

Prepared by and Return to:

**City of Delray Beach
Attn: Lynn Gelin, Esq.
City Attorney
200 N.W. 1st Avenue
Delray Beach, Florida 33444**

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (“Agreement”), made this _____ day of _____, 2020 (the “Effective Date”), by and between GROVE ROSEBUD TWO, LLC, A Florida Limited Liability Company (the “GROVE”), whose address is 101 SE 4th Avenue, Delray Beach, FL, 33483, and the City of Delray Beach (the “City”), A Florida Municipal Corporation, whose address is 100 N.W. 1st Avenue, Delray Beach, Florida, 33444.

WITNESSETH:

WHEREAS, the GROVE owns property located generally at the corner of NE 2nd Avenue and NE 2nd Street, Delray Beach, Florida, as more particularly described in Exhibit “A” [LEGAL DESCRIPTION] and which incorporated herein (“the Property”); and

WHEREAS, the GROVE submitted a Class IV Site Plan application (2020-054) to construct a multi-use facility, including, but not limited to, hotel, restaurant, and commercial/retail uses on the Property; and

WHEREAS, pursuant to the City’s Land Development Regulations (“LDRs”), the GROVE is required to provide adequate parking for the approved uses; and

WHEREAS, in lieu of the requirements laid forth in Section 4.6.9 of the LDRs, a parking facility with a valet service or operator which allows for attendants to receive, park and deliver the automobiles of occupants, tenants, customers, invitees, and visitors may be utilized; and

WHEREAS, when valet service is utilized to meet the requirements of Section 4.6.9 of the LDRs, an agreement with the City, which shall constitute a covenant running with the land binding the owners and its heirs, administrators, successors, and assigns, is required;

WHEREAS, the covenant can only be released by the City Commission and only upon such time a new site plan for the Property is approved which provides alternate parking arrangements which satisfy the parking requirements for the applicable uses; and,

WHEREAS, the parties agree to enter into this Agreement, which is to be recorded against the Property in the Public Records of Palm Beach County, Florida and shall apply and be enforceable against all current and future owners.

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, including but not limited to the mutual promises set forth herein, the GROVE and the City hereby agree as follows:

1. Recitals. The recitations set forth above are true and correct and incorporated in this Agreement as if fully set forth herein.

2. Queue for Valet Service. The Grove shall provide a valet drop-off/queuing area with a minimum length of 100 feet, as reflected on the Site Plan attached hereto as Exhibit "B", which is incorporated herein. The location of the valet drop-off/queuing area may be amended via the Site Plan, but under no circumstances shall the area be less than 100 feet in length, and it must be fully contained on private property. Additionally, at least two handicapped accessible spaces shall be provided adjacent to the valet drop-off/queuing area for any vehicles which cannot be operated by the valet attendant or other parking professional.

3. Valet Attendant. During all business hours, the Grove shall provide a valet attendant or other parking professional for vehicle retrieval.

4. Dimension and Number of Valet Spaces. The Grove shall provide and maintain 223 valet spaces as follows:

- a. First Level of the onsite Garage:
 - i. 42 standard spaces which are 9 feet wide and 18 feet deep;
 - ii. 37 compact spaces which are 8 feet wide and 16 feet deep;
 - iii. 4 accessible spaces which are 12 feet wide and 18 feet deep; and
 - iv. 20 drive aisle spaces which are 9 feet wide and 18 feet deep.
- b. Second Level of the onsite Garage:
 - i. 51 standard spaces which are 9 feet wide and 18 feet deep;
 - ii. 44 compact spaces which are 8 feet wide and 16 feet deep; and
 - iii. 25 drive aisle spaces which are 9 feet wide and 18 feet deep.

5. Covenant Running with the Land. The covenants and restrictions set forth herein shall run with the land and shall be binding upon the GROVE, and its transferees, lessees, grantees, successors, assigns and mortgagees, and shall inure to the benefit of the City and its transferees, lessees, grantees, successors, assigns and mortgagees. Any lessee, assignee, mortgagee, grantee, transferee, or successor as to any part of, or all of, the Property which is the subject of this Agreement shall automatically be deemed, by acceptance of the estate or title of such part, parcel or all thereof, to have assumed all obligations hereof relating thereto. Such assumption shall be automatic without the necessity to perform any other act or do any other thing.

