

Prepared by: Return to:

R Max Lohman, Esq.
City Attorney's Office
City of Delray Beach
200 NW 1st Avenue,
Delray Beach, FL 33432

PCN#

ARCADE RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT made this ____ day of _____, _____, by and between **50 SE 4TH AVENUE LLC** ("Owner"), whose address is 140 North Federal Highway, Suite 200, Mizner Park, Boca Raton, Florida 33432, and the **CITY OF DELRAY BEACH, FLORIDA**, a Florida municipal corporation, located at 100 NW 1st Avenue, Delray Beach, Florida, 33444 (the "City").

W I T N E S S E T H:

WHEREAS, the Owner 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"). The Project includes a two story building with an open air dining on the second floor and a covered arcade that extends over the City's right-of-way; and

WHEREAS, the City, acting through the Site Plan Review and Appearance Board, approved this Site Plan on January 10, 2018, subject to the condition that the City Commission approve a right-of-way agreement prior to certification of the Site Plan in accordance with Section 4.4.13 (E)(4)(f) of the City's Land Development Regulations; and

WHEREAS, the City finds that this Agreement is in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, therefore, for the mutual covenants and matters set forth herein, as of the date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.
2. **Use of City's right of way.** Pursuant to the approved Site Plan, Owner is permitted to construct an arcade structure and any appurtenances thereto ("Arcade") over a portion of the public right-of-way ("Premises"), as identified in the attached Exhibit "A". The Owner's use of the Premises shall not interfere with the normal use of the public right-of-way. Owner acknowledges that the City shall assume no liability or responsibility for the construction, installation, or maintenance of the Arcade or Premises. The Owner's placement of the Arcade on the Premises shall not in any way be construed as a constructive abandonment by the City.
3. **Maintenance.** Owner shall repair and maintain the Premises in conformance with the City's practices of maintaining public sidewalks throughout the City.
4. **Indemnification.** The Owner, his/her successors, heirs, and assigns, shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, or relating to any acts, action, neglect, or omission by Owner, or due to any accident, happening, or occurrence on the Premises. The Owner, his/her successors, heirs, and assigns shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Owner expressly understands and agrees that any insurance protection required by this Agreement or otherwise

provided by the Owner shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided. The obligations of this section shall survive the term of this Agreement.

5. **Insurance.** Owner shall provide certificates of insurance to the City evidencing its insurance coverage and naming the City as an additional insured. Such insurance shall be in an amount and form that is acceptable to the City and shall be delivered to the City prior to effective date of this Agreement.

6. **Recording; Termination.** This Agreement shall be binding on the Parties, their respective heirs, successors, legal representatives, and permitted assigns and shall run with the land. This Agreement shall be recorded in the public records of Palm Beach County, Florida. This Agreement shall become null and void upon recording an Notice of Termination mutually executed by City and Owner and thereupon this Agreement shall be of no further force or effect.

7. **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.

8. **Effective Date.** The Agreement shall become effective upon issuance of the Certificate of Occupancy for the Project.

9. **Miscellaneous.**

a. This Agreement may not be assigned or transferred by the Owner, in whole or part without the written consent of the City.

b. Nothing in this Agreement relieves Owner of any obligation imposed under all applicable governmental regulations, rules, laws, and ordinances. Owner is responsible for obtaining any and all permits required in connection with the construction and installation of the Arcade.

c. This Agreement constitutes the entire agreement between City and Owner and may not be altered, amended, or modified except by an instrument in writing signed by the parties to the agreement with all the same formalities as this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement the day and year first written above.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

City Attorney

WITNESSES:

Print Name: W. Scarpino

Print Name: Jill Sontag

50 SE 4TH AVENUE LLC

By: Steven Cohen
Steven Cohen, Managing Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5 day of MARCH, 2018 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

