

## NMCRA COMMERCIAL GRANTS PROGRAM

### REHABILITATION GRANT AGREEMENT

**THIS GRANT AGREEMENT** (the “Agreement”) is made and entered into as of December 12, 2023, by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the “CRA”), having an address at 735 N.E. 125th Street, Suite 100, North Miami, Florida 33161, and **652 NE 128 ST LLC**, a Florida limited liability company (the “Grantee”), having an address at 16970 N.E. 9<sup>th</sup> Avenue, Miami, Florida 33162.

#### RECITALS

1. The Commercial Grants Program (the “Program”) facilitates improvements to business and residential structures in the NMCRA’s Community Redevelopment Area by providing financial assistance for, among other things, interior and exterior improvements, while also reducing the incidence of slum and/or blighted conditions in the NMCRA Redevelopment Area.

2. The Program will fund up to fifty percent (50%) of the total cost of interior and/or exterior improvements to the owners or lessees of eligible commercial buildings in an amount up to One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) or such other higher amount as may be approved by the NMCRA Board per building on a reimbursement basis.

3. Grantee is the owner of the real property as more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof (the “Property”) with an address of 652 N.E. 128<sup>th</sup> Street, North Miami, Florida 33161, and Grantee has applied to the CRA for a Rehabilitation Grant with the scope of work to include certain repairs, including, but not limited to, new storefronts, exterior improvements and lighting.

4. At a duly noticed public meeting held on December 12, 2023, the NMCRA Board approved an award to the Grantee of a Rehabilitation Grant in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) (the “Grant”) for renovations on the Property in accordance with the terms and conditions of this Agreement including, but not limited to, the program guidelines attached hereto as Exhibit “B” and by this reference made a part hereof (the “Program Guidelines”) and the scope of work and budget for the project attached hereto as Exhibit “C” and by this reference made a part hereof (the “Project” or “Scope of Work”).

5. The Grantee desires to accept the Grant subject to the terms, conditions, and restrictions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the Grant and the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto do hereby agree as follows:

**Section 1. Recitals; Program Guidelines.** The Recitals set forth above are true and correct and are incorporated in this Agreement by reference. The terms and provisions of the

Program Guidelines are incorporated into this Agreement by reference and the Grantee agrees to abide by such terms and provisions. In the event of any conflict between the Program Guidelines and this Agreement, the terms and provisions of this Agreement will control with the understanding that any terms in the Program Guidelines that are not addressed in this Agreement shall nevertheless be applicable.

**Section 2. Effective Term.** The term of this Agreement shall commence on the date when it has been executed by both parties (the “Effective Date”) and the obligation of the NMCRA to fund the Grant shall terminate one (1) year and ninety (90) days thereafter, unless sooner terminated by either party as set forth herein (the “Funding Termination Date”). In addition to any other rights and remedies of the NMCRA set forth in this Agreement, any portion of the Grant for which a reimbursement request has not been submitted by Grantee to the NMCRA by the Funding Termination Date shall be forfeited and Grantee hereby waives any rights to such forfeited portion of the Grant. Notwithstanding the foregoing, this Agreement shall remain in full force and effect following the Funding Termination Date for such time periods as necessary to give the terms and provisions of this Agreement their full force and effect.

**Section 3. Scope of Work.** The Grantee agrees to use the Grant solely for the reimbursement of costs and expenses paid by the Grantee for the performance of the Scope of Work subject to and in accordance with this Agreement and the Program Guidelines. The Grantee further agrees that the Grant shall only be disbursed in accordance with the attached budget in the amounts for each line item as set forth therein. The Grantee shall be responsible for the design, engineering, permitting, and construction of the Project. Grantee shall cause the Project to be commenced within ninety (90) days after the Effective Date and thereafter prosecuted with due diligence and continuity and will achieve final completion on or before the Funding Termination Date. Final completion shall be evidenced by a final certificate of occupancy or use, as applicable, issued by the City of North Miami (the “City”), free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith. The Grantee agrees that the Scope of Work performed under this Agreement shall be performed in accordance with all applicable laws including the City’s land use and zoning requirements and the Florida Building Code. The Grantee agrees and represents that the contracts entered into by it for the Project shall require that its contractors, subcontractors, design professionals, engineers, and consultants possess the licenses required by applicable laws to cause to be performed the Scope of Work. Grantee shall provide the NMCRA with copies of the fully executed architect and contractor agreements and, at the request of the NMCRA, copies of the plans and specifications for the Project. Grantee represents and warrants that it will only engage Florida licensed architects and contractors for the Project.

