



GLEN MANOR HOUSE
EXCLUSIVE VENUE CATERING AND MANAGEMENT AGREEMENT
RUSSELL MORIN CATERING & EVENTS
&
TOWN OF PORTSMOUTH

DATED: _____, 2022 (THE "EFFECTIVE DATE")

ARTICLE I

Reference Data

1.1 Subjects Referred To. Each reference in this Exclusive Venue Catering and Management Agreement (the “Agreement”) to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section.

COMMENCEMENT DATE January 1, 2023

PREMISES
AND VENUE: The land and grounds with the buildings and improvements thereon located at:
Glen Manor House
3 Frank Coelho Drive
Portsmouth, RI 02781
(hereinafter the “Venue”)
(See Attachment A)

VENUE OWNER: The Town of Portsmouth
2200 East Main Road
Portsmouth, RI 02871
(hereinafter “the Town”)

CATERER AND
VENUE MANAGER: Morin’s, Inc., d/b/a Russell Morin Catering & Events
95 Frank Mossberg Drive
Attleboro, MA 02703
(hereinafter “RMCE”)

TERM: Approximately Five (5) years as further defined in Section 2.2.

FIXED ANNUAL
EXCLUSIVITY FEE: \$180,000.00 paid in equal monthly installments of \$15,000.00.

PERMITTED USES: Exclusive catering and management of the Venue.

1.2 Exhibits. The exhibits listed below in this section are incorporated in this Agreement by reference and are to be construed as part of this Agreement:

Exhibit 1: Town of Portsmouth Request for Proposals, RFP #P22-05 – Operation and Management Services for the Glen Manor House

Exhibit 2: RMCE’s Response to RFP #P22-005 (“RMCE’s Proposal”)

Attachment A: Physical Area of RMCE Authority

ARTICLE II

Venue and Term

2.1 Venue. The Town hereby agrees that RMCE shall be the sole and exclusive caterer, operator, and manager of the Venue, subject to and with the benefit of the terms, covenants, conditions and provisions of this Agreement. The Town grants RMCE permission to enter upon and use the Venue for the purposes of providing the services under this Agreement. This is an Agreement for services and shall not create any tenancy or landlord-tenant relationship between the Town and RMCE and shall not transfer or convey to RMCE any estate or property interest in the premises and Venue. The Town and its agents and representatives retain the right to enter all portions of the Venue to conduct inspections and observe RMCE's operations and the performance of RMCE's services under this Agreement. Provided, however that such inspections by the Town shall not interfere with RMCE events at the Venue, RMCE shall provide keys to the Town for such purpose.

2.1.1 Physical Area of the Agreement.

The area under RMCE authority is shown in Attachment A (designated as "GMH RMCE Agreement Area"). The adjacent area to the north (designated as "Elmhurst Park") is under the control of the Town as a recreational area. RMCE may use, on a nonexclusive basis, the associated Elmhurst Parking Area for RMCE events.

2.2 Term. This Agreement is effective as of the Effective Date, and shall terminate on June 30, 2028, unless sooner terminated as hereinafter provided under Article VII, or as extended under Article VI (hereinafter, the "Term").

2.3 Transition Assistance and Cooperation. The current Glen Manor House Resident Managers' Contract (the "RMC"), which expires on December 31, 2022, provides in section 2.27, as follows:

2.27 Transition Cooperation. The Resident Managers agree to cooperate with and assist the Town and any successor manager(s) or operator(s) of the Glen Manor House for a period of six (6) months prior to the expiration of the contract period in order to ensure an orderly transition and to minimize any disruption of the Glen Manor House and its business operations.

RMCE shall seek and obtain such assistance and cooperation from the outgoing Resident Managers (as defined in the RMC), to the extent it deems necessary, in order to ensure that RMCE will be fully prepared to perform its obligations under this Agreement upon the January 1, 2023 Commencement Date. If in RMCE's reasonable determination the Resident Managers are not providing necessary transition assistance, RMCE shall immediately inform the Town. The Town agrees to begin renovations of the Resident Managers' living quarters on or about January 2, 2023 and to complete such renovations as soon as practicable.

