

Prepared by: RETURN:

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

TRI-PARTY AGREEMENT FOR IN-LIEU OF PARKING FEE

THIS AGREEMENT (the "Agreement") is made as of the ____ day of _____, 2015, by and between **THE CITY OF DELRAY BEACH**, a Florida municipal corporation of the State of Florida ("City"), **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY** ("Owner"), and **EQUITY DELRAY, LLC**, a Florida Limited Liability Company ("Developer").

WHEREAS, **Owner** is the owner of certain real property located on the south side of Atlantic Avenue between SW 6th Avenue and SW 9th Avenue (the "Property"); and

WHEREAS, **Developer** has applied to the **City** for approval of a mixed use project consisting of 17,267.3 square feet of office; 6,098.8 square feet of restaurant; 43,162 square feet of commercial/retail; and 112 multiple family dwelling units on Property ("Project"); and

WHEREAS, **Owner** has entered into a Purchase and Sale Agreement with **Developer** under which the **Owner** is obligated to convey Property to **Developer** thirty (30) days after issuance of a building permit for the Project; and

WHEREAS, as a condition of approval for the development on the Property, **Developer** must provide certain parking as required under the Land Development Regulations of the **City**. Section 4.6.9(E)(3) of the Land Development Regulations further provides that the City Commission may approve the payment of a fee to the **City** in lieu of providing required parking; and

WHEREAS, **Developer** has requested that the City Commission approve the payment of a fee to the **City** in lieu of providing 38 of the required parking spaces for the development of the Property (with a 19-space credit for parking constructed within the public rights-of-way); and

WHEREAS, the City Commission finds that this In Lieu Parking Fee Request meets the requirements of 4.6.9(E)(3) of the Land Development Regulations and is consistent with the Comprehensive Plan. The City Commission declares 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 installments pursuant to an In-Lieu of Parking Fee Agreement between the City and the Owner(s) of the subject property; 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; and

WHEREAS, **Developer** is willing to assume the obligations of the **Owner** as set forth in this Agreement.

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 38 of the required number of parking spaces for the development of the Property (with a 19-space credit for parking constructed within the public rights-of-way).

4. **Owner/ Developer** shall pay to the **City** a total in-lieu of parking fee of \$87,400.00. The total fee shall be paid as follows:

(a) One payment in the amount of \$43,700.00 by check delivered to the **City** upon execution of this Agreement.

(b) One payment in the amount of \$21,850.00 is due on the second anniversary of the date of this Agreement.

(c) One payment in the amount of \$21,850.00 is due on the third anniversary of the date of this Agreement.

(d) Each payment shall be made to:

Finance Department
City of Delray Beach
100 N.W. First Avenue
Delray Beach, FL 33444

5. In the event **Owner/ Developer** fails to make a payment by the date required, the **City** shall provide written notice by certified mail, return receipt requested to **Developer** at 5100 PGA Blvd., Palm Beach Gardens, FL 33418 and to **Owner** at 20 N. Swinton Ave, Delray Beach, FL 33444, or at such other address as may be designated by **Owner/Developer** by written notice to the **City**. The **City's** notice shall request that **Owner/ Developer** make the past due payment no later than thirty (30) days from the date the notice is received. Failure of **Owner/Developer** 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/Developer** shall record this Agreement in the Public Records for Palm Beach County, Florida.

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:

CITY OF DELRAY BEACH, FLORIDA

By: _____
City Clerk

By: _____
Cary D. Glickstein, Mayor

Approved as to Form:

By: _____
City Attorney

**DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY**

WITNESSES:

Susan B. Shaw
Print Name: SUSAN B. SHAW

Jeffrey A. Costello
Print Name: JEFFREY A. COSTELLO

By: [Signature]
Print Name: DeWayne Lot

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19th day of Nov, 2015 by Reggie Cory Chair (name of officer or agent, title of officer or agent) of DeRay CRA Board (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

Susan B. Shaw
Signature of Notary Public - State
of Florida



Susan B. Shaw
Commission # FF070388
Expires: Nov. 13, 2017
WWW.AARONNOTARY.COM

WITNESSES:

[Signature]
Print Name: Chad Aranson

[Signature]
Print Name: IVAN GOMEZ

[Signature]
EQUITY DELRAY, LCC

By: [Signature]
Print Name: JOHN FLYNN

The foregoing instrument was acknowledged before me this 11 day of NOVEMBER, 2015 by JOHN FLYNN (name of officer or agent, title of officer or agent) of EQUITY DELRAY, LLC (name of corporation acknowledging), a FLORIDA (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

[Signature]
Signature of Notary Public - State
of Florida

