

## ADDENDUM

This is an addendum to that certain Lease Agreement between the City of Delray Beach, a political subdivision of the State of Florida (City or Lessee) and the State of Florida Department of Transportation (Department or Lessor) dated the 1<sup>st</sup> day of July, 2016. In addition to the provisions contained in said Lease, the following terms and conditions shall be deemed to be part of thereof pursuant to **Paragraph 9(d) of said Lease**:

1. The Department acknowledges and agrees that the City may issue sidewalk café and valet parking permits pursuant to City's local codes and ordinances and subject to any rules, regulations and/or procedures of the Department.
2. City shall clearly delineate and mark the subject premises so that any third party user shall not encroach beyond the property that is the subject of this lease. For public safety and aesthetics, the third party user's maintenance responsibilities must encompass its specific delineated area, any spillover to adjacent areas and the curbside.
3. In the event that the City issues permits or enters into an agreement for the premises that are the subject of this agreement, such third party user shall be required in any such permit or agreement to indemnify the Department and provide public liability, food products liability, liquor liability, and property damage insurance with limits of not less than the amount as stated in **Section 7 of the Lease (Insurance)**. Any such insurance or certificate shall also name the Department as an additional insured with 30 days' notice to be given to the City and the Department in the event of any intended cancellation of such policy. A copy of the insurance certificate shall be provided to the Department within ten (10) days of issuance of a permit or agreement.
4. Consideration for the first five (5) year term shall be \$3.50 per square foot for each permitted sidewalk café on East Atlantic Avenue, and \$4.00 per square foot for each permitted sidewalk café and valet parking queue on South Ocean Boulevard, paid annually beginning July 1, 2016. For the rental period beginning July 1, 2016, rent shall be \$14,400 annually, unless adjusted per paragraph 8, herein. All other terms under Section 3 of the Lease Agreement remain.
5. As part of this Agreement, City shall reimburse the \$7,950.00 appraisal fee incurred by the Department. This amount must be paid in lump sum.
6. The City is required, and does hereby agree, to assume the responsibility for performing periodic inspections of the leased premises for compliance with the terms of the Lease and with necessary clearance and setback requirements as set forth in the following:
  - a. Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System – Topic No. 625-010-003 (Department Procedure);
  - b. Plans Preparation Manual (PPM) – Topic No. 625-000-007 (Department Procedure); and
  - c. Facilities Access for Persons with Disabilities (ADA Compliance) – Topic No. 625-020-015 (Department Procedure).
7. City is required to submit an annual report by July 1<sup>st</sup> of each year that contains the following:
  - a. Current insurance certificates from each permittee with the Department named as an additional insured;
  - b. A statement that the premises have been inspected and meet all governmental requirements and necessary clearance and setback requirements (e.g., design standards, landscaping, maintenance, ADA compliance);
  - c. A list of current permittees/licensees;
  - d. A statement that the public purpose stated in the resolution continues to exist and justifies the commercial end-use; and
  - e. A sketch of each location where a sidewalk café or valet queue has been permitted or where there is the potential to issue a permit for a sidewalk café or valet queue. Each sketch must include a delineation of the permitted area with dimensions and square footage shown.
  - f. The Department must approve the annual report. The City agrees to promptly correct any deficiencies identified by the Department.
8. The City shall notify the Department of any new or cancelled permits by July 1<sup>st</sup> and January 1<sup>st</sup> of each year. The rent for the following year will be adjusted accordingly.

9. Any modifications to the size, configuration or use of the lease area must be pre-approved by the Department in writing after the City provides appropriate documentation of its proposed plans.
10. There is no inherent right of extension or renewal of the Lease. Any termination or expiration of the Lease will automatically terminate any sidewalk café or valet parking queue permits issued by the City at which time all items must be removed from the lease area.
11. Notwithstanding the termination provision in Section 9(a) of the lease, Lessor may terminate the lease after providing Lessee written notice of a lease default, with a thirty (30) day opportunity to cure the default.
12. The use of the Department's right-of-way is subject to any and all utility permits and access permits that have been issued or may be issued by the Department in the future.
13. Section 6 of the Lease is hereby amended as follows: The City acknowledges the limited waiver of sovereign immunity for liability in tort contained in Section 768.28, Florida Statutes, and agrees to be fully responsible for any losses, costs, damages, claims, or suits to the extent permitted by such statute. Nothing herein is intended to serve as a waiver of sovereign immunity by the City, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Lease Agreement.
14. The Department recognizes that the City is self-insured. Section 7 of the lease shall remain in force, where applicable. The City is remains responsible for item 7.a., above.
15. There are no third party beneficiaries to the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first written above.

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION (LESSOR)**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gerry O'Reilly, P.E., District Four Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Laurice Mayes, Senior Attorney

Attest: \_\_\_\_\_  
Alia E. Chanel, Executive Secretary

**CITY OF DELRAY BEACH (LESSEE)**

By: \_\_\_\_\_  
Cary D. Glickstein, Mayor, City of Delray Beach

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Attest: \_\_\_\_\_  
Chevelle D. Nubin, City Clerk