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CITY OF NORTH MIAMI
GREEN BUSINESS REHABILITATION
GRANT PROGRAM AGREEMENT

THIS GREEN BUSINESS REHABILITATION GRANT PROGRAM AGREEMENT (the "Agreement") is made and entered into as of the 1st day of February, 2019 by and between the **CITY OF NORTH MIAMI,** a Florida municipal corporation, (the "City") having an address at 776 N.E. 125th Street, North Miami, Florida 33161 and **LEON L. COHEN FAMILY LTD PTSHP,** (the "Grantee"), having a principal address at 12570 N.E. 14TH AVENUE, NORTH MIAMI, FL 33161.

RECITALS

1. The City's Green Business Rehabilitation Program (the "Program") provides financial incentives and create economic opportunity by promoting energy conservation, reduction of greenhouse gases and reduces long term operating costs that encourage sustainability by retrofitting buildings occupied by small businesses

2. Businesses eligible for participation in the Program must, among other things, be located in a commercial space within the City of North Miami, not have any liens against the property, been in business for at least two (2) years, have seven (7) employees or less, and not be part of any national franchise or chain.

3. The Program will fund one hundred percent (100%) of the approved total project costs up to a maximum of Ten Thousand 00/100 Dollars ($10,000.00) on a reimbursement basis.

4. The Grantee is the business owner who has applied to the City for a Green Business Rehabilitation Grant for the purpose of rehabilitating and making improvements to the Property with the consent of 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").

5. The City has approved an award to the Grantee of a Green Business Rehabilitation Grant in the amount of Ten Thousand 00/100 Dollars ($10,000.00) (the "Grant") toward the rehabilitation of 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").

6. 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:

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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 City to fund the Grant shall terminate six (6) months 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 City set forth in this Agreement, any portion of the Grant for which a reimbursement request has not been submitted by Grantee to the City 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 thirty (30) 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 City with copies of the fully executed architect and contractor agreements and, at the request of the City, copies of the plans and specifications 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 City. Availability of Grant funds shall be determined by the City, in its sole discretion. The Grantee waives any and all claims against the City for any reduction or unavailability of funding. The Grantee will not look to, nor seek to hold liable, the City, its officers, employees, or agents for the performance or non-performance of this Agreement and agrees to hold the City harmless and release the City from any and all claims and liability under this Agreement, whether as a direct or indirect consequence of any funding reduction or unavailability.

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Section 5. **Reimbursement Procedures.** The City 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 City. 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 City 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 fifty percent (50%), and one hundred percent (100%) of the Scope of Work has been completed with such percentages based upon expenditure of overall Project costs. The City 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 City, the Grantee shall be deemed to acknowledge and agree, and represent to the City, that (i) 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 City to the Grantee have been disbursed to the appropriate architect, contractors, consultants, sub consultants, subcontractors, materialmen, vendors and miscellaneous suppliers based upon the prior reimbursement request.

5.2 Expenditure Report Required. As part of each reimbursement request, Grantee shall submit to the City, 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 City. No request for reimbursement shall be processed without an expenditure report and the City 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 City. The payment of any reimbursement request by the City 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.** Following 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 repairs, maintenance and replacements relative to the Scope of Work. The foregoing shall expressly include the repair and replacement of any personal property. 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.

Section 7. **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 City, but are only recipients of funding support, and is not an agent or instrumentality of the City or entitled to any employment benefits by the City.

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Section 8. **Assignment.** This Agreement and participation in the Program are not transferable to new business owners or lessees. New business owners must re-apply to participate in the Program and are subject to the "Past Program Participation" restrictions set forth in the Program Guidelines

Section 9. **Records, Reports, Audits, Monitoring and Review.**

9.1 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 City, all such books and records of the Grantee which relate to the Project shall be available for inspection and audit by the City or any of its authorized representatives at all reasonable times during normal business hours. The City shall be entitled to make such copies of the books and records as the City deems appropriate.

9.2 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 the Funding Termination Date. The foregoing obligation shall expressly survive the expiration or earlier termination of this Agreement.

