

This Instrument Prepared By
and Return to:
Lynn D. Gelin, Esq.
City Attorney
100 NW 1st Avenue
Delray Beach, FL 33444

AMENDMENT NO. 2 TO PARKING SPACE AGREEMENT AND COVENANT

THIS AMENDMENT NO. 2 TO PARKING SPACE AGREEMENT AND COVENANT (“Amendment No. 2”) is made and entered into effective as of this ____ day of _____, 2025, by and between CDR Delray FEC, LLC, a Florida limited liability company, its successors and assigns (hereinafter referred to as “CDR”), with its principal office located at 2665 S. Bayshore Drive, Suite 605B, Miami, Florida 33133 and the City of Delray Beach, a municipal corporation of the State of Florida, and its successors and assigns (hereinafter referred to as “City”), whose mailing address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444.

RECITALS

WHEREAS, CDR and City previously entered into that Parking Space Agreement and Covenant dated January 24, 2020 (“Parking Agreement”), in connection with the City’s approval of an application for conditional use conversion (Application No. 2020-24) (“Application”) to convert the use of the OG Bar property (“OG Property”) from a free standing to a restaurant use; and

WHEREAS, on March 5, 2024, CDR and City entered into Amendment No. 1 to the Parking Agreement (“Amendment No. 1”), in connection with the City’s approval of an application submitted by CDR to redevelop property located at 101 SE 2nd Avenue, Delray Beach, Florida 33444 (the “101 Triangle Property”); and

WHEREAS, as of this date, the Parking Spaces include all parking spaces that are needed to satisfy the City’s Parking Condition for the OG Property and 101 Triangle Property; and

WHEREAS, CDR wishes to take over collection of the Parking Revenue, and to assume the responsibility for the enforcement of the City’s parking Ordinances and Regulations with respect to the Parking Spaces (the “Parking Regulations”); and

WHEREAS, this Amendment No. 2 sets forth the terms and conditions of CDR's assumption of responsibility to enforce the Parking Regulations and to collect the Parking Revenue.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CDR and the City hereby agree that the foregoing recitals are true and correct and further agree as follows:

- (1) Incorporation by Reference. The recitals set forth in the preamble to this Agreement are incorporated by reference as though set forth in full herein and made a part hereof.
- (2) Definitions. For purposes of this Amendment No. 2, the definitions stated in the Parking Agreement, as amended by Amendment No. 1, are incorporated by reference herein.
- (3) Daily Parking Rights. CDR acknowledges there are no restrictions on the times or days the public may use the Public Parking Spaces, which are for the exclusive use of the public. In addition, the remaining fifty-seven (57) spaces that are not Public Parking Spaces ("CDR Spaces") may be used by the public from 9:00 a.m., to 6:00 p.m. – Monday through Friday. CDR shall place signage, as approved by the City, within the area of the CDR Spaces clearly delineating the hours of use of the CDR Spaces by the public. This Amendment No. 2 is entered into, in part, for the purpose of allowing the general public and CDR to share the Parking Area.
- (4) Signage. CDR, at CDR's sole cost and expense, may install electronic or static signage at CDR's sole discretion designating "Public Parking" and such other appropriate signage at locations approved by City ("Signage Plan"), or as otherwise permitted by and in accordance with the Parking Regulations. CDR shall maintain, repair, and replace, at CDR's sole cost and expense, all of the signage, in good condition and repair, and in accordance with all applicable governmental regulations. CDR shall erect such other signage as required by the Signage Plan and may erect other signage in accordance with applicable governmental regulations, subject to the governmental approval process.
- (5) Parking Rate Limitations on the Public Parking Spaces. CDR shall not charge parking rates for any of the Public Parking Spaces in excess of the parking rates the City charges for public parking in the immediate vicinity of the Public Parking Spaces, i.e., along Atlantic Avenue from Swinton Avenue to the Intracoastal (the "Atlantic Ave Corridor"). As of the date of the execution of this Amendment No. 2, the maximum hourly parking rate CDR may charge for a Public Parking Space is \$4.00/hour (the "Maximum Rate"). In the event the City reduces the parking rates for public parking along the Atlantic Avenue Corridor, CDR may nevertheless continue to charge the parking rates charged for the Public Parking Spaces prior to the reduction and if such rate is less than the Maximum Rate.
 - a. In the event the City eliminates all parking charges for public parking along the Atlantic Avenue Corridor, the City Commission shall determine the parking rates for the Public Parking Spaces which rates shall be not less than the parking rates that were charged for public parking along the Atlantic Avenue Corridor just prior to the City's elimination of the parking charges for