Signature of Notary Public

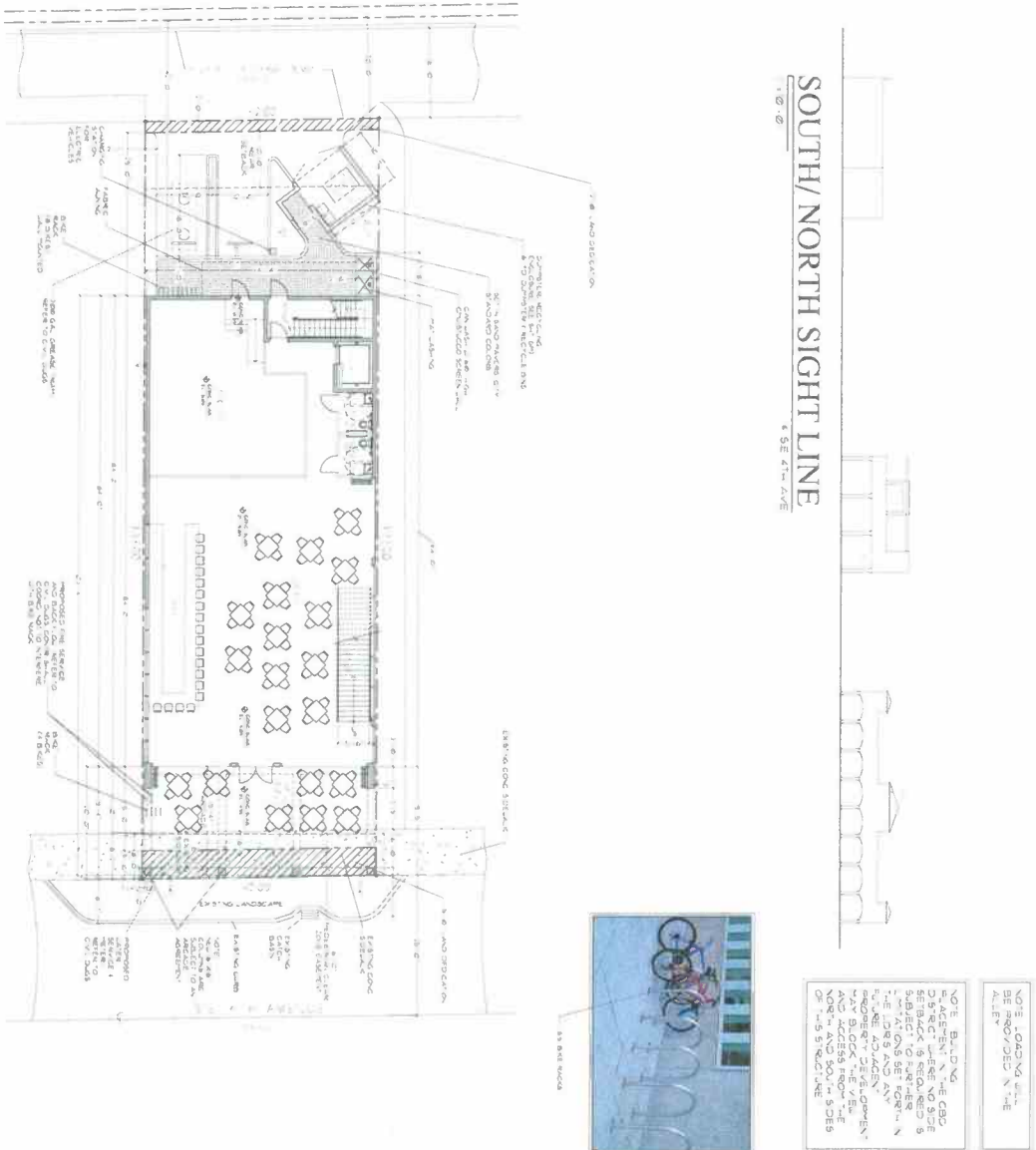


JILL SONTAG
MY COMMISSION # FF 173762
EXPIRES: November 14, 2018
Bonded Thru Budget Notary Services

