

PREPARED BY AND
RETURN TO:

NEIL M. SCHILLER, ESQ.
515 N. Flagler Drive, Suite 1400
West Palm Beach, Florida 33401

AMENDMENT NO 1 TO
PARKING COST SHARING AGREEMENT

THIS Amendment No. 1 to Parking Cost Sharing Agreement (this “Amendment”) is made this _____ day of September, 2020, by DELRAY BEACH 4th and 5th AVENUE LLC, a Delaware limited liability company, its successors and assigns (hereinafter referred to as “Developer”), whose mailing address is 136 Brookline Avenue, Boston, MA 02215, and the Delray Beach Community Redevelopment Agency, a Florida body corporate and politic created pursuant to Florida Statutes Section 163.356, its successors and assigns, whose mailing address is 20 N. Swinton Ave., Delray Beach, Florida 33444 (hereinafter referred to as “CRA”).

WITNESSETH

WHEREAS, CRA and Delray Beach Holdings, LLC, a Florida limited liability company (“Delray Beach Holdings”), Developer’s predecessor in interest, entered into a Tri-Party Agreement with the City of Delray Beach (“City”), pursuant to that certain Purchase and Sale Agreement having an effective date of December 17, 2013, as amended, pursuant to which Developer agreed to purchase from CRA and CRA agreed to sell to Developer the Overall Parcel (as hereinafter defined); and

WHEREAS, a final subdivision plat and waivers were approved by the City Commission on March 15, 2016, during which the City Commission requested certain conditions of approval and covenants be incorporated into an agreement; and

WHEREAS, pursuant to the terms of that certain Parking Cost Sharing Agreement dated as of March 14, 2017 by and between Delray Beach Holdings and CRA (the “PCSA”), CRA agreed to reimburse the Developer for certain maintenance costs incurred by the Developer in maintaining the Public Parking Spaces (as defined in the PCSA) contained in the Parking Garage Facility (as defined in the PCSA); and

WHEREAS, the Developer has constructed and developed a 497 seat movie theatre, 42,446 square feet of office space, 7,487 square feet of retail area, and a parking garage (the “Project”, a/k/a Fourth and Fifth Delray) on that certain real property described on Exhibit A attached hereto (the “Overall Parcel”), all in accordance with the City Agreements (identified on Exhibit B attached hereto) and applicable City approvals; and

WHEREAS, the Developer and the CRA now desire to amend the PCSA in accordance with the terms of this Amendment.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by the Developer to City, the adequacy and receipt of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

- I. Original Agreement. The terms of the PCSA shall continue in full force and effect but for the following sections which are hereby amended:

- A. Sections 2(ii) and (iii) the PCSA shall be amended and restated as follows:

“(ii) In addition to the Project Assistance Amount being paid to Holdings annually until the total amount is realized, CRA or its successor in interest, shall pay to Holdings the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) per year (prorated for any partial year) commencing in the year 2022 (“Annual Maintenance Payments”). The Annual Maintenance Payments shall be paid by CRA to Holdings within 30 days from receipt of a written invoice from Holdings. The Annual Maintenance Payments shall be due in perpetuity and shall extend to any party that succeeds to the interest of the CRA.

(iii) The obligations of the CRA to make the annual maintenance payments required hereunder shall commence on February 1, 2022.

- B. Section 6 of the PCSA is hereby amended and restated as follows:

“Holdings shall provide the CRA with the following documentation, to the reasonable satisfaction of the CRA Staff: (1) that the property taxes levied against the Property have been paid for such year; (2) that Holdings has put forth, and continues to put forth its good faith efforts to hire local contractors and residents of the CRA District to perform the work associated with the Project; and (3) a certification that the Public Parking Spaces are being properly maintained by December 31st of every year contemporaneously with its invoice for the coming year as required in Section 2.”

- II. Miscellaneous.

- A. Except as herein modified or amended, the provisions, conditions and terms of the PCSA shall remain unchanged and in full force and effect.
 - B. The CRA and the Developer acknowledge that neither party is in default under the CRA Agreements as of the date hereof, and that neither party is aware of any condition or circumstance which, with the passage of time or delivery of notice, or both, would constitute an event of default by either CRA or the Developer under the CRA Agreements. Neither CRA nor the Developer has any claims, defenses or set-offs of any kind to the payment or performance of the other party’s obligations under the CRA Agreements.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first written above.

DEVELOPER:

DELRAY BEACH 4TH & 5TH AVENUE LLC,
a Delaware limited liability company

By: DELRAY BEACH 4th & 5th AVENUE HOLDINGS LLC,
a Delaware limited liability company, its sole member

By: DELRAY BEACH 4th & 5th AVENUE DEVELOPER LLC,
a Delaware limited liability company, its managing member

By: S&A DELRAY BEACH 4th & 5th AVENUE LLC,
a Delaware limited liability company, its manager

By: S&A GP LLC, a Massachusetts limited liability company,
its manager

By: _____

Name: _____

Title: Manager

WITNESSES:

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Renée A. Jadusingh, Esq.
CRA Executive Director

Exhibit A

Legal Description for Overall Parcel