the Public Parking Spaces. Anytime the City considers reducing or eliminating parking rates for public parking along Atlantic Avenue Corridor, CDR may seek a rate increase for the Public Parking Spaces by requesting such increase in writing to the City Manager with supporting evidence of increased operation, insurance and maintenance costs which request shall not be unreasonably withheld, but the City Commission shall have no obligation to permit an increase in such rates.

(6) City Ingress and Egress. Ingress and egress to the Public Parking Spaces shall be in the same manner as other City owned parking lots or facilities. The City's rights under this Amendment No. 2 include, without limitation, the unimpeded non-exclusive easement, license, and right for pedestrian and vehicular ingress and egress from any public right of way to and from the Public Parking Spaces to utilize the Public Parking Spaces on an exclusive basis, which ingress and egress includes through, on, upon, and across walkways and driveways leading from or to a public right of way to provide access to the Public Parking Spaces (hereinafter collectively referred to as the "Ingress and Egress Areas"). CDR has the right to refuse entry or use of the Public Parking Spaces by any member of the public if such member refuses to use the Public Parking Spaces in accordance with CDR's reasonable rules including but not limited to causing damage or destruction to property, trespass, loitering or any other infraction other than public parking in accordance with the terms set forth in this Amendment No. 2. Any CDR rule which conflicts with this Amendment No. 2, or governmental rules and regulations, shall not be enforceable. At all reasonable times during the City's exclusive use of the Public Parking Spaces, City law enforcement, code enforcement, and traffic control officers shall be permitted to patrol and enter the Public Parking Spaces and Ingress and Egress Areas for the purpose of enforcing the terms of this Amendment No. 2 and the City's rules, laws, and regulations, and City employees and its contractors shall be permitted to enter the Public Parking Spaces and Ingress and Egress Areas to inspect, and in the event CDR fails to comply with this Amendment No. 2, to install, maintain, repair, and replace any portion of the Public Parking Spaces and Ingress and Egress Areas, subject to reimbursement of the City by CDR as provided in this Amendment No. 2. In the event CDR imposes any fee against a person or entity who uses the Public Parking Spaces in accordance with the terms of this Amendment No. 2, no such fee shall exceed the fee the City may charge a person or entity parking in a City public parking space along the Atlantic Avenue Corridor, for the same violation. If CDR charges a fee in excess of the limit set forth in this Amendment No. 2, City may charge CDR, in addition to all other available remedies, one thousand dollars (\$1,000.00) for the first violation, two thousand five hundred dollars (\$2,500.00) for the second violation, and five thousand dollars (\$5,000.00) for each subsequent violation. In the event of a violation, CDR may request, in writing, a hearing before the City Manager or designee within five (5) calendar days of receipt of notice of violation from the City. The City Manager or designee shall hold a hearing within a reasonable time of receipt of the written request. The City Manager may either affirm the fine, may reduce the fine, or may decline to issue the fine. The City Manager's decision is final and is not subject to appeal.

(7) CDR's Maintenance Standards. The standards and practices to be used by CDR

and its employees and contractors, in operating and cleaning of the Public Parking Spaces and Ingress and Egress Areas (collectively the “Parking Area”), shall be in keeping with the current industry practice for a Class A parking garage facility or lot. CDR shall operate the Parking Area in a commercially reasonable manner and in compliance with all applicable legal requirements. No obstruction or interference of the free flow of pedestrian and vehicular traffic or use of the Public Parking Spaces for parking shall be permitted or caused by CDR. CDR, at its sole cost and expense, shall cause any and all maintenance, repairs, and replacements to be made to the Public Parking Spaces and within the Parking Area as may be necessary or appropriate from time to time to keep the Parking Area in a commercially reasonable condition and in good repair. Maintenance, repair, and replacement items may include, without limitation, the surface of the parking lot, the concrete underlay, curbs, gutters, lighting facilities, striping, markers, and directional and parking signs. City shall have no obligation to maintain, repair, or replace any portion of the Parking Area. The parties hereto agree and acknowledge that CDR may be required to temporarily close all or portions of the Parking Area for maintenance, repair or replacement if applicable. Such closures shall be limited to the minimum amount of time necessary.

