

PREPARED BY: RETURN TO:

City Attorney's Office  
100 N.W. 1st Avenue  
Delray Beach, FL 33444

PCN: 12-43-46-16-01-089-0040  
Address: 325 NE 3rd Avenue

PCN: 12-43-46-16-01-081-0180  
Address: 324 NE 3rd Avenue

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### TRI-PARTY OFFSITE PARKING EASEMENT AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between 324 LOFTS, LLC, d/b/a 324 ARTS, LLC, a Florida limited liability company ("Developer"), whose address is 324 NE 3<sup>rd</sup> Avenue, #6, Delray Beach, Florida 33444; DEL PARK, LLC, a Florida limited liability company ("Grantor"), whose address is 325 NE 3<sup>rd</sup> Avenue, Delray Beach, Florida 33444; and the CITY OF DELRAY BEACH, FLORIDA, a Florida municipal corporation ("City"), whose address is 100 NW 1st Street, Delray Beach, Florida 33444.

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

WHEREAS, Developer is the owner of real property and improvements located at 324 NE 3<sup>rd</sup> Avenue, Delray Beach, Florida 33444, consisting of a 14,618 square foot, four-story mixed-use commercial building with restaurant use ("Project"); and

WHEREAS, Developer requested to expand the existing restaurant use for the Project; and

WHEREAS, for the expanded restaurant use to comply with City parking regulations, Developer secured offsite parking in accordance with the City's Land Development Regulations Section 4.6.9(E)(5) and Section 4.4.13(I)(3); and

WHEREAS, Grantor is the owner of certain real property that is located within seven hundred and fifty feet (750') of the Project as measured along the closest pedestrian route between

the nearest building entrance and nearest pedestrian parking entrance (“Property”), as more particularly described in Exhibit “A”, attached hereto and incorporated herein; and

WHEREAS, Grantor desires to grant Developer a perpetual parking easement (“Easement”) to assist Developer in fulfilling its obligations to provide parking; and

WHEREAS, this Agreement will be effective upon City approval of the expanded restaurant use and execution of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated as if fully set forth herein.

2. **Grant of Easement.** Subject to the terms and conditions hereinafter set forth, Grantor does hereby grant and convey to Developer, an exclusive and perpetual parking easement and right of access to twelve (12) parking spaces located on the Property (“Easement Area”) for the purpose of providing parking for the Developer’s Project. Concomitant and coextensive with this right is the further right of Developer, its successors, and assigns, of ingress and egress over and on the Property, to affect the purposes of the easement, as expressed herein.

3. **Owner’s Declaration of Covenant.** Grantor hereby declares that the Easement Area shall never be disposed of so long as the parking facilities are required for the Project.

4. **Maintenance.** Grantor shall maintain the parking spaces located in the Easement Area in a neat, clean, and sanitary condition, free from all garbage, trash, litter, and debris, and provide whatever maintenance is required thereon.

5. **Enforcement.** The Parties hereby acknowledge and agree that the parking spaces located in the Easement Area are necessary for the Project to satisfy the requirements as set forth

in the City's Land Development Regulations and that the Developer will be in violation of the City's Land Development Regulations if for any reason these offsite parking spaces are no longer available for use by Developer. In the event the Easement Area becomes inoperable for more than 10 business days, restaurant functions shall be limited to the first story until temporary replacement parking is secured in a form acceptable to the City. The City hereby reserves the right to enforce this Agreement by pursuing any and all remedies provided by law or in equity. All of the remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City from then or later pursuing any one or more other remedies. This Agreement may be enforced by any of the Parties hereto.

6. **Recordation**. This Agreement shall be binding upon, and inure to the benefit of, each party, its successors, assigns, or heirs, as the case may be. This Agreement and any amendments shall be recorded in the public records of Palm Beach County, Florida with the expense of such recordation to be borne by Developer.

7. **Termination**. This Agreement may only be terminated if replacement parking has been approved by the City or if the Project no longer requires the parking spaces located in the Easement Area to meet the City's parking requirements. This Agreement may not be modified, suspended, or terminated except by a written instrument properly executed by all Parties and recorded in accordance with Paragraph 6 hereinabove.