RMCE agrees to cooperate with and assist the Town and any successor catering manager(s) or operator(s) of the Venue for a period of six (6) months prior to the expiration of the Term in order to ensure an orderly transition and to minimize any disruption of the Venue and its business operations. The Town agrees that RMCE will be allowed to provide catering services for all RMCE events that were booked prior to the cessation of this Agreement.

ARTICLE III

Fees and Payments

3.1 The Fixed Annual Exclusivity Fee. RMCE covenants and agrees to pay the Town at the Portsmouth Town Hall, 2200 East Main Road, Portsmouth, RI 02871, Finance Department or such other place as the Town may by notice in writing to RMCE from time to time direct, the “Fixed Annual Exclusivity Fee” of \$180,000.00 during each year of the Term, in equal installments of 1/12th of the Fixed Annual Exclusivity fee for each such year, \$15,000, in advance on the First day of each calendar month of the Term. If applicable, payments for periods of less than one (1) month shall be prorated.

3.2 Additional Fees and Payments. RMCE further covenants and agrees to pay the following with respect to the Venue as herein provided.

(a) Caretaker. RMCE will, at its sole and exclusive expense, hire a caretaker, (hereinafter “Caretaker”) for the Venue who will oversee the operation, maintenance, upkeep, security, and cleanliness of the Venue, as set forth and described at pp. 17-18 of RMCE’s Proposal submitted in response to the Town’s RFP #P22-05. Such Caretaker shall solely be an employee of RMCE, and not the Town. (See Exhibit 2) The parties agree RMCE shall at all times provide the Town with the full twenty-four-hour contact information for the Caretaker. The Town reserves the right to obtain a background check and Bureau of Criminal Identification and Investigation (BCI) for such Caretaker and reserves the right to reject such Caretaker based on negative results as determined by the Town in its reasonable discretion. The Caretaker and one other person may reside in the Venue in the residential quarters on the third floor of the Glen Manor House and have use

of the laundry room. No smoking is allowed. No pets are allowed. Additional occupants may be permitted with the prior written approval of the Town.

(b) Capital Fund Commitment. RMCE will annually contribute \$30,000.00 to a Glen Manor Capital Fund (to be incorporated as part of the Town Capital Improvement Plan) for the purpose of capital improvements, intended to increase the Venue's desirability for weddings, benefits, parties, galas and events. Capital improvement means permanent durable upgrades, adaptations, or enhancements of the Venue that increase or preserve its value, including but not limited to structural improvements, changes, or restorations. Prior to the Commencement Date, and on each year thereafter, RMCE and the Town will jointly perform a site walkthrough to identify potential capital improvements and/or site deficiencies to be addressed through the Glen Manor Capital Fund. Further, the Town may continue funding capital improvements from its own revenues per its Capital Improvement Plan in keeping and consistent with its past practice, but subject to amounts determined by the Town on a yearly basis during its budget process.

(c) Food & Beverage Commission. RMCE will annually pay the Town a food and beverage commission on Gross Sales of food and beverage. "Gross Sales" means the gross dollar amount billed or invoiced by RMCE relating to the provision of its food and beverage catering services. Gross sales shall not include staffing fees, administrative fees, service charges or rental fees billed by RMCE. The commission percentage shall be based on aggregate Gross Sales made on an annual calendar-year basis, as follows:

- 2.5% commission on Gross Sales between \$750,000.00 and \$1,250,000.00;
- 3.0% commission on Gross Sales between \$1,250,000.00 and \$1,750,000.00;
- 3.5% commission on Gross Sales over \$1,750,000.00.

The RMCE annual \$30,000.00 of in kind contributions shall be excluded from such calculation and commission.

(d) Community Events. RMCE will annually contribute a cumulative total of \$30,000.00 of in-kind event and catering services to mutually agreed upon community events, not to exceed five such events per year. Such events will be scheduled by mutual agreement on dates which do not interfere with RMCE's event schedule at the Venue.

