

DRIVEWAY CLOSURE AGREEMENT

THIS DRIVEWAY CLOSURE AGREEMENT (the "Agreement") is made and entered into as of the 8th day of November, 2016 (the "Effective Date"), by and between the CITY OF DORAL, a municipality of the State of Florida, the principal and mailing address of which is 8401 NW 53rd Terrace, Doral, FL 33166 (the "City"), and APPLE NINE HOSPITALITY OWNERSHIP, INC., an active, for profit Virginia corporation, the principal and mailing address of which is 814 East Main Street, Richmond, VA 23219 ("Apple"). The City and Apple may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Apple is the owner of a certain parcel of commercially zoned property in the City of Doral (the "City"), with the physical address of 11600 NW 41st Street, Doral, FL 33178 (Folio # 35-3030-031-0010), as legally described in Exhibit "A" (the "Property"); and

WHEREAS, the Property was developed in 1999 as a 121-room Hampton Inn & Suites hotel (the "Hotel") following the approval of an application for administrative site plan review by Miami-Dade County ("Site Plan Approval"), in accordance with the plans submitted to Miami-Dade County, entitled "MD International, Inc. Site Plan/Details" as prepared by W.M. Arthur & Associates, Inc., last dated on July 1, 1997 and stamped received on April 14, 1998 (the "Plans"). The Site Plan Approval and the Plans are attached hereto as Exhibit "B"; and

WHEREAS, the Plans included an access driveway located on the northwest corner of the Property as a mean of ingress into/egress from the Property from/to NW 117th Avenue ("Driveway"); and

WHEREAS, while the Driveway was shown on the Plans, it was not a condition to the Site Plan Approval; and

WHEREAS, the City has been working with the Florida's Turnpike Enterprise ("FTE") to design and construct a highway and mobility improvement project that will connect NW 117th Avenue to the Homestead Extension of the Florida Turnpike (the "HEFT") by way of a vehicular ramp and overpass across Doral Boulevard (NW 41st Street) ("Overpass"), as well as a pedestrian bridge across Doral Boulevard ("Pedestrian Bridge"), with the purpose of improving vehicular and pedestrian mobility, easing congestion, and increasing connectivity to the HEFT (Overpass and Pedestrian Bridge collectively referred to as the "Project"). The plans for the Project are attached hereto as Exhibit "C"; and

WHEREAS, to accomplish the construction and permanent installation of the Overpass, the City will be conveying to FTE certain portions of the NW 117th rights-of-way on the north side of Doral Boulevard, legally described as provided in Exhibit "D" (117 R.O.W); and

WHEREAS, said right-of-way to be conveyed includes the northern end of NW 117th Avenue south of Doral Boulevard, which terminates in a cul-de-sac that services the Property via the Access Drive; and

WHEREAS, the Driveway is kept purposefully impassable by way of a chain and signage by the Hotel for security purposes; and

WHEREAS, the Project will include the removal of all roadway infrastructure in the conveyed rights-of-way, thereby eliminating the roadway to which the Driveway connects the Property; and

WHEREAS, representatives of the Hotel and Apple have agreed to the permanent closure and elimination of the Driveway to accommodate the Project, recognizing that the benefits of the Project to the area; and

WHEREAS, FTE requires that the City and Apple enter, and the City and Apple desire to enter, into an agreement to formalize the understanding of the Parties and show proof thereof, as a threshold issue to proceeding with the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are true, correct, and incorporated herein and made a part hereof by this reference, for the mutual promises specified herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the City and Apple hereby agree as follows:

1. **Driveway Closure.** Apple hereby agrees to the permanent closure of the Driveway in order to accommodate the Project. Upon execution of this Agreement, a copy shall be maintained with the City's Planning and Zoning Department, along with the Property's Site Plan, which shall be read together for purposes of showing the details of the improvements on the Property. The Parties acknowledge that this Agreement may need to be recorded in the Official Records of Miami-Dade County; if so, it shall be the responsibility of the City to record the Agreement, pay for the corresponding costs, and provide a copy to Apple. While it is acknowledged that the Driveway is currently kept impassable by way of locked chain, Apple shall install temporary road barricades/barriers, of a type deemed acceptable by the City, within sixty (60) days of execution of this Agreement. In the event that Apple or Hampton Inn desires to install or construct permanent fixtures and/or hardscape/landscape in the area once occupied by the Driveway, Apple shall be responsible for submitting corresponding plans, obtaining necessary permits, and paying applicable costs associated with such improvements.

