

Prepared by: RETURN:

City Attorney's Office  
100 N.W. 1st Avenue  
Delray Beach, FL 33444

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**HOLD HARMLESS AGREEMENT**

**THIS HOLD HARMLESS AGREEMENT**, is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF DELRAY BEACH, FLORIDA, (hereinafter referred to as "CITY") and TKC CLXXVIII, LLC, (hereinafter referred to as "OWNER").

**WITNESSETH:**

**WHEREAS, OWNER** owns property located at 4771 West Atlantic Avenue, Delray Beach, Florida, more particularly described in Exhibit "A," attached hereto and incorporated herein; and

**WHEREAS, OWNER** seeks to have an 8" water main remain in close proximity and adjacent to the two buildings (hereinafter referred to as "Adjacent Buildings") located on **OWNER's** property as depicted in Exhibit "B," attached hereto and incorporated herein.

**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** acknowledges that the **CITY** shall assume no responsibility or maintenance for the Adjacent Buildings and any improvements thereto, which **OWNER** placed adjacent to the public utility easement referenced in Exhibit B, and that **OWNER** shall be

responsible for the upkeep and maintenance of such Adjacent Buildings and associated improvements in accordance with the Code of Ordinances of the **CITY**.

3. **OWNER**, in consideration of the mutual covenants set forth herein, agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, servants, designees, and appointees from and against any and all claims, suits, and demands of liability, loss, or damage whatsoever, including attorneys' fees and costs and attorneys' fees and costs on appeal, from all claims, demands, debts, damages, liabilities, obligations, actions, or causes of action, whether known or unknown, foreseen or unforeseen, fixed, accrued, or contingent, liquidated or unliquidated, matured or unmatured, direct or derivative, or consequential arising from contract, tort, statute, regulation, or otherwise arising from or in any way connected with the water main and improvements located in the public utility easement. **OWNER** further agrees to hold the **CITY**, its agents, officers, employees and servants harmless for any damage to the Adjacent Buildings and associated improvements **OWNER** placed within the public utility easement. The **CITY** will be responsible for any damage it may cause to the Adjacent Buildings and associated improvements as a result of any maintenance or construction within the public utility easement. However, the **CITY** will not liable for any damage to the Adjacent Buildings and associated improvements resulting from catastrophic failures in the water main.

4. **OWNER**, by and through its undersigned officer, does hereby understand, accept, and acknowledge the terms and conditions set forth herein and that **OWNER** has read and understands this Agreement and has had the opportunity to confer with legal counsel of its choosing. **OWNER** further acknowledges that **OWNER** is entering into and executing this Agreement freely and without duress.

5. All notice required or allowed by this Agreement shall be delivered in person or mailed to the party at the following address:

CITY: City Manager  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

With a copy to: Utilities Director  
City of Delray Beach  
434 South Swinton Avenue  
Delray Beach, FL 33444

OWNER: TKC CLXXVIII, LLC  
4500 Cameron Valley Parkway  
Suite 400  
Charlotte, NC 28211

7. This Agreement shall be binding on the Parties, their respective heirs, successors, legal representatives, and permitted assigns and shall be recorded in the Public Records of Palm Beach County and shall run with the land.

8. This Agreement shall be governed by the laws of the State of Florida. Any proceeding initiated to enforce the provisions of this agreement shall be brought in the State or Federal courts located in Palm Beach County, Florida. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement, each party shall pay their own attorney's fees and costs, including appellate fees and costs. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

10. This Agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties hereto with the same formality as this Agreement.

[Remainder of Page Intentionally Left Blank]

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

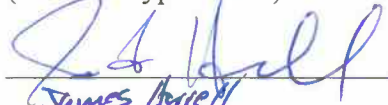
By: \_\_\_\_\_  
Shelly Petrolia, Mayor

Approved as to Form:

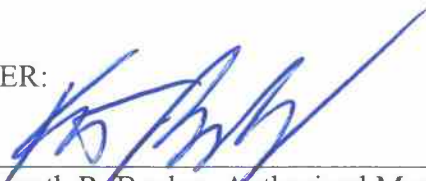
By: \_\_\_\_\_  
City Attorney

WITNESSES:

  
Eric Larson  
(Print or Type Name)

  
James Hurrell  
(Print or Type Name)

OWNER:

By:   
Kenneth R. Beuley, Authorized Member  
(Print or Type Name)

(SEAL)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_ (name of officer or agent), of \_\_\_\_\_ (name of corporation), a \_\_\_\_\_ (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.

\_\_\_\_\_  
Signature of Notary Public -  
State of \_\_\_\_\_

(SEAL)