

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

THIS HOLD HARMLESS AGREEMENT (Agreement), is entered into this _____ day of _____, 20__ by and between the **CITY OF DELRAY BEACH, FLORIDA**, (hereinafter referred to as "**CITY**") and _____ Edwards Atlantic Avenue, 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: _____
Mayor

Approved as to Form:

By: _____
City Attorney

WITNESSES

DEVELOPER:

EDWARDS ATLANTIC AVENUE LLC

By: [Signature]
JOHN A. LEIBOLD Vice Pres.
(Print or Type Name)

Address: 495 S. High Street
Suite 150

Phone: Columbus OH 43215
(614) 241-2070

[Signature]
Susan Wilgus
(Print or Type Name)
[Signature]
RACON FALLON II
(Print or Type Name)

OHIO
STATE OF ~~FLORIDA~~ FRANKLIN
COUNTY OF ~~PALM BEACH~~

The foregoing instrument was acknowledged before me this 8th day of May, 2018, by John A. Leibold (name of officer or agent, title of officer or agent) of Edwards Atlantic Avenue LLC (name of corporation acknowledging), a Delaware (state or place of incorporation) corporation, on behalf of the corporation. He is personally known to me or has produced (type of identification) as identification and did (did not) take an oath.



Susan Wilgus
Notary Public, State of Ohio
My Commission Expires 06-29-20

[Signature]
Signature of Notary Public
State of Florida OHIO



947 Clint Moore Road
Boca Raton, Florida 33487

SURVEYING & MAPPING
Certificate of Authorization No. LB7264

Tel: (561) 241-9988
Fax: (561) 241-5182

SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY) ATLANTIC CROSSING - MAINTENANCE AREA B

LEGAL DESCRIPTION

A PORTION OF U.S. HIGHWAY NO. 1 (ALSO KNOWN AS N.E. 6TH AVENUE), BEING A PORTION OF THE PLATTED ROADWAY FOR DADE AVENUE AND PORTIONS OF BLOCK 116, "TOWN OF LINTON", AS RECORDED IN PLAT BOOK 1 PAGE 3 AND AS SHOWN IN ROAD PLAT BOOK 2, PAGE 210, BOTH OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERNMOST SOUTHWEST CORNER OF TRACT A OF "ATLANTIC CROSSING", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 125 AT PAGES 80 THROUGH 85 OF SAID PUBLIC RECORDS (SAID POINT LYING AT THE POINT OF TANGENCY OF A CIRCULAR CURVE); THENCE SOUTH $89^{\circ}07'44''$ WEST, A DISTANCE OF 20.00 FEET; THENCE NORTH $00^{\circ}52'16''$ WEST, ALONG A LINE 10.00 FEET EAST OF THE CENTERLINE OF SAID U.S. HIGHWAY NO. 1, A DISTANCE OF 590.33 FEET; THENCE NORTH $89^{\circ}07'44''$ EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH $00^{\circ}52'16''$ EAST, ALONG THE WEST LINE OF SAID TRACT A AND THE NORTHERLY EXTENSION THEREOF, A DISTANCE OF 590.33 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA, AND CONTAIN 11807 SQUARE FEET, MORE OR LESS.

NOTES

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. NO SEARCH OF THE PUBLIC RECORDS WAS MADE IN THE PREPARATION OF THIS SKETCH AND DESCRIPTION.
3. BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING NORTH $90^{\circ}00'00''$ EAST ALONG THE SOUTH LINE OF TRACT A OF "ATLANTIC CROSSING".

CERTIFICATION

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON COMPLIES WITH STANDARDS OF PRACTICE AS CONTAINED IN CHAPTER 5J-17.051, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT SAID SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION.


JEFF S. HODAPP
SURVEYOR AND MAPPER
FLORIDA LICENSE NO. LS5111

ABBREVIATIONS

L	*	ARLENGTH
D	*	DELTA (CENTRAL ANGLE)
L.B.	*	LICENSED BUSINESS
L.S.	*	LICENSED SURVEYOR
MON.	*	MONUMENT
O.R.B.	*	OFFICIAL RECORDS BOOK
P.O.B.	*	POINT OF BEGINNING
P.O.C.	*	POINT OF COMMENCEMENT
P.B.	*	PLAT BOOK
P.B.C.R.	*	PALM BEACH COUNTY RECORDS
PG.	*	PAGE
P.S.M.	*	PROFESSIONAL SURVEYOR
	*	B MAPPER
R/W	*	RIGHT-OF-WAY

Project Name:	ATLANTIC CROSSING	DATE:	07/17/2018
JOB NO.	14167	DWG BY:	JSH
		CK'D BY:	TP
			SHEET 1 OF 3

