

## AMENDMENT NO. 1 TO PARKING SPACE AGREEMENT AND COVENANT

**THIS AMENDMENT NO. 1 TO THE PARKING SPACE AGREEMENT AND COVENANT** (the “Amendment”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between CDR DELRAY FEC, LLC, a Florida limited liability company (“CDR”) with its principal office located at 2665 S. Bayshore Drive, Suite 605 B, Miami, Florida 33133 and the City of Delray Beach, a municipal corporation of the State of Florida (“City”), with offices located at 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444.

### RECITALS:

WHEREAS, CDR and City have entered into that certain Parking Space Agreement and Covenant (the “Agreement”) dated January 24, 2020; and

WHEREAS, the parties desire to amend the Agreement; and

WHEREAS, CDR has submitted an application for the redevelopment of a parcel located at 101 SE 2<sup>nd</sup> Avenue, Delray Beach, Florida 33444 (“101 Delray Triangle”) and desires to utilize the Excess Parking Spaces to satisfy the off-site parking requirements for 101 Delray Triangle; and

WHEREAS, before the City can consider approving the application for 101 Delray Triangle, CDR must provide Twenty-Eight (28) parking spaces (the “Parking Condition”); and

WHEREAS, CDR desires to satisfy the Parking Condition by utilizing the Excess Parking Spaces as defined in the Agreement; and

WHEREAS, at the time the Agreement was negotiated, the parties contemplated full cost recovery to CDR for the construction of the project (the “Reimbursed Construction Costs”); and

WHEREAS, the Reimbursed Construction Costs exceeded the allotment of \$325,000 and the parties agree to amend the reimbursed amount to the actual cost incurred by CDR.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein and, in the Agreement, the parties do hereby further agree as follows:

1. The foregoing recitals are incorporated by reference as though set forth fully herein and made a part hereof.
2. Section 2 of the Agreement, Definitions, subsection (c), “Parking Spaces,” is amended to read as follows:

“Parking Spaces” refers collectively to all sixty-one (61) parking spaces that CDR will construct on the FEC Real Property. “Public Parking Spaces” shall mean the ~~thirty-two~~ four (4) additional parking spaces for the use of the general public. “Off Site Parking Spaces” shall mean the ~~Twenty-Nine (29)~~ Fifty-Seven (57) parking spaces CDR needs to satisfy the Parking Condition for the OG Property and 101 Delray Triangle.

5. Section 5(a) of the Agreement, Parking Revenue and Enforcement, is amended to read as follows:

Parking Revenue and Enforcement. City, at City's expense, shall collect all Parking Revenue and shall have authority to enforce all applicable parking regulations on the FEC Real Property. Parking Revenue shall be distributed as follows:

- (a) 100% of the Parking Revenue, less and excepting the reasonable costs of City enforcement of the Parking Spaces which the parties agree is One Thousand Four Hundred and No/100 Dollars (\$1400) per month, and fines and penalties collected by City related to the enforcement of the City's parking regulation on the FEC Real Property, shall be paid to CDR until CDR is fully reimbursed for the reasonable costs of construction of sixty-one (61) Parking Spaces, but in no event shall this amount exceed ~~Three Hundred Twenty Five Thousand and No/100 Dollars (\$325,000)~~ Six Hundred Eighteen Thousand and One Hundred Twenty Four Dollars and 44/100 (\$618,124.44).

6. Section 6 of the Agreement, Use of Spaces, is amended to read as follows:

Use of Spaces. CDR Shall have the right to use the ~~Twenty-Nine (29)~~ Fifty-Seven (57) Off Site Parking Spaces to satisfy the Parking Condition for the OG Property and 101 Delray Triangle, with the balance of the Parking Spaces (~~thirty-two (32)~~ four (4) parking spaces) to be available to the general public. City acknowledges that in the future, CDR may seek other, unrelated development approvals that may require off-site and if any Parking Spaces are not needed to satisfy the Parking Condition ("Excess Parking Spaces"), CDR may request the City to consider whether any of the Excess Parking Spaces can be used to satisfy any off-site parking requirements of the City's Code of Ordinances. City has no obligation to grant CDR's request by CDR to use any Excess Parking Spaces for such unrelated development approvals, and, at minimum, approval by City is contingent upon CDR's compliance with all applicable City Code and Ordinances which may relate to CDR's request. CDR's use of the Parking Spaces shall at all times comply with the applicable provisions of the City's Codes and Ordinances.

7. Section 8 of the Agreement, Termination of FEC Lease, is amended to read as follows:

Termination of FEC Lease. In the event, for any reason, the FEC Lease is terminated or CDR no longer has the right to use the FEC Real Property to satisfy the Parking Condition, except as provided in paragraph 8(a) of the Agreement, CDR shall, not less than ten (10) days prior to the effective date of the FEC Lease Termination, either pay to the City the in lieu parking fee for ~~Twenty-Nine (29)~~ Fifty-Seven (57) parking spaces (or enter into an in lieu off-site parking space fee agreement as allowed by the City's Code), or otherwise satisfy the Parking Condition failing which, the City's approval of the Application will automatically be revoked. CDR will be in violation of the City's Code of Ordinances, and the City will have the right, without limitation, to prohibit CDR from operating the converted use or any other use of the OG Property or the 101 Delray Triangle Property, which is then not in compliance with the City's Codes and Ordinances. City may exercise

any rights and seek any remedies as provided by this Agreement, the City's Code and Ordinances, and as provided by law, whether legal or equitable, and all such rights and remedies shall be cumulative.

- a. If this Agreement has been in effect for at least ten (10) years from the date the City first collects Parking Revenue, CDR has not been and presently is not in default of this Agreement CDR has continuously satisfied the Parking Condition, and there have been not less than Thirty-Two (32) Public Parking Spaces on the FEC Real Property (in addition to the Off Site Parking Spaces) continuously for general public use, then the alternative in lieu parking fee needed by CDR to satisfy the Parking Condition shall be deemed satisfied.
  - b. FEC and Railway shall deliver to City a copy of any termination notice or default notice of CDR under the FEC Lease at the same time and in the same manner it provides notice of default to CDR. CDR shall delivery a copy of any FEC Lease termination or default notice it receives from either FEC or Railway to the City within one (1) business day after CDR's receipt of the notice.
  - c. City may, but shall have no obligation, to cure any default of CDR under the FEC Lease, and if the City cure a default, CDR shall upon City's written demand, reimburse City for any costs, fees, or expenses it incurs in curing the default.
8. The Agreement, except as expressly amended by this Amendment No. 1, remains in full force and effect, and in the event of any conflict between the terms and provisions of the Agreement and this Amendment No. 1, this Amendment No. 1 shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Amendment No. 1 has been executed by the parties hereto on the day and year first reflected above.

**ATTEST:**

**CITY OF DELRAY BEACH**

By: \_\_\_\_\_  
Katerri Johnson, City Clerk

By: \_\_\_\_\_  
Shelly Petrolia, Mayor

Approved As To Form And Legal Sufficiency

By: \_\_\_\_\_  
Lynn Gelin, City Attorney

**WITNESSES:**

**CDR DELRAY FEC, LLC**  
A Florida limited liability company

By: \_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Print Name:

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