

Prepared by: RETURN:

Lynn Gelin, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, FL 33444

HOLD HARMLESS AGREEMENT

This Hold Harmless Agreement is made this _____ day of _____, 20__ by and between the City of Delray Beach, Florida (“**City**”) and Pierre Delray One LLC with a mailing address of 2000 Avenue of the Stars, 11th Floor, Los Angeles, CA 90067 and hereinafter referred to as (“**Owner**”).

W I T N E S S E T H:

WHEREAS, **Owner**, has requested approval to install and maintain in perpetuity all portions of the following improvements located within the public right-of-way at 302 E. Atlantic Avenue, Delray Beach, Florida (“Subject Site”): (1) eight (8) pre-manufactured awnings (“Awning Improvements”); (2) all portions of the building that encroach into the public right-of-way including but not limited to a perimeter roof cornice overhang, an exterior column, and a portion of the 2nd floor of the structure (“Building Improvements”); and (3) two (2) bicycle racks located north of the Subject Site (“Bicycle Rack Improvements”), the Bicycle Rack Improvements, the Building Improvements, and the Awning Improvements collectively referenced as the “Improvements”, as more particularly described in Exhibit “A” which is attached hereto and incorporated by reference 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 liability or responsibility for said Improvements located within the public right-of-way associated therewith, or now or in the future any partial or complete destruction or removal of the same within the public right-of-way.
3. Nothing in this Agreement relieves **Owner** of any obligation imposed under the **City's** Land Development Regulations or Code of Ordinances. **Owner** is responsible for obtaining any and all permits required in connection with the construction and installation of the Improvements.
4. **Owner** shall construct and install the Improvements in the locations and manner depicted in Exhibit "A", attached hereto and incorporated by reference herein.
5. **Owner** acknowledges that the **City** shall assume no responsibility for the maintenance or construction of the Improvements located within the public right-of-way.
6. **Owner**, in consideration of the mutual promises contained herein and other good and valuable consideration, agrees to hold harmless the **City**, its agents, officers, employees, and servants, designees, and appointees from any damage to the Improvements caused by City in the regular course of City's maintenance responsibility of the public right-of-way and use of the public right-of-way in the manner for which it is designed. It is understood that any cost for replacement of the Improvements shall be **Owner's** responsibility and **City** will not be held liable for any damage as a part of any maintenance or construction within the said public right-of-way.
7. **Owner** shall at all times hereafter indemnify, hold harmless and, at the **City** Attorney'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, negligent, or reckless 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 (Improvements), 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 the City Attorney to defend **City**. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

8. The **City** or its agent, contractor or representative shall be allowed to access the enclosed portion, if any, of the public right-of-way at any time.

9. **Owner** shall remove the Awning Improvements and Bicycle Rack Improvements that are in the public right-of-way within twenty (20) days of receiving notice from the **City** requesting removal. If the **Owner** fails to remove any of the structures listed above, the **City** reserves the right to remove the structures listed above and bill the **Owner** for the cost of such removal. The **City**, its agents, or contractors shall not be responsible for any damage that may occur to the building or any of the structures during such removal. The **City** may request removal of the items listed above for any reason and in its sole discretion.

10. **Owner**, in consideration of the mutual promises contained herein and other good and valuable consideration, further agree to hold harmless, defend, or reimburse the **City**, for any damage that is caused to the **City's** public right-of-way as a result of the construction,

maintenance or existence of the Improvements located in the public right-of-way.

11. The **Owner's** placement of the Improvements in the public right-of-way shall not in any way be construed as a constructive abandonment by the **City**.

12. 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.

13. Each person signing this Agreement represents and warrants to all other parties that said person has full right and authority to sign this Agreement on behalf of the party for whom it is being signed.

14. 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.