8. **Indemnification**. Developer and Owner shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney's fees and costs, court costs, and expenses, caused or alleged to be caused by any

intentional, negligent, or reckless act of, or omission of, Developer or Owner, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Developer and Owner shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or termination of this Agreement.

9. **Severability.** If any term, provision, covenant, or restriction contained herein or the application thereof to any person or circumstance shall be held to be invalid, illegal, or unenforceable, the validity of the remainder of this Agreement or the application of such term, provision, covenant, or restriction to persons or circumstances other than to those to which it is held invalid or unenforceable shall not be affected thereby.

10. **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:

Grantee: DEL PARK, LLC  
324 NE 3<sup>rd</sup> Avenue, #6  
Delray Beach, Florida 33444

Grantor: 324 LOFTS, LLC  
324 NE 3<sup>rd</sup> Avenue, #6  
Delray Beach, Florida 33444

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.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any proceeding initiated to enforce the provisions of this Agreement shall be brought in the State or Federal courts located in Palm Beach County, Florida. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement, each party shall bear their own attorney's fees and costs, including appellate fees and costs. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

12. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of it.

WITNESS #1

[Signature]

Signature Louis J. Carbone

Printed or Typed Name

90 SE 4th Ave Delray Beach FL 33483  
Address

GRANTOR/DEL PARK, LLC

By: [Signature]

Name: JOSH ABRAMS

Title: Manager

for DEL PARK LLC  
Company:

Date: July 25, 2024

WITNESS #2:

[Signature]

Signature Denise M Fulcomer

Printed or Typed Name

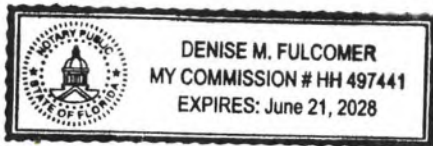
90 SE 4th Ave Delray Beach FL 33483  
Address

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 25 day of July, 2024, by JOSH ABRAMS (name of person), as Manager (type of authority) for DEL PARK LLC (name of party on behalf of whom instrument was executed).

Personally known  OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

[Signature]  
Notary Public – State of Florida



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

ATTEST:

**CITY OF DELRAY BEACH, FLORIDA**

By: \_\_\_\_\_

Katerri Johnson, City Clerk

By: \_\_\_\_\_

Thomas F. Carney, Jr., Mayor

Approved as to Form:

By: \_\_\_\_\_

Lynn Gelin, City Attorney

WITNESS #1



Signature


Louis J. Carbone

Printed or Typed Name

90 SE 4th Ave Delray Beach FL 33483

Address

**DEVELOPER/324 LOFTS, LLC**

By: 

Name: Josh Abrams

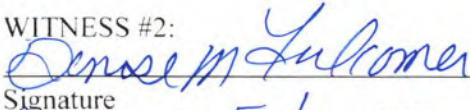
Title: Manager

for 324 LOFTS LLC

Company: 324 LOFTS LLC

Date: July 25, 2024

WITNESS #2:



Signature

Denise M Fulcomer

Printed or Typed Name

90 SE 4th Ave Delray Bch FL 33483

Address

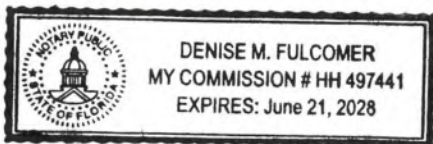
STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 25 day of July, 2024, by MANAGER JOSH ABRAMS (name of person), as \_\_\_\_\_ (type of authority) for 324 LOFTS LLC (name of party on behalf of whom instrument was executed).

Personally known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



  
Notary Public – State of Florida

**EXHIBIT "A"**

Lots 4 and 5, in Block 89 "Town of Delray", according to the Plat thereof recorded in Plat Book 13, Page 49 of the Public Records of Palm Beach County, Florida.

PCN 12-43-46-16-01-089-0040