

**ASSUMPTION OF LIABILITY AND
HOLD HARMLESS AGREEMENT**

THIS ASSUMPTION OF LIABILITY AND HOLD HARMLESS AGREEMENT (“Assumption Agreement”) is entered into this ____ day of _____, 2017, by and between:

T-C THE MANOR AT FLAGLER VILLAGE LLC, a Delaware limited liability company, its successors and assigns, hereinafter (“T-C”).

and

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida having a principal address at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter “CITY”).

R E C I T A L S

WHEREAS, T-C is the owner of a parcel of land legally described in **Exhibit “A”** attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Property is located on the west side of State Road 5 also known as US-1/Federal Highway (hereinafter referred to as “US-1”), a right-of-way which is under the jurisdiction of the State of Florida Department of Transportation (“FDOT”);

WHEREAS, the Property is developed with a mixed-use project known as The Manor at Flagler Village (“The Manor”); and

WHEREAS, certain landscape and streetscape improvements were installed in the right-of-way of US-1 during construction of The Manor (the “Manor Improvements”) consisting of landscaping, irrigation, tree grates and bike racks; and

WHEREAS, the Manor Improvements were installed within US-1 right-of-way between NE 5th Street (Mile Posts 0.383) and NE 6th Street (Mile Posts 0.516) (the “Improvement Area”); and

WHEREAS, in addition to the Manor Improvements, the City also installed certain streetscape improvements within the right-of-way of US-1 as part of a City improvement project (“City Improvements”) consisting of stamped asphalt and pavers; and

WHEREAS, in order to permit the Manor Improvements and City Improvements to remain, FDOT requires the City to enter into an agreement entitled “State of Florida Department of Transportation District Four Landscape Maintenance Memorandum of Agreement” (the “Agreement”) which is attached hereto and incorporated herein as **Exhibit “B”**; and

WHEREAS, the terms and conditions are set forth in the Agreement impose responsibility for maintenance of the City Improvements and Manor Improvements; and

WHEREAS, as a condition to executing the Agreement, T-C shall agree to assume all liability, obligations and responsibility under the Agreement and agree to indemnify and hold harmless the City from any and all liability under the Agreement only for the Manor Improvements; and

WHEREAS, T-C shall not be obligated to assume any maintenance responsibilities with respect to the City Improvements; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the sufficiency and adequacy of which is hereby acknowledged, T-C and the City hereby agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated herein.
2. **Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

City Manager means CITY's Chief Executive Officer, its City Manager, or his or her designee.

City Engineer means the City Engineer (Urban Design Engineer) for the CITY, or his designee. In the administration of this agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the City Engineer. For the purposes hereof, the CITY Engineer's designee shall be the Urban Design Engineer.

Day(s). In computing any period of time expressed in day(s) in this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Effective Date means the effective date of this Assumption Agreement, which shall be the date upon which both (i) this Agreement is executed by the proper corporate officials for T-C and the CITY and (ii) the Agreement is executed by FDOT and the City.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver,

successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

3. Compliance and Default. T-C agrees to assume any and all liability and responsibility for performance under the Agreement except that T-C shall not be liable for the City Improvements nor shall it be liable for any improvements by adjacent property owners in the right of way as set for in Section 7 of the Agreement. Further, except for the obligations in Section 7 of the Agreement, T-C hereby agrees to abide by and comply with each and every term and condition set forth in the Agreement and failure to so comply shall constitute a default under this Assumption Agreement. Any acts or omissions by T-C or T-C's contractors, agents or employees that are not in compliance with the terms and conditions of the Agreement shall constitute a default under this Assumption Agreement. The Agreement is incorporated into this Assumption Agreement as if fully set forth herein.

