

PREPARED BY AND RETURN TO:

City Attorney's Office  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

PCN: 12-43-46-16-01-089-0010  
Address: 301 NE 3rd Avenue, Delray Beach, FL

PCN: 12-43-46-16-01-089-0030  
Address: 319 NE 3rd Avenue, Delray Beach, FL

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### **TRI-PARTY SHARED DUMPSTER AGREEMENT**

**THIS TRI-PARTY SHARED DUMPSTER AGREEMENT** is made by and between **CHAZMONTI, LLC**, a Florida limited liability company whose address is 9608 Lake Serena Drive, Boca Raton, FL 33496 ("Chazmonti" or "Grantor"), **BIG B INVESTMENTS LLC**, a Florida limited liability company whose address is 9608 Lake Serena Drive, Boca Raton, FL 33496 ("Big B" or "Grantee"), and the **CITY OF DELRAY BEACH**, a Florida municipal corporation whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 ("City"), this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

#### **W I T N E S S E T H:**

**WHEREAS**, Big B is the owner of the property located at 319 NE 3<sup>rd</sup> Avenue, Delray Beach, FL 33444, as more particularly described in Exhibit "A" ("Big B Property"); and

**WHEREAS**, Chazmonti is the owner of the property adjacent to the Big B Property, located at 301 NE 3<sup>rd</sup> Avenue, Delray Beach, FL 33444, as more particularly described in Exhibit "B" (the "Chazmonti Property"); and

**WHEREAS**, the City of Delray Beach ("City") received a site plan approval request (File No. 2022-268) associated with the Big B property to operate a restaurant ("Project"); and

**WHEREAS**, as part of the Project, the proposed trash area for storage and pickup is located on the Chazmonti Property; and

**WHEREAS**, currently, there are no receptacles for trash storage on the Chazmonti Property; and

**WHEREAS**, Big B proposes to enter into this Agreement in order to satisfy the City's requirements concerning the disposal of solid waste that will be generated by the proposed restaurant; and

**WHEREAS**, Chazmonti desires to grant Big B a perpetual easement ("Easement") for the use of its trash and recycling receptacles pursuant to the terms hereof.

**NOW, THEREFORE,** in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree with each other as follows:

1. **INCORPORATION OF RECITALS.** The above-stated recitals are true and correct and are incorporated herein.

2. **SHARING OF WASTE RECEPTACLES.** Subject to the terms and conditions as set forth herein, Chazmonti does hereby grant and convey onto Big B, an exclusive and perpetual easement and right of access to use the trash and recycling receptacles on the Chazmonti Property for the purpose of providing adequate waste disposal for the Project. Concomitant and coextensive with this right is the further right of Big B, its successors and assigns, of ingress and egress over and on the Chazmonti Property, to effect the purposes of the easement, as expressed herein.

3. **TERM OF AGREEMENT.** This Agreement shall be effective upon its execution and shall continue in effect unless and until a certificate of completion is issued by the City for an approved dumpster enclosure on the Big B Property. Big B shall pay all costs associated with the construction of the dumpster enclosure on the Big B Property and for obtaining all approvals from the City.

4. **TERMINATION.** The City, in its sole and absolute discretion, may terminate this Agreement, with or without cause, by providing 180 days' written notice to the Grantor and Grantee in accordance with Paragraph 9 below. The City will have the right without limitation to prohibit any use of the Big B Property which is then not in compliance with the City's Codes and Ordinances. The City may exercise any rights and seek any remedies as provided by this Agreement, the City's Codes and Ordinances, and as provided by law, whether legal or equitable, and all such rights and remedies shall be cumulative.

5. **INDEMNIFICATION.** Big B shall indemnify, defend and hold harmless Chazmonti, the City, and their officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which Chazmonti or the City and its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by Big B or its employees, agents, servants, partners, principals, or subcontractors. Big B shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of Chazmonti and/or the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. Big B expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Big B shall in no way limit the responsibility to indemnify, keep and save harmless, and defend Chazmonti and/or the City or its officers, employees, agents, and instrumentalities as herein provided. The obligations of this section shall survive the term of this Agreement.

6. **INSURANCE.** At all times while this Agreement is in effect, Big B shall maintain, at its sole cost, comprehensive general liability insurance with single limit coverage of One Million Dollars (\$1,000,000.00), with such limit being increased by ten percent (10%) on every five (5) year anniversary of the date of this Agreement. Insurance shall be issued by one or more

companies licensed to issue such insurance in the State of Florida and rated at least A/IX by AM Best. Chazmonti, the City, and any other party requested by it shall be listed as additional insureds. Big B shall provide Chazmonti and the City with a certificate of insurance evidencing such insurance coverage upon execution of this Agreement and at least twenty (20) days prior to the renewal of the policy.

7. **MAINTENANCE.** Chazmonti shall maintain the trash and recycling receptacles in the Easement in a neat, clean and sanitary condition, free from all garbage, trash, litter and debris and provide whatever maintenance is required thereon.

8. **RESPONSIBILITY FOR DAMAGE.** Big B shall be responsible for all damage to the Chazmonti Property and its dumpster caused by Big B and its employees and agents.

