

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

PCN 12-43-46-16-01-102-0150
Address: 142 SE 5th Avenue

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

THIS HOLD HARMLESS AGREEMENT, is entered into this ____ day of _____, 20____, 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 **FIFTH AVENUE DELRAY, LLC**, a New York limited liability company, whose address is 5554 Main Street, Williamsville, New York 14221 (the “**OWNER**”).

W I T N E S S E T H:

WHEREAS, OWNER is the owner of certain real property located at 142 SE 5th Avenue, Delray Beach, Florida 33483 (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 the 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: Fifth Avenue Delray, LLC
5554 Main Street
Williamsville, New York 14221

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

Alexis Givings, City Clerk

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

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

WITNESSES:

Mary Beland
Signature

Mary Beland
Name

5554 Main St.
Address Williamsville, NY 14221

[Signature]
Signature

MARC PIOTROWSKI
Name

5554 Main Street
Address Williamsville NY 14221

STATE OF New York
COUNTY OF Erie

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 1st day of July, 2025 by Michael C. Huntress (name of person), as Member (type of authority) for Fifth Avenue Delray, LLC (name of party on behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification _____
Type of Identification Produced _____

Sarah Hyman
Notary Public, State of New York
Qualified in Niagara County
Reg No. 02HY6285993
My Commission Exp. 07/22/ 25

OWNER

X By: [Signature]

Name: Michael C. Huntress

Title: Member
for

Company: Fifth Avenue Delray, LLC

Date: 7/1/25

[Signature]
Notary Public – State of New York

EXHIBIT A
LEGAL DESCRIPTION

Lot 15, less the East 10 feet thereof, Block 102, of TOWN OF DELRAY (formerly known as Map of the Town of Linton, Florida), according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 1, Page 3,

and

Lot 16, less the East 10 feet thereof, Block 102, of TOWN OF DELRAY (formerly known as Map of the Town of Linton, Florida), according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 1, Page 3.

Also being described as:

Begin at the Southwest corner of Lot 16, Block 102 of the Plat of City of Delray Beach (formerly Town of Linton) as recorded in Plat Book 1, Page 3 of the Public Records of Palm Beach County, Florida. Thence North 122.40 feet to the Northwest corner of Lot 15 of said Block 2, thence East along the North line of said Lot 15, Block 102, a distance of 125.00 feet to the East Right-of-Way line of S.E. 5th Avenue, said point being 10 feet West of the East line of said Lots 15 and 16 of Block 102, thence South along said Right-of-Way line, a distance of 122.40 feet to the South line of Lot 16, Block 102, and being 10 feet West of the Southeast corner of said Lot 16, Block 102, thence West along said South line of Lot 16, a distance of 125.00 feet to the Point of Beginning.

EXHIBIT B
FDOT Utility Permit Form