

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “**Agreement**”) is made effective as of the \_\_\_\_\_ day of April, 2022 (the “**Effective Date**”), by and among the CITY OF CORAL GABLES (“**City**” or “**Landlord**”) and CORAL GRAND, LLC, a Florida limited liability company (“**Coral Grand**” or “**Tenant**”), and CORAL GABLES ATHLETIC CLUB, LP, a Florida limited partnership (“**Athletic Club**” or “**Sub-Tenant**”). City, Coral Grand and Athletic Club shall hereafter sometimes be referred to collectively as the “**Parties.**”

### RECITALS

WHEREAS, Landlord and Tenant were parties to that certain lease agreement, as amended, for Tenant’s management and operation of the real property located at 997 N. Greenway Drive, Coral Gables, Florida 33134 (the “**Country Club**”), which was executed on August 6, 2009, commenced on October 1, 2011, and had an initial 10-year term that ran through September 30, 2021 (the “**Lease**”).

WHEREAS, in addition to the actual building structure of the Country Club, which includes a Fitness Center, the Lease required Tenant to manage and/or operate a larger premises comprising of the Land, the Building, the Tennis Facility, the Parking Lot and the contents thereof. *See generally* § 1, 7 of the Lease.

WHEREAS, on June 23, 2021, Landlord and Tenant entered into a settlement agreement in an effort to resolve their differences and set a Lease expiration date, among other things (the “**Settlement Agreement**”). The terms of the Settlement Agreement allowed Tenant to continue occupying and operating the Country Club until April 30, 2022 (the “**Extended Operating Period**”). § 4(a) of the Settlement Agreement.

WHEREAS, the City intends on managing and operating the Country Club following the conclusion of the Extended Operating Period.

WHEREAS, in accordance with the Settlement Agreement, Tenant designated a list of items that it claims as its personal property, which were listed as “Tenants Equipment and Furnishings” at Exhibit “A” to the Settlement Agreement (the “**Personal Property**”). City hired a third-party, Kroll, to appraise the full list of Tenant’s claimed Personal Property, which arrived at total price of approximately \$370,000.00. In early April 2022, the City offered Tenant \$400,000.00 to purchase the Personal Property, which equipment and other improvements were deemed essential for a quick operational transition for the City in light of the current material shortages resulting from the COVID pandemic.

WHEREAS, on April 12, 2022 in order to protect the historical Country Club, obtain information needed to conduct and complete its audit, and determine what additional percentage rent may be owed to the City by Tenant, the City filed a lawsuit in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida against Coral Grand and Athletic Club (the “**Litigation**”) with Case No. 2022-006722-CA-01 (21), and sought the *ex parte* appointment of a receiver to operate Tenant through the Extended Operating Period (the “**Receivership**”).

WHEREAS, on April 14, 2022, Coral Grand and Athletic Club filed an Emergency Motion to Dissolve the Receivership, which motion is scheduled for an evidentiary hearing on Thursday, April 21, 2022 at 1:00 p.m. (the “**Evidentiary Hearing**”).

WHEREAS, the Parties desire to fully, completely, and finally amicably settle and resolve all claims and disputes between them arising out of or relating to the Lease, Settlement Agreement, Litigation, Receivership, and all potential claims that could have been brought by the City in connection with the Lease, including, but not limited to, underreported Gross Revenues and underpaid Percentage Rent, as well as any potential counterclaims that Coral Grand and Athletic Club could have raised or brought against City in connection with the Lease, Settlement Agreement, Litigation and Receivership (collectively, the “**Claims**”) in accordance with the terms and conditions set forth herein, in reliance upon the promises, representations, acknowledgments, agreements and warranties of the Parties contained herein and for other consideration;

**NOW THEREFORE**, in consideration of the promises, undertakings, payments and releases stated herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties do hereby stipulate and agree as follows:

1.     **Recitals**. The foregoing recitals are true and correct.
  
2.     **Memorialization**. The Parties hereby acknowledge that the purpose of this Agreement is to memorialize the resolution and to release all claims asserted by or which could have been asserted by and between the Parties and their employees, directors, officers, affiliated entities, subsidiaries, parents, assigns, agents, successors, predecessors, which arise out of or are in any way related to the Lease, Settlement Agreement, Litigation and Receivership.
  
