

# MEMORANDUM OF COOPERATION AND UNDERSTANDING

In San Juan, Puerto Rico, this 24 day of January, 2018.

**AS PARTY OF THE FIRST PART: MUNICIPIO AUTONOMO DE SAN JUAN**, a governmental entity created and existing under Law Num. 81 of August 30, 1991, as amended, better known as the "Puerto Rico Autonomous Municipalities Act", herein represented by its Municipal Secretary, Magdiel I. Pérez González, hereinafter referred to as "**MSJ**".-----

**AS PARTY OF THE SECOND PART: NORMANDIE HOTEL SAN JUAN, LLC.**, a limited liability company duly organized under the laws of the Commonwealth of Puerto Rico, herein represented by its President, Mark J. Berezdivin, hereinafter referred to as "**NHSJ**".-----

## -----**RECITALS**-----

**WHEREAS**, Article 2.0021(e) of the Puerto Rico Autonomous Municipalities Act permits MSJ to possess and administer real property and to lease the same pursuant to the provisions of said Act and;-----

**WHEREAS**, MSJ is the owner in fee simple of certain real estate property located on Avenida Luis Muñoz Rivera consisting of eight (8) parcels of land, commonly known as "El Escambrón" or the "Parque del Tercer Milenio", hereinafter referred to as the **ESCAMBRON PROPERTY** and;-----

**WHEREAS**, NHSJ currently has in its favor an option to purchase six (6) parcels of land, pursuant to a Purchase Agreement executed on May 3, 2017, that comprise the property commonly known as the Normandie Hotel, located immediately next to the **ESCAMBRON PROPERTY** and;-----

**WHEREAS**, it is the intent of NHSJ to invest a significant amount of capital in the rehabilitation, expansion and reopening of the Normandie Hotel for the operation of a first class hotel, including the addition of ballrooms, rooftop restaurant and other amenities and;-----

**WHEREAS**, the Normandie Hotel currently lacks space for adequate parking facilities, which, without, its remodeling, rehabilitation and reopening would not be economically viable and;-----

**WHEREAS**, MSJ is interested that NHSJ rehabilitate, remodel and reopen the Normandie Hotel because of the economic benefits that this project will bring to the Municipality of San Juan, its residents and Puerto Rico as a whole and;-----

**WHEREAS**, NHSJ has presented to MSJ a proposal that would resolve the problem of adequate parking facilities for the Normandie Hotel and, at the same time, improve the current conditions and facilities of the **ESCAMBRON PROPERTY** and;-----

**WHEREAS**, NHSJ has expressed to MSJ the importance of the execution of this Memorandum Of Cooperation and Understanding so as to continue with the permit and approval process in the corresponding government agencies and with the financing approval process and;-----

**WHEREAS**, based on these principles, the parties have agreed to continue conversations and engage in good-faith negotiations in order to attempt to reach a final agreement with respect to the proposal submitted by NHSJ and;-----

**WHEREAS**, NHSJ understands and is fully conscious of the fact that the execution of this document shall be non-binding as to both parties and that no agreement shall be binding upon MSJ until the Municipal Legislature has had the opportunity to review the terms of the final agreement and approve the same through the passing of a municipal ordinance and/or resolution.-----

**NOW THEREFORE**, in consideration of the mutual covenants herein negotiated, the parties hereby execute this Memorandum of Cooperation and Understanding based on the following:

-----**TERMS AND CONDITIONS**-----

**FIRST: AUTHORIZATION**-----

The representatives of each of the parties hereby confirm that they have the proper authorization to execute this Memorandum of Cooperation and Understanding, evidence of which they will provide whenever and wherever it is requested.-----

**SECOND: PURPOSE**-----

The purpose of this Memorandum of Cooperation and Understanding is to establish the framework by which the parties will continue to negotiate in good-faith in order to facilitate the potential development of the Normandie Hotel by providing the same with adequate parking facilities and, at the same time, improve the conditions and facilities of the ESCAMBRON PROPERTY for the benefit and use of the general public. As such, it is the desire of both parties to express their respective positions and proposals and make good-faith efforts to reach a final agreement, subject to the provisions of Law Num. 81 of August 30, 1991, as amended, better known as the "Puerto Rico Autonomous Municipalities Act", on the matters herein listed.-----

