

Prepared by: RETURN:

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

AGREEMENT FOR IN-LIEU OF PARKING FEE

THIS AGREEMENT, In Lieu of Parking Fee Agreement, is made as of the ____ day of ____, 2018, by and between **THE CITY OF DELRAY BEACH**, a Florida municipal corporation of the State of Florida ("City"), **SW Delray Artist Alley, LLC. (Joseph E. White III, member)**

WHEREAS, Owner is the owner of certain real property located **300-330 NE 4th St (the "Property")**; and

WHEREAS, Owner has applied to the **City** for approval of a change of use for premises comprising 15,993 square feet consisting of the following uses: retail; industrial; and warehouse. The proposal consists of converting 12,025 square feet to restaurant use and 3,968 square feet will remain retail use at the Property located 300-330 NE 4th Street; and

WHEREAS, as a condition of approval for the development on the Property, **Owner** must provide certain parking as required under the Land Development Regulations (LDR) of the **City**. 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, Owner has requested that the City Commission approve the payment of a fee to the **City** in lieu of providing (44) of the required parking spaces for the development of the Property; and

WHEREAS, the City Commission finds 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. The City Commission declares that there is ample and competent substantial evidence to support its findings; and

WHEREAS, Section 4.6.9(E)(3) of the Land Development Regulations further provides that the in-lieu parking fee may be paid in installments pursuant to an In-Lieu of Parking Fee Agreement between the City and the Owner of the subject property; 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 (44) of the required number of parking spaces for the development of the Property.

4. **Owner/ Developer** shall pay to the **City** a total in-lieu of parking fee of \$202,400. The total fee shall be paid as follows:

(a) One payment in the amount of **\$101,200** by check delivered to the **City** prior to issuance of a building permit.

(b) One payment in the amount of **\$50,600** is due on the second anniversary of the date of this Agreement.

(c) One payment in the amount of **\$50,600** is due on the third anniversary of the date of this Agreement.

(d) Each 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 a payment by the date required, the **City** shall provide written notice by certified mail, return receipt requested to **Owner c/o Joseph E. White III, 150 E. Palmetto Park Rd Suite 600, Boca Raton, FL 33432** 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: _____
R. Max Lohman, City Attorney

S.W. DELRAY ARTIST ALLEY, LLC.

WITNESSES:

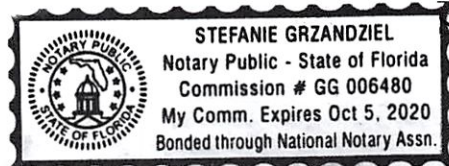
Print Name: Lester Hooker

By: _____
Print Name: Joseph E. White III, Member

Print Name: Steve Singer
STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of October, 2018 by Joseph white (name of officer or agent, title of officer or agent) of S.W. Delray Artist Alley, LLC (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



Signature of Notary Public - State
of Florida

Exhibit A

LTS 18 TO 28, INCL BLK 89, Subdivision of Block 89, Delray, According to the Plat thereof, as Recorded in Plat Book 4, Page 55, of the Public Records of Palm Beach County, Florida.