Exhibit A
Sheet 1 of 4

Legal Description of 50 SE 4th Avenue, Delray Beach, Florida

TOWN OF DELRAY LT 9 BLK 93



SITE DATA	
PROJECT NAME: 50 SE 4TH AVE RESTAURANT	PROJECT ADDRESS: 50 SE 4TH AVE, DELRAY BEACH, FL 33435
OWNER: [REDACTED]	ARCHITECT: [REDACTED]
BUILDING DATA	
BUILDING TYPE: RESTAURANT	FLOOR AREA: 10,000 SQ. FT.
NUMBER OF FLOORS: 1	NUMBER OF PARKING SPACES: 10
PARKING	
PARKING TYPE: SURFACE	PARKING AREA: 1,000 SQ. FT.
BIKE RACK CALCULATION	
BIKE RACK TYPE: BICYCLE	BIKE RACK AREA: 100 SQ. FT.
OPTIONAL REQUIREMENTS FOR ARCADE	
ARCADE TYPE: ARCADE	ARCADE AREA: 1,000 SQ. FT.

50 SE 4TH AVE.
NEW RESTAURANT

50 SE 4TH AVE
DELRAY BEACH, FL

ARCHITECT: [REDACTED]

50 SE 4TH AVE

DELRAY BEACH, FL

ARCHITECT: [REDACTED]

