



Cover Memorandum/Staff Report

File #: 19-534

Agenda Date: 5/21/2019

Item #: 7.F.

TO: Mayor and Commissioners
FROM: Lynn Gelin, City Attorney
DATE: May 21, 2019

CONSIDERATION OF THE PARKING FACILITY EASEMENT AGREEMENT AND PROJECT COVENANT FOR THE 4th & 5th DELRAY (IPIC), SPECIFICALLY THE REQUIRED PUBLIC TERRACE AND THE USE OF THE PUBLIC TERRACE AREA AS A RESTAURANT/BAR

Recommended Action:

Consider the proposed modifications to the Parking Facility Easement Agreement and Project Covenant for 4th & 5th Delray.

Background:

At its meeting of January 20, 2016, the Site Plan Review and Appearance Board (SPRAB) approved the Class V site plan for the iPic movie theater, offices, and retail for the project known as "4th & 5th Delray". A condition of approval required the applicant to record a covenant related to the applicant's obligation to allow non-exclusive public use of the upper level, third floor terrace garden area and corresponding access ("Public Terrace"). The covenant for the public terrace was included in the Parking Facility Easement Agreement and Project Covenant ("Agreement"); specifically page 7 of 25, Section VI. Public Terrace. Generally, the referenced section provides the City of Delray Beach with a non-exclusive easement for the general public to use the Public Terrace and non-exclusive easement to access the Public Terrace. The conditions of the Public Terrace include:

- No charge to the public or City for use
- Developer must maintain
- Developer may limit the operational hours, but shall at a minimum extend to normal business hours (Monday through Friday, 9AM to 5PM) and all other times the Developer's customers, guests, etc. are allowed to use the Public Terrace.
- Developer may adopt reasonable rules and regulations regarding use; must apply to all users on an equal basis and not materially interfere with public's right to use the Public Terrace
- Developer shall not rent or lease the Public Terrace for commercial, public, or private events separate and apart from the use of the movie theater.

The iPic-Gold Class Entertainment ("Applicant") has submitted a Class III site plan modification to provide a restaurant/bar in the Public Terrace space.

NOTE: Any modification to the Agreement regarding the Public Terrace Area only affects the area as it relates to the Agreement and its terms; a Class III site plan modification is required to approve a new use and the change in intensity of the development.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

None.

Timing of Request:

Consideration of the Agreement is necessary before the Class III site plan modification application can be processed.