

BUSINESS ASSISTANCE PROGRAM AGREEMENT

THIS AGREEMENT made and entered _____ day of _____, 2017, by and between the **CITY OF ORLANDO**, a municipality organized and existing under the laws of the State of Florida, (hereinafter referred to as the “City”), **Mai Bistro, LLC**, a for-profit Florida limited liability company with a principal address of 1830 East Colonial Drive, Orlando, Florida 32803 (hereinafter referred to as the “Business”) and Pham Khang Thi Life Estate, (hereinafter referred to as the “Property Owner”), whose mailing address is 6684 Vista Park Blvd., Orlando, Florida 32829.

WITNESSETH

WHEREAS, the Property Owner is the owner of certain real property located within the corporate limits of the City of Orlando, County of Orange, State of Florida, located at 1830 East Colonial Drive, Orlando, Florida 32803, and more particularly described as follows in **Exhibit “A”** attached hereto and incorporated herein by reference (hereinafter referred to as the “Property”); and

WHEREAS, the Business is seeking to locate, expand or redevelop in the City of Orlando, County of Orange, and the State of Florida; and

WHEREAS, it is the policy of the City to stimulate economic growth, by either attracting new businesses or by encouraging the expansion of existing businesses; and

WHEREAS, the creation of new employment opportunities and the increased tax revenues resulting from such business expansion are beneficial to the local economy; and

WHEREAS, the City Council has determined that offering economic development incentives encourages existing businesses to expand and thereby creates new employment opportunities for the residents of the City; and

WHEREAS, the City finds and declares that it is in the public’s best interest to award economic development incentives to the Business to off-set development costs pursuant to the terms of this Agreement; and

WHEREAS, the Business has provided to the Economic Development Department of the City a copy of the invoice of development cost (permitting fees, transportation impact fees, sewer fees or public right-of-way infrastructure fees) which is shown in **Exhibit “B”** attached hereto and incorporated herein by this reference; and

WHEREAS, the Business is eligible for assistance pursuant to the Business Assistance Program (“the Program”) because it is a for-profit new or expanding business and it is located within the City;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and are made a part of this Agreement as if fully set forth herein.

2. Fee Schedule. The City has determined that the following fees are due in connection with development and infrastructure costs, and hereby grants the Business the maximum amount allowed under the Program of Nine Thousand, Six Hundred and Sixty-Three Dollars and Thirty-Five Cents (\$9,663.35):

A. Total Project Fees Assessed: \$20,121.58

B. Total Eligible Fees Assessed: \$19,326.70

C. Fee Assistance from City:

(a) Fee Assistance Breakdown:

(i) Permitting Fees: \$0.00

(ii) Transportation Impact Fees: \$6,405.20

(iii) Sewer Fees: \$3,258.15

(iv) Public Right-of-Way Infrastructure: \$0.00

(b) Total Fee Assistance From City: \$9,663.35

D. Total Due From Business: \$10,458.23

The parties agree that the above fees shall be paid by the time the building permits are issued.

3. Failure to Pay. Failure of the Business to pay any of the above fees may, at the option of the City, result in discontinuation of sewer services, revocation or denial of Certificate of Occupancy, or any other appropriate legal action or equitable remedy available to the City, and shall result in the deferral of any City contribution to the Business until such fees are paid.

4. Condition. As a condition to the above fee assistance, Business agrees to do the following:

- a. Remain in operation for a minimum of three (3) years from the effective date of this Agreement. However, the City may, at its sole discretion, authorize in writing that the Business be temporarily closed for a period of not more than ninety (90) days upon written request submitted by Business.
- b. Obtain a Business Tax Receipt within ninety (90) days of the date of this Agreement or maintain an existing one. A copy of which must be provided to the City.
- c. Business 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. This part is not intended to preclude the City of Orlando from granting the Applicant certain waivers, exemptions, or variances as allowed under the Orlando City Code.

5. Default. If Business fails to comply with any of the terms or conditions of this Agreement, the City shall be entitled to immediately seek the repayment of funds from the Business that have already been disbursed by the City to the Business, and to terminate this Agreement upon ten (10) days written notice to the Business.

6. Indemnity. Business agrees to release, indemnify, defend, and hold harmless the City, its elected officials, appointed officials, officers, agents, and employees, from any and all claims, damages, losses, expenses (including reasonable attorneys' fees and costs, and reasonable attorneys' fees and costs on appeal), or liability arising in any way from its performance under this Agreement.

7. Governing Laws. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Orange County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

8. Warranty. The Business warrants that it has not paid or agreed to pay any person, corporation, individual or firm, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. The Business warrants and represents that it is Business's policy that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, or marital status.

9. Nonassignability. The Business may not assign its rights hereunder without prior consent of the City. Failure to comply with this section may result in immediate termination of the Agreement.

10. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the Business and the City. The Business cannot create any obligation or responsibility on behalf of the City or bind the City 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. Business further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by the Business as an inducement to entering into this Agreement.

11. 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 City in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the City contained herein.

12. Acknowledgment. None of the provisions, terms, and conditions contained in the Agreement are meant to modify any existing lease, contract, or agreement between the Applicant or Applicant's business and the Property Owner. The sole purpose of the Property Owner executing the Agreement is to demonstrate recognition and acknowledgment of any changes, modifications, or alterations being made to the Property by the Applicant or Applicant's business with the funding assistance provided under the terms of the Agreement.

13. Miscellaneous.

a. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

b. The parties agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in the Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

c. None of the provisions, terms, and conditions contained in the Agreement is meant to modify any existing lease, contract, or agreement between the Business and the Property Owner. The sole purpose of the Property Owner executing the Agreement is to demonstrate recognition and acknowledgment of any changes, modifications, or alterations being made to the property by the Business with the funding assistance provided under the terms of the Agreement.

14. Term. The term of this Agreement shall be three (3) years, commencing on the day of full execution of this Agreement.

15. Notices. All notices required or permitted in this Agreement shall be sent by certified mail, return receipt requested, to the parties at the following addresses:

Economic Development Director
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

with a
copy to:

City Attorney's Office
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

and if sent to the Business Owner shall be mailed to:

Mai Bistro, LLC
Attn: Dat Dang, Member
1830 E. Colonial Drive
Orlando, Florida 32803

and if sent to the Property Owner shall be mailed to:

Pham Khang Thi Life Estate
6684 Vista Park Blvd

Orlando, Florida 32829

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their names as of the day and year first above written.

CITY OF ORLANDO, FLORIDA

By: _____
Mayor/Mayor Pro Tem

ATTEST:

Orlando City Clerk

APPROVED as to form and legality,
for the use and reliance of the
City of Orlando, Florida only.

_____, 2017.

Assistant City Attorney
City of Orlando

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me, the undersigned authority, _____, [] well known to me or [] who has produced his/her _____ as identification, and known to me to be the Mayor/Mayor Pro Tem of the City of Orlando, and acknowledged before me that he/she executed the foregoing Business Assistance Program Agreement on behalf of the City of Orlando as its true act and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this ____ day of _____, 2017.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

PROPERTY OWNER

Print Name: _____

WITNESS:

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me, the undersigned authority, _____, on
this ____ day of _____, 2017, who is the Property Owner. He/she is personally known to me or
has produced _____ as identification and did/did not
take an oath.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____