

**CITY OF PALM BAY
GRANT AGREEMENT
COMMERCIAL PROPERTY ENHANCEMENT PROGRAM (CPEP)**

THIS GRANT AGREEMENT is made this ____ day of _____, **2024** by and between the **City of Palm Bay**, whose address is 120 Malabar Road NE, Palm Bay, Florida 32907 ("City") and **Malabar Pharmacy LLC**, whose principal address is, **930-1 Malabar Rd SE, Palm Bay, FL 32907** ("Grantee").

RECITALS:

WHEREAS, the City has implemented the Commercial Property Enhancement Program (CPEP), the primary purpose of which is to improve the aesthetics and economic order of the community, thereby promoting the public interest, by making matching grants to property owners and/or tenants or lessees of commercial property within the City of Palm Bay;

WHEREAS, a further objective of the CPEP is to upgrade and preserve the aesthetic appearance and/or structural integrity of commercial buildings located within the City of Palm Bay limits in order to reduce blight and make the City more conducive to private investment by providing funding incentives to undertake permanent property improvements to commercial building exteriors in the City of Palm Bay;

WHEREAS, the City believes the CPEP will thereby stimulate increased business opportunities within the City, improve property values, increase tax revenues, and improve employment opportunities;

WHEREAS, grants provided by the City shall be on a dollar-for-dollar matching basis, matching the investment made by the owner or owners of a particular parcel of commercial property; and

WHEREAS, Grantee has submitted an application under the CPEP which the City believes meets the criteria and purposes as outlined by the program.

NOW THEREFORE, in consideration, the mutual covenants and provisions hereof, and other good, and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties desiring to be legally bound do hereby agree as follows:

1. **Recitals.** Each of the foregoing recitals is hereby incorporated herein and

declared to be true and correct.

2. **Property Subject to Grant Agreement.** The real property to be benefited by this grant and that is subject to this Grant Agreement is described on **Exhibit A**, a copy of which is attached hereto and incorporated herein by this reference.

3. **Grant Awarded.**

(a) The Grantee is hereby awarded a grant pursuant to the City of Palm Bay CPEP. All regulations of the CPEP shall be adhered to by the City and the Grantee. The maximum amount of the grant is described in the attached **Exhibit B**. Under no circumstances shall the amount of money granted for qualifying facade improvements under the CPEP to the Grantee exceed the amount set forth in **Exhibit B** as the Maximum of Amount of Grant as approved by City Council or otherwise aggregately exceed the sum of **Amount of Grant approved (\$8,882.50)**. Grantees shall be awarded a maximum of one (1) grant per address. Grant funds shall only be paid by the City on a reimbursement basis for qualified approved facade improvements described on **Exhibit B**.

(b) Funds subject to this Grant shall be paid to the Grantee by the City only upon completion of all work. The City Council may award an amount less than \$10,000 and reimbursements would be provided based upon the amount approved by City Council, or 50 percent of the total cost, whichever is less. Completion of all work, as that term is utilized in this Grant Agreement, shall constitute issuance of a final inspection, certificate of completion, or similar instrument, issued by the City of Palm Bay's Building Department (if required) for the facade improvement work subject to this grant. All work shall be in compliance with zoning and design restrictions applicable to the Property.

To be reimbursed, the Grantee shall provide to the City of Palm Bay Office of Community and Economic Development on behalf of the City, paid receipts from laborers, suppliers, materialmen, contractors, and sub-contractors. The receipts must include the following information: 1) Name, address, and telephone number of laborer, supplier, materialmen, contractor, or sub-contractor performing work or supplying material; 2) Date of work or material provided; 3) Description of property upon which the work was provided or to which the material was delivered; 4) Itemized description of work provided (e.g. - who performed the work, how many hours involved, charge for work, type of work performed) or material supplied (e.g. - number of gallons of paint, quantity and measurements for each new dome style awning, 26 feet of 6' fence, one (1) 6'H x 10' W double gate; description of LED wall pack, etc.); 5) Itemized cost of work performed or material supplied; 6) Statement of what work or material was for (e.g. - supplied 2 coats of coal tar emulsion sealer with sand and latex additive to cover approximately 10,647 square feet of asphalt surface; supplied 26 feet fence for privacy fence to hide parking lot dumpster; number and measurements for privacy fence gate; labor time spent and LED wall pack etc. for parking lot lighting); and 7) Statement signed by laborer, supplier, materialmen, contractor, or sub-contractor that the amount billed has

been paid by the Grantee. The paid receipts are subject to City review and approval for application to this grant. In no event shall more than 50% of the amount noted on a City approved paid receipt be reimbursed to the Grantee.

(c) All work subject to this Grant Agreement must be substantially completed within 365 days of the date of this Grant Agreement is executed. One (1) extension may be granted by the Community and Economic Development Director upon written valid request by the Grantee.

(d) By execution of this Grant Agreement, the Grantee acknowledges that only State of Florida/Brevard County contractors licensed pursuant to Chapter 489, Florida Statutes, or as otherwise exempted under Section 489.103, Florida Statutes, shall be used to perform the work, and that all legally required permits, certifications, licenses, and insurance shall be obtained for the work to be performed.

(e) Reimbursement shall be denied for any instance in which the terms of this Grant Agreement have been violated.

4. **Warranty of Grantee: Maintenance: Covenant Running with the Land.**

(a) Grantee agrees and warrants to the City that the funds reimbursed pursuant to this grant shall only be spent for purposes as approved in **Exhibit B**.

Grantee covenants and warrants that all improvements approved for matching funds under this Grant Agreement shall be maintained and preserved for a minimum of five (5) years. The obligation to maintain the improvements for a minimum of five (5) years shall be binding upon successors and assigns and is intended to be a covenant running with the land. Grantee shall be required to sign the Covenant attached hereto as **Exhibit C**, which shall be recorded in the Public Records of Brevard County, Florida. If the City determines that said improvements are not being properly maintained during said five (5) – year period, the Grantee agrees that it is liable to and shall immediately reimburse the City for the entire amount of this CPEP Grant. Grantee shall be required to refund the amount to the City within thirty (30) days of receiving the demand.

(b) The Grantee hereby agrees to pay for any costs of recordation of the Declaration of Covenants with the Brevard County Clerk of Courts, and the recorded original hereof shall be returned to the City for filing in its records.

(c) The Grantee covenants and warrants that it shall continuously keep the buildings and other improvements now or hereafter existing, erected and located on said premises insured against loss or damage resulting from fire, windstorm, extended coverage and such other hazards, casualties and contingencies and perils for the five-year maintenance period in such a form and amount as may from time to time be required by the City, but not less than full insurable value. All such insurance

shall be carried with such company or companies as may be reasonably acceptable to the City and the original policy or policies and renewals thereof (or, at the option of the City, duplicate originals, or certified copies thereof) together with receipts evidencing payment of the premium therefore shall be deposited with, held by and are hereby assigned to the City as additional security for the indebtedness secured hereby. Each such policy of insurance shall contain a loss payable clause in favor of and in form reasonably acceptable to the City and shall provide for not less than thirty (30) days prior written notice of modification, cancellation, termination, or expiration to the City. In the event of loss by reason of the hazards, casualties, contingencies, and perils for which insurance has been required by the City, at its option, may make proof of loss if not made promptly by the Grantee.

5. **Grantee is an Independent Contractor.** It is specifically understood and agreed to by and between the parties hereto that in utilizing the funds hereunder, that this grant award, and relationship between the City and the Grantee is one in which the Grantee is an independent contractor of the City and not an agent, employee, joint venture, or other partner of the City of Palm Bay. Nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Grant Agreement shall be interpreted or construed to constitute the Grantee, or any of its agents, volunteers, or employees to be the agent, employee, partner, or representative of the City of Palm Bay.
6. **Grantee's Signatory.** The undersigned person executing this Grant Agreement on behalf of the Grantee hereby represents and warrants that he/she has the full authority to sign said Grant Agreement for the Grantee and to fully bind the Grantee to the terms and conditions set forth in this Grant Agreement. If Grantee is a tenant or lessee of the Property, property owner's written consent to the enhancement improvement application is required, along with a copy of the lease agreement. Both the property owner and the tenant or lessee will be required to sign this grant agreement.
7. **Record retention: Public records: Accounting: Inspection.**
 - (a) Financial records, supporting documentation, statistical and all other records pertinent to this Grant Agreement shall be retained for a period of at least five (5) years (365 days = 1 year) after final payment by the City of any grant funds, except that in all cases such records shall be retained until final resolution of matters resulting from any litigation, claim, or audit initiated prior to the expiration of the five year retention period and shall continue to be subject to retention until the same is resolved to the satisfaction of the City.
 - (b) Pursuant to Chapter 119, Florida Statutes, the Grantee agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of the Grantee related, directly or indirectly, to this Grant Agreement and made or received pursuant to law or

Florida Statutes, whether in the possession or control of City or the Grantee, and may not be destroyed without the specific written approval of the City's designated custodian of public records. The Grantee shall provide the City, upon request from the City, copies of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. The Grantee agrees to comply with public records laws. Should the City not possess public records relating to this Grant Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify the Grantee of the request and the Grantee shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. All public records in connection with this Grant Agreement shall, at any and all reasonable times during the normal business hours of the Grantee, be open and freely exhibited to the City for the purpose of examination, audit, or otherwise. If the Grantee fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Grantee's failure to comply with this Section, the City shall collect from Grantee prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Grantee. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Grantee's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Grant Agreement.

(c) Grantee financial records shall be prepared and maintained in accordance with generally accepted accounting practices and available for inspection by the City or its authorized representatives at all reasonable times. Grantee agrees that it may be audited for internal performance or accounting matters at any time by the City to assure compliance with this Grant Agreement. Any monies finally determined as a result of any financial review or audit which are misspent or otherwise not spent as provided for in this Grant Agreement shall be immediately returned to the City. Prior to making any final determination of misspending or failure to comply with this Grant Agreement by the Grantee, the City shall coordinate with the Grantee to allow the Grantee an opportunity to explain its actions or otherwise provide compliance with this Grant Agreement.

(d) City staff is authorized to conduct an inspection of the property at any time during regular business hours of the property to ensure improvements are maintained in accordance with this Grant Agreement. The City agrees that any inspection shall be coordinated with the property owner or tenant and conducted in a manner so as to minimize interference with the business of the property owner or tenant.

8. **Indemnification and Hold Harmless.** The Grantee agrees to the fullest extent permitted by law, to indemnify and hold harmless the City, its employees, officers, and attorneys from and against all claims, losses, damages, personal injuries

ordinance or in connection with the transaction of official business by the City may be deemed to be a public record and subject to the provisions of Chapter 119,

(including but not limited to death), or liability (including reasonable attorney's fees), directly or indirectly arising from the acts, inactions, errors, omissions, intentional or otherwise, arising out of or resulting from: (i) any act or omission on the part of the Grantee, its officers, agents, employees, volunteers, or invitees in the construction, reconstruction, or building of any improvement for which City funds might be reimbursed pursuant to this Grant Agreement;

(ii) by reason of any breach, violation or nonperformance of any condition or covenant in this Grant Agreement on the part of the Grantee; (iii) injury and negligence based on a failure to train or supervise workers, employees, contractors, volunteers, or agents of the Grantee in performing services or supplying material for work that is to be reimbursed pursuant to this Grant Agreement; (iv) failure of the Grantee, or its employees, agents, or volunteers, to employ safety measures in the performance of work that is to be reimbursed pursuant to this Grant Agreement; (v) injury or negligence of any person arising from the work or material supplied that is subject to reimbursement pursuant to this Grant Agreement; or (vi) failure to follow or correctly follow directions of the State or any other governmental entity.

The indemnification provided above shall obligate the Grantee to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its employees, officers, and attorneys which may result from the acts or omissions stated above under this Grant Agreement whether performed by the Grantee, anyone directly or indirectly employed by the Grantee, or anyone otherwise authorized to act, in any manner, on their behalf. In all events, the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with this indemnification provided herein. This indemnification provision shall survive termination of the Grant Agreement.

9. Applicable Law/Notice.

(a) This grant award and the attachments hereto shall be governed by the law of the State of Florida. Venue shall only be properly placed in Brevard County, Florida for state court actions and Orlando, Florida for federal actions.

(b) All notices, demands, requests, instructions, approvals, and claims shall be in writing. All notice of any type hereunder shall be given by U.S. mail or by hand delivery to an individual authorized to receive mail for the below listed individuals, all to the following individuals at the following locations:

TO THE CITY OF PALM BAY:

City of Palm Bay
Community & Economic Development
120 Malabar Road NE, Florida 32907

TO THE GRANTEE:

Malabar Pharmacy LLC
Ronak A. Shah
930-1 Malabar Road SE, Florida 32907

Notice shall be deemed to have been given and received on the date the notice is physically received if given by hand delivery or first-class U.S. mail, postage prepaid, as addressed above. Notice shall be deemed to have been given and received on the date the notice is mailed, if given by certified mail, return receipt requested, postage prepaid, as addressed above. Any party hereto by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which notice is to be received.