**Section 4. Amount Payable.** Subject to available funds, the maximum amount payable under this Agreement shall not exceed the Grant amount awarded. The Grantee acknowledges and agrees that should Program funding be reduced or unavailable, the amount payable under this Agreement may be reduced by the NMCRA. Availability of Grant funds shall be determined by the NMCRA, in its sole discretion. The Grantee waives any and all claims against the NMCRA for any reduction or unavailability of funding. The Grantee will not look to, nor seek to hold liable, the NMCRA, its board members, employees, consultants, attorneys, and/or agents (collectively the “Related Parties”) for the performance or non-performance of this Agreement and agrees to hold the



NMCRA and the Related Parties harmless and release the NMCRA and the Related Parties from any and all claims and liability under this Agreement, whether as a direct or indirect consequence of any funding reduction or unavailability.

**Section 5. Reimbursement Procedures.** The NMCRA agrees to disburse the Grant to the Grantee on a reimbursement basis for expenses necessarily and properly incurred under this Agreement and paid by Grantee based on the Scope of Work and in accordance with the budget set forth therein all as approved by the NMCRA. Payment shall be made in accordance with the following procedures:

5.1 Reimbursement Request. Reimbursement requests are to be in writing and presented to the NMCRA by the Grantee only after payment has been made by Grantee for labor and materials as set forth in the Scope of Work. Without limiting the foregoing, reimbursement requests shall be made not more often than monthly and only after approximately twenty-five percent (25%), fifty percent (50%), seventy-five percent (75%), and one hundred percent (100%) of the Scope of Work has been completed with such percentages based upon expenditure of overall Project costs. The NMCRA shall have the right to inspect and verify payment for all labor and materials prior to release of each reimbursement. By submitting a reimbursement request to the NMCRA, the Grantee shall be deemed to acknowledge and agree, and represent to the NMCRA, that (a) the work has progressed to the point indicated, (ii) the quality of the work is in accordance with the plans and specifications, and (iii) all monies previously paid by the NMCRA to the Grantee have been disbursed to the appropriate architect, contractors, consultants, subconsultants, subcontractors, materialmen, vendors, and miscellaneous suppliers based upon the prior reimbursement request. Notwithstanding the foregoing, the NMCRA may directly pay the Grantee's vendors provided that the NMCRA is provided with all documents required by Chapter 713, Florida Statutes, and the applicable contractor agreement(s) including partial and final waivers of lien, as well as a release by the Grantee, all in a form and substance acceptable the NMCRA. Notwithstanding anything in this Agreement to the contrary, the NMCRA, in its sole discretion, shall withhold and retain a minimum of twenty percent (20%) of the Grant as the final reimbursement, which final reimbursement amount will be withheld until the Grantee provides the NMCRA with written documentation, in a form and substance acceptable to the NMCRA in all respects, certifying that the Project (i) is completed, (ii) all inspections have been passed and finalized, (iii) all permits have been closed and (iv) a Certificate of Occupancy has been issued. The foregoing is in addition to the expenditure report required by Section 5.2 below.

5.2 Expenditure Report Required. As part of each reimbursement request, Grantee shall submit to the NMCRA, for its review and approval, a detailed expenditure report with all invoices and proof of payment as well as any other information and documentation reasonably requested by the NMCRA. No request for reimbursement shall be processed without an expenditure report and the NMCRA reserves the right to withhold all or any portion of the Grant if required and/or requested documentation is not submitted or is in a form and substance not acceptable to the NMCRA. The payment of any reimbursement request by the NMCRA shall not be construed that the work or any portion hereof complies with (a) the Scope of Work, the contract documents, and plans and specifications and/or (b) applicable law including the Florida Building Code, it being acknowledged and agreed by the Grantee that it is the Grantee's sole responsibility to ensure the work complies with (a) and (b) above.