2. **Removal of 117 Ave. Roadway Infrastructure, Driveway in Swale; License for Same.** It shall be the responsibility of the City to remove or cause to be removed the roadway infrastructure in the 117 R.O.W. prior to or in conjunction with the development of the Project. The Parties hereby agree that, at the time of removal of the roadway infrastructure in the 117 R.O.W., the City shall remove or cause to be removed, and shall pay for the removal of, all or any portion of the Driveway located in the swale of the Property and to fill, harmonize, and sod the area once occupied by the Driveway, provided that Apple and/or Hampton Inn did not remove the remaining portion of the Driveway during any improvements done to the area. Apple hereby grants to the City a non-exclusive, temporary, and revocable license for the Property so as to complete the removal of the portions of the Driveway in the swale as specified herein. The Property and such means of ingress and egress incidental to the use of the Property shall

constitute the limited area to which City shall have permission to carry-on its permitted use. The area covered by this license shall exclude, without limitation, areas of the parking lot and other hotel premises. The area covered under this license shall not be subject to change without the express written consent of the Apple. The City shall be entitled to go on the Property, upon notice to Apple and approval by Apple of mutually acceptable times for the work in the area. All work, including, but not limited to, set-up and break-down actions that the City may require shall occur within the approved time. This license shall continue in effect until the Work is completed or until revoked by the Apple. Apple shall grant the City, its contractors, its agents, employees, and invitees such access to the Property as may be needed during the approved time to accomplish the work. This license is being granted in consideration for the improvements that City will be completing on the Property. In the event that Apple revokes this license prior to the commencement of the work to be performed by the City as contemplated in this section, the City's obligations to remove the remaining portions of the Driveway in the swale shall be terminated.

3. **Authority.** The Parties has full power and authority to execute, deliver and perform all of the corresponding duties and obligations under this Agreement, and such execution, delivery and performance of this Agreement have been duly authorized by all requisite action on the part of City and Apple.

4. **Mutual Indemnification.** Apple shall indemnify and hold harmless the City, its successors and assigns, harmless from and against any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees (at trial and appeal), for injury (including death) to persons or damage to property or property rights that may arise from or be related to the negligent acts, errors, or omissions of Apple, its agents, invitees, or contractors or by any person under the control or direction of Apple, for any actions associated with performance under this Agreement. Likewise, City shall indemnify and hold Apple, its successors and assigns, harmless from and against, any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees (at trial and appeal), for injury (including death) to persons or damage to property or property rights that may arise from or be related to the negligent acts, errors, or omissions of the City, its agents, invitees, or contractors or by any person under the control or direction of City, for any actions associated with performance under this Agreement.

5. **Modification/Enforcement.** This Agreement may not be modified or terminated except by an instrument mutually executed by the Parties. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity by the Parties, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

6. **Construction.** The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

7. **Notices.** Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows (or to such other address as either party shall hereafter specify to the other in writing):

If to the City: Edward A. Rojas, City Manager
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

with copy to: Daniel A. Espino, Esq.
Weiss Serota Helfman Cole & Bierman, PL
City Attorney
2525 Ponce De Leon Boulevard, Suite 700
Coral Gables, FL 33134

If to Apple: Apple Nine Hospitality Ownership, Inc.
814 East Main Street,
Richmond, VA 23219

8. **Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal, meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

10. **Governing Laws.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Developer and the City agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the parties with respect to this Agreement. In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart will for all purposes be deemed an original, and all such counterparts shall constitute one and the same instrument

RESOLUTION No. 16-192

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A LOCALLY FUNDED AGREEMENT WITH FLORIDA'S TURNPIKE ENTERPRISE, IN SUBSTANTIALLY THE FORM PROVIDED, FOR THE DESIGN AND CONSTRUCTION OF THE NW 25 STREET CONNECTION TO THE HOMESTEAD EXTENSION OF THE FLORIDA TURNPIKE; APPROVING THE CONVEYANCE OF CERTAIN PORTIONS OF THE CITY OF DORAL'S RIGHTS-OF-WAY FOR NW 117 AVENUE NORTH OF DORAL BOULEVARD; APPROVING A DRIVEWAY CLOSURE AGREEMENT BETWEEN THE CITY AND THE HAMPTON INN, LOCATED AT 11600 NW 41 STREET; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY INSTRUMENTS AND AGREEMENTS, SUBJECT TO APPROVAL BY THE CITY ATTORNEY AS TO FORM AND LEGAL SUFFICIENCY, AND TO EXPEND BUDGETED FUNDS IN FURTHERANCE HEREOF; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on October 15, 2008, the Freight Transportation Advisory Committee, a subcommittee of the Miami-Dade County Metropolitan Planning Organization ("MPO") passed resolution 02-08, attached hereto as Exhibit "A", requesting that a study be performed for the connection of NW 25 Street to the Homestead Extension of Florida's Turnpike (the "HEFT"); and

WHEREAS, as a result, the MPO performed a study for the continuing of NW 25 Street to the HEFT by continuing the project along NW 117 Avenue and to construct an overpass to finally connect with the Florida Turnpike (the "Project"); and

WHEREAS, the Project will provide an alternative access to the HEFT for commuter and commercial traffic, creating capacity in other critical arteries in the City of Doral (the "City"); and

WHEREAS, on March 12, 2014, the City adopted Resolution 14-53, attached hereto as Exhibit "B", requesting the extension of NW 25 Street Viaduct westward to eventually

connect to the Turnpike, as well as the construction of a bicycle and pedestrian bridge that will connect the Turnpike pedestrian trail over NW 41 Street; and

