

Prepared by: RETURN:
Janice Rustin, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

P.C.N. # 12-43-46-30-28-000-0021 (as to FFS Parcel)
P.C.N. # 12-43-46-30-28-000-0022 (as to Cousins Parcel)

PUBLIC GREENWAY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this ____ day of _____, 2017, by and between, **FFS ENTERPRISES LLC** (hereinafter, "FFS") and **COUSINS FIRST STORAGE LLC** (hereinafter, "Cousins" and, collectively with FFS, the "Grantor"), each a Delaware limited liability company, both having an address of c/o Kaufman Lynn Construction, 4850 T-Rex Avenue, Suite 300, Boca Raton, Florida 33431 (collectively herein called "Grantor"), and **CITY OF DELRAY BEACH**, a municipal corporation in Palm Beach County, State of Florida, with a mailing address of 100 N.W. 1st Avenue, Delray Beach, Florida 33444 (herein called "City").

WITNESSETH:

WHEREAS, FFS is the fee simple owner of certain real property (hereinafter, the "FFS Property") and Cousins is the fee simple owner of certain real property (hereinafter, collectively called the "Cousins Property" and, collectively with the FFS Property, the "Property"), each of the FFS Property and the Cousins Property as more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, pursuant to Ordinance No. 14-16, Grantor has elected to acquire a development bonus by providing the City a community benefit bonus in the form of a shared use pedestrian and bicycle path, also known as a "Public Greenway"; and

WHEREAS, City desires to place, construct or install the Public Greenway on that portion of the Property as shown on Exhibit "B", attached hereto and made a part hereof ("Easement Area"); and

WHEREAS, the Grantor has agreed to allow City to construct a Public Greenway in the Easement Area in exchange for the development bonus.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. **Recitals.** All of the above recitals are true and correct and by this reference are incorporated herein and made a part hereof.

2. **Grant of Easement.** Subject to the terms and conditions hereinafter set forth, Grantor does hereby grant and convey unto City a right-of-way and perpetual non-exclusive easement and right of access for pedestrian and bicycle access and use over the Easement Area to be installed, constructed, repaired and maintained by the City. Grantor does hereby grant to the City the authority to enter upon and to install, construct, repair and maintain Public Greenway improvements within the Easement Area, subject to Grantor's review and approval and provided that such improvements do not negatively affect any approvals and permits, including but not limited to, the South Florida Water Management District permit, the approved site plan, and any other approvals associated with the Grantor's use of its Property (collectively, the "Approvals") or Grantor's use of the Property. Concomitant and coextensive with this right is the further right of the City, its successors and assigns, of ingress and egress over and on the Easement Area, to effect the purposes of this easement, as expressed herein.

3. **Fixtures and Structures.** City shall have the right to install on the Easement Area such structure/fixtures as City considers necessary or desirable for the construction/installation of the Public Greenway, subject to approval of Grantor and provided that such improvements do not negatively impact the Approvals, Grantor's use of the Property, or the visibility of improvements on the Property from Interstate 95 (I-95).

4. **Maintenance.** City shall be obligated to repair and maintain all the Public Greenway improvements within the Easement Area in the same manner that it maintains other pedestrian rights-of way located throughout the City limits of Delray Beach. City shall not be responsible to maintain and repair any other areas or improvements outside the Easement Area, unless same are damaged by any City employees or vendors performing such maintenance or repairs.

5. **Recording; Termination.** This Agreement shall be recorded in the public records of Palm Beach County, Florida. This Agreement shall become null and void upon recording an Agreement for Termination of Easement mutually executed by City and Grantor and thereupon this Easement shall be of no further force or effect.

6. **Venue.** This Agreement shall be governed by the Laws of the State of Florida and venue of any action to construe or enforce this Agreement shall be in Palm Beach County, Florida.

7. **Modification.** There are no other agreements, promises, or undertakings between the parties except as specifically set forth herein. No alterations, changes, modifications, or amendments shall be made to this Agreement except in writing and signed by the owners of the Property and the City and recorded in the Public Records of Palm Beach County, Florida.