(e) Insurance. RMCE shall take out and maintain throughout the Term the following insurance protecting the Town and naming the Town as insured:

Comprehensive liability insurance, including dram Shop liability, indemnifying the Town and RMCE against all claims and demands for any injury to person or property which may be claimed to have occurred on the Venue or on the sidewalks or ways adjoining the Venue, in amounts which shall, at the beginning of the Term, be at least equal to the limits set forth by the Town's Insurance provider (Rhode Island Interlocal Risk Management Trust) and, from time to time during the Term, shall be for such higher limits, if any, as are customarily carried in the area in which the Venue are located on property similar to the Venue and used for similar purposes; and workmen's compensation insurance with statutory limits covering all of RMCE's employees working on the Venue.

(f) Utilities and Services. RMCE shall pay directly to the proper authorities charged with the collection thereof all charges for water, wastewater, fuel, gas, electricity, cable, internet, telephone, solid waste disposal and other utilities or services used or consumed on the Venue, whether called charge, tax, assessment, fee or otherwise, including, without limitation, water and sewer use charges and taxes, if any, all such charges to be paid as the same from time to time become due. It is understood and agreed that RMCE shall make its own arrangements for such

utilities and that the Town shall be under no obligation to furnish any utilities to the Venue and shall not be liable for any interruption of failure in the supply of any such utilities to the Venue. In the event the water bill must stay in the Town's name, RMCE agrees to pay the same upon presentment by the Town.

(g) Financial Reporting and Audits. RMCE shall, on a quarterly basis, provide the Town with a financial statement, certified as true and accurate by a licensed public accountant and in a form and manner which conforms with industry standards and practices and is acceptable to the Town, which shall contain a detailed accounting and reporting of all receipts and revenues and commission calculations related to and/or for the Venue.. The Town shall have the right at all reasonable times to conduct such audits as it deems necessary and to examine and copy RMCE's books and records relating to and/or for the Venue. RMCE agrees to make all such records and books, available to the Town upon request, and to allow interviews of any officers, employees and representatives who might reasonably have information relating to such records.

ARTICLE IV

RMCE's Additional Covenants

4.1 Affirmative Covenants. RMCE hereby covenants at its expense at all times during the Term and such further time as RMCE occupies the Venue or any part thereof:

(a) Perform Obligations. To perform promptly all of the obligations of RMCE set forth in its Proposed Business Model and Operations Plan at pp. 7 through 10 of RMCE's Proposal and in this Agreement, (Exhibit 2); and to pay when due the Fixed Annual Exclusivity Fee under Section 3.1 and Additional Fees and Payments under Section 3.2 and all charges, rates and other sums which by the

terms of RMCE's Proposed Business Model and Operations Plan and this Agreement are to be paid by RMCE.

(b) Use. To use the Venue only for the Permitted Uses, and from time to time to procure all licenses and permits necessary therefor.

(c) House and Grounds Repair and Maintenance. RMCE agrees to maintain the Venue as specified in page 9 and 17 of RMCE's Proposal, (Exhibit 2 including Service Proposal regarding scope of work pp 27-29), using experienced vendors and professional landscapers who can commit to maintaining the current look and feel of the Venue. RMCE commits to keep the entire Venue including, without limitation, the grounds, buildings and all structural elements thereof, in good order and repair, reasonable use and wear and damage by fire or casualty only excepted; and to make all repairs and to do all other work necessary for the foregoing purposes. It is further agreed that the exception of reasonable use and wear shall not apply so as to permit RMCE to keep the Venue in anything less than suitable and efficient and usable condition considering the nature of the Venue and the use reasonably made thereof, or in less than good repair.

Such obligations of general repair and maintenance shall not include capital improvements to the Venue, which capital improvements shall remain the responsibility of the Town, nor shall it include correcting any deficiencies of the Venue existing prior to the Commencement Date. Provided, however, that RMCE will annually contribute \$30,000.00 to the Glen Manor Capital Fund as set forth in 3.2(b) above. RMCE agrees to supervise contractors for major repairs.

(d) Compliance with Law. To make all repairs, alterations, additions or replacements to the Venue required by any law or ordinance or any order or regulation of any public authority; to keep the Venue equipped with all safety appliances so required; and to comply with the orders and regulations of all governmental authorities, except that RMCE may defer

compliance so long as the validity of any such law, ordinance, order or regulation shall be contested by RMCE in good faith and by appropriate legal proceedings, if RMCE first gives the Town appropriate assurance against any loss, cost or expense on account thereof.