## **Section 6.     Maintenance; Alterations.**

6.1     Maintenance. Following Final Completion of the Project and for a period of five (5) years thereafter, the Grantee, at its sole cost and expense shall be responsible for and perform all exterior and interior repairs and maintenance, and replacements relative to the Scope of Work. Maintenance, repairs and replacements shall be in quality and class comparable to the original construction, to preserve the Project in good working order and condition, reasonable wear and tear excepted.

6.2     Alterations. Following completion of the Project and for a period of five (5) years thereafter, the Grantee shall not, perform or caused to be performed any alterations to the Project including, without limitation, exterior or interior alterations and nonstructural or structural alterations without the prior written consent of the NMCRA in each instance; provided, however, the Grantee may make minor or cosmetic alterations without the consent of the NMCRA.

## **Section 7.     Additional Requirements.**

7.1     Occupation Requirements. The Grantee is required to open for business within thirty (30) days from Final Completion of the Project, subject to extension for Force Majeure. For purposes of this Agreement, open for business means that the Grantee has received all City licenses (i.e., certificate of use and business tax receipt) and other governmental approvals for the use and occupancy of the Project for its intended use. If the foregoing occupational requirements are not met within one hundred eighty (180) days from Final Completion of the Project, notwithstanding anything in this Agreement to the contrary, all funding or Grant disbursements shall immediately terminate and the Grantee agrees to immediately pay to the NMCRA the portions of the Grant disbursed subject to the limitations set forth in Section 12.2 below.

7.2     Job Creation, Retention and Verification. The Grantee hereby agrees that preference for all jobs (including construction positions) related to the Project will be given (a) first to Community Redevelopment Area ("CRA") residents and (b) second, to City residents for all remaining jobs. The Grantee agrees to use its best efforts to comply with (a) and (b) above for a period of five (5) years following Final Completion. Grantee hereby acknowledges and agrees that the funding by the NMCRA is predicated upon this covenant by the Grantee, that the failure of the Grantee to use its best efforts to comply with this objective will constitute a material default under the terms of this Agreement. Accordingly, if the Grantee fails to hire any employees from the CRA and/or the City and cannot demonstrate in writing to the reasonable satisfaction of the NMCRA that the Grantee used its best efforts, and that any such failure shall require the Grantee to repay the Grant provided by the NMCRA in full as set forth in the last sentence of this Section 7.2. For purposes of this Agreement, a "job" shall mean a full-time job or the equivalent thereof (consisting of at least 30 hours per week of employment and eligibility for all customary benefits generally available for full-time employees of the Grantee) with the Grantee, at a wage at least equal to Living Wage Ordinance promulgated by the County. Notwithstanding anything in this Agreement to the contrary, in the event of a breach by Grantee of this Section 7.2 that remains uncured for thirty (30) days following written notice from the NMCRA, the NMCRA may seek reimbursement of the Grant as a remedy pursuant to Section 12.2 below.



7.3 Verification of Jobs. Upon commencement of business operations and every six (6) months following Final Completion, the Grantee shall submit a written certification to the NMCRA stating that the Grantee's baseline job numbers are either in compliance or not in compliance with the requirements of Section 7.2. Such certification shall be signed by an officer of Grantee as being true and correct in all material respects. If at any time the NMCRA reasonably believes that that Grantee is in default of the requirements of Section 7.2, upon notice, the NMCRA, or its designee, shall be provided full and complete access to all records of the Grantee that would be reasonably necessary to verify the number and types of jobs created, and the wages paid to employees. Subject to the notice and grace provisions of Section 12, failure to provide such access upon reasonable request shall constitute a material default under the terms of this Agreement. With respect to all information to be obtained pursuant to this Section, the NMCRA shall, to the extent permitted by law comply with all privacy, employment and other laws applicable thereto.

**Section 8. Relationship of the Parties.** The parties agree that this Agreement recognizes the autonomy of and does not imply any affiliation between the contracting parties. It is expressly understood and intended that the Grantee, its agents and employees, are not agents or employees of the NMCRA, but are only recipients of funding support, and is not an agent or instrumentality of the NMCRA or entitled to any employment benefits by the NMCRA.