8. **Notice.** Whenever any notice must be given or is required to be given under the terms of this Agreement, the same shall be delivered by hand, through the U.S. Mail, certified carrier (such as Federal Express) addressed to the parties as follows:

To CITY: City Manager
City of Delray Beach
434 S. Swinton Avenue
Delray Beach, FL 33444

To GRANTOR: Cousins First Storage LLC
c/o Kaufmann Lynn Construction
4850 T-Rex Avenue, Suite 300
Boca Raton, Florida 33431
Attn: Michael Kaufman

FFS Enterprises LLC
c/o Kaufmann Lynn Construction
4850 T-Rex Avenue, Suite 300
Boca Raton, Florida 33431
Attn: Michael Kaufman

9. Grantor agrees to provide for the release or subordination of any and all mortgages or liens encumbering the Easement Area. Grantor also agrees to erect no building or effect any other kind of construction or improvements upon the Easement Area with the exception of any improvements previously approved by the City associated with the site plan approval (Class V Site Plan Approval 2016-175) and any building and engineering permits associated with the approved site plan. Grantor does hereby fully warrant the title to the Easement Area, subject only to matters of record, and will defend the same against the lawful claims of all persons whomsoever claimed by, through or under it, that it has good right and lawful authority to grant an easement on the Easement Area and that the same is unencumbered except for matters of record, including, easements, restrictions, reservations of record, and those easements referenced herein.


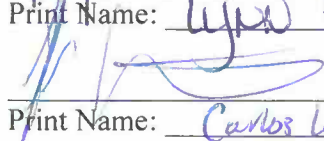
10. **Indemnification.** Subject to the monetary and all other limitations contained in Section 768.28, Florida Statutes, the City agrees to indemnify and hold Grantor harmless from any and all damages, claims, causes of action, or liabilities for personal injury, bodily injury, and/or property damage directly caused by the negligent acts or omission of the Grantee, its officers employees, servants and agents. Notwithstanding anything to the contrary herein, the Grantee's indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*, and nothing in the indemnification is meant to or shall serve as a waiver of any of the requirements or limitations contained in Section 768.28, *Florida Statutes*. This indemnification provision shall continue indefinitely and survive the cancellation, termination, expiration, lapse of suspension of this easement.


11. **Effective Date.** The effective date of this Agreement shall be the date that the parties hereto duly execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Easement on the day and year first above written.

WITNESSES:

Grantor: **COUSINS FIRST STORAGE LLC, a Delaware limited liability company**

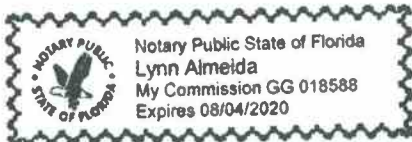

Print Name: Lynn Almeida

Print Name: Carlos Lorenzo

By: 
Print Name: Michael Kaufman
Title: Manager

(SEAL)

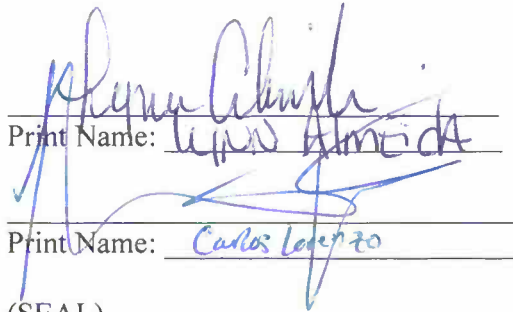
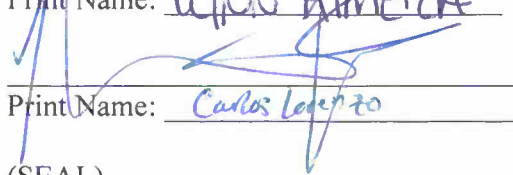
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2nd day of August, 2017, by Michael Kaufman, as Manager of Cousins First Storage LLC, a Delaware limited liability company, on behalf of the limited liability company. He is personally known to me or has produced _____ (type of identification) as identification.

