

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF NORTH MIAMI
AND
NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY
PROVIDING FOR THE USE AND OCCUPANCY OF LIBERTY GARDENS PARK

This Memorandum of Understanding ("MOU") is between the City of North Miami ("CITY"), a Florida municipal corporation, whose mailing address is 776 N.E. 125th Street, North Miami, Florida 33161 and the North Miami Community Redevelopment Agency ("NMCRA") whose mailing address is 735 N.E. 125th Street, Suite 100, North Miami, Florida 33161 (each a "Party" and collectively referred to as the "Parties").

WITNESSETH

WHEREAS, CITY holds all right, title, and interest in the real property known as Liberty Gardens Park, located at 715 NE 125th Street, North Miami, Florida 33161; and

WHEREAS, the CITY has the authority to plan, develop, and enter into agreements to ensure the beneficial use of the park; and

WHEREAS, the CITY and the NMCRA are desirous of entering into this MOU for the use and occupancy of the real property known as Liberty Gardens Park; and

WHEREAS, the NMCRA will provide for, or cause to be provided for, the development, operation, and maintenance of an on-site restaurant facility; and

WHEREAS, the NMCRA has authorized the Executive Director and NMCRA Attorney to negotiate and finalize an MOU with the CITY for this purpose; and

WHEREAS, on May 14, 2024, the Mayor and City Council adopted Resolution No. 2024-R-68 authorizing the negotiation and execution of an MOU with the NMCRA for these purposes; and

WHEREAS, this MOU is intended to establish and outline the partnership between the CITY and the NMCRA in furtherance of these joint objectives.

NOW THEREFORE, in consideration of the mutual covenants stated herein, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated as the intent of this MOU.
2. **Term.** The term of this MOU shall commence simultaneously with the commencement of the term of the License Agreement (as defined below) and, unless terminated sooner pursuant to the terms hereof, terminate simultaneously upon the termination of the License Agreement.

3. **Location.** Liberty Gardens Park is located on a portion of certain real property owned by the CITY with a street address of 715 N.E. 125 Street, North Miami, Florida 33161 and specifically identified with folio number 06-2230-007-0930 (the "Property").

4. **Project Scope.** Under the terms of this MOU, the NMCRA is permitted to use and occupy the Property for the development, operation, and maintenance of an on-site restaurant facility. The Parties acknowledge and agree that the restaurant will be used and occupied by the Licensee (as defined below) pursuant to the License Agreement. The proposed project scope is attached as Exhibit "A" and is approved by the CITY.

5. **Duties and Obligations of the Parties.**

a) **CITY Obligations.**

i. CITY agrees to allow NMCRA to utilize Liberty Gardens Park for the design, development, operation, and maintenance of a restaurant facility by the Licensee pursuant to the License Agreement.

b) **NMCRA Obligations.**

i. NMCRA shall be responsible for the issuance of a solicitation for the selection of a developer/operator ("Licensee") for the restaurant facility and intends to enter into a "License Agreement" with the Licensee.

ii. NMCRA shall enforce the terms and conditions of the License Agreement and provide the CITY with copies of any notices of default by the Licensee.

iii. NMCRA shall cause the Licensee shall be responsible for the funding and development of the project scope which may include financial incentives from the NMCRA.

iv. NMCRA shall cause the Licensee shall be responsible for the operation and maintenance of the restaurant facility pursuant to the License Agreement.

v. NMCRA shall cause the Licensee shall be responsible for obtaining all required permits and licenses for the sale of food and beverages at the Property.

vi. NMCRA acknowledges that section 7-201 of the City of North Miami Code of Ordinances prohibits the sale or use of expanded polystyrene food service articles and single-use plastic beverage straws by CITY contractors and special event permittees or on CITY properties and facilities. NMCRA will comply with this provision of the Code in the conduct of business on the Property and cause the

Licensee to comply with this provision of the Code in the conduct of business on the Property.

Notwithstanding anything herein to the contrary, the NMCRA shall be and remain primarily responsible to the CITY for compliance with the terms and conditions of the MOU.

