

INSTALLATION AND MAINTENANCE AGREEMENT

THIS INSTALLATION AND MAINTENANCE AGREEMENT ("Agreement") is entered into on May 21, 2020 between the City of North Miami, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida 33161 ("City"), and NM 124, LLC, a limited liability company registered and authorized to do business in the State of Florida, having its principal business office at 1111 Kane Concourse, #217, Bay Harbor Islands, FL 33154 ("Permittee"). The City and Permittee shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

WHEREAS, the City of North Miami, Florida has approved a Conditional Use Permit ("CUP") for the construction of One Hundred Seventy-Five (175) residential apartment units, along with retail and commercial space, (the "Project"); and

WHEREAS, the Project includes amenities to be constructed on the City's public property as will be depicted on the approved site plan, to be installed and maintained at the sole cost of Permittee; and

WHEREAS, in accordance with the CUP and Site Plan approval, the City desires to grant Permittee permission to install and maintain the amenities on public property.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

1. The City grants permission to NM 124, LLC ("Permittee") to install and maintain amenities on the City's public property, including landscaping, the public promenade and street furniture as shown on the site plan attached as Exhibit "A."
2. Neither Permittee nor the permitted installation shall hinder, impede, or deter public use of the public right of way. Permittee will, on City's written request, promptly remove or modify any improvements which interfere with the use of the public right of way.
3. This Agreement shall commence on Date of C.O. and shall continue for (30) years, until terminated by either party giving written notice to the other party thirty (30) days prior to such termination. The parties shall have the option to renew the agreement for successive terms of ten (10) years.
4. Permittee shall apply for and obtain any and all required permits, entitlements, and/or environmental approvals prior to the effectiveness of this permit.
5. Permittee shall, and its sole cost and expense, maintain the permitted installation in good condition to the satisfaction of the City. The City makes no warranties or representations of any kind regarding the suitability of this public right-of-way location for the proposed installation.
6. Should the Director of Public Works determine, in his/her exclusive and unfettered

discretion, that Permittee is not maintaining the permitted installation in good condition as set forth in Paragraph 4 of this Agreement, or that some part of the permitted installation hinders, impedes, or otherwise deters free movement in the public right-of-way, City may conduct any required maintenance or repair as necessary to bring the area back into satisfactory condition and/or may remove any such impediment and charge any expense incurred, including labor and material, to the Permittee, provided that the City gives Permittee notice of the condition and a reasonable opportunity to cure.

7. Permittee may, only with the prior written approval of the Director of the Department of Public Works, or his designee, and at Permittee's sole cost and expense, modify or make further improvements to the permitted installation shown in Exhibit A. Permittee will be responsible for obtaining any and all other necessary permits or entitlements. When this Agreement terminates, the City may require Permittee to remove the permitted installation and restore the public right of way to its previous condition in good repair.
8. Permittee shall, with respect to the permission granted in connection with the permitted installation, indemnify and hold harmless the City, their officials, employees and agents (collectively in this section, "City") from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including attorney's fees, court costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for property damage, personal injury or death arising in whole or in part from any negligent act or omission of Permittee, its officers, employees, agents, sub-consultants, or anyone under Permittee's control (collectively "Indemnitor"). Independent of the duty to indemnify and as a freestanding duty on the part of Permittee, Permittee shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise. Permittee shall notify the City of any Claim within ten (10) days. Likewise, City shall notify Permittee of any claim, shall tender the defense of such Claim to Permittee, and shall assist Permittee as may be reasonably requested, in such defense.
9. City shall not be responsible or liable in any way for Permittee's permitted installation or for Permittee's loss by theft, fire, flood, burglary, vandalism, or any other cause whatsoever.
10. No hazardous or toxic material will be brought into the public right-of-way in association with the installation of the permitted installation.
11. Should City revoke or terminate this Agreement as a result of future development or roadway improvements by the City, or for any other reason whatsoever, Permittee shall not be entitled to any relocation benefits or other compensation from the City due to such revocation or termination.
12. Permittee acknowledges that, by this Agreement, they do not acquire any right, title or interest of any kind in the property on which the permitted installation is installed. This Agreement is personal to Permittee and they shall not assign this Agreement without the express written consent of the Director, which shall not be unreasonably withheld or delayed.

13. City may revoke this Agreement for any reason by giving thirty (30) days' notice to Permittee. Upon revocation, Permittee shall remove all permitted installations constructed or placed by Permittee or any previous party to this Agreement at no cost to City and in accordance with all applicable laws.
14. Permittee, during the term of this Agreement, shall comply with all applicable laws, ordinances, rules and regulations of and obtain permits from all federal, state and local governmental authorities having jurisdiction over the permit area and Permittee's use thereof.
15. Any notice under this permit shall be in writing and personally delivered, deposited in the U.S. Postal Service, first class postage prepaid to Permittee at 1111 Kane Concourse, #217, Bay Harbor Islands, FL 33154 and to City at 776 N.E. 125 Street, North Miami, FL 33161, Attn: City Manager and City Attorney. Notice shall be deemed given on the date of personal delivery or on the date of deposit in the mail, whichever first occurs.
16. This Agreement shall never be construed as a grant by the City of any right to permanently use or occupy all or any portion of the public right-of-way nor shall it ever be construed as a waiver on the part of the City, or as an estoppel against it, which would in any manner whatsoever bar or limit, or otherwise prejudice, City's right to at any time whatsoever require a discontinuance of the use or occupancy of all or any part of the public right-of-way, the removal therefrom of all or any obstructions erected or maintained under this Agreement and as the restoration of such public right-of-way to a clean condition, all at the sole cost and expense of the Permittee.
17. If case suit shall be brought for the recovery of possession of all or any portion of the public right- of-way, the removal of any permitted installations or any impediments to the public right-of-way, or the breach of any covenant, promise, or agreement made by Permittee pursuant to the Agreement, Permittee shall pay to the City reasonable costs including attorney's fees which shall be fixed by the court.
18. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By:  _____

Print Name: Juan Busto

Date: 5/21/20

NM 124, LLC, a Florida limited liability company

"Permittee":

By:  _____

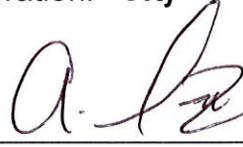
Print Name: Marcelo Tenenbaum

Date: 5-21-2020

ATTEST:

By:  _____
Vanessa Joseph, Esq.
City Clerk

City of North Miami, a Florida municipal Corporation: "City"

By:  _____
Arthur H. Sorey, III
Interim City Manager

APPROVED AS TO FORM AND
Legal sufficiency:

By:  _____
Jeff P. H. Cazeau
City Attorney