3.     **Settlement**. This Agreement settles and resolves all disputes, disagreements, claims, and conflicts between the Parties arising out of or relating to the Lease, Settlement Agreement, Litigation and Receivership. The Parties have entered into this Agreement to avoid the uncertainty and costs of any future protracted litigation. Nothing in this Agreement shall be construed as an admission of liability, wrongdoing, or violation of any applicable state, federal, or local laws or regulations by any of the Parties.
  
4.     **Purchase of Personal Property**. City will pay Coral Grand a total sum of \$295,000.00 (Two Hundred Ninety-Five Thousand and 00/100 Dollars) (“**Purchase Price**”) for the purchase of the Personal Property and Coral Grand’s retail beverage license (License No. BEV2330100), and permanent food service license (License No. SEA2322475) (“**Coral Grand Licenses**”). In exchange for the Purchase Price, Tenant agrees to convey all rights, interest and title of its Personal Property to City by a Bill of Sale, and also agrees to transfer and assign all of their rights, title and interest in the Coral Grand Licenses to City immediately upon the execution of this Agreement and effective as of May 2, 2022 at 10:00 a.m.. The City is to take possession of the Country Club with all of Tenant’s Personal Property therein on Monday, May 2, 2022 at 10:00 a.m. in exchange for payment of the Purchase Price to Coral Grand via a Cashier’s Check.
  
5.     **Athletic Club License and Fitness Center Equipment**. In full accord and satisfaction of all Claims that the parties may have against one another, the Athletic Club agrees to transfer and assign all of their rights, title and interest in the gym operation license (License No.

HS10377) (“**Athletic Club License**”) to City immediately upon the execution of this Agreement and effective as of May 2, 2022 at 10:00 a.m.. The Athletic Club also agrees not to exercise any purchase options over the Fitness Center Equipment or take such further action that would result in the lessor or any other party or individual from removing the Fitness Center Equipment from the Fitness Center.

6. **Lease and Settlement Agreement Obligations.** Tenant shall continue to honor, satisfy and fulfill all continuing Lease and Settlement Agreement obligations and requirements through the end of the Extended Operating Agreement, including, but not limited to continuous operation of the Fitness Center, fulfillment of all events through April 30, 2022.

7. **Events of Default.** The failure of Tenant and the Athletic Club to peaceably turnover possession of the Country Club on Monday, May 2, 2022 at 10:00 a.m., and turnover possession of all of the Personal Property, Coral Grand Licenses and Athletic Club License subject of this Agreement and full compliance with the terms in paragraphs 4, 5 and 6 above shall constitute an event of default and immediate breach of this Agreement (“**Default**”). Such Default will render this Agreement and releases herein null and void and of no effect such that the City may continue to prosecute the Litigation to its conclusion.

8. **Notice.** Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be deemed given (i) when delivered or refused by hand during regular business hours, (ii) three (3) calendar days after being sent by United States Postal Service, registered or certified first-class mail, postage prepaid, return receipt requested, or (iii) on the day of receipt or the day of refusal of delivery if sent by a reputable national overnight express mail service that provides tracing and proof of receipt or refusal of items mailed (e.g., UPS, FedEx). Notices to City or Coral Grand and Athletic Center shall be delivered as follows:

**City:**

Miriam Soler Ramos  
City Attorney  
City of Coral Gables  
405 Biltmore Way, 2nd Floor  
Coral Gables, FL 33134  
Bar Number 581348  
[mramos@coralgables.com](mailto:mramos@coralgables.com)

With a copy to:

Holland & Knight LLP  
Attn: Anna Marie Gamez, Esq.  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131  
E-Mail: [annie.hernandezgamez@hklaw.com](mailto:annie.hernandezgamez@hklaw.com)

**Coral Grand and Athletic Club:**

Nick Di Donato  
25 British Columbia Road  
Exhibition Place  
Toronto, Ontario M6KC3  
Canada

Anthony Di Donato  
6800 SW 40th Street, Unit 183  
Miami, Florida 33155

With a copy to:

David Winker, Esq.  
David J. Winker, P.A.  
4720 S. LeJeune Road  
Coral Gables, Fl 33146  
E-Mail: dwinker@dwrlc.com

Notwithstanding the foregoing, any attempted notice given by email or facsimile transmission by City to Coral Grand or Athletic Club will be deemed effective if the recipient party confirms its receipt of the notice by reply email, facsimile or other written notice of receipt.