**Section 9. Assignment.** This Agreement and participation in the Program are not transferable to new property owners or lessees. New property owners or lessees must re-apply to participate in the Program and are subject to the "Past Program Participation" restrictions set forth in the Program Guidelines. If the Grantee is the owner of the Property and either (a) the Grantee sells, transfers, conveys, or otherwise alienates the Property, in whole or in part or (b) there is a change of forty-nine percent (49%) or more of the ownership or control of the Grantee (either through a single transaction or the aggregate of multiple transactions) during the term of this Agreement or during the five (5) year period following completion of the Project, all funding or Grant disbursements shall immediately terminate and the Grantee agrees to immediately pay to the NMCRA one hundred percent (100%) of the Grant received through the Program. If the Grantee is the lessee of the Property and either (a) the Grantee sells, transfers, conveys, or otherwise assigns its interest in the Lease, in whole or in part, (b) there is a change of forty-nine percent (49%) or more of the ownership or control of the Grantee (either through a single transaction or the aggregate of multiple transactions), and/or (c) the lease is terminated for any reason whatsoever during the term of this Agreement or during the five (5) year period following completion of the Project, all funding or grant disbursements shall immediately terminate and the Grantee agrees to immediately pay to the NMCRA one hundred percent (100%) of the Grant received through the Program.

**Section 10. Miami-Dade County Requirements.** Grantee acknowledges and agrees that the following provisions are required pursuant to that certain Interlocal Cooperation Agreement, as amended, by and among the County, the City and the NMCRA (the "ICA"). The Grantee agrees that such provisions constitute material obligations on the part of the Grantee and that Grantee shall comply with such provisions including cooperating with the County and its Office of the Inspector General to ensure and demonstrate compliance therewith.



10.1 Community Benefits Agreements. The ICA requires all entities or contractors contracting with or receiving grants from the NMCRA for new commercial and residential developments to be constructed within the NMCRA Redevelopment Area in an amount of \$200,000 or more, or such other amount as may be established by the Board of County Commissioners, to enter into a community benefits agreement with the NMCRA which will benefit primarily the residents of the NMCRA Redevelopment Area. To the extent allowed by law, a community benefits agreement shall include provisions for hiring the labor workforce for the project financed by the grant or agreement from residents of the NMCRA Redevelopment Area that are unemployed or underemployed. Depending on the worker or employee to be hired, the NMCRA is required to ensure that such entity or contractor complies with wage requirements, as applicable, established by the County's Living Wage or Responsible Wage Ordinances, pursuant to Section 2-8.9 and 2-11.16, respectively, of the Code of Miami-Dade County, Florida (the "Code") or pay higher wages and benefits, as are feasible. Grantee and the NMCRA acknowledge and agree that (a) this Agreement is intended to constitute the community benefits agreement and (b) the Grantee is required to ensure compliance with wage requirements, as applicable, established by the County's Living Wage or Responsible Wage Ordinances, pursuant to Code Section 2-8.9 and 2-11.16, respectively, or pay higher wages and benefits, as are feasible.

10.2 Recovery of Grant Funds. The ICA requires the NMCRA to include in its contracts or grant agreements a "clawback" provision that requires the NMCRA to "clawback" or rescind and recover funding from any entity or contractor to which it provides funding which does not substantially comply with the provisions of its agreement with the NMCRA by demanding repayment of such funds in writing, including recovery of penalties or liquidated damages, to the extent allowed by law, as well as attorney's fees and interest, and pursuing collection or legal action, to the fullest extent allowable by law, if feasible. Grantee and the NMCRA acknowledge and agree that Section 12 of this Agreement is intended to constitute the clawback provisions required by the ICA.

## **Section 11. Books and Records; Public Records, Reports, Reporting.**

11.1 Books and Records. The Grantee shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the Project. Upon the request of the NMCRA, all such books and records of the Grantee which relate to the Project shall be available for inspection and audit by the NMCRA or any of its authorized representatives at all reasonable times during normal business hours. The NMCRA shall be entitled to make such copies of the books and records as the NMCRA deems appropriate. The Grantee's books and records shall be maintained or caused to be maintained in accordance with generally accepted accounting principles in a consistent manner, together with the pertinent documentation and data to provide reasonable audit trails for a period of six (6) years following Final Completion. The foregoing obligation shall expressly survive the expiration or earlier termination of this Agreement.