**THIRD: UNDERTAKINGS BY NHSJ**-----

**BEACH SPORTS COMPLEX:**-----

NHSJ shall be responsible for the design and construction, at its sole cost and expense, of a beach volleyball/soccer/tennis complex (Beach Sports Complex) to be located on or near the dirt mount area (*area de la lomita*) immediately north of the main grand stand of the Sixto Escobar Stadium. (Exhibit II) The size of the Beach Sports Complex to be built shall be directly related to the space available in said area and its design shall be subject to the prior written approval of MSJ, which shall not be unreasonably denied.-----

The parties agree that the Beach Sports Complex shall be open for the benefit and use of the general public and hotel guests. This notwithstanding, the parties agree that in the final negotiations between the parties regarding the administration and use of the Beach Sports Complex, the use of the same by the general public may be restricted as a result of court availability, administration and operational rules and/or organization of local or international tournaments.-----

**PARKING CONVERSION PROPOSAL:**-----

In consideration of the construction of the Beach Sports Complex, MSJ hereby gives its conceptual approval for the conversion of the ESCAMBRON PROPERTY's softball/baseball field, located immediately west of the Sixto Escobar Stadium, to a parking lot facility similar to the parking facilities currently existing on the ESCAMBRON PROPERTY immediately east of the softball/baseball field. (**Parking Conversion Proposal**). Since the lack of adequate parking facilities is a major impediment for the development and rehabilitation of the Normandie Hotel, it is understood and agreed by the parties that this new parking lot shall be for the primary benefit and use of the Normandie Hotel, its guests and visitors and, to the extent necessary, for the benefit and use of the Beach Sports Complex. (Exhibit I) The parties agree to enter into good-faith negotiations for the future execution of an agreement regarding the administration and operation of the new parking facility.-----

NHSJ shall be solely responsible, at its sole cost and expense, for the design and construction of the new parking facility and NHSJ shall also be responsible for requesting the necessary permits, if any, for the construction and operation of the same. The design of the new parking facility shall be subject to the prior written approval of MSJ, which shall not be unreasonably denied.-----

Due to the location of the new parking lot facility vis-à-vis the Normandie Hotel, MSJ shall secure, for the benefit of NHSJ, vehicular access from the Normandie Hotel through the ESCAMBRON PROPERTY to the new parking facility. The parties have identified a preliminary route for said access and MSJ hereby reiterates its commitment to secure the requested vehicular access for the exclusive use of the Normandie Hotel's valet parking services and for municipal and/or state emergency vehicles.-----

With the execution of this Memorandum of Cooperation and Understanding, MSJ reiterates its commitment to the Parking Conversion Proposal and shall diligently cooperate and work with NHSJ so as to execute an agreement regarding this conversion proposal.-----

**RECREATIONAL AREAS (AREAS PASIVAS):**-----

The parties understand and recognize the importance of open public spaces for the health, benefit and well being of the general public. Therefore, and as consideration of MSJ's cooperation, assistance and preliminary approval of the Parking Conversion Proposal, NHSJ has also agreed to be responsible for the refurbishment and embellishment of the open areas between and around the Scuba Dogs kiosk and the food kiosk. Said embellishment and refurbishment program will include the planting of a large number of palm trees and other local flora so as to provide shaded areas, as well as the installation of new picnic

tables for the enjoyment of the general public. The embellishment and refurbishment program herein described shall be at the sole cost and expense of NHSJ and its implementation and design shall be subject to the prior written approval of MSJ, which shall not be unreasonably denied. Moreover, nothing herein included shall eliminate or limit, in any manner, way or form, any public access currently existing to the beach area in this part of the ESCAMBRON PROPERTY.-----

**FOURTH: COSTS AND EXPENSES**-----

The development costs of the Normandie Hotel Property, as well as the costs associated with the improvements to be made by NHSJ to the ESCAMBRON PROPERTY, are substantial and considerable. As such, it is the intent of the parties that MSJ consider NHSJ's projected investment amount when negotiating possible lease agreements for the use and administration of the new parking facility and the Beach Sports Complex. As such, and subject to the approval of the Municipal Legislature, in consideration of the significant investment to be made by NHSJ in certain areas of the ESCAMBRON PROPERTY, MSJ shall not require NHSJ to pay any monthly rent for the use and administration of the new parking facility and/or for the administration of the Beach Sports Complex. Moreover, at a future date, the parties agree to negotiate in good faith the duration of the lease term and the future administration rights of said facilities.-----

