



CITY OF DELRAY BEACH
DEPARTMENT OF DEVELOPMENT SERVICES
100 N.W. 1ST AVENUE • DELRAY BEACH • FLORIDA 33444 • (561) 243-7040



MEMORANDUM

TO: SHERRY DUNGEY, TREASURY ANALYST

FROM: JENNIFER BUCE, PLANNER

THROUGH: ANTHEA GIANNIOTES, DEVELOPMENT SERVICES DIRECTOR

DATE: SEPTEMBER 21, 2023

SUBJECT: IN LIEU PAYMENT FEE FOR 302 NE 6TH AVENUE, SUBCULTURE

On April 18, 2023, the City Commission approved an in lieu parking request for five parking spaces in the amount of \$118,300.00 for Subculture Coffee located at 302 NE 6th Avenue. The subject property is in Area 1 and the cost of each parking space is \$23,600. Area 1 account number is 115-00-000-344-540.

Pursuant to LDR Section 4.6.9(E)(3)(d) allows, "*The in-lieu fee may be paid in full upon issuance of a building permit or in installments*". As no exterior changes are proposed to the building, the payment is due at the time of a zoning certificate of use. The applicant has chosen to pay the in-lieu fee in installments. The first installment is 50% of \$118,300, which is \$59,150.00. The 2nd installment at 25% of the total fee is due on the anniversary date of the signing of the agreement. The third and final payment of the total fee is due on the third anniversary date of the signing of the agreement.

Attached is a copy of the recorded Resolution No. 62-23 and agreement for the approval of five in lieu parking spaces. Attached is the first installment of \$59,150.00. The mailing address of the applicant is 302 NE 6th Avenue LLC, 520 Clematis Street, West Palm Beach, FL 33401.

C# 14464

Prepared by: R. H. RN:

City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

AGREEMENT FOR IN-LIEU OF PARKING FEE

THIS AGREEMENT (the "Agreement") is made as of the 18th day of April, 2023 by and between **THE CITY OF DELRAY BEACH**, a Florida municipal corporation of the State of Florida ("City"), and **302 NE 6th Avenue, LLC**, ("Owner").

WHEREAS, **Owner** is the owner of certain real property known as **Subculture Coffee** (the "Project"); and

WHEREAS, the City of Delray Beach received an In Lieu application (2023-073) from the Owner of a parcel of land measuring approximately 0.20 acres located at 302 NE 6th Ave. as more particularly described in Exhibit "A" ("Property") seeking relief to the parking requirement for an adaptive reuse from a business office use to a restaurant use consisting of 2,205 square feet on Property; and

WHEREAS, the City's Land Development Regulations ("LDR") require that the **Owner** provide 13 parking spaces upon conversion of the Property's use to restaurant space.

WHEREAS, LDR Section 4.6.9(E)(3) provides that the City Commission may approve the payment of a fee to the **City** in lieu of providing required parking; and

WHEREAS, the City Commission already determined that this In Lieu Fee Request meets the requirements of 4.6.9(E)(3) of the Land Development Regulations and is consistent with the Comprehensive Plan. Further, the City Commission has previously declared that there is ample and competent substantial evidence to support its findings; and

WHEREAS, Section 4.6.9(E)(3) of the Land Development Regulations further provides that the in-lieu parking fee may be paid in full upon issuance of a building permit or in installments pursuant to an In-Lieu of Parking Fee Agreement between the City and the Owner of the subject property; and

WHEREAS, the request is not associated with a Site Plan Modification; and

WHEREAS, the in-lieu parking fee shall be paid upon approval of a Zoning Certificate of Use; and

WHEREAS, the parties desire to enter into this Agreement in order to confirm the terms on which the in-lieu parking fee shall be paid.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained in this Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The parties hereby represent and warrant that the foregoing recitals are accurate and correct and hereby incorporate them in this Agreement.

2. The Property to which this Agreement applies is legally described as follows:

See Attached Exhibit "A".

3. The **City** hereby confirms that, pursuant to Section 4.6.9(E)(3) of the Land Development Regulations, it has approved the payment of the fees described in this Agreement in lieu of providing five (5) of the required number of parking spaces for the development of the Property.

