

MINORITY/WOMEN ENTREPRENEUR BUSINESS ASSISTANCE PROGRAM FUNDING AGREEMENT

Nikki's Place, Inc.

This **MINORITY/WOMEN ENTREPRENEUR BUSINESS ASSISTANCE PROGRAM FUNDING AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the Community Redevelopment Agency of the City of Orlando, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes (hereinafter referred to as the "CRA"), the principal address of which is Orlando City Hall, 6th Floor, 400 S. Orange Ave., Orlando, Florida 32801, and **Nikki's Place, Inc.**, a Florida corporation (hereinafter referred to as "Grantee"), the principal address of which is 742 West Carter Street, Orlando, Florida 32805 (hereinafter singularly referred to by their respective designation contained hereinabove, or as the "Party", and collectively as the "Parties").

WHEREAS, the CRA was created as a public body corporate and politic of the State of Florida, for the purposes of the community redevelopment objectives of Part III, Chapter 163, Florida Statutes; and

WHEREAS, in an effort to accomplish the objectives of Part III, Chapter 163, Florida Statutes, and further implement the Downtown Orlando Community Redevelopment Plan adopted pursuant thereto, the CRA has adopted and established the Minority/women Entrepreneur Business Assistance Program (hereinafter referred to as the "Program"), which provides CRA financial assistance towards certain specified start-up, retention, or relocation costs and expenses for eligible enterprises within the Program's Target Area ("Target Area") within Downtown Orlando; and

WHEREAS, the CRA has found and declared that the Program serves an important and significant public purpose and is necessary and proper in order to promote the health, safety, and welfare of the public by furthering the eradication of slum and blight by providing vibrant retail within the Program's Target Area; and

WHEREAS, Grantee is eligible for CRA financial assistance pursuant to the Program because it is an existing for-profit restaurant business that is located at **742 West Carter Street, Orlando, Florida**, which is located within the Program's Target Area; and

WHEREAS, the retention of Grantee's business will further the CRA objective of providing new and improved neighborhood businesses within the Program's Target Area; and

WHEREAS, Grantee is seeking assistance under the Program in the form of reimbursement for capital equipment and capital improvements; and

WHEREAS, in order to offset such expenses of the business, the CRA, upon recommendation by the MEBA Advisory Board and CRA Advisory Board, awarded funding in

an amount of up to Twenty-Five Thousand, Five Hundred and Fifty-Two Dollars and Seventeen Cents (\$25,552.17) (“the MEBA grant”) to be given pursuant to and contingent upon the terms of this Agreement; and

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CRA and Grantee agree as follows:

1. Incorporation of Recitals. The recitals set forth hereinabove are true and correct and are incorporated herein as if fully set out below.

2. Funding. Subject to Grantee complying with the conditions contained in section 3 hereunder, the CRA shall provide funding up to the amount of Twenty-Five Thousand, Five Hundred and Fifty-Two Dollars and Seventeen Cents (\$25,552.17) in accordance with the following:

a. Upon Grantee providing invoices, receipts, and other appropriate documentation of the expenditures made by Grantee, deemed acceptable by the Executive Director of the CRA, the CRA shall pay to Grantee an amount not to exceed Twenty-Five Thousand, Five Hundred and Fifty-Two Dollars and Seventeen Cents (\$25,552.17) as reimbursement for purchases made in the following categories associated with the retention of the business in the Target Area. Purchases must be made after the Effective Date of this Agreement. The amounts which the CRA will reimburse for a particular item(s) within a category will be the actual amount of Grantee’s expenditure for such item(s) as reflected in the documentation provided to the CRA by Grantee as required by this section. However, the total amount reimbursed will not exceed the MEBA grant.

- Capital Equipment
 - One stove (six-burner with grill and two ovens)
 - Two convection ovens (to replace existing stacked ovens)
 - Installation costs
 - One deep fryer
 - New refrigerator motor (for reach-in refrigerator)

- Capital Improvements
 - Tile installation in restrooms, back hall area leading to restrooms, and main dining room
 - New signage for the building and doors
 - New awnings

Total:.....\$25,552.17

b. If all items for above categories have been purchased and the amount the CRA has reimbursed Grantee is less than \$25,552.17, Grantee may use the remaining funds for other item(s) not included in the proposal submitted, but that are associated with the

retention of the business, upon approval by the Executive Director of the CRA, provided that the total amount reimbursed Grantee under the terms of this Agreement does not exceed the MEBA grant.

c. Any items listed in the above categories may not be substituted for a similar or different item(s) without approval from the Executive Director of the CRA or his/her designee.

d. If a specified amount is allocated to a specific category listed above, such funds cannot be shifted in whole or in part to another category without approval from the Executive Director of the CRA or his/her designee.