WHEREAS, Miami-Dade County adopted Resolution R-1015-15, attached hereto as Exhibit "C", urging the Florida Legislature and the Department of Transportation to fund the extension of NW 25 Street Viaduct westward to connect the Viaduct with Florida's Turnpike; and

WHEREAS, Florida's Turnpike Enterprise ("FTE") has been in the process of developing the studies and reports necessary to substantiate the widening of the HEFT from State Road 836 ("836") to NW 57 Avenue; and

WHEREAS, FTE has funded the construction of the HEFT widening from 836 to south of NW 106 Street ("HEFT Widening"), for construction in Fiscal Year 2017, and is preparing a design-build request for proposals for the construction of the HEFT Widening (the "RFP"); and

WHEREAS, with the development of the RFP by FTE, the City discovered an opportunity to include the Project in the scope of the HEFT Widening and proposed same to FTE; and

WHEREAS, FTE developed a concept study and estimated an initial construction cost for the Project and its impact on the HEFT Widening; and

WHEREAS, the City desire to facilitate the inclusion of the Project in the HEFT Widening by undertaking a series of actions, in pertinent part, to: enter into a Locally Funded Agreement with FTE, in substantially the form attached in Exhibit "D" (the "LFA"), which is incorporated herein and made a part hereof by this reference; promise to appropriate and pay for the cost of the slip ramp portion and trail bridge elements of the Project; dedicate certain portions of the NW 117 Avenue rights-of-way north of Doral

Boulevard to FTE to accommodate the Project; and assist with the closure of a certain access driveway off NW 117 Avenue (“117 Avenue Driveway”) belonging to the Hampton Inn and Suites, located at 11600 NW 41 Street (“Hampton Inn”); and

WHEREAS, the portion of the City’s NW 117 Avenue rights-of-way needed to accommodate the project, as legally described in Exhibit “E” (“117 Avenue R.O.W.”), which is incorporated herein and made a part hereof by this reference, are not being used to their maximum benefit for the community because NW 117 Avenue and the pedestrian trail dead-end on both sides of Doral Boulevard; and

WHEREAS, dedication of the 117 Avenue R.O.W. by the City to the FTE for the construction of the Project will bring a great benefit to the City; and

WHEREAS, the City has engaged Hampton Inn in negotiations for the closure of its Hampton Inn’s 117 Avenue Driveway, which was not a condition to its site plan approval (copy of the Hampton Inn’s Site plan is attached hereto as Exhibit “F”), presently serves no public or mobility purposes, and which the Hampton Inn presently keeps closed and is willing to eliminate; and

WHEREAS, the City and Hampton Inn desire to enter into an agreement for the closure of the 117 Avenue Driveway, in substantially the form provided in Exhibit “G” (the “Driveway Closure Agreement”), in order to facilitate the development of the Project; and

WHEREAS, construction and development of the Project will significantly improve overall traffic circulation and will serve to alleviate congestion greatly resulting in the enhancement of public's general health, safety and welfare; and

WHEREAS, alleviating traffic congestion and increasing mobility options for the Community has been a top priority of the City, and the City Council believes that the

obligations undertaken herein necessary to accomplish the Project are in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval of LFA. The LFA by and between the City and FTE, in substantially the form provided in Exhibit "D", providing the mutual obligations of the City and FTE for development of the Project as part of the HEFT Widening, is hereby approved. It is acknowledged that such obligations include, in part, without limitation, the payment of the costs of construction of the slip ramp of the Project at \$3.2 million (funds available from Public Works Department General Fund, account no. 001.80005.500633), the funding of aesthetic design guidelines for the Project, and the securing of all permits from Miami-Dade County for access management change of NW 117 Avenue on both the north and south sides of Doral Boulevard.

Section 3. Approval 117 Avenue Dedication. The dedication of portions of NW 117 Avenue on the north side of Doral Boulevard, as legally described in Exhibit "E", for the construction and permanent erection of the Project, is hereby approved.

Section 4. Approval of Driveway Closure Agreement. The Agreement by and between the City and Hampton Inn, in substantially the form provided in Exhibit "G", for the closure of the 117 Avenue Driveway, is hereby approved; it being acknowledged that the 117 Avenue Driveway was not a condition of site plan approval and is currently maintained closed by the Hampton Inn.

Section 5. Authorization. The City Manager is hereby authorized to execute all instruments and documents needed to accomplish the foregoing objectives in furtherance of the Project, including, without limitation, the LFA, warranty deeds for the right-of-way dedication, and the Driveway Closure Agreement, all subject to approval from the City Attorney as to form and legal sufficiency, and to expend budgeted funds in furtherance hereof.

Section 6. Implementation. The City Manager, the City Clerk, and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and provision of this Resolution.


Section 7. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption.

The motion was seconded by Mayor Boria and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Not Present At Time of The Vote

PASSED AND ADOPTED this 14 day of September, 2016.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY