

Prepared by: RETURN:

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 4<sup>th</sup> day of October, 2023 by and between the City of Delray Beach, Florida (“City”) and Lelyn Delray Properties 1, LLC (“Owner”) with a mailing address of 707 Skokie Boulevard Suite 600, Northbrook, IL 60062, regarding the property located at 310 East Atlantic Avenue, Delray Beach, Florida.

W I T N E S S E T H:

WHEREAS, **Owner**, requested approval to install a canopy on the structure located at 310 East Atlantic Avenue, Delray Beach, Florida, as more particularly described in Exhibit “A,” which is attached hereto and incorporated by reference herein. The requested canopy would extend into the public right-of-way abutting the property; and,

WHEREAS, Section 6.3.4 of the Land Development Regulations permits canopy to extend into the public right-of-way when approved by the Chief Building Official through approval of an applicable agreement with the City; and

WHEREAS, the Chief Building Official, through this Agreement, approves the installation of a canopy extending into the public right-of-way, which shall be constructed in accordance with Exhibit “B,” and pursuant to the requirements of the Land Development Regulations of the City of Delray Beach, including but not limited to Section 6.3.4.

**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. The parties hereby represent and warrant that the above recitations set forth above are accurate and correct and hereby incorporate them in this Agreement.
3. **Owner** acknowledges 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.
4. 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.
5. **Owner** shall construct/install the canopy in the location and manner depicted on Exhibit "B", attached hereto and incorporated by reference herein.
6. **Owner** acknowledges the **City** shall assume no responsibility for the canopy which is being placed within the public right-of-way.
7. **Owner**, in consideration of the mutual promises contained herein and other good and valuable consideration, agrees 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.

8. **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.

9. The **City** or its officers, agents, servants, employees, contractors, or representatives shall be allowed to access the enclosed portion, if any, of the public right-of-way at any time.

10. **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 officers, agents, servants, employees, 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. In the event that such a request is made by

the **City, Owner** agrees to repair and/or restore the public right-of-way affected by the canopy to its previous or better condition.

11. **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.

12. 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**.

13. All notices required or allowed by this Agreement shall be delivered in person or mailed to the party at the following address:

CITY: City Manager  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

With a copy to: City Attorney  
City of Delray Beach  
200 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

OWNER: Lelyn Delray Properties 1, LLC  
707 Skokie Boulevard Suite 600  
Northbrook, IL 60062

14. 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.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any proceeding initiated to enforce the provisions of this Agreement shall be brought in the State or Federal courts located in Palm Beach County, Florida. 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, each party shall pay their own attorney's fees and costs, including appellate fees and costs. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED.

16. 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.

17. 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.

[Remainder of Page Intentionally Left Blank]

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: Katene Johnson  
City Clerk

By: STEVE TOBIAS  
Chief Building Official

Approved as to form  
By: [Signature]  
City Attorney



WITNESSES  
Jason Wiznitzer

OWNER  
By: Leo Wiznitzer  
Leo Wiznitzer  
(Print or Type Name)

(Print or Type Name)  
Lisa Wiznitzer  
LISA WIZNITZER  
(Print or Type Name)

(SEAL)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 20<sup>th</sup> day of September, 2023 by Leo Wiznitzer (name of person), as owner/manager (type of authority) for Delray Beach (name of party on behalf of whom instrument was executed).

Personally known  OR Produced Identification  
Type of Identification Produced



Debra Haubert  
Comm.: HH 420855  
Expires: Aug. 11, 2027  
Notary Public - State of Florida

Debra Haubert  
Notary Public - State of Florida

Exhibit "A"

East 45.16 feet of Lot 2, Block 93, Re-subdivision of Block 93, City of Delray, formerly Linton, according to the Plat thereof, as recorded in Plat Book 10, page 53, Public Records of Palm Beach County, Florida.