11.2 Public Records. Both Parties understand that the NMCRA is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all other applicable Florida Statutes. The Grantee agrees and understands that Florida has broad public records disclosure laws, and that any written communication with the Grantee, to include emails, email addresses, a copy of this Agreement, and any deliverables under this Agreement, are subject to public disclosure upon



request, unless otherwise exempt or confidential under Florida Statute. If the materials provided by the Grantee do not fall under a specific exemption, under Florida or federal law, materials provided by the Grantee to the NMCRA would have to be provided to anyone making a public records request. It will be the Grantee's duty to identify the information, which it deems is exempt under Florida law, and to identify the statute by number, which exempts that information.

11.2.1 Grantee shall ensure that public records which are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if the Grantee does not transfer the records to NMCRA.

11.2.2 Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Agreement must be made directly to the NMCRA. The Grantee shall direct individuals requesting public records to the public records custodian listed below. Should any person or entity make a public request of the NMCRA which requires or would require the NMCRA to allow inspection or provide copies of records which the Grantee maintains are exempt from public records laws or are confidential, it shall be the Grantee's obligation to provide the NMCRA within seven (7) days of notification by the NMCRA to the Grantee of the request, of the specific exemption or confidentiality provision so the NMCRA will be able to comply with the requirements of section 119.07(1)(e) and (f), Florida Statutes.

11.2.3 Should the NMCRA face any kind of legal action to require or enforce inspection or production of any records provided by Grantee to the NMCRA which Grantee maintains are exempt or confidential from such inspection/production as a Public Record, Grantee shall hire and compensate attorney(s) who shall represent the interests of the NMCRA as well as the Grantee in defending such action. The Grantee shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to section 119.12, Florida Statutes.

**IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE NMCRA'S CUSTODIAN OF PUBLIC RECORDS CITY CLERK'S OFFICE, CITY OF NORTH MIAMI, 776 N.E. 125TH STREET, NORTH MIAMI, FLORIDA 33161, PHONE (305) 895-9817, [VAJOSEPH@NORTHMIAMIFL.GOV](mailto:VAJOSEPH@NORTHMIAMIFL.GOV).Section**

## **Section 12. Breach of Agreement; Remedies; Security Interest.**

12.1 Breach. A breach by the Grantee under this Agreement shall have occurred if: (a) the Grantee fails to complete the Project as set forth in this Agreement; (b) the Grantee ineffectively or improperly uses the Grant allocated under this Agreement; (c) the Grantee does not receive all permits and/or governmental approvals for the Project as required by applicable law; (d) the Grantee fails to submit a detailed expenditure report as required by this Agreement or submits incorrect or incomplete proof of expenditures to support reimbursement requests; (e) the Grantee refuses to allow the NMCRA access to records or refuses to allow the NMCRA to monitor, evaluate, and review the Grantee's Project; (f) a transfer or assignment occurs within five (5) years



following completion of the Project as set forth in Section 9 above, (g) the Grantee makes or allows to be made any changes, alterations, or modifications to the completed Project without the prior written consent of the NMCRA, (h) the Grantee discriminates in violation of any Federal, State, or local law; (i) the Grantee attempts to meet its obligations under this Agreement through fraud, misrepresentation, or material misstatement; (j) the Grantee fails to obtain final certificates of occupancy or completion, as applicable, for the Project; (k) the Grantee fails to perform or improperly performs any of its obligations set forth in this Agreement; (l) Grantee defaults in its obligations under any other agreements entered into between the NMCRA and/or the City and Grantee; (m) an event of default occurs with respect to any loan to the Grantee; (n) an event of default occurs with respect to the Lease or the Lease is terminated, assigned (in whole or in part) or there is a sublease of the premises (in whole or in part); and/or (o) Grantee fails to operate its business from the Property. With respect to subsections (m) and (n), the Grantee agrees to provide the NMCRA with copies of any notices of default given by any lender and/or landlord.

