

Prepared by: RETURN:
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

PCN 12-43-46-16-01-111-0041
Address: 235 SE 5th Avenue, Delray Beach

**HOLD HARMLESS AGREEMENT FOR WORK
PERFORMED WITHIN THE STATE RIGHT-OF-WAY**

THIS HOLD HARMLESS AGREEMENT, is entered into this ____ day of _____, 2024, by and between the **CITY OF DELRAY BEACH, FLORIDA**, a Florida municipal corporation of the State of Florida, whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 (the “**CITY**”) and **SIR II DEVELOPMENT, LLC**, a Florida Limited Liability Company, whose address is 17011 Wandering Wave Avenue, Boca Raton, FL 33496 (the “**OWNER**”).

W I T N E S S E T H:

WHEREAS, OWNER is the owner of certain real property located at 235 SE 5th Avenue, Delray Beach, Florida (the “**PROPERTY**”), as more particularly described in Exhibit “A”; and

WHEREAS, OWNER is constructing improvements on the **PROPERTY** which require the installation of utilities and related improvements (the “**PROJECT**”); and

WHEREAS, the PROJECT requires work to be completed within State right-of-way located at or near the **PROPERTY**; and

WHEREAS, the CITY is required to sign the permit on behalf of the **OWNER** to allow the installation/construction to take place in the State right-of-way; and

WHEREAS, the CITY is required to indemnify and hold harmless the State for the work performed by **OWNER** in the State right-of-way; and

WHEREAS, this Agreement requires **OWNER** to hold harmless and defend the **CITY** for the work performed in the State right-of-way by the **OWNER**, its developer, contractor or agent.

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** shall at all times indemnify and hold harmless the **CITY** and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CITY** or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the completion of the **PROJECT** by the **OWNER** or its employees, agents, servants, partners, principals, or subcontractors. **OWNER** shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the **CITY**, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. **OWNER** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by **OWNER** shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the **CITY** or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.
3. **OWNER** warrants and guarantees to the **CITY** that all work on the **PROJECT** shall be constructed in accordance with the applicable codes of the City of Delray Beach and the State of Florida. The **OWNER's** warranty and guarantee shall remain in effect for one year from the date of final acceptance. Unremedied defects identified for correction during the warranty/guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee and warranty. Defects in the installation or construction of the **PROJECT**, which are remedied as a result of obligations of the warranty/guarantee shall subject the remedied portion of the work to an extended warranty/guarantee period of one year after the defect

has been remedied. **OWNER** shall deliver this Agreement to its Surety. The Surety shall be bound with and for the **OWNER** in the **OWNER's** faithful observance of the guarantee.

4. **OWNER** shall supervise and direct the installation and construction of the PROJECT and related improvements, applying such skills and expertise as may be necessary to perform the work in accordance with approved engineering plans. **OWNER** shall be solely responsible for the means, methods, techniques, sequences and procedures of the construction and installation of the PROJECT.

5. **OWNER** agrees to include the following terms in any contract entered into between **OWNER** and any developer, contractor, or agent selected by **OWNER** to perform any work required by this Agreement: (i) The contractor agrees to protect, defend, indemnify, and hold harmless the City of Delray Beach, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind, including court costs, reasonable attorney's fees, at both the trial and appellate levels in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of contractor, its employees, servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false, or fraudulent, and (ii) The parties recognize that various provisions of this Agreement, including but not necessarily limited to

this Section, provide for indemnification by the contractor and that Section 725.06, Florida Statutes, requires a specific consideration be given thereof. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by contractor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

6. Any claims, lawsuits or disputes that may arise under this Agreement shall be governed by the Laws of Florida, with venue in Palm Beach County, Florida.

7. This Agreement constitutes the entire agreement and understanding of the parties, as it pertains to the **PROJECT**. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

8. **OWNER**, its developer, contractor, or agent shall maintain worker's compensation insurance in an amount required by law and general liability insurance in the amount of one million dollars (\$1,000,000.00) governing bodily injury and property damage in standard form, insuring **CITY** and the State as additional named insureds. **OWNER** its developer, contractor, or agent shall provide this information to the **CITY** on a Certificate of Insurance, that is acceptable to the **CITY**, prior to commencing installation or construction.