6. **Modifications to Park.**

- a) All requests for permission to modify park grounds must be brought to the attention of the CITY.
- b) Requests must include a "Letter of Intent", accompanied by construction drawings and specifications.
- c) If approved, the CITY will provide written permission to NMCRA.
- d) NMCRA and Licensee shall not make any changes to any permanent structures, or add any permanent structures to the facilities without written CITY approval.
- e) NMCRA acknowledges that the adjacent walls are not CITY property and that the NMCRA must obtain written permission from the owners of such property for any modifications or improvements which will be attached to the adjacent walls.
- f) CITY shall not have any obligation to repair, maintain, or restore any improvements placed upon the site by the NMCRA unless caused by the act or omissions of the CITY.
- g) Any facility malfunctions or damage is to be reported to CITY.
- h) No signage is to be added to facility by NMCRA without prior written approval from CITY.
- i) The CITY assumes no liability or responsibility for any equipment or property kept in the facility.
- j) NMCRA must provide keys to CITY for all storage units, locked closets and secured areas.
- k) The on-site storage of any flammable and/or toxic substances is strictly prohibited.

7. **Liquor Licensing.** The NMCRA may sell alcoholic beverages and permit the Licensee to sell alcoholic beverages for on-site consumption only at the Property only in compliance with applicable state and local laws and with all required permits and approvals.

8. **Insurance.**

- a) During the term of this MOU, Parties shall provide one another a current certificate of policy evidencing its comprehensive and general liability insurance coverage. This insurance shall be written in amounts not less than \$1,000,000.00 for each occurrence and \$2,000,000 aggregate.
- b) Parties shall also provide one another a written endorsement naming each other as an additional insured. Coverage shall provide notice to the additional insured of any change in or limitation of coverage or cancellation of the policy no less than thirty (30) days prior to the effective date of the change, limitation, or cancellation.
- c) The NMCRA shall also cause the Licensee to provide insurance policies as required by the License Agreement which insurance policies shall also name the CITY as an additional insured.

9. **Indemnification and Liability.**

- a) Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes as amended, CITY and NMCRA agree to defend and hold harmless the other Party and its officers, employees, and agents (the "Indemnified Parties"), from all claims and liability, including reasonable attorney's fees and costs, for injuries, death, or damages to any person or property, arising from or in any way connected with the activities contemplated under this MOU, or any default or breach of any term of this MOU by NMCRA or the CITY.
- b) Each party agrees to be (i) fully responsible for its acts of negligence or its employees' acts of negligence when acting within the course and scope of their employment; and (ii) liable for any damages resulting from said negligence. The foregoing shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, as amended, subject to the provisions of that statute whereby neither party shall be held liable to pay a personal injury or property damage claim or judgment by any one person which currently exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by said party arising out of the same incident or occurrence, currently exceeds the sum of \$300,000. Nothing herein shall be construed as making either party responsible for any liability or claim arising out of the negligent performance or failure of performance of the other party or as a result of the negligence or failure of performance of any third party. Further, nothing contained herein shall be construed or interpreted as: i) denying either party or other state or public entity any remedy or defense available under the laws of the State of Florida; ii) the consent of either party to be sued; or iii) a waiver of sovereign immunity of either party beyond the waiver described herein and provided in §768.28, Florida Statutes.
- c) The NMCRA shall also cause the Licensee to indemnify the CITY pursuant to the

terms of the License Agreement.

10. **Termination.** This MOU may be terminated as follows:

- a) Without cause by the written mutual agreement of the Parties.
- b) For cause in the event either Party breaches or defaults in its duties and obligations under this MOU, and such failure is not cured within thirty (30) days of the issuance of written notice of default specifying the breach (the "Default Notice"); provided however, if the default, by its nature cannot reasonably be cured within such thirty (30) day period and if, within the initial thirty (30) day period the defaulting Party has provided the non-defaulting Party with written notice specifying the reason why such breach cannot be cured within the initial (30) day period and has commenced and is diligently pursuing curative action, the defaulting Party shall have up to ninety (90) days from the date of the Default Notice to cure the specified breach or default. If the breach or default shall continue beyond the initial thirty (30) day period or as such may be extended up to ninety (90) days, then the non-defaulting Party shall have the right to terminate this Agreement upon written notice to the defaulting Party and, in such case, this Agreement shall terminate and the non-defaulting Party shall have no further duties or obligations under this Agreement to the defaulting Party. The non-defaulting Party shall be entitled to all remedies available at law and in equity.