Section 10. **Breach of Agreement; Remedies.**

10.1 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 City access to records or refuses to allow the City to monitor, evaluate and review the Grantee's Project; (f) a transfer or assignment occurs within three (3) 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 City, (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.

10.2 Remedies. Immediately upon the breach of this Agreement by Grantee as set forth in Section 10.1 above, in addition to all rights and remedies available at law or in equity, the City 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 City 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.

10.3 No Waiver. No express or implied consent or waiver by the City to or of any breach or default by the Grantee in the performance or non-performance by the Grantee of its obligations

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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 City 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 City of its rights hereunder. The giving of consent by the City in any one instance will not limit or waive the necessity to obtain the City's consent in any future instance.

Section 11. **Indemnification by Grantee.** The Grantee hereby covenants and agrees to indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from and against all liability, losses or damages, including attorneys' fees and costs, at both the trial and appellate levels, which the City may suffer as a result of claims, demands, suits, causes of actions or proceeding of any kind or nature arise 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 City) all claims, suits or actions of any kind or nature in the name of the City, 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 City. Nothing contained in this Agreement shall be construed to affect the City's right of sovereign immunity as provided in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

Section 12. **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 City designate the following as the respective places for giving such notice:

City:	City of North Miami 776 N.E. 125th Street North Miami, FL 33161 Attn: City Manager
Copy to:	City of North Miami 776 N.E. 125th Street North Miami, FL 33161 Attn: City Attorney
Grantee:	Leon L. Cohen Family LTD PTSHP 12570 NE 14th Avenue North Miami, FL 33161 Attention: Lorraine Cohen Steen (Registered Agent)

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Section 13. Inspections. At any time during normal business hours, the City 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 14. Limitation of Liability. The City desires to enter into this Agreement only if in so doing the City 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 City 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 City 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 City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

Section 15. Miscellaneous.

15.1 Publicity. It is understood and agreed between the parties that this Grantee is receiving funds by the City. Further, by the acceptance of these funds, the Grantee agrees that activities funded by this Agreement shall recognize the City as a funding source. The Grantee shall ensure that any publicity, public relations, advertisements and signs recognize the City for the support of all contracted activities. Grantee shall permit, or cause the landlord to permit, as applicable, a sign to be placed upon the Property by the City relative to this Agreement.

15.2 Compliance with Laws. The Grantee agrees to comply with all applicable federal, state, county and city laws, rules and regulations.

15.3 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 City and signed by both parties.

15.4 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.

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

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

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

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15.8 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.

15.9 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.

15.10 Governing Law; Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami-Dade County, Florida.

15.11 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.

15.12 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.

15.13 Recording. Grantee agrees that the City 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 City 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.

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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:

By: _____

LORRAINE COHEN STEEN

Type or Print Name

STATE OF FLORIDA)
SS:
COUNTY OF MIAMI-DADE)

The foregoing was acknowledged before me this 16 day of JANUARY 2019, by Lorraine Cohen Steen, who (check one) [ ] are personally known to me or [X] have produced a Florida driver's license as identification.

_____
Notary Public
Print Name: Tommie Lee Frison

My Commission Expires: FEB 14, 2021

TOMMIE LEE FRISON
MY COMMISSION # GG 051891
EXPIRES: February 14, 2021
Bonded Thru Notary Public Underwriters

CITY:

CITY OF NORTH MIAMI,
a Florida Municipal Corporation

DocuSigned by:
By: Larry M. Spring, Jr.
C28984DEA2724CF...
City Manager

Attest:

DocuSigned by:
By: Michael A. Etienne
2C7010872EE84141...
City Clerk

Approved as to form and legal sufficiency:

DocuSigned by:
By: Jeff P.H Cazeau
8AF8443D71A0491...
City Attorney

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EXHIBIT "A"
Legal Description

12552 -12572 North East 14th Ave: North Miami SUB Lot 10 less W 50 Ft of ARCH CREEK SUBDIVISION PB B- Page 121

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EXHIBIT "B"

Program Guidelines

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EXHIBIT "C"

Scope of Work