3. Conditions to Funding. The CRA shall not be obligated to provide the funding enumerated in Section 2 hereof to Grantee unless Grantee first meets the requirement set forth in subsection (a) and maintains compliance with the other conditions listed thereafter during the term of this Agreement:

- a. Grantee shall provide a Design Action Plan (DAP) to the MEBA Program Manager prior to receiving the first payment from the CRA pursuant to section 2 herein.
- b. Grantee shall remain open for business as “Nikki’s Place” at 742 West Carter Street, Orlando, Florida.
- c. Grantee shall, at a minimum, be open for business at least five (5) days a week and at least eight (8) hours per day for a minimum of forty (40) hours each workweek.
- d. Grantee shall display the Downtown Orlando logo, as provided by the CRA, on the front main entrance door of the business.
- e. Grantee shall install dynamic and highly visible identification signage. All signage must comply with the sign regulations of the City of Orlando and are subject to the approval of the City of Orlando Downtown Development Board Architectural Review Board (hereinafter referred to as the “ARB”).
- f. Grantee shall maintain active, transparent, and clear storefront windows.
- g. Grantee shall seek technical assistance from an economic development organization or company, approved by the CRA Executive Director, or his or her designee, on an as-needed basis to address financial issues, business strategy, or marketing.
- h. Grantee shall execute a Security Agreement and Continuing Guaranty simultaneously with this Agreement.

4. Deferred Loan. The MEBA grant is a deferred loan, whereby no interest will accrue upon the principal of the total award amount and payment to the CRA shall be deferred during the term of this Agreement. The loan shall depreciate at 33% each year for the first two

years and 34% for the third year. At the end of the three-year period, the loan shall be forgiven in its entirety as long as the Grantee is in compliance with the terms and conditions of this Agreement. In the event of a Default, the CRA shall be entitled to a pro rata share (using a three-year amortization schedule for the loan proceeds) of the total loan amount.

5. Progress and Financial Reporting. During the term of this Agreement, Grantee shall submit quarterly reports to the Program Manager for the MEBA Program. Such reports shall demonstrate Grantee's compliance with the Conditions to Funding enumerated in Section 3 herein and shall be in a form that is acceptable to the CRA's Executive Director. Such reports shall also include the number of clients served and profit and loss statements. In addition, Grantee shall provide an Annual Status Report to the MEBA Advisory Board and the CRA Advisory Board at a Board meeting. Grantee shall obtain the reporting format for both the quarterly and annual reports from the Program Manager.

6. Covenants, Representations, and Acknowledgements of Grantee. Grantee hereby covenants, represents, and acknowledges the following:

- a. Grantee has or will obtain all federal, state, and local permits or other government authorizations and approvals required by law in order to operate the business at 742 W. Carter Street, Orlando, Florida.
- b. Grantee shall at all times be in compliance with the Orlando City Code, including, but not limited to, code sections pertaining specifically to planning, zoning and permitting, and Grantee shall maintain a current and valid City of Orlando occupational license (also referred to as "business tax receipt") or licenses at all times. This part is not intended to preclude the City of Orlando from granting Grantee certain waivers, exemptions, or variances as allowed under the Orlando City Code.
- c. Grantee shall make timely payment of any and all taxes owed by Grantee.
- d. Grantee has not and will not apply for funding through The City of Orlando Business Assistance Program.

7. Books and Records. Grantee shall compile and maintain accurate books and records indicating its compliance with the requirements of this Agreement, and shall make such records available at a mutually agreed upon time for inspection and/or audit by the CRA during regular business hours.

8. Default. The occurrence of any one of following events or conditions shall constitute a default and breach of this Agreement by Grantee, and shall entitle the CRA to enforce the terms of the Security Agreement, immediately cease any payments contemplated herein to Grantee, seek reimbursement of any funds already paid by the CRA to Grantee, and terminate this Agreement upon ten (10) days written notice to Grantee:

- a. Grantee's failure to comply with any of the requirements and Conditions to Funding contained herein at Section 3.

- b. Grantee's failure to maintain and operate the business, except for normal U.S. holidays, as required in Section 3(b) herein at anytime during the term of this Agreement. (A temporary closure may only be permitted with prior written approval of the CRA.)
- c. Grantee's abandonment or permanent closing of the business without prior written notice to the CRA.
- d. Grantee's sale of the business or change of the current business that would not independently qualify for the Program.
- e. Grantee's making of a material misrepresentation in any certification or communication submitted by the Grantee to the City in an effort to induce the award of the grant, payment or the administration thereof that is determined to be false, misleading, or incorrect in any material manner.
- f. Grantee is found guilty of, or enters a plea of no contest for, committing a misdemeanor or felony that is related to this Agreement.

Failure of the CRA to declare a default shall not constitute a waiver of any rights by the CRA. Furthermore, the waiver of any default by the CRA shall in no event be construed as a waiver of rights with respect to any other default, past or present.

