

RETURN to:
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

PCN: 12-43-46-08-07-010-0090
Address: 1616 North Swinton Avenue

HOLD HARMLESS AND MAINTENANCE AGREEMENT

THIS HOLD HARMLESS AND MAINTENANCE AGREEMENT (the "Agreement") is made this ____ day of _____, 20__ by and between the **City of Delray Beach**, a Florida municipal corporation of the State of Florida (the "City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 and **Charles Simmons and Kim Simmons** (collectively referred to as "Owners"), whose address is 1616 North Swinton Avenue, Delray Beach, Florida 33444.

WITNESSETH:

WHEREAS, the City owns, operates, and maintains the right-of-way known as North Swinton Avenue located, for purposes of this Agreement, between NW 16th Street and NW 17th Street (the "ROW Area"); and

WHEREAS, Owners hereby warrant and represent they are the fee simple owners of a parcel of land located at 1616 North Swinton Avenue (the "Property"), as more particularly described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, the Property abuts the ROW Area; and

WHEREAS, Owners, or their predecessors, installed a weeping fig tree and four (4) concrete, decorative pillars (the "Improvements") within the ROW Area; and

WHEREAS, the City has commenced the North Swinton Avenue Roadway and Underground Utility Improvements Project, which includes improvements to the ROW Area; and

WHEREAS, Owners desire to keep and maintain the Improvements and the City will allow the Improvements to remain in the ROW Area, pursuant to the terms of this Agreement; and

WHEREAS, this Agreement shall in no way be deemed an actual, constructive, or any other type of abandonment by the City of the public right-of-way of North Swinton Avenue; and

WHEREAS, the City reserves the right at any time to utilize the right-of-way for right-of-way purposes; and

WHEREAS, the Parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. The City hereby permits Owners to keep and maintain the Improvements in their current form, size, and location as depicted in composite Exhibit "B," attached hereto and incorporated herein.
3. Owners shall be solely responsible for the maintenance, repair, or removal of the Improvements, including, but not limited to the costs of any materials and labor. Owners shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies to complete any required future maintenance, repairs, or removal of the Improvements.
4. Owners hereby agree to maintain the Improvements in accordance with the City's Ordinances and the terms and conditions of this Agreement. Owners shall, at a minimum, maintain the Improvements in a safe and aesthetically pleasing condition, repairing or removing any portion of the Improvements that fall below any applicable City standards. In the event any of the Improvements are substantially destroyed, regardless of the cause, same shall not be replaced or reinstalled in the ROW Area without the express permission of the City.
5. If at any time after the execution of this Agreement, the City becomes aware that the Improvements are not properly maintained pursuant to the terms and conditions of this Agreement, the City may, at its option, issue a written notice that a deficiency or deficiencies exist, by sending a certified letter to Owners. Thereafter, the Owners shall have a period of thirty calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City may, at its option, terminate this Agreement and require Owners to remove the Improvements at Owners' expense.
6. If for any reason the City decides that it needs the right-of-way of North Swinton Avenue for any public purpose this Agreement shall terminate, and Owners shall be required to remove the Improvements at their own expense. Owners shall remove all Improvements from

the right-of-way within 20 days of such notification. Additional time may be afforded to Owners upon a showing of good cause and Owners' demonstrated efforts to come into compliance.

7. Owners shall at all times hereafter indemnify, hold harmless and, at the City's option, defend or pay for an attorney selected by the City Attorney to defend the City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act of, or omission of, Owners, their employees, agents, servants, or officers, or accruing, resulting from, or related to the Improvements or the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Owners shall, written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

8. This Agreement shall constitute the entire Agreement of the Parties with respect to the subject matter of it. 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.

9. Upon conveyance of the Property to any future owner, this Agreement shall be deemed automatically assigned by Owners to any such future owner of the Property, and such future owner shall be deemed to have assumed all Owners' obligations hereunder. This Agreement may not otherwise be assigned or transferred by Owners, in whole or part, without the written consent of the City.

10. This Agreement shall be binding on the Parties, their respective heirs, successors, legal representatives, and permitted assigns and shall be recorded in the Public Records of Palm Beach County and shall run with the land.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. Any notice or communication under this Agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or

communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise, then by registered or certified mail, it should be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

City: City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444

Owners: Charles and Kim Simmons
1616 N Swinton Avenue
Delray Beach, Florida 33444

Either party may at any time by giving ten (10) days written notice designate any other person or entity or any other address in substitution of the foregoing to which the notice or communication shall be given.

[Remainder of Page Intentionally Left Blank]

WITNESSES:

John Euen
Signature

John Euen
Name

969 SE 5th Ave, Delray Beach, FL 33483
Address

[Signature]
Signature

Daniel Singh
Name

969 SE 5th Ave, Delray Beach, FL 33483
Address

OWNER

By: Kim Simmons

Name: Kim Simmons

Date: 3/4/25

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4th day of March, 2025 by Kim Simmons (name of person acknowledging).

Personally known OR Produced Identification
Type of Identification Produced Florida DL



[Signature]
Notary Public – State of Florida

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

WITNESSES:

John Elen
Signature

John Elen
Name

969 SE 57th Ave, Delray Beach, FL 33483
Address

[Signature]
Signature

Daniel Singh
Name

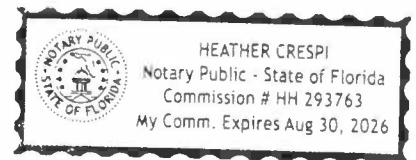
969 SE 57th Ave, Delray Beach, FL 33483
Address

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 4th day of March, 2025 by Charles Simmons (name of person acknowledging).

Personally known ☐ OR Produced Identification
Type of Identification Produced Florida DL



[Signature]
Notary Public – State of Florida

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to Form:

Lynn Gelin, Esq., City Attorney

EXHIBIT A

Lot 9, Block 10, Crest Lake Park, according to the plat thereof as recorded in Plat Book 4, Page 10, Public Records of Palm Beach County, Florida.

COMPOSITE EXHIBIT B