10. **Interpretation.** Both the City and the Grantee have participated in the drafting of all parts of this Grant Agreement. As a result, it is the intent of the parties that no portion of this Grant Agreement shall be interpreted more harshly against either of the parties as the drafter.
11. **Amendment of Grant Agreement.** Modifications or changes in this Grant Agreement must be in writing and executed by the parties bound to this Grant Agreement.
12. **Severability.** Invalidation of any one word, clause, sentence, or paragraph, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other words, clauses, sentences, or paragraphs, all of which shall remain in full force and effect, and this Grant Agreement shall be read as if said invalidated word, clause, sentence, or paragraph did not exist.
13. **Attorney's Fees.** In the event any litigation or controversy arises out of or in connection with the parties hereto, each party shall bear their own costs and attorney's fees. Notwithstanding the foregoing, should the City determine that the Grantee must reimburse the City in the amount of the Grant for failure to maintain the improvements in accordance with this Grant Agreement, the Grantee shall be responsible for all related costs and attorney's fees incurred by the City as to any related litigation or controversy.
14. **Entire Grant Agreement.** This Grant Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or Agreements, either oral or written, and all such matters shall

be deemed merged into this Grant Agreement.

15. **Sovereign Immunity.** The City intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Grant Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Grant Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00). Nothing in this Grant Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Grant Agreement.
16. **Headings.** The headings used in this Grant Agreement are for reference only and shall not be relied upon nor used in the interpretations of this Grant Agreement.

IN WITNESS WHEREOF, the City and Grantee have set forth their signatures on the day and year written below.

Witnesses: _____ Print Name: _____ _____ Print Name: _____	GRANTOR: CITY OF PALM BAY By: Suzanne Sherman, City Manager Signature: _____
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STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____ 2024 by **Suzanne Sherman, City Manager of PALM BAY**, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

Notary Public Signature

Typed or Printed Notary Name

[This area left intentionally blank, signatures on next page]

Witnesses: <hr/> Print Name: <hr/> <hr/> Print Name: <hr/>	GRANTEE: <hr/> Print Name: <hr/> Title: <hr/> Signature <hr/> PROPERTY OWNER: <hr/> Print Name: <hr/> Title: <hr/> Signature: <hr/>
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STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024 by _____ of _____, who is personally known to me or who has produced _____ as identification.

(NOTARY SEAL)

Notary Public Signature

Typed or Printed Notary Name

[This area left intentionally blank]

EXHIBIT A

DESCRIPTION OF REAL PROPERTY SUBJECT TO GRANT AGREEMENT

Street Address(es): 930 Malabar SE, Palm Bay, FL 32907 .

Owner: Brevard Specialty Pharmacy LLC

Legal Description of Real Property: A parcel of land lying in the Northeast 1/4 of Section 5, Township 29 South, Range 37 East, Brevard County, Florida, being a part of the North 1/2 of Lot 29 of the plat of "Florida Indian River Land Company Subdivision" as recorded in Plat Book 1, pages 164 and 165 of the public records of Brevard County, Florida, being more fully described as follows:

Commence at the Northwest corner of said Northeast 1/4 of said Section 5; thence South 00 degrees 31 minutes 58 seconds East, along the West line of said Northeast 1/4, a distance 33.00 feet to a point on the South right-of-way line of State Road 514 (Malabar Road); thence South 89 degrees 33 minutes 46 seconds East along said South right-of-way line, a distance of 250.10 feet to the POINT-OF-BEGINNING; thence continue South 89 degrees 33 inutes 46 seconds East along said South right-of-way line, a distance of 200.00 feet; thence South 00 degrees 36 minutes 00 seconds East, a distance of 300.00 feet; thence North 89 degrees 33 minutes 46 seconds West, parallel with said South right-of-way line, a distance of 200.00 feet; thence North 00 degrees 36 minutes 00 seconds West, a distance of 300.00 feet, to the POINT-OF-BEGINNING.

EXHIBIT B

GRANT DESCRIPTION

Maximum Amount of Grant as Approved: \$8,882.50 .

