

Prepared by: RETURN:

R. Brian Shutt, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

CANOPY HOLD HARMLESS AGREEMENT

This Hold Harmless Agreement and General Release, is made this _____ day of _____, 2006 by and between the City of Delray Beach, Florida ("City") and JHB Florida Properties, LLC with a mailing address of 215 N. Federal Highway, Boca Raton FL 33432 and hereinafter referred to as ("Owner").

WITNESSETH:

WHEREAS, **Owner**, has requested approval to install a canopy on the structure located at 432 E. Atlantic Ave. Delray Beach, Florida in accordance with Exhibit "A" 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 requires approval of the Chief Building Official through approval of an applicable agreement with the City; and,

WHEREAS, **Owner** agrees to abide by all the regulations governing canopies extending into the public right-of-way as contained within the ordinances of the City of Delray Beach.

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 supports.
4. **Owner** shall construct/install the canopy in the location as shown on Exhibit "A".
5. **Owner**, on behalf of himself/herself, his/her successors, heirs, and assigns, acknowledge that the **City** shall assume no responsibility for the canopy which is being placed within the public right-of-way.
6. **Owner**, his/her successors, heirs, and assigns, 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**, his/her successors, heirs and assigns 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. **Owner**, his/her

successors, heirs, and assigns, in consideration of the mutual promises contained herein and other good and valuable consideration, agree to defend, indemnify and hold harmless the **City**, its agents, officers, employees and servants from any claim, lawsuit or action brought against the **City** as a result of the canopy being placed within the public right-of-way.

7. 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.

8. **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** may remove the canopy and bill the **Owner** for the cost of such removal. The **City**, or 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.

9. **Owner**, his/her successors, heirs, and assigns, 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.

10. 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**.

11. This agreement shall not be valid unless signed by the **City's** Manager and City Clerk.

12. 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: _____
City Manager

Approved as to form:

By: _____
City Attorney

WITNESS:

La Vengeance, Nicole

(name typed or handwritten)

WITNESS:

[Signature]

(name typed or handwritten)

OWNER:

By: _____

(name typed or handwritten)

SEAL

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 8th day of April, 2006 by James H. Bartmasian (name of officer or agent, title of officer or agent), of JHB Florida Properties, LLC (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced

_____ (type of identification) as identification and
did/did not take an oath.

J. Rodriguez
Signature of Person Taking
Acknowledgment

