall, at its sole cost and expense, keep in a neat, clean, and safe condition, and in good order, condition and repair, all parts of the Premises, including, but not limited to, the foundations, exterior walls and surfaces, roof, parking areas, landscaping, storefronts, windows, plate glass, doors, signage, heating, ventilating and air conditioning systems, electrical and plumbing systems servicing the Premises, down spouts, sprinkler systems, walls, floors and ceilings, and all other repairs, replacements, renewals and restorations, interior and exterior,

except to the extent that the same may be covered under a warranty which was given to the City.

Late Charge; Interest:

Any payment due under the Lease and not received by City on its due date shall bear interest at the rate of eighteen percent (18%) per annum on any such sums due Landlord from the due date to the date of actual receipt by Landlord of such sums; provided, however, that if it shall be unlawful to charge Tenant at such rate, then the interest rate thereon shall be reduced to the highest rate per annum chargeable to Tenant pursuant to law, until paid in full, and a late charge equal to 5% of such delinquent payment shall be paid by Tenant without notice or demand.

No Brokers:

City and Tenant represent and warrant to each other that neither City, nor Tenant, have been, or will be, represented by any broker in connection with the Lease, and no broker commission or finder's fee shall be payable as a result of the Lease.

Alterations:

No consent of City shall be required for the installation of any trade fixtures of Tenant that are not affixed to the Premises or other interior alterations so long as such alterations do not require a building permit and do not affect the exterior appearance of the building, structural portions of the building, or building systems. Except as provided above, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, make any alterations, improvements, remodeling or additions to either the interior or exterior of the Premises or to fixtures installed therein, or paint, drill or in any way deface any portion of the Premises. City may require Tenant to post a payment and performance bond for any improvements to be made by Tenant and for any repairs or replacements to be made by Tenant.

Indemnity:

Tenant shall defend (with legal counsel acceptable to City), indemnify, protect, reimburse, and hold harmless the Building, City, and City's officers, directors, lenders, employees, contractors, representatives, agents, successors and assigns (collectively, "City and/or City's Related Parties"), for, from and against any and all claims, losses, damages, demands, fines, penalties, liens, actions, suits, obligations, liabilities, judgments, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Damages"), arising from, relating to, associated with, in connection with, or resulting in any way from: (a) Tenant's use or occupancy of the Premises, (b) the conduct of Tenant's business activities, including, without

limitation, business activities conducted on or at the Premises, (c) any act or omission of Tenant or any of Tenant's employees, agents, contractors, representatives, invitees, customers, guests, and (d) any breach or default by Tenant under or pursuant to the Lease, including any violation of applicable laws. This indemnity will not apply to the proportionate share of any Damages arising from the negligence or willful misconduct attributable to the City and/or the City's Related Parties as determined by a court of final adjudication or as otherwise agreed to by the parties. This indemnity shall survive any termination of the Lease.

Defaults; Remedies:

If Tenant breaches or defaults under the Lease, or fails to perform any of Tenant's duties or obligations thereunder, or files for bankruptcy protection or is adjudged bankrupt, or seeks protection from creditors, City may exercise any right and enforce any remedy available to City in contract, at law or in equity, including, without limitation, the right to terminate the Lease, the right to terminate Tenant's right of possession of the Premises without terminating the Lease, the right to lock Tenant out of the Premises in accordance with applicable laws, the right to sue Tenant for losses and damages (including reimbursement of all costs, expenses, fees and charges incurred or paid by City in connection with the Lease, the development of the Premises, the construction of the tenant improvements, and all other costs and expenses relating thereto, together with interest thereon at the rate of 10% per annum from the date of demand for payment from City until paid in full, including reasonable attorneys' fees), the right to sue for specific performance, the right to an injunction, the right to apply any deposit held by City, the right to perform (or attempt to perform) Tenant's unperformed obligations, in which event Tenant shall immediately, upon receipt of City's request for payment, reimburse City for all costs and expenses incurred by City in performing or attempting to perform Tenant's unperformed obligations, and Tenant shall also pay to City an amount equal to all damages and losses incurred or suffered by City as a result of Tenant's breach or default, including reasonable attorneys' fees, all without limiting or impairing or waiving any of City's other rights and remedies. All of City's rights and remedies shall be cumulative. The Lease shall contain additional provisions regarding Tenant's breaches and defaults and City's additional rights and remedies.