4. **Owner** shall pay to the **City** a total in-lieu of parking fee of \$118,300. The total fee shall be paid as follows:

a) One payment in the amount of **\$118,300.00** by check delivered to the **City** upon the effective date of the Agreement; or

b) With three installment payments as follows:

i. One payment in the amount of **\$59,150.00** by check delivered to the **City** prior to issuance of a Zoning Certificate of Use.

ii. One payment in the amount of **\$29,575.00** is due on the second anniversary of the date of this Agreement.

iii. One payment in the amount of **\$29,575.00** is due on the third anniversary of the date of this Agreement.

c) Payments shall be made to:

Finance Department
City of Delray Beach

100 N.W. First Avenue
Delray Beach, FL 33444

5. In the event **Owner** fails to make a payment by the date required, the **City** shall provide written notice by certified mail, return receipt requested to **Owner** c/o **302 NE 6th Avenue, LLC, 520 Clematis Street, West Palm Beach, FL 33401** or at such other address as may be designated by **Owner** by written notice to the **City**. The **City's** notice shall request that **Owner** make the past due payment no later than thirty (30) days from the date the notice is received. Failure of **Owner** to remit payment within this thirty (30) day period shall be deemed breach of this Agreement. The **City** shall thereby be entitled to accelerate the remaining payments, demand payment, and file suit in a court of law seeking all payments due, interest, costs, and attorneys' fees.

6. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefits of and be enforceable by, the parties to this Agreement and their respective successors, legal representatives, and assigns.

7. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of this Agreement. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

8. This Agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties to this Agreement.

9. This Agreement is not valid unless signed by the Mayor and City Clerk.

10. The **Owner** shall record this Agreement in the Public Records for Palm Beach County, Florida.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to the Agreement have caused this Agreement to be duly executed on their behalf as of the dates set forth above.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to Form and Legal Sufficiency

Lynn Gelin
Lynn Gelin, City Attorney



Lina Escobar
(Print or Type Name)

Shawn Z. Turner
(Print or Type Name)

Owner: 302 NE 6th Avenue, LLC

By: Rodney Mayo
Print Name: Rodney Mayo
Title: Manager

STATE OF Florida

COUNTY OF Delaware

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 31 day of January, 2022, by Rodney Mayo (name of person), as Owner (type of authority) for 302 NE 6th Ave (name of party on behalf of whom instrument was executed).

Personally known ☐ OR Produced Identification ☐
Type of Identification Produced

Kristen Dagata
Notary Public State of Florida

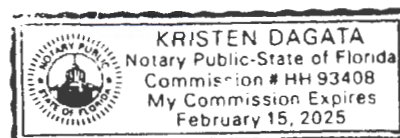


EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

The East 85.0 feet of Lots 13 and 14, Block 105, Highland Park, an addition to the City of Delray Beach, Florida, according to the Plat thereof recorded in Plat Book 2, Page 79, of the Public Records of Palm Beach County, Florida, for highway purposes in Cause No. 60-L-185-D, styled Palm Beach County, Florida V.C.P. Mager, et al in the Circuit Court of the Fifteenth Judicial District Circuit, Palm Beach County, Florida.

RESOLUTION NO. 62-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING AN IN-LIEU OF PARKING FEE REQUEST FOR THE PROPERTY LOCATED AT 302 NE 6TH AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT CONSISTENT WITH THE APPROVAL HEREIN; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, 302 NE 6TH Avenue, LLC, ("Owner") is the owner of a parcel of land measuring approximately 0.20 acres ("Property"), as more particularly described in Exhibit "A"; and

WHEREAS, the City of Delray Beach, Florida received an application (File No. 2023-073) seeking relief to the parking requirement for the Property; and

WHEREAS, the Owner is requesting a change of use of the Property from "Business Office" to "Restaurant", and

WHEREAS, the Property is zoned Central Business District ("CBD"), - Central Core; and

WHEREAS, pursuant to the Land Development Regulations ("LDR") of the City of Delray Beach, the Property is required to have 13 parking spaces with a designated use of "Restaurant" when only five spaces are required with a designated use of "Business Office"; and

WHEREAS, the property only has eight existing parking spaces on site; and

WHEREAS, for properties zoned CBD, LDR Section 4.4.13(1)(3)(a)(v) provides an option to pay an in-lieu fee of the required parking, provided certain criteria are met, if the required parking is not or cannot be provided on-site or off-site; and

