

ROAD IMPROVEMENT AGREEMENT

This Agreement ("Agreement") is entered this ____ day of _____, 2020, by and between CITY OF DELRAY BEACH, FLORIDA ("City") and DELRAY PLACE, LLC, a Florida limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the property more particularly described as the Delray Place South shopping center, with address of 1911 South Federal Highway, which is located at the northeast corner of Tropic Blvd. and Federal Highway, in the City of Delray Beach, State of Florida ("Property"); and

WHEREAS, on August 14, 2019, the City's Site Plan Review and Appearance Board ("SPRAB") reviewed and approved the prepared site plan providing for redevelopment and renovation of the Property (Agenda Item 6.E; Application 2019-121) ("SPRAB Approval"), which plan is comprised generally of site plan modifications, façade and landscape improvements, parking reconfiguration, existing building removal and building addition ("Project Approvals"); and

WHEREAS, as a condition to the SPRAB Approval, the Developer agreed to construct and expand the existing substandard westbound left and right turn lanes on Tropic Boulevard exiting onto Federal Highway from approximately 8 1/2 feet in lane width to approximately 10 feet in lane width ("Expanded 2 Tropic Lanes "); and

WHEREAS, at the August 14, 2019, SPRAB meeting, Developer proffered an additional left turn lane within the existing center median at the Tropic Boulevard/Federal Highway intersection east of Federal Highway which proffer was not accepted by the SPRAB Board ("Expanded 3 Tropic Lanes"); and

WHEREAS, the Expanded 2 Tropic Lanes are planned to improve the westbound vehicular movements traversing thru the Federal Highway and Tropic Boulevard intersection ("Tropic/Federal Intersection") to allow simultaneous left and right turns; and

WHEREAS, on September 5, 2019, within agenda Item 6.F.1. I, the SPRAB Approval was before the City Commission as a Board approved item for consideration on whether to appeal ("Appeal Item"); and

WHEREAS, prior to the hearing for the Appeal Item, Developer proffered to the City a letter wherein the Developer agreed to analyze traffic conditions of the Tropic/Federal Intersection within one (1) year from the date of completion of construction of the Project which specifically listed actions to be taken if the Tropic/Federal Intersection is operating at a failing level of service traffic performance standard, a copy of which is attached as Exhibit "A" and is incorporated herein ("Developer Proffered Letter"); and

WHEREAS, a majority of the City Commission voted against appealing the Appeal Item, ("City Commission Approval").

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. All recitals set forth above are true and correct and are incorporated herein by reference.
2. City and Developer hereby mutually agree to the terms and conditions contained within that Developer Proffered Letter from Bonnie Miskel, Esq., on behalf of Developer, to Neal de Jesus, Interim City Manager, dated September 5, 2019 and attached as Exhibit "A".
3. Notwithstanding anything to the contrary, the SPRAB Approval, City Commission Approval, and all other Developer's approvals, ("Combined Approvals") are final, and in no event shall any of Developer's Site Plan, access driveways and/or any other element of Developer's Combined Approvals, be required to be modified by any of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

ATTEST:

City of Delray Beach, Florida

City Clerk

By: _____
Mayor

Approved as to Form and legal
sufficiency:

City Attorney: _____

Witnesses:

Michelle Burns

Roz Schulman

DELRAY PLACE, LLC, a Florida limited liability company, by Delray Place Manager, Inc., a Florida corporation, its Managing Member

By: _____
Joe Carosella, President

EXHIBIT "A"



Ally Brown
Bonnie Miskel
Scott Backman
Haji Callahan
Dwayne Dickerson
Eric Zuckerman
Matthew J. Scott
Christina Gierke
Liam W. Geron
Jack Dwyer-Walton

September 5, 2019

Neal de Jesus, Interim City Manager
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444

Re: Delray Place South (2019-121) – Agenda item 6.E. of August 14, 2019, Site Plan Review
and Appearance Board meeting ("Project")

Dear Mr. de Jesus:

As you are aware, the above-referenced agenda item was heard by the Site Plan Review and Appearance Board ("Board") on August 14, 2019 ("Site Plan") and approved by a 4-2 vote. Although my client was agreeable to and proffered the design and construction of a dual left, and a single right-turn lane improvement exiting Tropic Boulevard westbound to Federal Highway ("3 Lane Section"), the Board chose not to accept the expanded 3 Lane Section, but rather accepted an expansion of the existing substandard right and left turning lanes from approximately 8 1/2 feet in lane width to approximately 10 feet in lane width ("2 Lane Section"). The Board was concerned that unlike the 2 Lane Section, the expanded 3 Lane Section required the use of a portion of the existing median and the loss of at least one of the two Tropic Isle monument signs located in the median within the public right-of-way.

Although my client's traffic engineer previously testified that upon completion of the Project (including the construction of the 2 Lane Section of Tropic Boulevard) Tropic Boulevard and Federal Highway will continue to meet the County's Traffic Performance Standards, my client is willing to reevaluate the 2 Lane Section and perform a new traffic study of westbound Tropic Boulevard at Federal Highway one (1) year from completion of construction of the Project. In the event the traffic study concludes that the 2 Lane Section results in a degradation in the level of service D to a failing condition, my client agrees to pay for the design of the 3 Lane Section and upon approval by the Florida Department of Transportation and any other applicable agency shall commence and diligently complete construction resulting in an additional left turn lane at the Federal Highway intersection. This offer is conditioned upon approval by the Florida Department of Transportation and all other applicable governmental agencies and the City's agreement to waive its appeal right provided by City Code. If there is interest in this proposal, if necessary please schedule this proposal for consideration on your next available City Commission agenda.

Thank you very much.

Sincerely,


Bonnie Miskel, Esq.

Accepted by City of Delray Beach
___ day of September, 2019

By: _____