4. Indemnification and Hold Harmless.

(a) T-C shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses charged or incurred, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of T-C under the Agreement and this Assumption Agreement, conditions contained therein, the location, construction, repair, maintenance use or occupancy by T-C of the Manor Improvements, or the breach or default by T-C of any covenant or provision of the Agreement or this Assumption Agreement, except for any occurrence arising out of or resulting from the intentional torts or negligence of the CITY, its officers, agents and employees. However, this exception shall not be deemed a waiver of the City's sovereign immunity. Without limiting the foregoing, any and all such charges, claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Improvements by T-C or others, including but not limited to costs, charges and other expenses charged or incurred, including reasonable attorney's fees and costs actually incurred or liabilities arising out of or in connection with the rights, responsibilities and obligations of T-C under the Agreement and this Assumption Agreement, or any actual violation of any applicable and known statute, ordinance, administrative order, rule or regulation or decree of any court by T-C, is included in the indemnity.

(b) T-C further agrees that upon delivery of proper and timely notice of violations under the Agreement it shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense. The City shall retain the right to select counsel of its own choosing as deemed appropriate. This indemnification shall survive termination, revocation or expiration of the Agreement and this Assumption Agreement and shall cover any acts or omissions occurring during the term of the Agreement and this Assumption Agreement.

5. Insurance. At all times during the term of the Agreement and this Assumption Agreement, T-C, at its expense, shall keep or cause to be kept in effect the insurance coverages for the Manor Improvements set forth in the Agreement and T-C shall cause such coverage to be

extended to CITY as an additional insured and shall furthermore provide Certificates of Insurance to CITY at least fourteen (14) days prior to the commencement of the Agreement and annually thereafter on the anniversary date of the policies.

6. Removal of Improvements and Restoration of Improvement Area.

(a) Except as may otherwise be expressly provided herein, it is agreed that upon termination of the Agreement, in whole or in part, T-C shall remove all or any part of the Improvements in accordance with the terms and conditions of the Agreement, and T-C shall restore the right of way to conditions acceptable to FDOT as to the roadway and conditions acceptable to the CITY as to the sidewalk area and any impacted public utilities. Such removal and restoration shall be at T-C's sole cost and expense. In the event T-C fails to begin to remove all or any part of the Manor Improvements contemplated herein with thirty (30) days after written demand by FDOT or CITY, the CITY is hereby authorized to remove the Manor Improvements that interfere with the easement rights or the public's use of dedicated rights-of-way and restore the right of way to conditions acceptable to FDOT as to the roadway and conditions acceptable to the CITY as to the sidewalk area and any impacted public utilities, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by T-C.

(b). In the event T-C fails to remove the Manor Improvements and CITY finds it necessary to remove the Manor Improvements in accordance with the foregoing, then the total expense incurred by the CITY in removing the Manor Improvements and the reasonable administrative costs associated therewith shall be considered a special assessment and lien upon the Property. T-C consents to and grants the City the right to place a lien on the Property. T-C shall have sixty (60) days from the date of the statement of the total expenses incurred by the CITY and the administrative costs associated therewith within which to pay or contest to the CITY the full amount due. Failure to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs after an adequate review of no less than sixty (60) days will result in the matter being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with the CITY's removal of the Improvements. The Resolution may also impose a special assessment lien against the Property for the expenses and costs so assessed. A Notice of the Special Assessment assessed by the CITY Commission for the unpaid expenses and costs as stated above shall be recorded with the CITY Clerk and in the Public Records of Broward County, Florida. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law. Any lien filed pursuant to this Agreement shall be subordinate to any mortgages/construction financing obtained for any portion of the Project, whether the mortgage/construction financing obtained before or after the Claim of Lien is recorded.

7. Event of Default; Remedy. In the event the T-C fails to perform or violates any of the terms or conditions of the Agreement or this Assumption Agreement or is in breach or default in any term or condition thereof, the City shall notify T-C of the specific failure or violation of this Assumption Agreement or the Agreement in writing and T-C shall thereafter have a period of thirty (30) days to cure any such failure or violation to the City's reasonable

