

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

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### **HOLD HARMLESS AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of August, 2019 by and between the City of Delray Beach, Florida ("City") and COVE 4 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (collectively, "Owner").

#### **W I T N E S S E T H:**

WHEREAS, the City is the owner of the submerged lands within the yacht basin located in Delray Beach, Florida and as described on the attached Exhibit A; and,

WHEREAS, the Owner is the owner of the land contiguous to the yacht basin directly to the east as is shown on Exhibit A; and,

WHEREAS, there exists within the yacht basin two finger piers and a dock. The Owner shall be allowed to improve and reconstruct new extended finger piers, a seawall and a dock into and over the yacht basin as is more particularly described on Exhibit A, attached hereto and incorporated herein, pursuant to the terms of this Agreement ("Improvements"); and,

WHEREAS, this Agreement shall in no way be deemed an actual, constructive or any other type of abandonment by the City of any portion of the yacht basin as described in Exhibit A; and,

WHEREAS, the City reserves the right at any time to utilize the yacht basin as a navigable waterway and for navigability of vessels and said Owner shall hold the City harmless for any and all damages to said yacht basin and the Improvements made thereon during access to the City's Property; and,

WHEREAS, the public will benefit from the beautification of areas within the yacht basin by the addition of the Improvements; and,

WHEREAS, this Agreement is not effective unless the Owner has submitted a dock and pier improvement plan and it has been approved by the City; and,

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Parties hereby represent and warrant that the above recitals are accurate and correct and hereby incorporate them in this Agreement.

2. The Owner shall perform all conditions as required by the City or any Board of the City in conjunction with the site plan and review process for the required construction of the Improvements. The subject property, further described in Exhibit A, shall have an approved dock and finger piers as shown on Exhibit A, submitted by Owner and incorporated herein by reference.

3. The Owner shall be responsible for purchasing and installing all Improvements or any other material as required by the Owner's approved plan. Owner shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies.

4. The Owner hereby agrees to maintain the Improvements in the yacht basin in accordance with the City's Ordinances and the terms and conditions of this Agreement. The Owner shall be responsible to maintain the Improvements in accordance with applicable City Ordinances, state and federal law.

5. If at any time after the execution of this Agreement by the Owner, it shall come to the attention of the City that the Improvements are not properly maintained pursuant to the terms and conditions of this Agreement then the City may at its option issue a written notice that a deficiency or deficiencies exist, by sending a certified letter to the Owner. Thereafter, the Owner shall have a period of thirty calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

- (a) Maintain the Improvements or part thereof and invoice the Owner for expenses incurred.
- (b) Terminate this Agreement and require the Owner to comply with the City's current applicable Ordinance on improvements within the yacht basin.
- (c) Cite the Owner for failure to comply with the City's Ordinances.

6. At all times hereto, the Owner shall own and maintain all Improvements installed in the yacht basin by the Owner.

7. Owner 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, Owner, 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, Owner 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.

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 assigned or transferred by the Owner, in whole or part without the written consent of the City.

11. 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.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

*[signatures appear on following pages]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this \_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

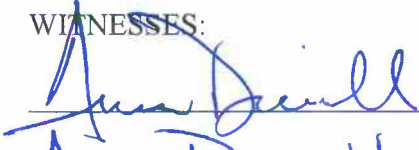
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Shelly Petrolia, Mayor

Approved as to legal form and  
Sufficiency:

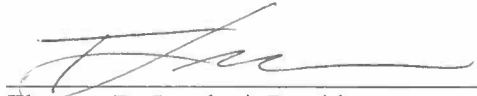
\_\_\_\_\_  
Lynn Gelin, City Attorney

WITNESSES:

  
ANN DRISCOLL  
(Print of Type Name)

Martha Senatus  
Gertha Senatus  
(Print of Type Name)

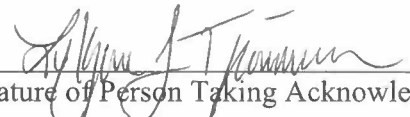
COVE 4 CONDOMINIUM ASSOCIATION,  
INC., a Florida not-for-profit corporation

  
Thomas D. Laudani, President

STATE OF MASSACHUSETTS

COUNTY OF Essex

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2019, by Thomas D. Laudani, as President of Cove 4 Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced Driver's License (type of identification) as identification.

  
Signature of Person Taking Acknowledgment

\_\_\_\_\_  
Name Typed, Printed or Stamped

**Lykourgos J. Tzioumas**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires September 9, 2022