6. Reservation of Rights. This Agreement shall in no way affect any rights which may have accrued to any party hereto under all applicable law and each party hereto retains and reserves any and all of such rights.

7. Waiver.

a. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and the City. Additionally, any such written waiver shall only be applicable to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver.

b. The failure of any party hereto at any time or from time to time to require performance of any of another party's obligations under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent breach.

8. Pursuit of Rights and Remedies.

a. For default, violation or breach of any of the provisions of this Agreement (collectively sometimes referred to as a "Violation"), the GROVE or the City (the "Enforcing Party"), shall have the right to bring suit, either at law or in equity, in a court of competent jurisdiction, to compel compliance with the terms hereof.

b. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

c. This Agreement is entered into in the State of Florida and shall be governed by the laws of the State of Florida. In the event of litigation concerning this Agreement, the parties agree and consent to the County of Palm Beach as the appropriate venue of such litigation. All parties hereto waive their respective rights to trial by jury.

9. Notices. All notices and demands herein required shall be in writing and shall be deemed properly given if sent by registered or certified mail to the addresses below:

- a. As to GROVE:
Grove Rosebud Two, LLC
c/o Menin Development
101 Se 4th Avenue
Delray Beach, FL 33483
- b. As to the City:
City of Delray Beach
Attention: City Manager

100 N.W. 1st Avenue
Delray Beach, Florida 33444

and;

City of Delray Beach
Attention: City Attorney
200 N.W. 1st Avenue
Delray Beach, FL 33444

Any party may change the address to which notices to it are to be sent by giving written notice to the others. Every notice and demand shall be deemed to have been given, made or communicated, as the case may be, at the time that the same shall have been deposited by registered or certified mail, properly addressed as aforesaid, postage prepaid, in the United States mail.

10. Valid and Binding Agreement. The parties represent and warrant to the other that the execution and delivery of this Agreement has been duly and validly authorized by all necessary actions, and that when executed and delivered, this Agreement shall constitute a legal and binding obligation of such party.

11. Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any part of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect or impair any other part of this Agreement. In the event that any provision of this Agreement or the application thereof is to any extent finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such, other than those provisions as to which are held invalid and unenforceable, shall not be affected thereby.

12. Miscellaneous.

a. Where necessary or appropriate to the meaning of this Agreement the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine and neuter, the neuter to include the masculine and the feminine and the feminine to include the masculine and neuter.

b. Use of other words of similar import refer to this Agreement as a whole and not to any particular articles, section or other paragraph of this agreement unless specifically noted otherwise in this Agreement.

c. Each party hereto acknowledges that all parties hereto have participated equally in the drafting of this Agreement and that accordingly, no court construing this Agreement shall construe it more forcefully against one party than the other.

d. The captions used in connection with the articles, sections or paragraphs of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.

e. This Agreement shall be recorded at the expense of the GROVE. In the event that there exists any prior mortgage, lien or encumbrance as to the Property, then the holder of same shall execute and record, at the GROVE's expense, a Subordination Agreement recognizing this Agreement and subordinating completely and fully to the restrictions, covenants, terms, conditions and provisions of this Agreement.

f. This Agreement, together with all Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between the parties on this subject matter and there are no promises, agreements conditions, understandings or inducements, oral or written, express or implied, between them other than as expressly set forth herein.

g. Time is of the essence as to the performance of each party in connection with this Agreement.

13. Assurances. The parties shall take such action or execute any further instruments or documents as are necessary or desirable to vest or confirm any right or remedy herein granted or required so long as such actions, instruments or documents are consistent herewith and further that such actions, instruments or documents do not enlarge their respective responsibilities or obligations hereunder.

14. Entire Agreement. This Agreement, together with all Exhibits hereto, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

IN WITNESS WHEREOF, said Grantor has signed and sealed these presents the day and year first above written.

WITNESSES:

GROVE ROSEBUD TWO, LLC

Signature

Print Name

Signature

Print Name

By: _____

Name: _____

Its: _____

Date: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of Florida

ATTEST:

**CITY OF DELRAY BEACH,
FLORIDA**

By: _____

City Clerk

By: _____

Shelly Petrolia, Mayor

Approved as to Form:

By: _____

City Attorney