WHEREAS, LDR Section 4.6.9(E)(3), states that when a property is changing its use, there is no maximum number of In Lieu parking spaces that can be requested; and

WHEREAS, the Property is located within Area 1, which sets forth an in lieu of parking fee of \$23,660.00 per space; and

WHEREAS, the Owner is requesting to pay a fee of \$118,300.00 in lieu of providing 5 of the 13 required parking spaces; and

WHEREAS, at its meeting on March 21, 2023, the Parking Management Advisory Board voted 4 to 0 to recommend approval to the City Commission of the requested In-Lieu of Parking fee; and

WHEREAS, pursuant to LDR Section 2.4.5(O)(5), the City Commission must make findings that the request is consistent with the Land Development Regulations, City Comprehensive Plan, and all currently adopted City policies and or studies.

WHEREAS, LDR Section 2.4.5(O)(5) requires that for in-lieu requests, the City Commission make an additional finding that adequate public parking options are available; and

WHEREAS, the City Commission considered this In Lieu Parking Fee Request, and has considered the respective findings as set forth in the Land Development Regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby incorporated herein by this reference and are approved.

Section 2. The City Commission makes positive findings that the request is consistent with the Land Development Regulations, City Comprehensive Plan, and all currently adopted City policies and/or studies.

Section 3. The City Commission makes positive findings that adequate public parking options are available.

Section 4. The City Commission approves the Owner's request to pay a fee of \$118,300.00 in-lieu of providing 5 of the 13 required parking spaces for the adaptive reuse of the Property from Business Office to Restaurant.

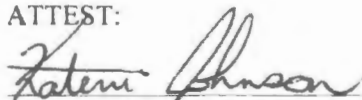
Section 5. The City Commission authorizes the City Manager to execute an agreement consistent with the approval herein.

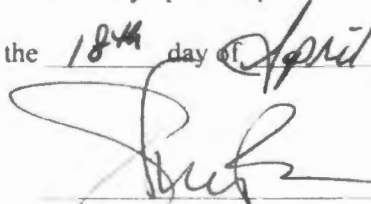
Section 6. All resolutions or parts of resolutions in conflict herewith shall be and hereby are repealed.

Section 7. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the 18th day of April, 2023.

ATTEST:


Katerri Johnson, City Clerk


Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

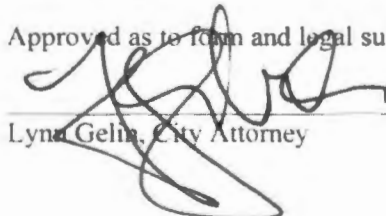

Lynn Gelina, City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

The East 85.0 feet of Lots 13 and 14, Block 105, Highland Park, an addition to the City of Delray Beach, Florida, according to the Plat thereof recorded in Plat Book 2, Page 79, of the Public Records of Palm Beach County, Florida, for highway purposes in Cause No. 60-L-185-D, styled Palm Beach County, Florida V C.P. Mager, et al in the Circuit Court of the Fifteenth Judicial District Circuit, Palm Beach County, Florida



CITY OF DELRAY BEACH
CITY ATTORNEY'S OFFICE
200 NW 1ST Avenue, Delray Beach, FL 33444
561-243-7090



LEGAL REVIEW FORM

This form is to be used solely for the legal review of documents not including procurement agreements. Procurement Agreements are reviewed under a separate cover. This form shall only be completed by a member of the City Attorney's Office.

Date of Review: 3/23/23

Document Name: RESOLUTION NO. 62-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, GRANTING AN IN-LIEU OF PARKING FEE REQUEST FOR THE PROPERTY LOCATED AT 302 NE 6TH AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT CONSISTENT WITH THE APPROVAL HEREIN; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Document Type: Resolution

Submitted by: Jen Buce

☒ This document is approved as to form and legal sufficiency.

☐ This document is approved as to form and legal sufficiency; however, the undersigned made the following change(s):

☐ This document is not approved as to form and legal sufficiency for the following reason(s):

s/Kelly W. Brandon, Esq.
Attorney

Copy to:

___ City Attorney's Office (with a copy of the approved document)