

Prepared by: RETURN:

Noel Pfeffer, Esq.  
City Attorney's Office  
200 N.W. 1st Avenue  
Delray Beach, FL 33444

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**CANOPY HOLD HARMLESS AGREEMENT**

This Hold Harmless Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by  
and between the City of Delray Beach, Florida ("City") and Performance Fitness  
with a mailing address of 403 SE 1<sup>st</sup> Street Delray Beach, FL 33483  
hereinafter referred to as ("Owner").

WITNESSETH:

WHEREAS, **Owner**, has requested approval to install a canopy on the structure located  
at 95 SE 4<sup>th</sup> Avenue, Delray Beach, Florida and more particularly described  
in Exhibit "A" which is attached hereto and incorporated by reference herein. The canopy shall be  
constructed in accordance with Exhibit "B" and pursuant to the requirements of the Land  
Development Regulations of the City of Delray Beach, Section 6.3.4; and,

WHEREAS, the Land Development Regulations of the City of Delray Beach, Florida, in  
Section 6.3.4, require approval of the Chief Building Official through approval of an applicable  
agreement with the City.

**NOW, THEREFORE**, for the mutual covenants and matters set forth herein, as of the  
date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.

2. **Owner** acknowledges that the **City** shall assume no liability or responsibility for said land, structures, improvements, materials, appurtenances or the partial or complete destruction or removal of the same on the subject property.

3. Nothing in this Agreement relieves **Owner** of any obligation imposed under the **City's** Land Development Regulations or Code of Ordinances. **Owner** is responsible for obtaining any and all permits required in connection with the construction/installation of the canopies and/or supporting structures.

4. **Owner** shall construct/install the canopy in the location and manner depicted on Exhibit "B", attached hereto and incorporated by reference herein.

5. **Owner** acknowledges that the **City** shall assume no responsibility for the canopy which is being placed within the public right-of-way.

6. **Owner**, in consideration of the mutual promises contained herein and other good and valuable consideration, agree to hold harmless the **City**, its agents, officers, employees and servants from any damage to the canopy and other related improvements which will be placed within the public right-of-way. It is understood that any cost for replacement of the canopy and other related improvements shall be **Owner's** responsibility and **City** will not be held liable for any damage as a part of any maintenance or construction within the said public right-of-way.

7. **Owner** shall at all times hereafter indemnify, hold harmless and, at the **City** Attorney's option, defend or pay for an attorney selected by the City Attorney to defend 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, negligent, or reckless act of, or omission of, **Owner**, its employees, agents, servants, or officers, or accruing, resulting from, or

related to 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, **Owner** shall, upon written notice from **City**, resist and defend such lawsuit or proceeding by counsel satisfactory to **City** or, at **City's** option, pay for an attorney selected by the City Attorney to defend **City**. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due **Owner** under this Agreement may be retained by **City** until all of **City's** claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by **City**.

8. The **City** or its agent, contractor or representative shall be allowed to access the enclosed portion, if any, of the public right-of-way at any time.

9. **Owner** shall remove the canopy from the public right-of-way within twenty (20) days of receiving notice from the **City** requesting removal. If **Owner** fails to remove the canopy, the **City** reserves the right to remove the canopy and bill the **Owner** for the cost of such removal. The **City**, its agents, or contractors shall not be responsible for any damage that may occur to the canopy during such removal. The **City** may request removal of the canopy for any reason and in its sole discretion.

10. **Owner**, in consideration of the mutual promises contained herein and other good and valuable consideration, further agree to hold harmless, defend, or reimburse the **City**, for any damage that is caused to the **City's** public right-of-way as a result of the construction, maintenance or existence of the canopy located in the public right-of-way.

11. The **Owner's** placement of the canopy in the public right-of-way shall not in any way be construed as a constructive abandonment by the **City**.

12. 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.

13. Each person signing this agreement represents and warrants to all other parties that said person has full right and authority to sign this agreement on behalf of the party for whom it is being signed.

14. This agreement constitutes the entire agreement between **City** and **Owner** and may not be altered, amended, or modified except by an instrument in writing signed by the parties to the agreement with all the same formalities as this agreement.

**IN WITNESS WHEREOF**, the parties hereto have entered into this agreement the day and year first written above.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

WITNESSES:

Isabelle Rivera  
Isabelle Rivera  
(Print or Type Name)

Patricia Flasher Fitzgerald  
Patricia Flasher Fitzgerald  
(Print or Type Name)

OWNER

By: Raul Rodriguez  
Raul Rodriguez - Performance Fitness  
(Print or Type Name)

(SEAL)

STATE OF FL  
COUNTY OF Delray Beach

The foregoing instrument was acknowledged before me this 16 day of March, 2016 by Raul Rodriguez (name of officer or agent), of Performance Fitness (name of corporation), a FL (State or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced FL DL (type of identification) as identification and did/did not take an oath.

Jennifer Rodriguez  
Signature of Notary Public -  
State of FL

(SEAL)



Jennifer Rodriguez  
Signature of Notary Public - State of Florida