9. **COVENANT RUNNING WITH THE LAND.** The rights and privileges granted in this Agreement shall constitute a covenant running with the land, binding upon the parties hereto and their successors and assigns. This Agreement shall be recorded in the public records of Palm Beach County, Florida.

10. **GOVERNING LAWS; VENUE.** This Agreement shall be governed by the internal laws of the State of Florida without regard to principles of conflicts of law. Exclusive venue shall be in Palm Beach County, Florida.

11. **INTEGRATION.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties. This Agreement may not be amended, supplemented or waived orally, but only by a writing signed by the parties and making specific reference to this Agreement.

12. **ENFORCEMENT COSTS.** In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to recover, and the non-prevailing party shall pay (in addition to all other remedies to which the prevailing party may be entitled), the prevailing party's reasonable attorneys' fees and costs, including attorneys' fees and costs incurred on appeal, bankruptcy and post-judgment proceedings and in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs.

13. **SEVERABILITY.** If any part of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

14. **ENFORCEMENT.** The Parties hereby acknowledge and agree that the trash and recycling receptacles that are subject of this Easement are necessary for the Project to satisfy the requirements as set forth in the City's Land Development Regulations and that Big B will be in violation of the City's Land Development Regulations if for any reason these trash and recycling receptacles are no longer available for use by Big B. City shall have the right to enforce the terms, conditions, and obligations set forth in this Agreement, including the City's development

requirements, by any legal means available, including but not limited to those set forth in the City Code of Ordinances, rules, and/or policies, any state and/or federal law. This Agreement may be enforced by any of the Parties hereto.

15. **SPECIFIC PERFORMANCE.** Each party acknowledges that the parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party of any provision of this Agreement, any other party, including the City, shall be entitled, in addition to all other rights or remedies, to an injunction restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Agreement.

16. **THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any person other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

17. **WAIVERS.** The failure or delay of any party at any time to enforce this Agreement shall not affect such party's right to enforce this Agreement at any other time. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in any other circumstance.

18. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

19. **NOTICE.** Any notice or communication under this Agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise, then by registered or certified mail, it should be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

Grantor: Chazmonti, LLC  
9608 Lake Serena Drive  
Boca Raton, FL 33496

Grantee: Big B Investments, LLC

9608 Lake Serena Drive  
Boca Raton, FL 33496

City: City of Delray Beach  
City Manager  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

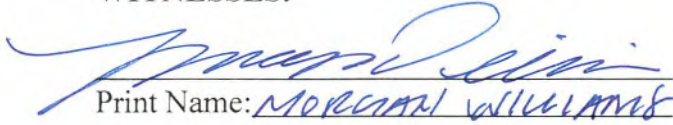
Either party may at any time by giving ten (10) days written notice designate any other person or entity or any other address in substitution of the foregoing to which the notice or communication shall be given

[signature page to follow]




IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

WITNESSES:

  
Print Name: MORDECAI WILLIAMS

Address: 2125 NE 7th Ct  
BOCA RATON, FL 33432

  
Print Name: NEIL M. SCHULER

Address: 17960 Villa Club Way  
Boca Raton, FL 33496

CHAZMONTI, LLC

By:   
Charles Monticello, Manager

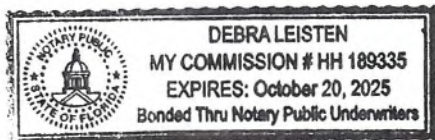
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 23 day of May, 2024, by Charles Monticello, the Manager of Chazmonti, LLC, a Florida limited liability company, on behalf of the company.

Personally known ☐ OR Produced Identification  
Type of Identification Produced NY Driver's License

My Commission Expires: 10/20/2025

  
Notary Public – State of Florida



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WITNESSES:

Print Name: MURRAY WILLIAMS

Address: 2725 NE 2ND CT  
BOCA RATON, FL 33432

Print Name: NEIL M SCHILLER

Address: 17960 Villa Club way  
Boca Raton, FL 33496

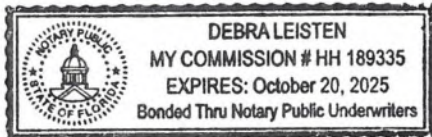
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 23 day of May, 2024, by Charles Monticello, the Manager of Big B Investments LLC, a Florida limited liability company.

Personally known ☐ OR Produced Identification  
Type of Identification Produced NY Driver's License

My Commission Expires: 10/20/2025

Debra Leisten  
Notary Public – State of Florida



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ATTEST:

**CITY OF DELRAY BEACH**

\_\_\_\_\_  
Katerri Johnson, City Clerk

\_\_\_\_\_  
Thomas F. Carney, Jr., Mayor

Approved as to Form:

\_\_\_\_\_  
Lynn Gelin, City Attorney



**Exhibit "A"**

Lot 3, Resubdivision of the West Portion of Block 89, Delray Florida, according to plat thereof as recorded in Plat Book 13, Page 49, Public Records of Palm Beach County, Florida.

**Exhibit "B"**

Lots 1 and 2, Block 89 Resubdivision of the West Portion Delray Florida, according to the map or plat thereof as recorded in Plat Book 13, Page 49, Public Records of Palm Beach County, Florida.