**FIFTH: UNDERTAKINGS BY MSJ**-----

MSJ shall continue to be responsible for operating and providing maintenance services to those areas of the ESCAMBRON PROPERTY that are not subject to the provisions of this Memorandum, including but not limited to, trash removal and clean up services. In addition, MSJ shall establish traffic controls so as to restrict access of private vehicles beyond the roundabout (*redonde!*) area located near the entrance to the Sixto Escobar Stadium.-----

In addition, and in order to improve the overall visibility, access and appearance of the ESCAMBRON PROPERTY, MSJ will analyze the possibility of demolishing, at its sole cost and expense, the grand stand, other non-historical seating areas and outer walls of the Sixto Escobar Stadium. With regards to the foregoing, it is expressly understood and agreed by the parties that MSJ shall not be bound by any timetable and, more importantly, that MSJ shall not even be obligated to incur in said analysis in the future. It is expressly understood and agreed by the parties that the historical façade and grand stand of the Sixto Escobar Stadium shall be preserved in accordance with all existing federal, state and municipal rules and regulations.-----

**SIXTH: COSTS**-----

Aside from the costs associated with each party's undertakings, both NHSJ and MSJ shall each be responsible for all costs associated with the hiring of its own attorneys, engineers, architects and any other consultants deemed necessary to carry out its undertakings and responsibilities under this Memorandum.-----

**SEVENTH: AUTHORIZATIONS AND PERMITS**-----

Understanding that time is of the essence, and as an essential part of this Memorandum of Cooperation and Understanding, MSJ shall designate a contact person with whom NHSJ shall communicate with regarding the contents of this Memorandum including, but not limited to, the approval process in the Municipal Legislature and final negotiations regarding the Parking Conversion Proposal, Beach Sports Complex and other improvements to be undertaken by NHSJ in the ESCAMBRON PROPERTY.-----

Notwithstanding the foregoing, with respect to the Parking Conversion Proposal in particular, MSJ shall provide NHSJ with written confirmation of its approval no later than thirty (30) days after execution date of this Memorandum.-----

**EIGHTH: GOOD FAITH NEGOTIATIONS**-----

The parties agree to continue good-faith negotiations and afford each other the necessary assistance and cooperation in order to facilitate and promote the realization of the undertakings agreed to by each of the parties. Notwithstanding the foregoing, it is understood and agreed that this shall not be deemed to be a promise by MSJ that any one or more of the undertakings herein included shall be approved by the Municipal Legislature and/or successfully completed.-----

**NINTH: NON-BINDING AGREEMENT**-----

The parties understand and agree that the terms included in this Memorandum of Cooperation and Understanding are a reflection of their aspirations with respect to the ESCAMBRON PROPERTY and of their attempt to reach the agreements herein contemplated. In case any or all of the undertakings and agreements are not completed as per the intention of the parties, neither NHSJ or MSJ, or any of its officers, directors, shareholders, employees, contractors, representatives, affiliates, successors and/or assignees shall have any obligation or liability whatsoever with respect to or arising from this Memorandum and, as such, each party waives, releases and agrees to defend and hold harmless the other and agree not to sue or file any complaint against the other for any reason or cause of action related to this Memorandum.-----

**TENTH: CONFIDENTIALITY**-----

The parties acknowledge and agree, to the fullest extent possible, MSJ shall not disclose to third parties any information of a confidential nature regarding NHSJ. Confidential Information shall not include information which becomes generally available to the public, except as a result of the disclosure of such information by either party or any of its respective representatives in violation of this section.----

**ELEVENTH: JURISDICTION AND GOVERNING LAW**-----

This Memorandum of Cooperation and Understanding shall be governed by the laws of the Commonwealth of Puerto Rico and the parties agree to submit to the jurisdiction of the Court of First

Instance, Superior Court of San Juan, in case of any dispute or legal action arising in relation to this Memorandum.-----

**IN WITNESS THEREOF**, the parties execute this Memorandum of Cooperation and Understanding on the date and place herein stipulated.

A stylized signature consisting of a large, rounded 'S' shape with a horizontal line through it, and several vertical lines extending downwards from the base of the 'S'.

Autonomous Municipality of San Juan

A handwritten signature in cursive script, appearing to read 'L. B. ...', written over a horizontal line.

Normandie Hotel San Juan, LLC