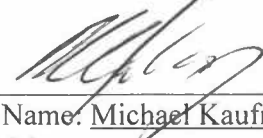



Notary Public – State of Florida

WITNESSES:

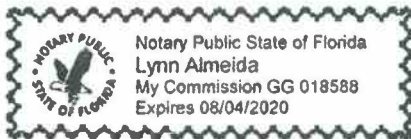

Print Name: Lynn Almeida

Print Name: Carlos Lopez
(SEAL)

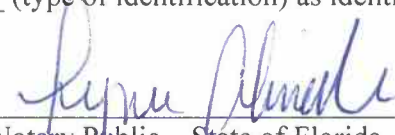
Grantor: **FFS ENTERPRISES LLC, a
Delaware limited liability company**

By: 
Print Name: Michael Kaufman
Title: Manager

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2nd day of August, 2017, by Michael Kaufman, as Manager of FFS Enterprises LLC, a Delaware limited liability company, on behalf of the limited liability company. He is personally known to me or has produced _____ (type of identification) as identification.




Notary Public – State of Florida

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Chevelle Nubin, City Clerk

By: _____
Cary D. Glickstein, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

R. Max Lohman, City Attorney

MORTGAGEE'S CONSENT, SUBORDINATION AND JOINDER

This Consent, Subordination and Joinder ("Joinder") by _____ (the "**Mortgagee**") is made this ____ day of _____, 2017. For good and valuable consideration, the receipt of which is acknowledged, the Mortgagee, as owner and holder of those certain Mortgage and Security Agreements dated November 23, 2016, and recorded in Official Records Book 28734, Page 192 and Official Records Book 28734, Page 235, of the Public Records of Palm Beach County, Florida (the "**Mortgage**") hereby consents to the making and recording of the Public Greenway Easement Agreement to which this Joinder is attached ("Agreement"). The Mortgagee hereby consents and agrees that the aforesaid Mortgage held by Mortgagee is and shall be subject and subordinate to the foregoing Agreement; provided, however, that nothing herein contained shall in anyway impair, alter or diminish the effect, lien or encumbrance of the Mortgage on the mortgaged premises, or any of the rights and remedies of the Mortgagee or any subsequent holder thereof, nor shall anything herein contained be construed as an assumption by the Mortgagee of any obligations of the parties of the foregoing Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder as of the day and year first above written.

WITNESS #1:

Maxine Burnside
MAXINE BURNSIDE
(name printed or typed)

Mortgagee:

FLORIDA COMMUNITY BANK, N.A.

By: 

Print Name: DOUGLAS E. ROBERTS

Title: SENIOR VICE PRESIDENT

WITNESS #2:

Vivian Gómez
Vivian Gómez
(name printed or typed)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 1st day of August, 2017 by Douglas E Roberts (name of officer or agent), of Florida Community Bank, NA (name of corporation), a Florida (State or place of incorporation) corporation, 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.

T Lyn-kee-chow

Signature of Notary Public -
State of _____

(SEAL)



T LYN-KEE-CHOW
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF156190
Expires 9/2/2018

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

FFS PROPERTY

A portion of Lot 2, of CORPORATE TECH CENTER PLAT NO. 2, according to the Plat thereof, recorded in Plat Book 54, Page 177, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the northwest corner of said Lot 2; THENCE N89°12'30"E along the north line of said Lot 2, a distance of 395.01 feet to the northeast corner of said Lot 2; THENCE S00°18'55"E along the east line of said Lot 2, a distance of 36.46 feet; THENCE S89°41'05"W, a distance of 54.25 feet; THENCE S00°18'55"E, a distance of 24.00 feet THENCE S89°41'05"W, a distance of 153.73 feet; THENCE S00°18'55"E, a distance of 271.27 feet to a point of intersection with the south line of said Lot 2; THENCE S89°12'30"W along said south line, a distance of 187.03 feet to the southwest corner of said Lot 2; THENCE N00°18'55"W along the west line of said Lot 2, a distance of 330.00 feet to the point of beginning.

COUSINS PROPERTY

A portion of Lot 2, of CORPORATE TECH CENTER PLAT NO. 2, according to the Plat thereof, recorded in Plat Book 54, Page 177, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the southeast corner of said Lot 2; THENCE S89°12'30"W along the south line of Lot 2, a distance of 207.98 feet; THENCE N00°18'55"W, a distance of 271.27 feet; THENCE N89°41'05"E, a distance of 153.73 feet; THENCE N00°18'55"W, a distance of 24.00 feet; THENCE N89°41'05"E, a distance of 54.25 feet to a point of intersection with the east line of said Lot 2; THENCE S00°18'55"E along said east line, a distance of 293.54 feet to the point of beginning.

EXHIBIT B

