

Prepared by and
when recorded return to:

INDEMNITY AND HOLD HARMLESS AGREEMENT

This INDEMNITY AND HOLD HARMLESS AGREEMENT (the “Agreement”) is entered into and effective the ___ day of _____, 2023, by and between **11TH AVENUE REALTY INVESTMENTS, LLC**, a Georgia limited liability company (the “Owner”), and the **CITY OF DALTON** (the “City”).

WHEREAS, the Owner owns certain real property located at 420 Sheridan Avenue, Dalton, Georgia, as described on **Exhibit A**, attached hereto and made a part hereof (the “Property”); and

WHEREAS, prior improvements have been constructed on the Property resulting in the encroachment of a building up to 3.32 feet across the property line into the May Street right of way (the “City Right-of-Way”), as shown on **Exhibit B** (the “Encroachment”); and

WHEREAS, the City is requiring the Owner to indemnify the City for any matters relating to such location and existence of the Encroachments shown on **Exhibit B** over the City Right-of-Way.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable considerations, the parties agree as follows:

1. **Encroachment**. The City hereby acknowledges, agrees and permits Owner, or its assigns, a permanent encroachment over and upon the City Right-of-Way in order to keep and maintain the Encroachment as depicted on **Exhibit B** (the “Permitted Improvements”), subject to the terms and conditions of this Agreement.

2. **Indemnity by the Owner**. The Owner hereby agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any expense City incurs from the construction or reconstruction of City’s street, sidewalk, and related infrastructures (the “City Right-of-Way Infrastructure”) located within the City Right-of-Way as a result of the Permitted Improvements as depicted on **Exhibit B**, including such costs or expenses related to such damage to the Permitted Improvements

existing within the City Right-of-Way. Owner further agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any and all liability, claims, damages, expenses, including attorney's fees and litigation costs, resulting from or arising out of the removal or alteration of the Permitted Improvements encroaching within the City Right-of-Way, as deemed necessary by the City.

3. Repair and/or Replacement Obligations. Owner understands and agrees that if the City or any agent, officer, employee, or contractor removes, damages or alters the Permitted Improvements, that Owner is fully responsible for the repair and/or replacement of the Permitted Improvements. Owner further understands and agrees that if Owner damages or causes damages to the City Right-of-Way Infrastructure within the City Right-of-Way that Owner is fully responsible for the immediate repair and/or replacement of the City Right-of-Way Infrastructure as deemed necessary by and to the standards of the City. Owner agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any and all liability, claims, damages, expenses, including attorney's fees and litigation costs, resulting from or arising out of the removal, damage, or alteration of the Permitted Improvements encroaching within the City Right-of-Way and/or damage to the City Right-of-Way Infrastructure resulting from Owner and/or the Permitted Improvements, as deemed necessary by the City.

4. Relocation after Building is Demolished or Destroyed. If the Permitted Improvements as depicted on **Exhibit B**, or structures on the Property served by the Permitted Improvements, are ever demolished or destroyed, any new construction must be erected entirely on private property and shall not encroach into the City Right-of-Way.

5. No Expansion. Permitted Improvements shall not be expanded upon within the City Right-of-Way.

6. Survival. This Agreement shall run with the Property and be binding upon and inures to the benefit of all future owners, successors, and assigns of the Property. Accordingly, if Owner (or a future owner) transfers fee simple title to the Property, then it no longer is obligated under nor is a beneficiary of this Agreement, and the rights and obligations hereunder shall pass to the new title owner. Notwithstanding the foregoing, Owner (or a future owner) shall be responsible for the indemnity provisions set forth herein from and after the transfer of title if it is later discovered that a claim arose during the time period that the Owner (or a future owner) owned the Property. The right of indemnification pursuant to this Agreement shall survive any applicable statute of limitation, if any. If the City seeks indemnification under this Agreement it shall provide Owner (or the then owner of the Property, as applicable) with written notice which reasonably sets forth, in light of the information then known to the City, a description of the estimate (if then reasonable to make) of the amount involved in such claim.

This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. The above authorization to allow such encroachment over and upon the City Right-of-Way and the rights granted herein shall constitute covenants running with the land.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement has been executed by Owner and the duly authorized representative of Dalton as of the date first written above.

OWNER:

Signed, sealed and delivered in the presence of:

11TH AVENUE REALTY INVESTMENTS, LLC, a Georgia limited liability company

Unofficial Witness

By: _____

Name: _____

Title: _____

Notary Public

My Commission expires: _____

[SEAL]

CITY:

Signed, sealed and delivered in the presence of:

CITY OF DALTON, GEORGIA:

Unofficial Witness

By: _____

Name: _____

Title: _____

Notary Public

My Commission expires: _____

[SEAL]

EXHIBIT A

Legal Description

All that tract or parcel of land lying and being in Land Lot No. 240 in the 12th District and 3rd Section of Whitfield County, Georgia, and being all of Lots Nos. 34-51, inclusive and the south five feet of Lot 33, Block B, of the R.A. Williams Subdivision, per plat of said subdivision recorded in Plat Book 1, Page 49 (Plat Cabinet A, Slide 12), Whitfield County, Georgia Land Records, and being more particularly described according to said plat as follows:

BEGINNING at the northwest corner of the intersection of Sheridan Avenue (12th Avenue) and May Street (not opened) and running thence west along the north side of said May Street a distance of 406 feet to the east side of 11th Avenue; thence north 175 feet along the east side of said 11th Avenue; thence east 206 feet; thence north 105 feet; thence east 200 feet to the west side of Sheridan Avenue; thence south along the west side of Sheridan Avenue 280 feet to the POINT OF BEGINNING.

EXHIBIT B

Permitted Improvement/Encroachment

According to the ALTA/NSPS Land Title Survey prepared by Bryan Long, GA. Reg. No. 3107, for and on behalf of Meridian Geomatics, dated April 20, 2023, a portion of the 1-story commercial building located at 420 Sheridan Avenue encroaches by up to 3.32 feet onto May Street as depicted in the below images from such survey.