9. **Mutual Release.** Except as to the obligations set forth in this Agreement, and specifically those itemized in paragraphs 4 and 5 above, each Party, on behalf of itself and its respective parent, subsidiaries, affiliated entities, directors, officers, employees, partners, members, managers, shareholders, trustees and successors and anyone claiming by or through them, including Nicola (“Nick”) Di Donato and Anthony Di Donato (collectively, the “**Releasing Parties**” or individually, each a “**Releasing Party**”), hereby forever remise, release, acquit, and forever discharge and covenant not to sue the other Party, and its respective parent, subsidiaries, affiliated entities, directors, officers, employees, partners, members, managers, shareholders, trustees, heirs, attorneys, agents, representatives, appointed and elected officials and successors and anyone claiming by or through them (collectively, the “**Released Parties**” or individually, each a “**Released Party**”), from and for any and all claims, actions, claims, causes of action, suits, obligations, liabilities, debts, sums of money, accounts, reckonings, bonds, bills, contracts, agreements, demands, warranties, rights, reputational harm, damages, reasonable and actual attorneys’ fees, costs, charges and causes of action, both known or unknown, foreseen, unforeseen or unforeseeable, in law or in equity, of any kind whatsoever (each, a “**Loss**”), which the applicable Releasing Party ever had, now have, or may have against the applicable Released Party for, upon or by reason of any matter, cause or thing whatsoever, up to and including the Effective Date, including but not limited to: any and all Losses that were raised by the Parties in connection with the Lease, Settlement Agreement, Litigation, Receivership, and the Claims, as well as all claims and causes of action founded in tort, contract (oral, written or implied) or any other common law, statutory or equitable basis of action specifically related and limited to the Lease, Settlement Agreement, Litigation and Receivership. This Release shall not inure to the benefit of any third party, except as specifically stated herein. Moreover, neither Coral Grand nor Athletic Club is released from its/their obligations under this Agreement. Nothing contained within this paragraph

shall prohibit either party from pursuing any legal action necessary to secure performance of the other party's obligations as set forth herein. Such release shall be immediately effective and self-executing on May 2, 2022 only upon the Tenant's and Athletic Club's compliance with all obligations specified in paragraphs 4, 5 and 6 above.

10. **Postponement of Evidentiary Hearing and Dismissal of Appeal.** Immediately upon execution of this Agreement, Tenant and Athletic Club shall take all steps necessary to cause the cancellation of the Evidentiary Hearing on their Emergency Motion to Dissolve Receivership in accordance with the Court's procedures. Should the Commission ultimately approve this Agreement at the Commission meeting scheduled for April 26, 2022, then (a) Tenant and Athletic Club shall within (1) business day dismiss the appeal currently pending in the 3rd District Court of Appeal, and (b) the Emergency Motion to Dissolve Receivership shall become moot. If the Agreement is not approved by the Commission then the Evidentiary Hearing may be rescheduled to a mutually coordinated date.

11. **Dismissal of Litigation and Discharge of Receivership.** Within one (1) business day from City's receipt of timely and peaceable possession of the Country Club, the Personal Property, and all right, title and interest to such Personal Property is perfected in favor of the City and duly transferred Licenses, City shall cause the discharge of the Receiver and dissolution of the Receivership and dismiss the Litigation with prejudice. To be clear, the Receivership shall remain in place and undisturbed through such time as the Tenant has fully and timely complied with the terms herein.

This Agreement shall not be filed with the Court at the time of filing the Notice of Voluntary Dismissal with Prejudice; however, it may be filed with the Court in connection with any motion or action brought to enforce the terms of this Agreement.

12. **Voluntary Participation.** The Parties recognize and agree that they have voluntarily entered into this Agreement in consideration of the mutual promises, covenants, and agreements contained herein, and not as a result of any intimidation, coercion or pressure from anyone else.

13. **Negotiation and Representation by Counsel.** Each of the Parties hereto acknowledge and agree that they have actively and with full understanding participated in the drafting and negotiation of this Agreement, and for all purposes, therefore, this Agreement shall be deemed to have been drafted jointly by each of the Parties. The Parties further acknowledge and agree that all of the terms and conditions of this Agreement have been negotiated at arm's-length and that this Agreement has been negotiated, prepared, and executed without fraud, and each Party hereby waives and releases any claim of, fraud in the inducement, duress, undue influence, or coercion of any kind or nature whatsoever having been exerted by or imposed by any Party. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party to this Agreement by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated, or drafted such provision. In the event an ambiguity exists in any provision of this Agreement, such ambiguity is not to be construed by reference to any doctrine or statute calling for ambiguities to be construed against the drafter of the document. Additionally, each of the Parties have consulted with their attorneys prior to signing this Agreement.