9. The **CITY** hereby reserves the right to enforce this Agreement by pursuing any and all remedies provided by law or in equity. All of the remedies available to the **CITY** shall be cumulative, and the **CITY'S** election to pursue any remedy shall not preclude the **CITY** for then or later pursuing any one or more other remedies.

10. **OWNER** shall be bound by all the terms and conditions found in the Permit

Agreement between the CITY and the State for this project and attached hereto as Exhibit "B".

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

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

Owner: Sir II Development, LLC
17011 Wandering Wave Avenue
Boca Raton, FL 33496

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.

IN WITNESS WHEREOF, the City and the Owner executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: Thomas Carney, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

SIR II DEVELOPMENT, LLC

By: Sir II Management, LLC
Its: Manager for Sir II Development, LLC

By: Richard S. Jones, Jr.
Name: Richard S. Jones, Jr.

Its: Manager

Date: 3-6-24

WITNESSES:

Amanda Peterson
Signature
Amanda Peterson
Print Name

Austin Robb
Signature
Austin Robb
Print Name

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 6 day of March, 2024, by Richard S. Jones, Jr., (name of person), as Manager (type of authority) for Sir II Management, LLC (name of party on behalf of whom instrument was executed), as manager for Sir II Development, LLC.

Personally known OR Produced Identification
Type of Identification Produced FULL

Barbara A. Tompkins
Notary Public - State of Florida

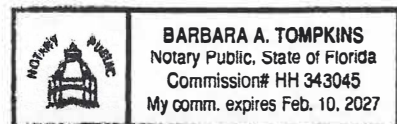


EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH THREE (3') FEET OF LOT 4, ALL OF LOTS 5 THROUGH 8, INCLUSIVE, AND THE NORTH THREE (3') FEET OF LOT 9, BLOCK 111 (ONE-HUNDRED ELEVEN), OF THE PLAT OF RESUBDIVISION OF BLOCK 111 DELRAY PALM BEACH COUNTY FLA., ACCORDING TO THE PLAT AS SET FORTH IN PLAT BOOK 13, PAGE 46, OF THE PUBLIC RECORDS OF PLAM BEACH COUNTY, FLORIDA, LESS THE WEST FIVE (5') FEET THEREOF FOR STATE ROAD PURPOSES, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 13,760 SQUARE FEET.

EXHIBIT B
FDOT Utility Permit

UTILITY PERMIT

PERMIT NO: Temp: 0233870

STATE ROAD INFORMATION

County: Palm Beach	Section: 93010000	State Road No: SR 5	Beginning Mile Post: 9.500	Ending Mile Post: 9.500
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APPLICANT INFORMATION

The Utility Agency Owner (UAO) shall be identified in this Applicant Information Box. When the UAO is a City or County and desires to have the Utility Builder make a joint permit applicant, as prescribed in Section 2.1(4) of the 2017 Utility Accommodation Manual (UAM), the Utility Builder shall also be identified in this Applicant Information Box. A Utility Builder alone cannot apply for a utility permit without the City or County adding them as a joint applicant.

Utility Agency/Owner (UAO)

Name: CITY OF DELRAY BEACH
Contact Person: CITY OF DELRAY BEACH
Address: 434 SOUTH SWINTON AVENUE
City: DELRAY BEACH
State: Florida
Zip: 33444
Telephone: 5612437303
Email: CraigM@mydelraybeach.com

Utility Builder (only applicable when the UAO is a City or County)

Name: _____
Contact Person: DAVID BEGIC
Address: _____
City: _____
State: _____
Zip: _____
Telephone: _____
Email: dbegic@engenuitygroup.com

WORK DESCRIPTION

The Applicant(s) requests permission from the Florida Department of Transportation (FDOT) to construct, operate, and maintain the utilities as described below and as depicted in the incorporated documentation.

The proposed project includes improvements on water and sewer services. Water service improvements include approximately 210 LF of 6" water service (with steel casting), 65 LF of 3" water service (with steel casting), 6 gate valves, 1 fire hydrant, 3 tapping sleeves, 1 FDC, 2" water meter, 6" DDCV and 2" backflow preventer.

Sanitary sewer system improvements include approximately 82 LF of 6" sewer main, 2 cleanouts, and 6" wide connection to existing 8" VCP sanitary sewer main.