11. **Force Majeure.** Neither Party shall be liable or responsible to the other Party for any delay, loss, damage, failure, or inability to perform under this MOU due to an Event of Force Majeure, if the Party claiming failure or inability to perform provides written notice to the other Party within thirty (30) days of the date on which such Party gains actual knowledge of such Event of Force Majeure. In the event of damage or destruction to a material portion of the Property due to fire, storm or other casualty loss that renders the facility (or a material portion thereof) untenantable, the CITY shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the facility (or a material portion thereof) untenantable for a period estimated by an engineer or architect selected by the owner of the property, of at least ninety (90) days from the date of such fire, storm, or other casualty loss, either Party may terminate this MOU without any liability, upon written notice to the other.

For purposes of this Agreement, "Force Majeure" or "Event of Force Majeure" shall mean the inability of either Party to commence or complete its obligations hereunder by the dates herein required resulting from delays caused by: (a) hurricane, flood, tornado, excessive rain, wind, or other extreme unpredictable weather, natural disaster, meteorological events, seismic event, or other acts of God; (b) fire or other casualty; (c) earthquake; (d) explosion; (e) war (whether or not formally declared); (f) civil unrest, riot, civil commotion or insurrection, or rebellion; (g) area-wide or industry-wide strike, lockout, or other labor dispute; (h) condemnation; (i) act or threat of terrorism; (j) a regional or national disruption of the delivery of materials, ability to receive services or utilities, or of shipping or transportation services; (k) shortage of any material or commodity, which is not due to a Party's failure to

appropriately contract for the same; (l) embargo, quarantine, disease and/or virus outbreak, pandemic, or epidemic; (m) national, regional or local emergency; (n) action or inaction by governmental authorities including the CITY or (o) any other causes beyond either Party's reasonable control, which shall have been timely communicated in writing to the other Party. Events of Force Majeure shall extend the period of performance of the obligations for the period equal to the period(s) of any such delay(s). Notwithstanding anything herein to the contrary, failure to secure or retain financing or obligation to pay money shall not be deemed an event of Force Majeure.

12. **Notices.** All notices regarding this MOU shall be between the contact persons indicated below:

CITY OF NORTH MIAMI:

Anna-Bo Emmanuel, Esq.
Interim City Manager
City of North Miami
776 N.E. 125 Street
North Miami, FL 33161

NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY:

Anna-Bo Emmanuel, Esq.
Executive Director
North Miami Community Redevelopment Agency
735 N.E. 125 Street, Suite 100
North Miami, FL 33161

The contact person may be changed at any time by either Party by giving the other Party written notice of same.

13. **Entire Agreement.** This MOU represents the entire and integrated agreement between CITY and NMCRA, and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter of this MOU. The MOU may not be modified, changed, supplemented, or terminated, nor may any obligations under this MOU be waived or amended, except by written instrument signed by the duly authorized representatives of CITY and NMCRA.
14. **Severability.** If any part of this MOU is found to be unenforceable by any court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected thereby, and each term or provision of this MOU shall be valid and enforced as written to the full extent permitted by law.
15. **Assignment.** This MOU shall not be assigned by Parties without the prior written consent of the Parties, which consent may be granted, denied, or conditioned in each Party's sole and absolute discretion.
16. **Governing Law and Venue.** This MOU shall be governed by the laws of the State of Florida. Venue for any action arising under this MOU or for the enforcement of

this MOU shall be in a state court with jurisdiction located in Miami-Dade County, Florida.

17. **Counterparts.** This MOU may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
18. **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.
19. **WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective and duly authorized officers as of the day and year written below.

CITY OF NORTH MIAMI ("CITY")

By:



Anna-Bo Emmanuel, Esq.

Interim City Manager

Title

Date

Attest:

Vanessa Joseph, Esq.

City Clerk

Name and Title

Date

Approved as to Form and Legal Sufficiency:

Jeff P. H. Cazeau

City Attorney

Date

NORTH MIAMI COMMUNITY
REDEVELOPMENT AGENCY
("NMCRA")

By:



Anna-Bo Emmanuel, Esq.

Executive Director

Title

Date

Attest:



VANESSA JOSEPH, ESQ.

NMCRA Secretary

Print Name and Title

Date



Taylor English Duma LLP

NMCRA Attorney

Date