12.2 Remedies. Immediately upon the breach of this Agreement by Grantee as set forth in Section 12.1 above, in addition to all rights and remedies available at law or in equity and as may be set forth herein, the NMCRA may terminate this Agreement by giving written notice to the Grantee of such termination and by specifying the termination date at least five (5) days before the effective date of termination. In the event of termination, the City may also (a) seek reimbursement of the Grant or any portion thereof paid to the Grantee under this Agreement; or (b) terminate or cancel any other agreements entered into between the NMCRA and the Grantee. The Grantee shall be responsible for all direct and indirect costs associated with such termination including, but not limited to, attorneys' fees and costs at both the trial and appellate levels and also incurred in enforcing this attorneys' fees provision.

12.3 No Waiver. No express or implied consent or waiver by the NMCRA to or of any breach or default by the Grantee in the performance or non-performance by the Grantee of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Grantee of the same or any other obligations of such other Party hereunder. Failure by the NMCRA to complain of any act or failure to act of the Grantee or to declare the Grantee in default, irrespective of how long such failure continues will not constitute a waiver by the NMCRA of its rights hereunder. The giving of consent by the NMCRA in any one instance will not limit or waive the necessity to obtain the NMCRA's consent in any future instance.

12.4 Security Interest. In order to secure Grantee's obligations to reimburse and/or repay the Grant as required by this Agreement, Grantee hereby pledges, grants, conveys, and assigns to the NMCRA a continuing lien and security interest upon the Collateral (as defined below). Grantee represents and warrants to the NMCRA that, upon the filing and recording of UCC financing statements with the Florida Secured Transactions Registry and Miami-Dade County, respectively, the lien granted pursuant to this Agreement will constitute a valid, perfected lien on the Collateral, enforceable as such against all creditors of Grantor and second in priority only to any institutional lenders identified in writing by Grantee to NMCRA at the time of execution of this Agreement. Upon satisfaction in full of Grantee's obligations hereunder including, but not limited to the maintenance requirements in Section 6 above, NMCRA's security interest under this Agreement shall terminate and NMCRA shall execute and deliver to the Grantee a UCC-3



termination statement or similar documents and agreements to terminate all of NMCRA's security interest rights under this Agreement. For purposes of this Agreement, "Collateral" shall mean: All furnishings, fixtures, equipment, and other personal property of Grantee, or in which Grantee has any interest, whether now owned or hereafter acquired or created, wherever located, including (but not limited to), all Goods, Equipment, Inventory, Accounts, Deposit Accounts, Fixtures, General Intangibles, Goods, Documents, Documents of Title, Instruments, Contract Rights, Chattel Papers, and all books and records relating to any of the foregoing together with all additions, accessions, substitutions, changes, renewals, and replacements of all or any of the foregoing in part or in whole, and all Proceeds and Products of the foregoing, and all other personal property of Grantee now owned or hereinafter acquired and wherever located. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Florida Revised Uniform Commercial Code - Secured Transaction, Chapter 679, Florida Statutes (2019) or as incorporated therein by reference therein.

12.5 Miami-Dade County Requirements. Grantee acknowledges and agrees that the following provisions are required pursuant to that certain Interlocal Cooperation Agreement, as amended, by and among the County, the City and the NMCRA (the "ICA"). The Grantee agrees that such provisions constitute material obligations on the part of the Grantee and that Grantee shall comply with such provisions including cooperating with the County and its Office of the Inspector General to ensure and demonstrate compliance therewith.

12.5.1 Recovery of Grant Funds. The ICA requires the NMCRA to include in its contracts or grant agreements a "clawback" provision that requires the NMCRA to "clawback" or rescind and recover funding from any entity or contractor to which it provides funding which does not substantially comply with the provisions of its agreement with the NMCRA by demanding repayment of such funds in writing, including recovery of penalties or liquidated damages, to the extent allowed by law, as well as attorney's fees and interest, and pursuing collection or legal action, to the fullest extent allowable by law, if feasible. Grantee and the NMCRA acknowledge and agree that Section 12 of this Agreement is intended to constitute the clawback provisions required by the ICA.