Utility Work No: _____

Additional sheets are attached and are incorporated into this permit Yes ☐ No ☒

For FDEP certification, the FDOT agency report is attached in accordance with UAM Section 2.4.1 (13) Yes ☐ No ☒

TRAFFIC CONTROL (TCP)

☒ The TCP will comply with the following 600 series index(es) 600

☐ A TCP has been attached and incorporated into this permit application in compliance with UAM Section 2.4.2.

MOT Technician's contact information (may be supplied at the two (2) business day notification to FDOT):

Name: _____ Telephone: _____ Email: _____

COMMENCEMENT OF WORK

The UAO and/or Utility Builder shall commence actual construction in good faith within sixty (60) calendar days after approval of the permit application. If the beginning date is more than sixty (60) calendar days from the date of approval, the UAO and/or Utility Builder must review the permit with the FDOT Approving Engineer listed to make sure no changes have occurred to the transportation facility that would affect the permit's continued approval. The UAO and/or Utility Builder shall make good faith efforts to expedite the work and complete the work within the calendar days indicated.

Anticipated Start Date: 12/1/2023

Calendar days needed to completed: 365

UTILITY PERMIT**PERMIT NO:** Temp: 0233870**APPLICANT SIGNATURE**

By the below signature(s) the UAO and/or Utility Builder agree(s) to construct, operate, and maintain the work as noted in the above Work Description, shown in plans and incorporated documents, in compliance with the UAM, all instructions noted in the FDOT Special Instructions Box, and special instructions incorporated into this permit. The UAO and/or Utility Builder declares, the location of all existing utilities that it owns or has an interest in, both aerial and underground, are accurately shown on the plans of the work areas. In accordance with UAM Section 2.8, the UAO and/or Utility Builder further declares that a letter of notification was delivered to the owners of other facilities within the work areas and that those listed below are the only facility owners known to be involved or potentially impacted by the proposed work.

Date Notified:

Name of other facility owners (attach additional sheets if necessary).

Utility Agency/Owner

Utility Builder (when applicable)

Signature: _____ Date: _____

Signature: DAVID BEGIC (digital signature) Date: 10/25/2023

Name (printed): _____

Name (printed): DAVID BEGIC

Title: _____

Title: _____

FDOT PROJECT INFORMATION

Pursuant to UAM Section 2.1(10), the utility work is within FDOT projects listed below and must have a Utility Work Schedule for each project approved prior to commencement of work within the FDOT project limits:

There are NO FDOT constructions (proposed or underway).**This work is NOT related to an approved utility work Schedule.****FDOT SPECIAL INSTRUCTIONS**

In accordance with UAM Section 2.7, FDOT incorporates the below and attached special instructions into this permit.

Additional FDOT Special Instructions are attached and incorporated into this permit. Yes ☐ No ☒

PERMIT APPROVAL

By signature below, FDOT gives permission to the UAO and /or Utility Builder to construct, operate, and maintain the utilities indicated in this Utility Permit in compliance with the UAM, all incorporated documents, and special instructions. Any changes to the approved work must be approved by the FDOT's Approving Engineer and attached and incorporated into this permit in accordance with UAM Section 2.11.

Approving Engineer: _____ Date: _____

Name: _____

Title: _____

Notification of Utility Work to be provided to: _____ Telephone _____ or Email: _____

An FDOT Representative is required to be present on the worksite prior to commencement of work. Yes ☐ No ☐

Rep. Name: _____ Telephone _____ Email: _____

Florida Department of Transportation
UTILITY PERMIT

December 14, 2016

PERMIT NO: Temp: 0233870

CERTIFICATION

I, the undersigned UAO and/or Utility Builder, hereby CERTIFY that the utilities were constructed and inspected in compliance with the UAM all incorporated documents, and special instructions. Pursuant to UAM Section 2.11, all changes have been approved by the FDOT's Approving Engineer and incorporated into this permit along with all other material certifications, test results, bore logs, approved plans changes, as-built plans or other required documentation.

I also CERTIFY that work began on _____ and was completed on _____ and that the area was left in as good or better condition than when the work began.

