

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

---

### STREETLIGHT MAINTENANCE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Delray Beach, Florida ("City") and **Samar 202 Florida LLC**, a Florida limited liability company ("**Owner**").

#### WITNESSETH:

WHEREAS, in order to provide adequate lighting in the City, the City Commission adopted ordinances setting forth requirements for street lighting; and,

WHEREAS, in order to comply with the City's streetlight Ordinance, Owner shall be allowed to install streetlights in the right-of-way of SE 5th Avenue, SE 2nd Street and SE 3rd Street, pursuant to the terms of this Agreement; and,

WHEREAS, this Agreement shall in no way be deemed an actual, constructive or any other type of abandonment or conveyance by the City of the public right-of-way of SE 5th Avenue, SE 2nd Street and SE 3rd Street; and,

WHEREAS, the City reserves the right at any time to utilize the right-of-way for right-of-way purposes; and,

WHEREAS, the public will benefit from the beautification of areas along its streets by the addition of streetlighting; and,

WHEREAS, this Agreement is not effective unless the Owner has submitted a lighting 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 installation and maintenance of the street lighting within the City's right of way. The subject property is depicted in and subject to the approved street lighting plan in Exhibit "A", attached hereto and incorporated herein by reference.

3. The Owner shall be responsible for purchasing and installing all material as required by the Owner's approved street lighting 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 lighting in the right-of-way in accordance with the City's Ordinances and the terms and conditions of this Agreement. The Owner shall be responsible for each streetlight fixture covered by this Agreement and shall maintain the street lighting hardware at its own expense.

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 street lighting is 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 (30) 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 street lighting 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 Ordinance on street lighting, exclusive of any requirements to maintain street lighting the Right of Way.

- (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 street lighting installed in the right-of-way by the Owner in the manner provided herein.

7. If, for any reason, the City decides that it needs the right-of-way of SE 5th Avenue, SE 1st Street and/or SE 3rd Avenue, for any other public purpose, the City may terminate this Agreement upon at least sixty (60) days notice and the Owner shall thereafter be required to comply with the City's current Code of Ordinances regarding street lighting requirement, exclusive of any requirements to maintain street lighting the Right of Way. Owner shall remove all street lighting from the right-of-way within sixty (60) days of such notification, if so requested by the City.

8. 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 is a covenant that runs with the land. Upon any transfer of the subject property, the transferee shall be deemed to assume the Owner's obligations under this Agreement, and the Owner shall be released of any further responsibility.

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.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

**CITY OF DELRAY BEACH, FLORIDA**

\_\_\_\_\_  
Katerri Johnson, City Clerk

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

Approved as to legal form  
and sufficiency:

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

WITNESS #1:

**Samar 202 Florida, LLC** a Florida limited liability  
company

Alan Rottner  
(name printed or typed)

By: Alan Mindel  
Alan Mindel, Manager

WITNESS #2:  
Isabella Johnson  
(name printed or typed)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online  
notarization, this 14<sup>th</sup> day of February, 2020, by Alan Mindel  
(name of person), as Manager (type of authority) for Samar 202 Florida LLC (name of party on  
behalf of whom instrument was executed).

Personally known ☒ OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

Melissa A Valukis

Notary Public – State of Florida

New York

**MELISSA A VALUKIS**  
Notary Public, State of New York  
No. 01VA6189328  
Qualified in Nassau County  
Commission Expires June 23, 2020