**Section 13. Indemnification by Grantee.** The Grantee hereby covenants and agrees to indemnify and hold harmless the NMCRA and the Related Parties from and against all liability, losses, or damages, including attorneys' fees and costs, at both the trial and appellate levels, which the NMCRA and the Related Parties may suffer as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance or non-performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, or subcontractors. The Grantee shall pay all claims and losses and shall investigate and defend (with legal counsel acceptable to NMCRA) all claims, suits, or actions of any kind or nature in the name of the NMCRA, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees and costs which may issue. The Grantee expressly understands and agrees that any insurance required by this Agreement or otherwise provided by the Grantee shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the NMCRA and the Related Parties. Nothing contained in this Agreement shall be construed to affect the NMCRA's right of sovereign immunity as provided in Chapter 768, Florida Statutes. Additionally, the NMCRA does not waive sovereign immunity, and no claim or award against the NMCRA shall include attorney's fees, investigative costs, or pre-judgment interest.



**Section 14. Notices.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, Grantee and the NMCRA designate the following as the respective places for giving such notice:

NMCRA: Anna-Bo Emmanuel, Esq., Executive Director  
North Miami Community Redevelopment Agency  
735 N.E. 125<sup>th</sup> Street, Suite 100  
North Miami, Florida 33161  
Telephone No. (305) 895-9839  
Facsimile No. (305) 895-9822

Copy to: Steven W. Zelkowitz, Esq., NMCRA Attorney  
Taylor English Duma LLP  
2 S. Biscayne Boulevard, Suite 2050  
Miami, Florida 33131  
Telephone No. (786) 840-1437  
Facsimile No. (770) 434-7376

Grantee: Chaim Breier, Managing Member  
652 NE 128 ST LLC  
c/o Strategic Capital Alliance, LLC  
16070 N.E. 9<sup>th</sup> Avenue  
Miami, Florida 33162  
Telephone No. (305) 424-8543  
Facsimile No. (\_\_\_\_\_) \_\_\_\_\_

**Section 15. Inspections.** At any time during normal business hours, the NMCRA or any of its agents, shall have the right to enter the Property, to examine the same for purpose of ensuring Grantor's compliance with the terms and provisions of this Agreement.

**Section 16. Limitation of Liability.** The NMCRA desires to enter into this Agreement only if in so doing the NMCRA can place a limit on its liability for any cause of action for money damages arising out of this Agreement, so that its liability never exceeds the sum of \$100.00. Grantee expresses its willingness to enter into this Agreement with recovery from the NMCRA for any action or claim arising from this Agreement to be limited to the sum of \$100.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Grantee agrees that NMCRA shall not be liable to Grantee for damages or for any action or claim arising out of this Agreement in an amount in excess of the sum of \$100.00. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the NMCRA's liability as set forth in Chapter 768, Florida Statutes. Additionally, the NMCRA does not waive sovereign



immunity, and no claim or award against the NMCRA shall include attorney's fees, investigative costs or pre-judgment interest.

**Section 17. Miscellaneous.**

17.1 Publicity. It is understood and agreed between the Parties that this Grantee is receiving funds by the NMCRA. Further, by the acceptance of these funds, the Grantee agrees that activities funded by this Agreement shall recognize the NMCRA as a funding source. The Grantee shall ensure that any publicity, public relations, advertisements, and signs recognize the NMCRA for the support of all contracted activities. Grantee shall permit a sign to be placed upon the Property by the NMCRA relative to this Agreement during the construction of the Project.

17.2 Compliance with Laws. The Grantee agrees to comply with all applicable federal, state, county, and city laws, rules, and regulations. Without limiting the foregoing, Grantee agrees to comply with all legal requirements relative to any agreements between the City and the Grantee relative to the Project including, but not limited to, any Community Development Block Grant requirements such as payment of wages in accordance with the Davis-Bacon Act.

17.3 Modifications. Any amendments, variations, modifications, extensions, or waivers of provisions of this Agreement including, but not limited to, amount payable and effective term shall only be valid if in writing, duly approved by the NMCRA Board and signed by the NMCRA and the Grantee.

17.4 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

17.5 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

17.6 Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement, and are incorporated herein by reference.

17.7 Extent of Agreement. This Agreement represents the entire and integrated agreement between the NMCRA and the Grantee and supersedes all prior negotiations, representations, or agreements, either written or oral.

17.8 Third Party Beneficiaries. Neither of the parties intend to directly or substantially benefit any third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

17.9 Construction. Both parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.



17.10 Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida.