(e) Payment for RMCE's Work. To pay promptly when due the entire cost of any work to the Venue undertaken by RMCE so that the Venue shall at all times be free of liens for labor and materials; to procure all necessary permits before undertaking such work; to do all such work in a good and workmanlike manner, having first complied with the provisions of Section 4.2(c) hereof, employing materials of good quality and complying with all governmental requirements and to save the Town harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or growing out of such work.

(f) Indemnity and Liability Insurance. To assume exclusive control of the Venue and all tort liabilities incident to the control or leasing thereof, and to defend, indemnify and save harmless from all injury, loss, claim or damage to or of any person or property while on the Venue or any area adjacent to the Venue unless arising from any omission, fault, negligence or other misconduct of the Town; and to defend, indemnify and save the Town harmless from all injury, loss, claim or damage to or of any person or property anywhere occasioned by any omission, fault, neglect or other misconduct of RMCE.

(g) Personal Property at RMCE's Risk. That all furnishings, fixtures, equipment, effects and property of every kind, nature and description of RMCE and of all persons claiming by, through or under RMCE which, during the continuance of this Agreement or any occupancy of the Venue by RMCE or anyone claiming under RMCE, may be on the Venue, shall be at the sole risk and hazard of RMCE, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes,

or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or to be borne by the Town.

(h) Inventory/Town equipment. The Town will provide a written spreadsheet of its inventory and equipment presently used at the Venue (“Inventory”) and make all such Inventory available to RMCE for its use. By way of example, the Inventory includes grounds equipment, a golf cart, snow blower, mowers, hedge trimmers, tables, chairs and the like. The personal property and equipment are supplied in an “as is” condition and at no additional cost. Any repairs or replacements needed by RMCE shall be the obligation of RMCE. Any such Inventory remaining at the end of this Agreement shall remain the property of the Town.

(i) Payment of the Town's Cost of Enforcement. To pay on demand the Town's expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of RMCE under this Agreement or in curing any default by RMCE under this Agreement as provided in Section 7.4.

(j) Yield Up. At the expiration of the Term or earlier termination of this Agreement, to surrender all keys to the Venue, to remove all of its trade fixtures and personal property in the Venue, to remove such installations made by it as the Town may request and all RMCE's signs wherever located, to repair all damage caused by such removal and to yield up the Venue (including all installations and improvements made by RMCE except for such of said installations or improvements as the Town shall request RMCE to remove) broom-clean and in the same good order and repair in which RMCE is obliged to keep and maintain the Venue by the provisions of the Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by the Town in such manner as the Town shall determine and RMCE shall pay the Town the entire cost and expense incurred by it in effecting such removal

and disposition and in making any incidental repairs and replacements to the Venue and for use and occupancy during the period after the expiration of the Term and prior to its performance of its obligations under this Section 4.1(j). RMCE shall further indemnify the Town against all loss, cost and damage resulting from RMCE's failure and delay in surrendering the Venue as above provided.

Any prepaid venue deposits for any events that will take place after the termination of this Agreement shall be paid by RMCE to the Town. RMCE will work with the Town on the timing and payment of these Venue deposits. Venue deposits held by the Town for future events booked by the Town for events occurring after the Commencement Date, shall be credited to RMCE by the Town. The Town through its finance department will work with RMCE on the timing and funding of these Venue deposits.

(k) Public Access and Town Use.

(1) RMCE will continue to support the following community events each year

- (a)(i) Mistletoe Madness Ball (first Friday in December)
- (a)(ii) Christmas Open House (second Sunday in December)
- (b) Summer Pops Concert Friends of the Glen (Thursday in July)
- (c) Police awards & Banquets (TBD)
- (d) Friends Annual Social (TBD)

RMCE and the Town agree to schedule dates for these events at the beginning of each year.

(2) RMCE will work with the Town on an annual basis to develop potential new events to showcase the property and establish a reciprocal sense of local pride. In the event that RMCE and the Town mutually agree upon a new community event, such event may be substituted for one of the events listed in 4.1.(k) (l) (a)(i) – (d) above.