- a. CDR’s cost and expense of constructing, maintaining, repairing, and replacing the Parking Area, shall be borne by CDR including, without limitation:
 - (i) All costs of initial construction of improvements on the Parking Area;
 - (ii) all costs of maintaining, repairing, or replacing the sidewalks on the Parking Area;
 - (iii) all costs of maintaining, mowing, weeding, trimming, and watering all landscaped areas on the Parking Area;
 - (iv) all costs of repairs or replacements of or to any structural component of the Parking Area;
 - (v) all ad valorem real estate taxes on the Parking Area; and
 - (vi) all costs of management fees, wages, or salaries, and related employment benefits of any agents, managers, officers, directors or employees of CDR;
- b. For any and all, maintenance, repairs, and replacements or other work to be constructed or performed by Developer in or about the Parking Area, Developer shall take any and all safety measures reasonably required to protect the persons and property of City and invitees of City from accidental death, injury, or damage caused by or resulting from the construction or performance of any such work.

(8) Duty To Notify. Each party to this Amendment No. 2 shall notify the other parties to this Amendment No. 2 of any unsafe condition within the Parking Area promptly upon its discovery. As between City and CDR, CDR shall be responsible for the safety and security of the Parking Area and patrons and other invitees using the Parking Area.

(9) Parking Revenue. Effective as of _____, _____ (“Revenue Effective Date”) CDR shall collect all Parking Revenue and CDR shall be entitled to retain all Parking Revenue collected, subject to the maximum limits set forth in this Amendment No. 2. Effective as of _____, _____ CDR shall also be entitled to collect and retain all fines and penalties CDR assesses against persons using the Public Parking Spaces, subject to the maximum limits set forth in this Amendment No. 2. City is allowed access to the Parking Area and Public Parking Spaces, from time to time, to remove, at the City’s sole cost and expense, the existing City parking meters, kiosks and signage. The City anticipates removing

all City meters, kiosks, and signage within sixty (60) days after the Revenue Effective Date.

- (10) Conflict. The Parking Agreement as amended by Amendment No.1, except as expressly amended by this Amendment No.2, remain in full force and effect, and in the event of any conflict between the terms and provisions of the Parking Agreement, Amendment No. 1, and Amendment No.2, this Amendment No. 2 shall control.

- (11) Updated Notices. Notices shall be given to the parties at their respective addresses as stated above, with a copy to:

On behalf of CDR to:

Bonnie Miskel, Esq.
Miskel Backman, LLP
14 SE 4th Street, Suite 36
Boca Raton, Florida 33432

On behalf of City to:

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

and to:

City Attorney
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, Florida 33444

- (12) Remedies. In the event CDR fails to reimburse the City for any fees, costs, or expenses, incurred by City under or in connection with this Amendment No. 2, or CDR otherwise is in material breach of this Amendment No. 2, Amendment No. 1, and/or the Parking Agreement, after the City has provided CDR with notice of the breach and not less than thirty (30) days to cure the breach, in addition to any remedy the City may be entitled to under this Amendment No. 2, Amendment No. 1 and/or the Parking Agreement, or as provided by law or in equity, if CDR fails to cure the breach within the thirty (30) days after notice to CDR, City may terminate this Agreement, whereupon, CDR may not utilize any of the parking spaces provided in the Parking Agreement, as amended, to satisfy the Parking Condition requirement. Notwithstanding the foregoing, CDR shall have no remedy of suspension or termination of the Parking Agreement, Amendment No. 1 or Amendment No.2 on account of any breach by the City.

IN WITNESS WHEREOF, this Amendment No. 2 has been executed by the parties hereto on the day and year first reflected above.

CITY OF DELRAY BEACH

By: _____
Tom Carney, Mayor

Attest By: _____, City Clerk

Approved as to form and legal sufficiency:

By: Lynn Gelin, City Attorney

CDR DELRAY FEC, LLC

A Florida limited liability company
By: _____
Print Name:
Title:
By:
Print Name:

WITNESS

Print Name of Witness

Witness Address

WITNESS

Print Name of Witness

Witness Address

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of Florida