satisfaction (an "Event of Default"). Upon an Event of Default, the City has the right 1) to take any equitable action to enforce the terms and conditions of the Agreement or this Assumption Agreement, it being stipulated by the parties that since the Agreement and this Assumption Agreement deals with the right to use public easements and rights-of-way of FDOT used for a governmental purpose, a violation or breach of any term or condition of the Agreement or this Assumption Agreement constitutes an irreparable injury to the public and CITY for which there is no adequate remedy at law or 2) take such curative action that was required to be taken by the T-C under the Agreement and the cost and expense incurred in CITY's curative actions shall be passed on to and owed by T-C, in which case T-C shall be liable for payment to CITY for all reasonable and necessary costs and expenses incurred by CITY in connection with the performance of the action or actions associated with the Manor Improvements. T-C shall reimburse CITY within thirty (30) days following written demand for payment thereof. Interest shall accrue on the unpaid amount at the rate of twelve percent (12%) per annum simple interest but in no event shall interest exceed the highest amount allowed by Florida law. If a dispute arises as to the need for, or amount due to the CITY for repairs or maintenance undertaken by CITY in accordance with the Agreement or Assumption Agreement, and such dispute is not resolved within thirty days (30) days after the date that CITY makes the written demand for payment, T-C shall pay to CITY the undisputed amount and shall provide CITY with a bond or other security acceptable to CITY for the disputed amount pending a resolution of the dispute by negotiation or litigation. If T-C does not make the payments required under this Section within the thirty (30) day period set forth herein, then CITY shall have a right to record a Claim of Lien against the Property, which Lien may be either (a) for the total amount of the fines, including all subsections thereunder, or (b) for all reasonable and necessary costs and expenses of any cure undertaken by CITY in accordance with this Section, the cost of any interim insurance policy as provided herein, and reasonable attorneys' fees and costs associated therewith. The Lien shall be effective upon the recording of a the Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to CITY. The Lien may be foreclosed by CITY in the same manner as provided by law for foreclosure of mortgage liens. The Lien shall continue until payment to CITY of the amounts set forth in the Lien (at which time CITY shall record a satisfaction of such lien). In addition to the Lien, CITY shall have all other rights and remedies granted to it at law or in equity for T-C's failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. CITY shall have all other rights and remedies granted to it at law or in equity for T-C's failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. The remedies found within this Section are cumulative. The exercise of one does not preclude the exercise of any other remedy.

8. Emergencies. If an emergency situation arises with respect to the Agreement or the Assumption Agreement where the Improvement Area or any condition thereof presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone and fax or email notice to T-C's Contact Person. If, following that notice, T-C fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure or resolve the emergency from T-C in accordance with provisions hereof. For the purposes of this Paragraph, T-C Contact Person shall be **LAUREN BOURGEOIS, General Manager, Franklin Street**, telephone

number **954-312-1685**; and e-mail address: **Lauren.Bourgeois@franklinst.com**. In the event the T-C's Contact Person or any other information pertaining to the T-C's Contact Person shall change, such change shall be provided to the CITY Engineer in writing.

9. Damage to Public Property. In the event the use, operation, maintenance, repair, construction, demolition or reconstruction of the Improvements cause(s) any damage whatsoever to any other public property, then T-C shall be responsible for the cost of repair and shall, at CITY's option, make said repairs, subject to CITY's reasonable satisfaction.

10. Notices.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in the Agreement or this Assumption Agreement, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as T-C may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder upon receipt if by hand delivery, or upon one (1) business day after deposit with such overnight courier as required above, or upon two (2) business days after deposit with the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY: City Manager
 City Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, FL 33301

With copy to: City Attorney
 City of Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, FL 33301

With a copy to: Transportation and Mobility Director
 City of Fort Lauderdale
 290 N.W. 3rd Avenue
 Fort Lauderdale, FL 33301

AS TO T-C:

Name: Taeuk Namkoong, Director
Company: TH Real Estate
Address: 1 Financial Plaza, Suite 1950
Hartford, CT 06074

(c) As to activities under Paragraph 8, Emergencies, notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Paragraph 8, Emergencies.

11. Independent Contractor. As between CITY and T-C, T-C is an independent contractor under this Assumption Agreement. In providing such services, neither T-C nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to T-C or T-C's agents any authority of any kind to bind CITY in any respect whatsoever.

12. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Assumption Agreement and acknowledge that the preparation of this Assumption Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Assumption Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

13. Interpretation of Agreement; Severability. This Assumption Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Assumption Agreement or the application of the remainder of the provisions, shall not be affected. Rather, this Assumption Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Assumption Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Assumption Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Assumption Agreement, unless otherwise expressly provided. All terms and words used in this Assumption Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

14. Successors. This Assumption Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns. It is intended that this Assumption Agreement and the rights and obligations set forth herein shall run with the land and shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

15. No Waiver of Sovereign Immunity. Nothing contained in this Assumption Agreement is intended to serve as a waiver of sovereign immunity by the City to which sovereign immunity may be applicable.

16. Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Assumption Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

17. Non-Discrimination. T-C shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Assumption Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

18. Records. Each party shall maintain its own respective records and documents associated with this Assumption Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes as applicable, and any resultant award of attorney's fees for non-compliance with that law.

19. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Assumption Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

20. Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Assumption Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Assumption Agreement shall not be deemed a waiver of such provision or modification of this Assumption Agreement. A waiver of any breach of a provision of this Assumption Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Assumption Agreement.

21. Governing Law. This Assumption Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Assumption Agreement and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Assumption Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device.

By entering into this Assumption Agreement, CITY and T-C hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to the Agreement or this Assumption Agreement or any acts or omissions in relation thereto.

22. Recording. This Assumption Agreement shall be recorded in the Public Records of Broward County, Florida, the costs of which shall be borne by T-C. T-C shall record this Assumption Agreement and a copy of the recorded Assumption Agreement shall be provided to City and filed with the City Clerk's Office.

23. Term. This Assumption Agreement shall continue in full force and effect until such time as the Agreement becomes null and void by removal of the Manor Improvements, by operation of law or in accordance with the terms of the Agreement, or is terminated by a court order or mutual agreement between T-C, FDOT and CITY and no obligations lying thereunder survive such termination.

24. Assignment. T-C may assign this Assumption Agreement without the prior written consent of the City to a transferee of the fee simple interest in the Property or to an owner responsible for the common areas of the Property (including a condominium association, homeowner's association or property owner's association, with written notice of such assignment and delivery of a copy of the written assumption of responsibilities executed by the assignor and recorded in the Public Records of Broward County, Florida.

25. Police Power. Nothing herein shall be construed as a waiver of the City's police power. T-C shall comply with the City's codes, ordinances and regulations with respect to installation and construction of the Improvements. T-C shall construct operate and maintain the Manor Improvements in compliance with all health, sanitary, fire, zoning and building code requirements and any other governing authority with jurisdiction over the Improvement Area and Improvements.

26. Intentionally Deleted.

27. No Property Rights. T-C expressly acknowledges that pursuant to the terms hereof, it gains no property right through this Assumption Agreement or the Agreement to the continued possession or use of the Manor Improvements within the Improvement Area.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the undersigned does hereby warrant that they are authorized to enter into this Assumption Agreement by T-C THE MANOR AT FLAGLER VILLAGE LLC, a Delaware limited liability company and the CITY OF FORT LAUDERDALE.

T-C THE MANOR AT FLAGLER VILLAGE LLC, a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Address: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ of T-C THE MANOR AT FLAGLER VILLAGE LLC, a Delaware limited liability company, who is known to me or who has produced _____, as identification.

NOTARY PUBLIC

Type or Print Name

Commission No. _____

My Commission Expires:

AS TO CITY:

WITNESSES:

[Witness type or print name]

[Witness type or print name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By _____
John P. "Jack" Seiler, Mayor

By _____
Lee R. Feldman, City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk

Approved as to form:
Cynthia A. Everett, City Attorney

By: _____
Print Name: _____
Title: Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2014, by **John P. “Jack” Seiler**, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2017, by **Lee R. Feldman**, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

Exhibit A

Legal Description of the Property

Parcel A, MINTO FEDERAL, according to the Plat thereof, as recorded in Plat Book 177, Page 103, Public Records of Broward County, Florida.

Exhibit B

[Attached copy of the Agreement]