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PREPARED BY: RETURN TO:

Janice Rustin, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

TRI-PARTY OFFSITE PARKING EASEMENT AGREEMENT

THIS AGREEMENT made this 14th day of December, 2017, by and between **50 SE 4TH AVENUE LLC** ("Developer" or "Grantee"), whose address is 140 North Federal Highway, Suite 200, Mizner Park, Boca Raton, Florida 33432; **THE COASTAL GROUP, INC.** ("Owner" or "Grantor"), whose address is 350 SE 1st Street, Delray Beach, Florida 33483; and the **CITY OF DELRAY BEACH, FLORIDA** (the "City").

WITNESSETH:

WHEREAS, **Developer** has applied to the City for approval of a development site plan ("Site Plan") for a development located at 50 SE 4th Avenue, Delray Beach, Florida, 33483 ("Project"); and

WHEREAS, for the Project to be approved, **Developer** has secured offsite parking for the Project to meet the Project's parking requirement in accordance with the City's Land Development Regulation Section 4.6.9(E)(5) and Section 4.4.13(I)(3); and

WHEREAS, **Owner** is the owner of certain real property that is located within seven hundred and fifty feet (750') of the Project ("Property"); and

WHEREAS, **Owner** desires to grant **Developer** a perpetual parking easement ("Easement") to assist **Developer** in fulfilling its obligations to provide parking; and

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100 NW 1st Avenue, Delray Beach, FL 33444

WHEREAS, it is the desire of **Developer** and the **Owner** to each operate and maintain their respective properties with integration of certain common areas for their mutual benefits as to parking; and

WHEREAS, this Agreement will be effective upon certification of the Site Plan for the Project (if approved).

NOW, THEREFORE, for good and valuable consideration, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated as if fully set forth herein.
2. **Grant of Easement.** Subject to the terms and conditions hereinafter set forth, Owner/Grantor does hereby grant and convey unto Developer/Grantee, an exclusive and perpetual parking easement and right of access to twenty-five (25) parking spaces that are located on the Property more particularly described and depicted on Exhibit "A" ("Easement Area") for the purpose of providing customer and employee parking for the Grantee's Project. Concomitant and coextensive with this right is the further right of the Grantee, its successors and assigns, of ingress and egress over and on the Easement Area, to effect the purposes of the easement, as expressed hereinafter.
3. **Owner's Declaration of Covenant.** The Owner hereby declares that the Easement Area shall never be disposed of except in conjunction with the transfer or sale of the Project which the Easement Area is intended to serve, so long as the parking facilities are required.
4. **Maintenance.** Owner shall maintain the parking spaces located in Easement Area in a neat, clean and sanitary condition, free from all garbage, trash, litter and debris and provide

whatever maintenance is required thereon, including, but not limited to asphalt repair or repaving, and painting lines thereon to clearly mark the parking spaces.

5. **Enforcement.** The Parties hereby acknowledge and agree that the parking spaces located in the Easement Area are necessary for the Project to satisfy the parking requirements as set forth in the City's Land Development Regulations and that the Developer will be in violation of the City's Land Development Regulations if for any reason these offsite parking spaces are no longer available for use by Developer. City shall have the right to enforce the terms, conditions, and obligations set forth in this Agreement, including the City's parking requirements, by any legal means available, including but not limited to those set forth in the City Code of Ordinances, rules, and/or policies, state, and/or federal law. This Agreement may be enforced by any of the Parties hereto.

6. **Recordation.** This Agreement shall be binding upon, and inure to the benefit of, each party, its successors, assigns, or heirs, as the case may be. This Agreement and any amendments shall be recorded in the public records of Palm Beach County, Florida with the expense of such recordation to be borne by Developer.

7. **Termination.** This Agreement may only be terminated if replacement parking has been approved by the City or if the Project no longer requires the parking spaces located in the Easement Area to meet the City's parking requirements. This Agreement may not be modified, suspended or terminated except by a written instrument properly executed by all Parties and recorded in accordance with paragraph 6 hereinabove.

8. **Indemnification.** Developer and Owner shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any

and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Developer and/or Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Developer and/or Owner shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City.

9. Severability. If any term, provision, covenant or restriction contained herein or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this Agreement or the application of such term, provision, covenant or restriction to persons or circumstances other than to those to which it is held invalid or unenforceable shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed these presents and affixed their seals hereto as of the day and year first above written.

ATTEST:

City Clerk

Approved as to Form:

City Attorney

CITY OF DELRAY BEACH, FLORIDA

By:

Cary D. Glickstein, Mayor

WITNESSES:

Print Name:

William Weismann

Print Name:

Doba M. Cohen

50 SE 4TH AVENUE LLC

By:

Steven Cohen, Managing Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25TH day of SEPTEMBER, 2017 by STEVEN COHEN (name of officer or agent, title of officer or agent) of 50 SE 4th AVENUE LLC (name of entity), on behalf of the corporation. He/She is personally known to me or has produced (type of identification) as identification and did (did not) take an oath



JILL SONTAG
MY COMMISSION # FF 173762
EXPIRES: November 14, 2018
Bonded Thru Budget Notary Services

Signature of Notary Public

WITNESSES:

[Signature]
Print Name: Marjorie S. Margolis

[Signature]
Print Name: WILLIAM WEISMAN

THE COASTAL GROUP, INC

By: [Signature]
Jenna Sellers Miller

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of October, 2017 by Jenna Sellers Miller (name of officer or agent, title of officer or agent) of The Coastal Group, Inc. (name of entity), on behalf of the corporation. He/She is personally known to me or has produced Florida's license (type of identification) as identification and did (did not) take an oath

[Signature]
Signature of Notary Public

 MARJORIE S. MARGOLIES
MY COMMISSION # FF 173625
EXPIRES: November 14, 2018
Bonded thru Budget Notary Services



EXHIBIT "A"