

Prepared by: RETURN:

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

AGREEMENT FOR IN-LIEU OF PARKING FEE

THIS AGREEMENT (the “Agreement”) is made as of the ____ day of_____, 2022, by and between **THE CITY OF DELRAY BEACH**, a Florida municipal corporation of the State of Florida (“City”), **MDG Banyan Delray Partners, LLC**. (“Owner”).

WHEREAS, Owner is the owner of certain real property known as City Center Delray (the “Project”); and

WHEREAS, the City of Delray Beach, Florida received a Class V Site Plan Modification, Certificate of Appropriateness application (2022-060) from the Owner associated with the property abutting the intersection of North Swinton Avenue and West Atlantic (“Property”) seeking to construct a 3-story structure west of the existing Doc’s building; and

WHEREAS, the City’s Land Development Regulations (“LDR”) require that **Owner** provide certain parking as part of the Project. LDR Section 4.6.9(E)(3) further provides that the City Commission may approve the payment of a fee to the **City** in lieu of providing required parking; and

WHEREAS, the City Commission has already determined 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. Further, the City Commission has previously declared that there is ample and competent substantial evidence to support its findings; 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.

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 25 additional parking spaces in order to accommodate the requested changes to the parking lot configuration of the Project.

4. **Owner** shall pay to the **City** a total in-lieu of parking fee of \$253,500.00 for 25 additional parking spaces located in area 2, defined as parcels located within the OSSHAD zoning district, except for those parcels which front East Atlantic Avenue, as illustrated in the "In Lieu Fee Areas" map, and parcels located within the areas which are zoned CBD. The total fee shall be paid as follows:

(a) One payment in the amount of **\$253,500.00** by check delivered to the **City** upon execution of this Agreement.

(b) The 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** fails to make the payment by the date required, the **City** shall provide written notice by certified mail, return receipt requested to **Owner** c/o MDG Banyan Delray Partners, LL., **227 West Monroe, Suite 5040, Chicago, IL. 60606** or at such other address as may be designated by **Owner** by written notice to the **City**. The **City's** notice shall request that **Owner** make the past due payment no later than thirty (30) days from the date the notice is received. Failure of **Owner** 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** shall record this Agreement in the Public Records for Palm Beach County, Florida.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

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: _____
Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

By: _____
Lynn Gelin, City Attorney

WITNESS #1:

MDG Banyan Delray Partners, LLC:

Print Name: _____

By: _____
Print Name: _____

WITNESS #2

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

By: _____
Print Name: _____