14. **Binding on Successors.** This Agreement is binding upon and inures to the benefit of City, its heirs, representatives, successors, and assigns and upon Coral Grand and the Athletic Club, their heirs, representatives, successors, and assigns.

15. **Authority to Bind.** Each party to this Agreement represents and warrants that it has the authority to enter into this Agreement and to perform the duties and obligations to which it has agreed. However, this Agreement remains subject to City Commission approval at the next regularly scheduled Commission meeting currently set for Tuesday, April 26, 2022. If this Agreement is not approved by a majority of the Commission at said meeting, then this Agreement shall be null and void and of no effect.

16. **No Third Party Beneficiaries.** This Agreement is binding on, and insures solely to the benefit of the Parties herein, namely City, Coral Grand and Athletic Club.

17. **Attorneys' Fees and Costs.** Each Party will be responsible for paying its/their own attorneys' fees, costs and expenses arising out of or connected with the Lease, Settlement Agreement, Litigation, Receivership and the Claims, including, but not limited to the preparation and execution of this Agreement. In the event a suit or other action is brought by either Party to this Agreement to enforce any of its terms, and in any appeal therefrom, it is agreed that the prevailing party shall be entitled to its reasonable attorney's fees and costs. This will include attorney's fees and costs at all levels of the action, including litigation and appeals. This will also include attorney's fees and costs incurred for litigating both entitlement to fees and the amount of attorney's fees.

18. **Counterparts.** This Agreement may be executed in any number of duplicate originals or counterparts by the Parties, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute but one and the same instrument. A copy of any signature on a signature page or a signature by facsimile or email transmission shall be valid and binding as an original signature.

19. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior or contemporaneous written or oral offers, proposals, representations, understandings or agreements among them. There are no oral agreements among the Parties that exist or are of any force and effect. . The Parties hereby agree that the provision of this Agreement, including without limitation the representations, warranties, covenants and releases made herein, shall survive the execution of this Agreement and the performances by the Parties of their respective obligations under this Agreement.

20. **Further Assurances.** At any time and from time to time after the date hereof, each Party shall, at its own cost and expense, execute, deliver and acknowledge such other documents and take such further actions as may be reasonably requested by the other Party in order to fully perform such Party's obligations as contemplated hereby. No obligation provided for under this Agreement may be assigned without the express written consent of the Party to whom such obligation is owed and the City.

21. **No Other Modifications.** No modification or addition to this Agreement will be valid unless in writing, specifically referring to this Agreement and signed by all of the Parties to

this Agreement, it being expressly agreed that this Agreement cannot be modified orally, by course of dealing or by implied agreement.

22. **Time is of the Essence.** Time is of the essence for the performance of the obligations under this Agreement and no party shall unreasonably delay the conclusion of the transaction(s) required hereunder.

23. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the substantive laws of the State of Florida, without reference to conflict of laws principles.

24. **Venue.** The exclusive venue for all legal proceedings shall be in Miami-Dade County, Florida. The Parties agree not to assert any defense to any action or proceeding initiated in connection with the enforcement of this Agreement based upon improper venue or inconvenient forum. The Parties agree that the Court shall retain jurisdiction to enforce the terms of this Agreement.

25. **JURY WAIVER.** EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

26. **Severability.** If any one or more of the provisions contained in this Agreement shall be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect. . Accordingly, any part, provision, representation or warranty of this Agreement that is prohibited or unenforceable, or is held by a court of competent jurisdiction to be void or unenforceable, in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining parts, provisions, representations or warranties herein, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereby knowingly, intelligently and voluntarily waive any provision of law that prohibits or renders void or unenforceable any part, provision, representation or warranty hereof.

27. **Headings.** The headings of paragraphs in this Agreement are for convenience of reference only and shall not in any way affect the interpretation or construction of this Agreement.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

[SIGNATURES ON NEXT PAGE]

**CITY**

CITY OF CORAL GABLES

By: \_\_\_\_\_

Peter Iglesias

Its: City Manager

**CORAL GRAND**

Coral Grand LLC

By: \_\_\_\_\_

Name: Nicolas Di Donato

Title: Manager

Date: April 21, 2022

**ATHLETIC CLUB**

Coral Gables Athletic Club, LP

By: \_\_\_\_\_

Name: Anthony Di Donato

Title: as Manager of CGAC, Inc., its General Partner

Date: April 21, 2022