(3) Public Access. RMCE agrees to have the grounds of the Venue open to the public Monday through Thursday from sunrise to sunset (and on other days when no events are scheduled). The Venue will remain closed to the public on Fridays, Saturdays and Sundays (unless no event is scheduled) so as to not interfere with scheduled events, provided, however, that access between Elmhurst Park and the waterfront dock area will be allowed so long as it does not unreasonably interfere with RMCE events.

For contemplated third party events to be permitted by the Town outside the Venue in the Elmhurst and Waterfront/Dock areas, the Town will reasonably coordinate and consult with RMCE during the permitting process to ensure those third-party events do not unreasonably impact RMCE's events at the Venue.

(l) Safety and Security. RMCE agrees to maintain a safe and secure environment.

(1) RMCE agrees to provide 24/7 security of the venue either by physical presence of a Caretaker as set forth in Paragraph 3.2 (a) or by use of electronic surveillance acceptable to the Town.

(m) Fuel Oil/Propane. Town agrees to fill the fuel oil tank and any propane tanks at the Commencement Date and RMCE agrees to fill the same at the termination of this Agreement.

4.2 Negative Covenants. RMCE hereby covenants at all times during the Term and such further time as RMCE occupies the Venue or any part thereof:

(a) Assignment, etc. Without the Town's written approval, not to assign, transfer, mortgage or pledge this Agreement (which terms shall be deemed to include the granting of concessions and licenses and the like) all or any part of the Venue or suffer or permit this Agreement or any other rights arising under this Agreement to be assigned, transferred or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of law, or permit the use and operation of the Venue by anyone other than RMCE. Any attempted assignment, transfer, mortgage, pledge, or other encumbrance shall be void. No assignment, transfer, mortgage, or other encumbrance, whether or not approved, and no indulgence granted by the Town to any assignee or licensee, shall in any way impair the continuing primary liability (which after an assignment shall be joint and several with the assignee) of RMCE hereunder, and no approval in a particular instance shall be deemed to be a waiver of the obligation to obtain the Town's approval in the case of any other assignment or license.

(b) Overloading, Nuisance, etc. Not to injure, overload, deface or otherwise harm the Venue; nor commit any nuisance; nor permit the emission of any objectionable noise or odor; nor make, allow or suffer any waste; nor improperly store, treat, transport, dispose of, use or otherwise manage any hazardous material on the Venue, nor leave or permit any such material to remain on the Venue at the expiration of the Term or earlier termination of this Agreement; nor make any use of the Venue which is improper, offensive or contrary to any law or ordinance or which will invalidate any of the Town's insurance; nor conduct any auction, fire, "going out of business" or bankruptcy sales.

(c) Installation, Alterations or Additions. Not to make any installations, alterations or additions in, to or on the Venue (including, without limitation, buildings, walks, roadways, parking and loading areas) nor to permit the making of any holes in the walls, partitions, ceilings or

floors without consent of the Town, and then only pursuant to plans and specifications approved by the Town in advance in each instance.

4.3 Quarterly Meetings. To ensure a smooth transition and continued cooperation, the Town and RMCE shall convene a meeting at least quarterly, with a mutually agreed upon agenda, to discuss all aspects of this Agreement.

ARTICLE V

Casualty or Taking

5.1 Termination. In the event that the entire Venue, any material part thereof, or more than 25% of the floor area of the building on the Venue shall be taken or shall be destroyed or damaged by fire or casualty, or by the action of any third party, then this Agreement may be terminated at the election of the Town. Such election, which may be made notwithstanding the Town's entire interest may have been divested, shall be made by the giving of written notice by the Town to RMCE within thirty (30) days after the right of election accrues.