Items to be Improved
Pursuant to Approved Grant

Cost of Items
to be Improved

1. Removal and installation of monument and building signage, as well as a new LED system for signage

\$17,765.00

Total: \$ 17,765.00

EXHIBIT C

City of Palm Bay RESTRICTIVE COVENANTS

Commercial Property Enhancement Program (CPEP)

THESE COVENANTS are entered into this ____ day of _____, 2024, by **Brevard Specialty Pharmacy LLC**, hereinafter referred to as the Owner, and shall be effective for a period of five years from the date of recordation by the Clerk of the Circuit Court of Brevard County, Florida.

RECITALS

WHEREAS, the Owner is the fee simple titleholder of the Property located at **930 Malabar Road SE, Palm Bay, FL 32907** Brevard County, Florida, as legally described in Exhibit A, attached to and made a part hereof; and

WHEREAS, the Owner is a grant recipient and is to receive Commercial Façade Improvement Program assistance funds administered by the City of Palm Bay, 120 Malabar Road NE, Palm Bay, FL 32907, hereinafter referred to as the City, in the amount not to exceed **\$9,504.28**, to be used for the improvement of the Property of the Owner as described in Exhibit A; and

WHEREAS, said City funds have been or will be expended for the purpose of improving the façade of the building(s) located on Owner's Property in order to reduce blight and make the City of Palm Bay more conducive to private investment; and

NOW THEREFORE, as part of the consideration for the City grant, the Owner hereby makes and declares the following restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for a period stated in the preamble above:

1. The Owner agrees to maintain and preserve all improvements located on the Property approved for grant funding by the City.
2. The Owner agrees that no modifications will be made to the Property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the City.
3. The Owner agrees that any modifications to the Property shall be made in a manner consistent with the applicable zoning and design regulations of the City of Palm Bay.
4. The Owner agrees that the City of Palm Bay, its agents and its designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether the conditions of the Grant Agreement and these covenants are being observed.
5. The Owner agrees that these restrictions shall encumber the property for a period of five years from the date of recordation, and that if the restrictions are violated within the five-year period, the City shall be entitled to demand return of the entire grant amount, plus interest at the promulgated Prime rate at the time of default, which shall be refunded within thirty (30) days of receiving the demand.
6. The Owner agrees to file these covenants with the Clerk of the Circuit Court of Brevard County, Florida, and shall pay any and all expenses associated with their filing and recording prior to reimbursement of City funds.
7. The Owner agrees that the City shall incur no tax liability as a result of these restrictive covenants.

IN WITNESS WHEREOF, the Owner has read these Restrictive Covenants and has

hereto affixed their signature.

WITNESSES:

Witness Signature

OWNER Signature

Witness Name Typed/Printed

Owner's Address

Witness Signature

City

State

Zip

Witness Name Typed/Printed

The State of Florida

County of: _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that by ☐ physical means or ☐ online notarization, _____, personally appeared as:

_____ for _____
(Title) (Name of Corporation/Business)

known to me to be or who proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument:

Type of Identification Produced: _____

Executed and sealed by me _____, Florida on _____,
in 2024.

Notary Signature

Notary Name Printed

The State of: _____

My commission expires: _____

[SEAL]

EXHIBIT A of RESTRICTIVE COVENANTS

Legal Description of Property

Parcel 1: A parcel of land lying in the Northeast 1/4 of Section 5, Township 29 South, Range 37 East, Brevard County, Florida, being a part of the North 1/2 of Lot 29 of the plat of "Florida Indian River Land Company Subdivision" as recorded in Plat Book 1, pages 164 and 165 of the public records of Brevard County, Florida, being more fully described as follows:

Commence at the Northwest corner of said Northeast 1/4 of said Section 5; thence South 00 degrees 31 minutes 58 seconds East, along the West line of said Northeast 1/4, a distance 33.00 feet to a point on the South right-of-way line of State Road 514 (Malabar Road); thence South 89 degrees 33 minutes 46 seconds East along said South right-of-way line, a distance of 250.10 feet to the POINT-OF-BEGINNING; thence continue South 89 degrees 33 inutes 46 seconds East along said South right-of-way line, a distance of 200.00 feet; thence South 00 degrees 36 minutes 00 seconds East, a distance of 300.00 feet; thence North 89 degrees 33 minutes 46 seconds West, parallel with said South right-of-way line, a distance of 200.00 feet; thence North 00 degrees 36 minutes 00 seconds West, a distance of 300.00 feet, to the POINT-OF-BEGINNING.

Brevard County, Florida as listed in Brevard County Property Appraiser records.