50 SE 4TH AVE

DELRAY BEACH, FL

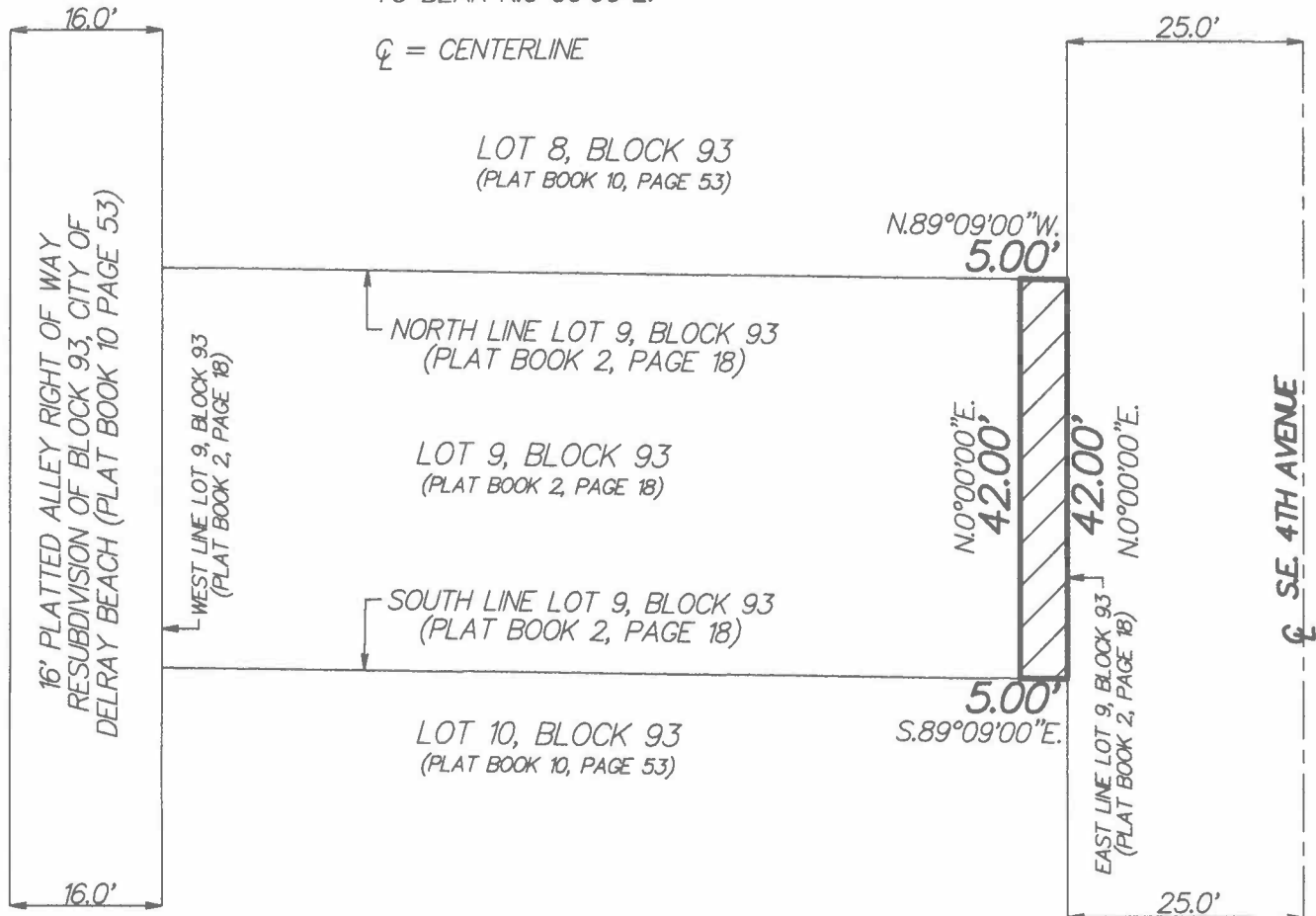
EXHIBIT "A"
SHEET 3 OF 4

NOTES:

THIS IS NOT A SURVEY

THE EAST LINE OF LOT 9, BLOCK 93
(PLAT BOOK 2, PAGE 18) IS ASSUMED
TO BEAR N.0°00'00"E.

\mathcal{C} = CENTERLINE



DESCRIPTION:

THE EAST 5.0 FEET OF LOT 9, BLOCK 93, RESUBDIVISION OF BLOCK 93, TOWN OF LINTON (NOW DELRAY BEACH) ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 210 SQUARE FEET.

ORDER NO. 16-76"4TH AVENUE R/W"

PAUL D. ENGLE
SURVEYOR & MAPPER NO. 5708

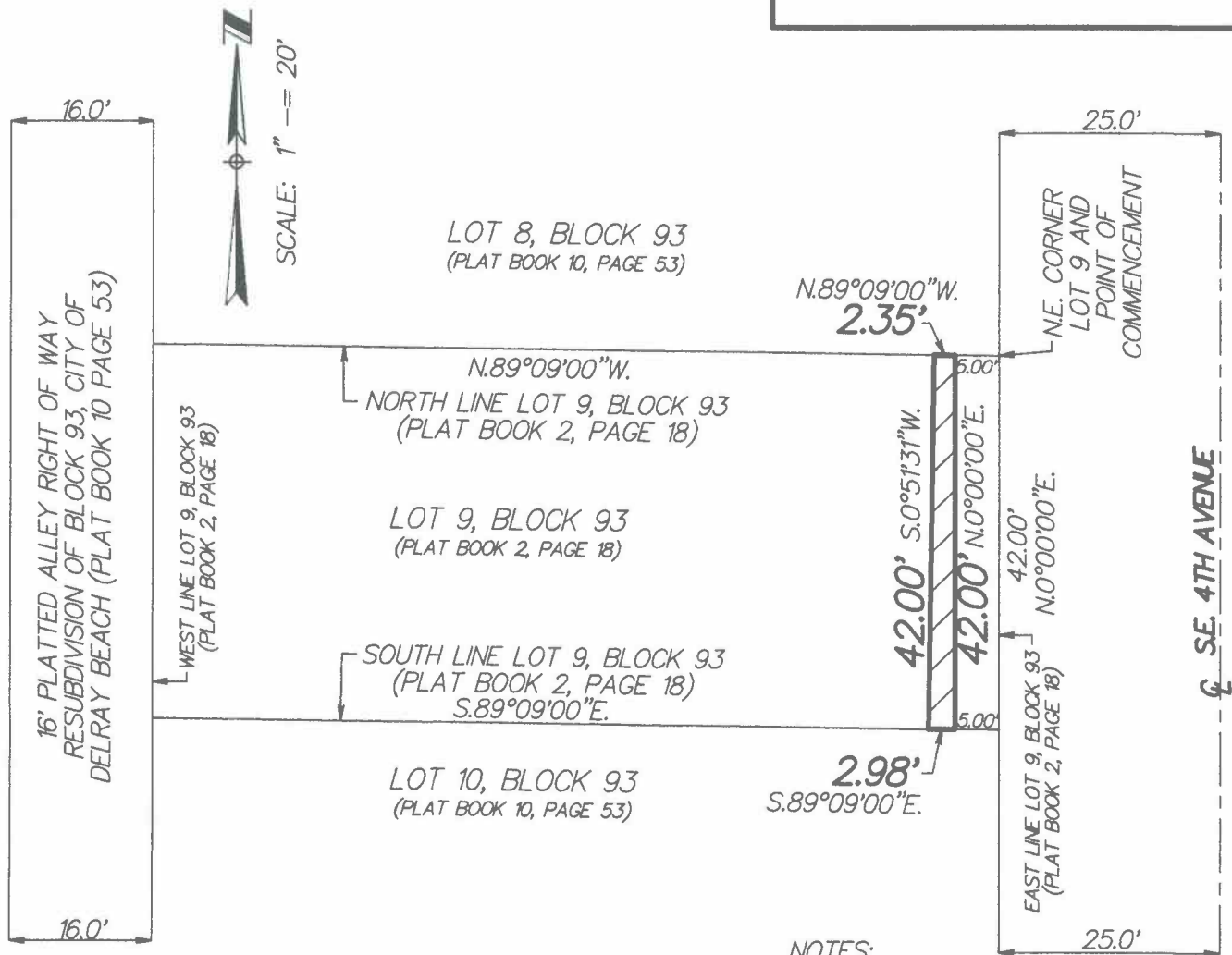
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER.