5.2 Restoration. If the Town does not exercise said election, this Agreement shall continue in force and a just proportion of the Fixed Annual Exclusivity Fees reserved, according to the nature and extent of the damages sustained by the Venue, shall be suspended or abated until the Venue, or what may remain thereof, shall be put by the Town in proper condition for use, which the Town covenants to do with reasonable diligence to the extent permitted by the net proceeds of insurance recovered or damages awarded for such taking, destruction or damage, subject to zoning and building laws then in existence, and subject to any mortgagee of the Venue making such proceeds available. "Net proceeds of insurance recovered or damages awarded" refers to the gross amount of such insurance or damages less the reasonable expenses

of the Town in connection with the collection of the same, including without limitation, fees and expenses for legal and appraisal services.

5.3 Award. Irrespective of the form in which recovery may be had by law, all rights to damages or compensation shall belong to the Town in all cases. RMCE hereby grants to the Town all of RMCE's rights to such damages and covenants to deliver such further assignments thereof as the Town may from time-to-time request.

ARTICLE VI

Option

6.1 Option to Extend. RMCE shall have an option to extend this Agreement for an additional five (5) year term (the "Option Term"). The option to extend may be exercised by giving notice in writing to the Town on or before six (6) months before the end of the initial Term hereunder but no earlier than nine (9) months before the end of the initial Term hereunder; provided, however, that the option to extend may only be exercised if RMCE is not then in breach of any of its obligations under this Agreement. The Agreement as so extended shall be on the same terms and conditions as provided for in the original Term, except that the Fixed Annual Exclusivity Fee and other Fees and Payments provided under Article III of this Agreement for the Option Term shall be renegotiated for such Option Term. If RMCE and the Town have not agreed upon the Fixed Annual Exclusivity Fee and other Fees and Payments for the Option Term on or before three (3) months before the end of the initial Term, RMCE's Option to extend this Agreement shall expire and become null and void.

ARTICLE VII

Defaults

7.1 Events of Default. (a) If RMCE shall default in the performance of any of its obligations to pay amounts due hereunder and if such default shall continue for ten days after written notice from the Town designating such default or if within thirty (30) days after written notice from the Town to RMCE specifying any other default or defaults RMCE has not commenced diligently to correct the default or defaults so specified or has not thereafter diligently pursued such correction to completion, or (b) if any assignment shall be made by RMCE or any guarantor of RMCE for the benefit of creditors, or (c) if a lien or other involuntary encumbrance is filed against RMCE's interest or RMCE's other property and is not discharged within ten (10) days thereafter, or (d) if a petition is filed by RMCE or any guarantor of RMCE for adjudication as a bankrupt, or for reorganization or an arrangement under any provision of the Bankruptcy Act as then in force and effect, or (e) if an involuntary petition under any of the provisions of said Bankruptcy Act is filed against RMCE or any guarantor of RMCE and such involuntary petition is not dismissed within thirty (30) days thereafter, then, and in any such cases, the Town and the agents and servants of the Town lawfully may, in addition to and not in derogation of any remedies from any preceding breach of covenant, immediately or at any time thereafter terminate this Agreement by mailing a notice of termination addressed to RMCE as set forth in Section 8.1.

7.2 Remedies. In the event that this Agreement is terminated under any of the provisions contained in Section 7.1 or shall be otherwise terminated for breach of any obligation of RMCE, RMCE covenants as an additional and cumulative obligation after any such termination to pay punctually to the Town all the sums and perform all the obligations which RMCE covenants in

this Agreement and to perform in the same manner and to the same extent and at the same time as if this Agreement had not been terminated.

7.3 Remedies Cumulative. Any and all rights and remedies which the Town may have under this Agreement, and at law and equity, shall be cumulative and shall not be deemed inconsistent with each other, and any or all such rights and remedies may be exercised at the same time insofar as permitted by law.

7.4 The Town's Right to Cure Defaults. The Town may, but shall not be obligated to, cure any default by RMCE at any time, without notice of any default by RMCE under this Agreement, and whenever the Town so elects, all costs and expenses incurred by the Town, including reasonable attorneys' fees, in curing a default shall be paid by RMCE to the Town on demand, together with lawful interest thereon from the date of payment by the Town to the date of payment by RMCE.

7.5 Effect of Waivers of Default. Any consent or permission by the Town to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by the Town of the breach of any covenant or condition herein, shall not in any way be held or construed (unless expressly so declared) to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise except as to the specific instance, operate to permit similar acts of omission.