17.11 Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance is determined to be invalid or unenforceable, then to the extent that the invalidity or unenforceability thereof does not deprive a party of a material benefit afforded by this Agreement, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the full extent permitted by law.

17.12 Survival. All terms and provisions of this Agreement shall survive the Funding Termination Date and the termination of this Agreement, as applicable, as necessary in order for the parties to enforce their rights hereunder.

17.13 Recording. Grantee agrees that the NMCRA may record a Memorandum of this Agreement in the Public Records of Miami-Dade County at Grantee's expense. The form of Memorandum shall be prescribed by the NMCRA and the Grantee shall execute such Memorandum simultaneously with this Agreement. The rights and interests created herein, are intended to and shall run with the land, and shall be binding upon, inuring to the benefit of, and enforceable against the parties hereto and their respective successors and assigns.

**17.14 JURISDICTION; VENUE AND WAIVER OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURT SITUATED IN MIAMI-DADE COUNTY, FLORIDA; (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING; AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

17.15 Grantee's Required Insurance Coverages. Grantee, at Grantee's expense, agrees to keep in force during the term of this Agreement:

(a) Commercial general liability insurance which insures against claims for bodily injury, personal injury, and property damage based upon, involving, or arising out of the use, occupancy, or maintenance of the Property as well as business interruption insurance.

(b) All-risk property insurance (and builder's risk insurance during any periods of construction), including theft, sprinkler leakage, and boiler and machinery coverage on all of Grantee's trade fixtures, furniture, inventory, and other personal property in the Property, and on any alterations, additions, or improvements made by Grantee upon the Property all for the full replacement cost thereof. In the event of any casualty, theft, or any other damage to the Property and/or



the foregoing items, Grantee shall use the proceeds from such insurance for the replacement of trade fixtures, furniture, inventory, and other personal property and for the restoration of Grantee's improvements, alterations, and additions to the Property but in no event shall such coverage be less than the amount of the Grant. Failure to promptly perform such replacement and/or restoration shall be a material default of this Agreement by the Grantee entitling the NMCRA to its rights and remedies hereunder.

All policies required to be carried by Grantee hereunder shall be issued by and binding upon an insurance company licensed to do business in the State of Florida with a rating of at least "A - VIII" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by the NMCRA. Grantee shall not do or permit anything to be done that would invalidate the insurance policies required herein. Certificates of insurance, acceptable to NMCRA, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to NMCRA prior to disbursement of any Grant proceeds and thereafter no more than (10) days following each renewal date. Certificates of insurance for insurance required to be maintained as set forth above shall include an endorsement for each policy showing that the NMCRA is included as an additional insured. Further, the certificates must include an endorsement for each policy whereby the insurer agrees not to cancel, non-renew, or materially alter the policy without at least thirty (30) days' prior written notice to the NMCRA. The limits of insurance shall not limit the liability of Grantee or relieve Grantee of any obligation hereunder.

17.16 Prevailing Party's Attorney's Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

**GRANTEE:**

652 NE 128 ST LLC,  
a Florida limited liability company

By: Strategic Capital Alliance, LLC,  
a Florida limited liability company,  
as Manager

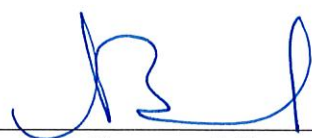
By: \_\_\_\_\_

  
Chaim Breier  
Managing Member

**NMCRA:**


NORTH MIAMI COMMUNITY  
REDEVELOPMENT AGENCY,  
a public body corporate and politic

By: \_\_\_\_\_

  
Anna-Bo Emmanuel, Esq.  
Executive Director

Attest:

By: \_\_\_\_\_

  
Vanessa Joseph, Esq.  
NMCRA Secretary

Approved as to form and legal sufficiency:

By: \_\_\_\_\_

  
Taylor English Duma LLP  
NMCRA Attorney



## **EXHIBIT "A"**

### **Legal Description of the Property**

Lots 37, 38 and 39, in Block 11, of FIRST ADDITION TO IRONS MANOR, according to the Plat thereof, as recoded in Plat Book 16, Page 62, of the Public Records of Miami-Dade County, Florida.

## **EXHIBIT “B”**

### **Program Guidelines**