Compliance with Laws:

Tenant shall comply in all respects with all applicable federal, state and local laws, statutes, rules, regulations, ordinances, requirements, decrees, and orders (including, without limitation,

laws regulating the environment and hazardous substances and materials).

No Hazardous Materials: Tenant may not use, generate, store, dispose of, release, or bring onto the Premises (or permit to be used, generated, stored, disposed of, released, or brought onto the Premises) any hazardous, flammable or dangerous substances or materials, or any regulated substances or materials, without the prior written consent and approval of City.

Entry: City may enter the Premises at any time to inspect the Premises, to verify Tenant's compliance with the Lease, and to perform any of City's obligations.

No Liens: Tenant shall at all times keep and maintain the Premises free and clear of any and all liens (including consensual liens), and all mechanics' and materialmen's liens and notices and claims of liens arising from or relating to any work, repairs or replacements made or to be made by Tenant.

Surrender: Upon termination or expiration of the Lease, Tenant shall remove all of Tenant's equipment, personal property, trade fixtures, and inventory from the Premises and repair any damage caused by such removal, and surrender the Premises to City in good, safe, working order condition and repair, and in accordance with the other terms of the Lease. City shall have the right to require Tenant to remove any and all of Tenant's improvements from the Premises and to repair any damage caused by such removal.

Damages: In no event shall City be liable to Tenant (or be subject to any claim from Tenant) for any damage or destruction to any of Tenant's equipment, personal property, inventory, trade fixtures, or improvements, and Tenant agrees to provide adequate insurance coverage for all such matters, items, risks and losses.

In no event shall City be liable to Tenant or any person claiming through or under Tenant for any consequential, exemplary or punitive damages under or pursuant to the Lease.

Time is of Essence: Time is of the essence for the performance of Tenant's duties and obligations under the Lease. There shall be no waiver by City of any of its rights and remedies, unless agreed to in writing by City.

Governing Law: The Lease shall be governed by the laws of the State of Illinois (without regard to conflict of laws).

Venue and Jurisdiction: Venue and exclusive jurisdiction for any action arising out of the Lease shall be in Cook County, Illinois, and Tenant waives any and all defenses relating to such jurisdiction and venue.

Jobs: 52 total employees (7 managers and 45 staff)
45 new jobs created and 30 of such 45 new jobs will be fulfilled by residents residing within a 2 mile radius

SCHEDULE 2

ELEMENTS OF INTERIOR BUILD-OUT*

- Electrical
- Plumbing
- Framing, Drywall, Insulation
- HVAC
- Ceramic Tile
- Flooring
- Ceiling
- Site Work (Concrete, Masonry)
- Doors, Windows, Glass
- Interior (Painting, Carpet, Wall Covering)
- Fire Equipment
- Finishings & Accessories
- General Conditions, Overhead
- Kitchen hood and exhaust

*Only includes non-Culver's specific materials and installation.



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COMMITTEE MEMBERSHIPS

**HOUSING AND REAL ESTATE
CHAIRMAN**

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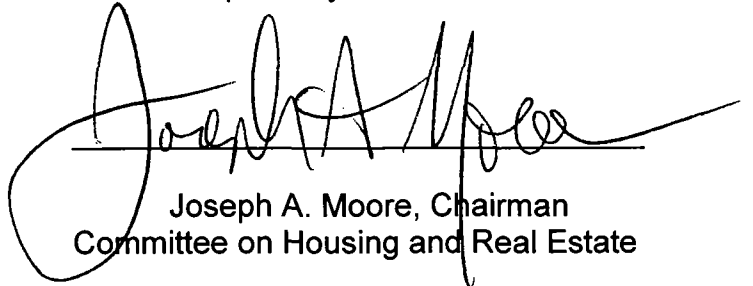
April 10, 2019

To the President and Members of the City Council:

Your Committee on Housing and Real Estate, for which a meeting was held on April 9, 2019, having had under consideration the substitute ordinance introduced by Mayor Rahm Emanuel on April 9, 2019, this being the lease of City-owned property at 4301 W. Chicago Ave., begs leave to recommend that Your Honorable Body Approve said ordinance transmitted herewith.

This recommendation was concurred in by a voice vote of all committee members present with no dissenting votes.

Respectfully submitted,



Joseph A. Moore, Chairman
Committee on Housing and Real Estate