Utility Agency/Owner

Utility Builder (when applicable)

Signature: _____ Date _____

Signature: _____ Date _____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

FINAL INSPECTION OF WORK

☐ The work was inspected and found to be in non-compliance as noted below:

☐ All issues of non-compliance listed above have been brought into compliance and/or FDOT has no outstanding issues that need to be addressed by the UAO and/or Utility Builder. However, this final inspection does not release the UAO and/or Utility Builder of their continuing responsibilities pursuant to Rule 14-46.001, the UAM, all incorporated documents, and special instructions.

FDOT Inspector: _____ Date: _____

Name: _____

Title: _____

PERMIT NO.: Temp: 0233870

STATE ROAD INFORMATION:

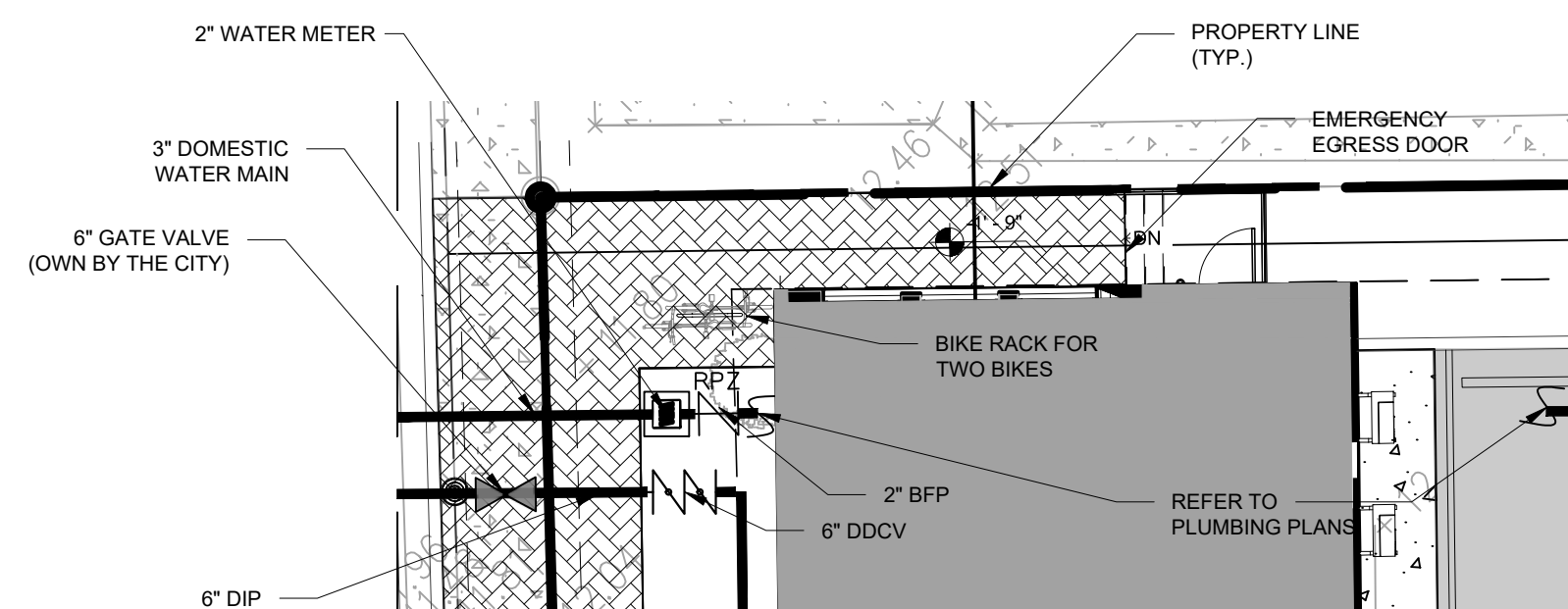
Palm Beach SR 5, Section: 93010000, Begin MP: 9.500, End MP: 9.500, Palm Beach SR 5, Section: 93010101, Begin MP: 2.377, End MP: 2.377

NAME OF OTHER FACILITY OWNERS / DATE NOTIFIED:

FDOT PROJECT INFORMATION:

There are NO FDOT constructions (proposed or underway).
This work is NOT related to an approved Utility Work Schedule.

THE WORK WAS INSPECTED AND FOUND TO BE IN NON-COMPLIANCE AS NOTED BELOW:



SUBMITTAL PERMIT