15. This Agreement constitutes the entire Agreement between **City** and **Owner** and may not be altered, amended, or modified except by an instrument in writing signed by the parties to the Agreement with all the same formalities as this Agreement.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement the day and year first written above.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katterri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

Lynn Gelin, Esq., City Attorney

WITNESSES:

**OWNER: PIERRE DELRAY ONE, a Delaware
limited liability company**

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

(SEAL)

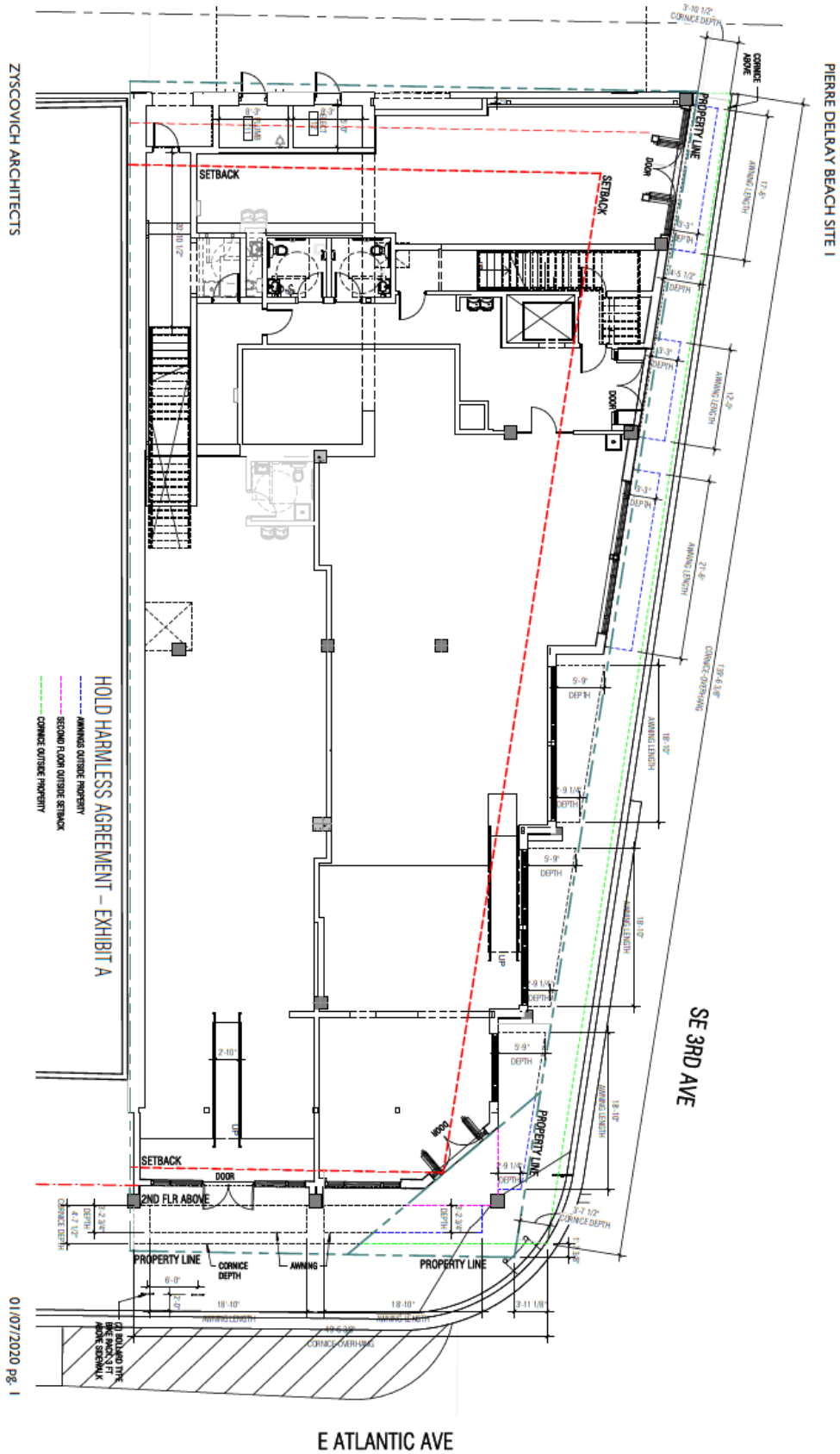
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ as Authorized Signatory of Pierre Delray One LLC, a Delaware Limited Liability Company.

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of _____

Exhibit "A" **IMPROVEMENTS**



ZYSKOVICH ARCHITECTS