

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

THIS HOLD HARMLESS AGREEMENT (Agreement), is entered into this 27 day of January, 2016 by and between the **CITY OF DELRAY BEACH, FLORIDA**, (hereinafter referred to as "CITY") and MCA Delray Preserve Owner LLC (hereinafter referred to as "DEVELOPER").

WITNESSETH:

WHEREAS, DEVELOPER wishes to install/construct utilities in the right-of-way of the State of Florida; and

WHEREAS, the CITY is required to sign the permit on behalf of the **DEVELOPER** 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 **DEVELOPER** in the State right-of-way; and

WHEREAS, this Agreement shall provide that **DEVELOPER** shall hold harmless and defend the **CITY** and the State for the work performed in the State right-of-way by the **DEVELOPER**, its 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. **DEVELOPER** shall at all times hereafter indemnify, hold harmless, and at the **CITY'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 or negligent act of, or omission of,

DEVELOPER, 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, **DEVELOPER** 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 City Attorney to defend **CITY**. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. **DEVELOPER** warrants and guarantees to the **CITY** that all work on the utility improvement shall be constructed in accordance with the applicable codes of the City of Delray Beach and the State of Florida. The **DEVELOPER'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 utility improvement, 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. **DEVELOPER** shall deliver this agreement to its Surety. The Surety shall be bound with and for the **DEVELOPER** in the **DEVELOPER'S** faithful observance of the guarantee.

4. **DEVELOPER**, shall supervise and direct the installation and construction of the utility improvement, applying such skills and expertise as may be necessary to perform the work in accordance with the approved engineering plans. **DEVELOPER** shall be solely responsible

for the means, methods, techniques, sequences and procedures of the construction and installation of the utility improvement.

5. **DEVELOPER** agrees to include the following terms in any contract entered into between **DEVELOPER** and any contractor selected by **DEVELOPER** 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 construction or installation of the utility. 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. **DEVELOPER** or its contractor 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. **DEVELOPER** or its contractor 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. **DEVELOPER** shall be bound by all the terms and conditions found in the Utility Permit Agreement between the **CITY** and the State for this project and attached hereto as Exhibit "A".

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

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: _____
Cary Glickstein, Mayor

Approved as to Form:

By: _____
City Attorney

WITNESSES

Andres Lozano
(Print or Type Name)
STEFAN BIRD
(Print or Type Name)

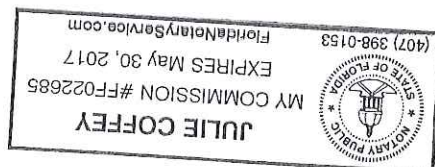
DEVELOPER:

Kyle Clayton
(Print or Type Name)

Address: _____
Phone: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27 day of January, 2016 by Kyle Clayton (name of officer or agent, title of officer or agent) of MCA Delray Preserve Owner, LLC (name of corporation acknowledging), a Florida (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.



Julie Coffey
Signature of Notary Public-
State of Florida