DATE: AUGUST 27, 2018

O'BRIEN, SUITER & O'BRIEN, INC.
 CERTIFICATE OF AUTHORIZATION #LB353
 SURVEYOR AND MAPPER IN RESPONSIBLE
 CHARGE: PAUL D. ENGLE
 955 N.W. 17TH AVENUE, SUITE K-1
 DELRAY BEACH FLORIDA 33445
 (561) 276-4501 (561) 732-3279

SKETCH OF DESCRIPTION

EXHIBIT "A"
SHEET 4 OF 4



NOTES:

THIS IS NOT A SURVEY

THE EAST LINE OF LOT 9, BLOCK 93
(PLAT BOOK 2, PAGE 18) IS ASSUMED
TO BEAR N.0°00'00"E.

CL = CENTERLINE

Paul D. Engle

PAUL D. ENGLE
SURVEYOR & MAPPER NO. 5708

NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER.

DATE: AUGUST 27, 2018

O'BRIEN, SUITER & O'BRIEN, INC.
CERTIFICATE OF AUTHORIZATION #LB353
SURVEYOR AND MAPPER IN RESPONSIBLE
CHARGE: PAUL D. ENGLE
955 N.W. 17TH AVENUE, SUITE K-1
DELRAY BEACH FLORIDA 33445
(561) 276-4501 (561) 732-3279

DESCRIPTION:

THAT PORTION OF LOT 9, BLOCK 93, RESUBDIVISION OF
BLOCK 93, TOWN OF LINTON (NOW DELRAY BEACH)
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT
BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF PALM BEACH
COUNTY, FLORIDA, DESCRIBED AS FOLLOWS.

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 9;
THENCE N.89°09'00"W., ALONG THE NORTH LINE OF SAID
LOT 9, A DISTANCE OF 5.00 FEET TO THE POINT OF
BEGINNING OF HEREIN DESCRIBED EASEMENT; THENCE
CONTINUE N.89°09'00"W., ALONG SAID NORTH LINE, A
DISTANCE OF 2.35 FEET; THENCE S.0°51'31"W., A
DISTANCE OF 42.00 FEET TO A POINT ON THE SOUTH LINE
OF SAID LOT 9; THENCE S.89°09'00"E., ALONG SAID
SOUTH LINE, A DISTANCE OF 2.98 FEET TO A POINT ON A
LINE 5.00 FEET WEST OF AND PARALLEL TO THE EAST LINE
OF SAID LOT 9; THENCE N.0°00'00"E., ALONG SAID
PARALLEL LINE, A DISTANCE OF 42.00 FEET TO THE POINT
OF BEGINNING.

CONTAINING 112 SQUARE FEET.

ORDER NO. 16-76"PEDESTRIAN CLEAR ZONE"