7.6 No Waiver, etc. The failure of the Town to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by the Town of any fees, commissions or other payments with knowledge of the breach of any covenant of this

Agreement shall not be deemed to have been waiver of such breach by the Town, or by RMCE, unless such waiver be in writing signed by the party to be charged. No consent or waiver, express or implied, by the Town to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any breach of the same or any other agreement or duty.

7.7 No Accord and Satisfaction. No acceptance by the Town of a lesser sum than amounts then due shall be deemed to be other than on account of the earliest installment of such Fixed Annual Exclusivity Fees or charge due, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Fixed Annual Exclusivity Fees or other charge be deemed an accord and satisfaction, and the Town may accept such check or payment without prejudice to the Town's right to recover the balance of such installment or pursue any other remedy in this Agreement provided.

7.8 Contra Proferentem. The Parties acknowledge and agree that both parties have participated in the drafting of this Agreement, and any rule of law providing that ambiguities shall be construed against the drafting party, or their attorneys, shall be of no force or effect.

ARTICLE VIII

Miscellaneous Provisions

8.1 Notices from One Party to the Other. All notices required or permitted hereunder shall be in writing and shall be deemed duly served if and when mailed by registered or certified mail postage prepaid addressed, if to RMCE, at the original Address of RMCE as set forth in Article 1 or such other address as RMCE shall have last designated by notice in writing to the Town and, if to the Town, at the Portsmouth Town Hall, 2200 East Main Road, Portsmouth, RI

02871 or such other address as the Town shall have last designated by notice in writing to RMCE.

8.2 Limitation of Liability. It is agreed that no venturer, partner, trustee, beneficiary, officer, director, shareholder, agent or employee of either party hereto shall ever be personally or individually liable for any claim or judgment or otherwise to the other party hereto.

8.3 Acts of God. In any case where either party hereto is required to do any act, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood or other casualty, materials or equipment, unusually severe weather, or other causes beyond such party's reasonable control (provided financial inability shall never be deemed a cause beyond such reasonable control) shall not be counted in determining the time during which such party's obligations shall be met, whether such time be designated by a fixed date, a fixed time, or "a reasonable time," and such time shall be deemed to be extended by the period of such delay.

8.4 The Town's Default. The Town shall not be deemed to be in default in the performance of any of its obligations hereunder unless it shall fail to perform such obligations and such failure shall continue for a period of thirty days or such additional time as is reasonably required to correct any such default after written notice has been given by RMCE to the Town specifying the nature of the Town's alleged default. RMCE shall have no right to terminate this Agreement for any default by the Town hereunder and no right, for any such default, to offset or counterclaim against any Fixed Annual Exclusivity Fees due hereunder.

8.5 Applicable Law and Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island without reference to its conflict of laws principles. Each party irrevocably consents and agrees that any action, suit or other proceeding regarding any matter related to this Agreement shall be brought in a court of the

State of Rhode Island or in the United States District Court for the State of Rhode Island. By execution and delivery of this Agreement, each party irrevocably submits to and accepts the personal jurisdiction of each of such courts and waives any objection (including without limitation any objection to venue, enforcement, or grounds of forum non conveniens) which might be asserted against the bringing of any such action, suit or other proceeding in such courts. If any provisions of this Agreement shall to any extent be deemed invalid, the remainder of this Agreement shall not be affected thereby. This Agreement is the sole and entire agreement with respect to the subject matter hereof and there are no oral or other written agreements between the Town and RMCE affecting this Agreement. This Agreement may be amended, and the provisions hereof may be waived or modified, only by instruments in writing executed by the Town and RMCE. The titles of the several Articles and Sections contained herein are for convenience only and shall not be considered in construing this Agreement.

WITNESS the execution hereof under seal as of the day and year first above written.

TOWN OF PORTSMOUTH, RHODE ISLAND

“THE TOWN”:

By: _____

Title:

MORIN’S INC., d/b/a RUSSELL MORIN CATERING & EVENTS

“RMCE”:

By: _____
R. Russell Morin, Jr.

Title: Treasurer

Attachment A
Physical Area of RMCE Authority

