

Prepared by: RETURN:

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

HOLD HARMLESS AGREEMENT

THIS HOLD HARMLESS AGREEMENT, is entered into this ____ day of _____, 20__, by and between the CITY OF DELRAY BEACH, FLORIDA, (hereinafter referred to as "CITY") and ALBERT D. THORP, JR., (hereinafter referred to as "OWNER").

WITNESSETH:

WHEREAS, OWNER owns property located at 901 SE 4th Avenue, Delray Beach, Florida, 33483, more particularly described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, the City of Delray Beach, as part of its alley enhancement project, plans to improve and pave the alleyway between SE 4th Avenue and South Federal Highway, from SE 9th Street to SE 10th Street (the "Alleyway"); and

WHEREAS, there currently exists a structure located on OWNER's property (hereinafter referred to as the "Structure"), as depicted in Exhibit "B," attached hereto and incorporated herein, that encroaches on the City's right-of-way, however OWNER does not waive any rights he may have as to whether or not it is considered a legal encroachment; and

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 liability for the Structure existing on the City's right-of-way, unless caused by the intentional acts or negligence of the **CITY**, its officers, agents, employees, servants, designees, and appointees.
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 Structure unless caused by the intentional acts or negligence of the **CITY**, its officers, agents, employees, servants, designees, and appointees. **OWNER** further agrees to hold the **CITY**, its agents, officers, employees and servants harmless for any damage to any property or injury to any persons resulting from the placement of the Structure in the City's right-of-way unless caused by the intentional acts or negligence of the **CITY**, its officers, agents, employees, servants, designees, and appointees.
4. **OWNER** 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 1st Avenue
Delray Beach, FL 33444

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

OWNER: Albert D. Thorp, Jr.
901 SE 4th Avenue
Delray Beach, FL 33483

6. 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.

7. 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, the prevailing party shall be entitled to its attorney's fees and costs, including appellate fees and costs.

8. 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. The parties do not waive any rights each may have pursuant to Florida or Federal law.

9. 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: _____

Approved as to Form:

Shelly Petrolia, Mayor

By: _____
City Attorney

WITNESSES:

Susan Kiminas
SUSAN Kiminas
(Print or Type Name)

William Bennett
William Bennett
(Print or Type Name)

OWNER:

By: A.D. Thorp, Jr.
A.D. Thorp, Jr.
(Print or Type Name)

(SEAL)

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 27th day of February, 2020, by A.D. Thorp, Jr. (name of person acknowledging).

Personally known ☒ OR Produced Identification

Type of Identification Produced _____

(SEAL)

Catherine Inglese
Notary Public – State of Florida