9. Indemnification. To the extent permitted by law, Grantee shall indemnify, defend and hold harmless the CRA, its agents, employees, and elected and appointed officials, including the Advisory Boards to the CRA and their members, from and against all claims, damages, losses, and expenses (including all attorneys' costs and fees reasonably and actually incurred, and all attorneys' costs and fees on appeal) arising out of or resulting from Grantee's performance under this Agreement, and which are caused in whole or in part by Grantee, its agents, employees or subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

10. Bankruptcy. In the event (a) an order or decree is entered appointing a receiver of Grantee or its assets, which is not appealed (or if appealed is determined adverse to Grantee) or (b) a petition is filed by Grantee for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty (60) days after the filing thereof, then the CRA shall have the right to immediately terminate this Agreement.

11. Force Majeure. The parties shall use reasonable diligence to ultimately accomplish the purpose of this Agreement but shall not be liable to each other, or their successors or assigns, for breach of contract, including damages, costs, and attorney's fees (including costs or attorney's fees on appeal) as a result of such breach, or otherwise for failure to timely perform its obligations under this Agreement occasioned by any cause beyond the reasonable control and without the fault of the parties. Such causes may include but shall not

limited to acts of God, acts of terrorism or of the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or contractual capacity, fires, hurricanes, tornadoes, floods, epidemics, quarantines, restrictions, strikes, substantial shortages of building materials within the Orlando Metropolitan Area, or failure or breakdown of transmission or other facilities (“Force Majeure”). Notwithstanding anything herein to the contrary, if Grantee or the CRA is delayed, hindered or prevented in or from performing its respective obligations under this Agreement by any occurrence or event of Force Majeure, then the period for such performance shall be extended for the period of such performance is delayed, hindered or prevented, and the party delayed, hindered or prevented in or from performing shall not be deemed in breach hereunder.

12. Agency. Grantee and CRA, and their agents, contractors, and subcontractors, shall perform all activities that are contained herein as independent entities and not as agents of each other.

13. Third-party Beneficiaries. This Agreement is solely for the benefit of the parties signing hereto and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

14. Binding Nature of Agreement. This Agreement shall be binding, and shall inure to the benefit of the successors or assigns of the parties hereto, and shall be binding upon and inure to the benefit of any person, firm, or corporation that may become the successor in interest, directly or indirectly, to the Business, or any portion thereof.

15. Controlling law and venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the City of Orlando now in effect and those hereinafter adopted. Unless otherwise specified in this Agreement for a particular issue, all City ordinances, rules, regulations and policies are applicable. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.

16. No Liability or Monetary Remedy. Grantee hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the CRA, and that the CRA bears no liability for direct, indirect or consequential damages arising in any way out of this Agreement. The only remedy available to Grantee for any breach by the CRA is one of mandamus to require the CRA’s specific performance under the terms and conditions of this Agreement.

17. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between Grantee and the CRA. Grantee cannot create any obligation or responsibility on behalf of the CRA or bind the CRA in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each party acknowledges that it is not acting as a fiduciary for or any advisor to the other in respect to this

Agreement or any responsibility or obligation contemplated herein. Grantee further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Grantee as an inducement to entering into this Agreement.

18. Personal Liability. No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the CRA in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the CRA contained herein.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waiver of the provisions herein shall be made by the parties in writing.

20. Severability. If a sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portion hereto.

21. Estoppel Letter. Upon the request of Grantee or one of its lenders, the CRA hereby agrees to furnish a letter stating whether (i) this Agreement is in full force and effect, (ii) there are any defaults under this Agreement and, if any, identify them, and (iii) all amounts due and payable hereunder have been paid in full, and, if not, the outstanding balances hereunder. Such letter shall be furnished within ten (10) days after request therefore.

22. Notices. Any notice required or allowed to be delivered hereunder shall be in writing and deemed to be delivered when (i) hand delivered to the person hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the party's name below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith:

CRA: Thomas Chatmon
Executive Director
Community Redevelopment Agency
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801

Copy to: Victoria Walker
Assistant City Attorney
Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801

Grantee: Nikki's Place, Inc.

Attn: Nick and Elaine Akins
742 West Carter Street
Orlando, Florida 32805

21. Assignment. Grantee shall not assign this Agreement without the prior and written consent of the CRA.

22. Term. The term of this Agreement shall be three (3) years, commencing on the Effective Date, unless this Agreement is terminated earlier.

23. Effective Date. This Effective Date of this Agreement shall be the date upon which all parties have fully executed the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below.

Nikki's Place, Inc.

Print Name

Title

WITNESS:

Sign: _____
Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The forgoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, who is the _____ for Nikki's Place, a Florida corporation, the Grantee. He/she is personally known to me or has produced _____ as identification.

Notary Public

Print Name: _____

Commission Expires _____

For the Community Redevelopment Agency

Buddy Dyer, Chairman

Date

ATTEST:

Thomas C. Chatmon, Jr.
Executive Director, CRA

Approved as to form and legality for the use and reliance of the CRA only:

Assistant City Attorney