

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

THIS AMENDMENT NO. 1 TO PARKING SPACE AGREEMENT AND COVENANT ("Amendment") is made and entered into this 5th day of March 2024 by and between CDR DELRAY FEC, LLC, a Florida limited liability company ("CDR") and the City of Delray Beach, a municipal corporation of the State of Florida ("City").

WITNESSETH:

WHEREAS, CDR and City have entered into that certain Parking Space Agreement and Covenant ("Agreement") dated January 24, 2020, and this Amendment shall be annexed thereto and made a part thereof; and

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

WHEREAS, at the time Parking Space Agreement and Covenant was executed, 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 that cost 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 hereby confirmed as true and correct.
2. Section 2 of the Agreement, Definitions, "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 four (4) additional parking spaces for the use of the general public. "Off Site Parking Spaces" shall mean the Fifty-Seven (57) parking spaces CDR needs to satisfy the Parking Condition.

3. 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 Fifty-Seven (57) Off Site Parking Spaces to satisfy the City's Parking Condition, with the balance of the Parking Spaces (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.

4. 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 the 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.

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 Six Hundred Eighteen Thousand and One Hundred Twenty Four Dollars and 44/100 (\$618,124.44).

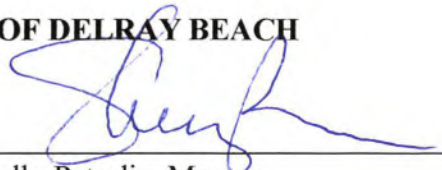
6. The Agreement, except as expressly amended by this Amendment No. 1, remains in full force and effect, and in the event of any conflict between the terms and provisions of the Agreement and this Amendment No. 1, this Amendment No. 1 shall control.

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

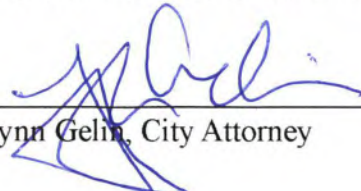
ATTEST:

By: 
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH

By: 
Shelly Petrolia, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

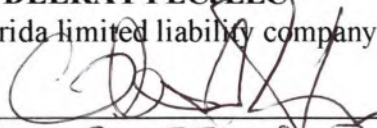
By: 
Lynn Gelin, City Attorney



WITNESS:

By: _____
Print Name:

CDR DELRAY FEC, LLC
A Florida limited liability company

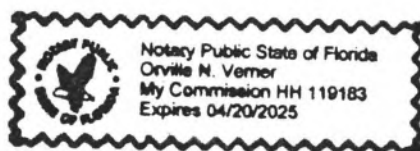
By: 
Name: CLIFFORD ROSEN
Title: 2/25/24 MANAGER

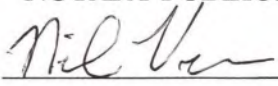
State of FLORIDA

County of PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of FEB,
2024, by CLIFFORD ROSEN, an individual, who is ☒ personally
known to me or who has produced _____ as identification and who did
take an oath.

NOTARY PUBLIC:



Sign: 

Print: ORVILLE NILES VERNER

My Commission Expires:

04/20/2025



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: 2/27/24

Document Name: *Amend No 1 to Parking Apace Agreement and Covenant*

Document Type: Amendment

Submitted by:

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

☐ These documents are 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//Lynn Gelin, Esq.
City Attorney

Copy to:

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