

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

PCN 12-43-46-16-01-061-0010
Address: 22 West Atlantic Ave, Delray Beach

**HOLD HARMLESS AND AGREEMENT FOR RESTORATIVE WORK
TO DECORATIVE PAVERS WITHIN THE PUBLIC RIGHTS-OF-WAY**

THIS HOLD HARMLESS AGREEMENT, is entered into this ____ day of _____, 2022, by and between the **CITY OF DELRAY BEACH, FLORIDA**, (hereinafter referred to as “**CITY**”), whose address of 100 NW 1st Avenue, Delray Beach, Florida 33444 and **SUNDY VILLAGE WEST, LLC** (hereinafter referred to as “**OWNER**”), whose address of 7900 Glades Road, Suite 540, Boca Raton, Florida 33434.

WITNESSETH:

WHEREAS, OWNER is the owner of certain real property located generally at 22 West Atlantic Avenue in Delray Beach, Florida (“**PROPERTY**”), as more particularly described in Exhibit “A”; and

WHEREAS, OWNER is constructing improvements on the **PROPERTY** which eliminate an existing electrical connection for the traffic signal and related improvements located on the southwest corner of the intersection at Atlantic Avenue and Swinton Avenue (“**SIGNAL**”); and

WHEREAS, Florida Power & Light Company is going to construct an alternate electrical connection to the **SIGNAL** (“**PROJECT**”); and

WHEREAS, the PROJECT requires work to be completed within public rights-of-way located at or near the **PROPERTY**, as more particularly shown in Exhibit “B”; and

WHEREAS, the sidewalks located in public rights-of-way consist of decorative pavers; and

WHEREAS, Palm Beach County (“**COUNTY**”) owns, operates, and maintains the **SIGNAL**; and

WHEREAS, COUNTY requires **CITY** to indemnify and hold harmless the **COUNTY** for any damage to the decorative pavers in public rights-of-way; and

WHEREAS, this Agreement requires **OWNER** to hold harmless and indemnify the **CITY** for any damage to the decorative pavers in the public rights-of-way and to be responsible for any restorative work to be performed.

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 performance of the agreement 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** shall be responsible for any restorative work to the decorative pavers due to the **PROJECT** or due to maintenance or future improvements made or required by the **COUNTY**

related to the **SIGNAL**.

4. **OWNER** warrants and guarantees to the **CITY** that all restorative work to the pavers in the public rights-of-way associated with the **PROJECT** shall be constructed in accordance with the applicable codes of the City of Delray Beach and the State of Florida.

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

6. **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.

7. 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.

8. This Agreement constitutes the entire agreement and understanding of the parties, as it pertains to the installation or maintenance of the utilities and related improvements. 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.

9. **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.

10. 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.

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: Sundy Village West, LLC
7900 Glades Road, Suite 540
Boca Raton, Florida 33434

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.

[Remainder of Page Intentionally Left Blank]

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: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

WITNESSES:

Sundy Village West, LLC

Signature

By: _____

Print Name

Name: _____

Signature

Its: _____

Print Name

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of _____

EXHIBIT A

Parcels 1, 2, 3 and 4, “Sundy Village”, according to the plat thereof, as recorded in Plat Book 133, at pages 152 - 155 of the Public Records of Palm Beach County, Florida.

EXHIBIT B