

## **INSURANCE AND INDEMNITY AGREEMENT**

**THIS AGREEMENT** (the “Agreement”), is made and entered into on this 2nd\_\_ day of November, 2025, by and between CHARLES HENRY PROPERTIES, LLC, a New York limited liability company with an address at c/o 336 East 56<sup>th</sup> Street, Front A, New York City, NY 10022 (the “Adjacent Owner”) and X11 FIRST AVE LLC, a Delaware limited liability company with an address at c/o Vanbarton Group LLC, 292 Madison Avenue, 7<sup>th</sup> Floor, New York, New York 10017 (“Project Owner”) (Project Owner and Adjacent Owner are collectively referred to as the “Parties”), as follows:

**WHEREAS**, X11 FIRST AVE LLC, with an address at c/o Vanbarton Group LLC, 292 Madison Avenue, 7<sup>th</sup> Floor, New York, New York 10017 is the owner of the premises located at 1011 First Avenue, New York, NY 10022, designated as Lot 23 in Block 1348 on the Tax Map of New York County (the “Site”);

**WHEREAS**, Adjacent Owner is the owner of the premises located at 336 East 56<sup>th</sup> Street, New York, New York, designated as Lot 35 in Block 1348 on the Tax Map of New York County (the “Adjacent Premises”), which is adjacent to the Site;

**WHEREAS**, Project Owner intends to perform certain exterior construction work that includes vertical extension and façade renovation work at the Site (the “Project”) and, in connection with the Project, Project Owner will need to install, maintain, and remove a sidewalk shed along a portion of the perimeter of the Adjacent Premises (the “Sidewalk Shed”), as more fully described and depicted in the protection plans which are annexed hereto as **Exhibit A** (the “Protection Plans”);

**WHEREAS**, Adjacent Owner requires, as a condition to granting Project Owner’s access to the Adjacent Premises to install the Sidewalk Shed, that Project Owner name Adjacent Owner as additional insureds under its commercial general liability insurance and

umbrella/excess policies pursuant to the terms set forth herein;

**WHEREAS**, Adjacent Owner requires, as a condition to granting Project Owner's access to the Adjacent Premises, that Project Owner indemnify Adjacent Owner pursuant to the terms set forth herein;

**WHEREAS**, Project Owner desires to indemnify Adjacent Owner and name Adjacent Owner as an additional insured on its commercial general liability insurance and umbrella/excess policies pursuant to the terms of this Agreement;

**WHEREAS**, the parties acknowledge and agree that a separate access agreement (the "Access Agreement") is intended to be executed subsequent to the date of this Agreement, for the purpose of granting the Project Owner additional access rights to the Adjacent Premises;

**WHEREAS**, the parties agree that the Access Agreement will include provisions relating to insurance and indemnification, and that, upon its execution, the Access Agreement shall supersede this Agreement in its entirety; and

**WHEREAS**, Project Owner and Adjacent Owner wish to memorialize their agreement with respect to the matters set forth above;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

**1. INSURANCE**

Project Owner shall maintain a comprehensive commercial general liability insurance policy with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate (project specific coverage covering Adjacent Owner and Project Owner), and \$10,000,000 in umbrella/excess coverage until the removal of the Sidewalk Shed at the Adjacent Premises. Project Owner shall name Adjacent Owner as an additional insureds on its commercial general liability insurance and excess policies. Project Owner shall also maintain worker's compensation

coverage and disability insurance in statutory limits, Employer's Liability coverage in an amount that is not less than \$1,000,000 per accident, and automobile coverage for owned and hired automobiles in an amount that is not less than \$1,000,000 per claim. Project Owner's commercial general liability insurance and umbrella/excess insurance shall be primary and non-contributory, shall waive subrogation as to the Additional Insureds and shall not include any action over exclusions. Project Owner shall provide Adjacent Owner with a certificate of insurance and written endorsements evidencing the foregoing coverages prior to accessing the Adjacent Premises and prior to the performance of the Sidewalk Shed Project.

## **2. INDEMNIFICATION**

To the fullest extent permitted by law, Project Owner shall defend, indemnify and hold harmless the Adjacent Owner/Additional Insureds and their respective members, principals, directors, officers, employees, representatives, agents, successors and assigns (collectively, the "Indemnitees") from and against any and all causes of action, damages, claims, demands, judgments, liens, litigation, liability, penalties, orders, fines, losses, costs, or expenses, including reasonable attorneys' fees, which may at any time be asserted against or incurred by the Indemnitees or any one or more of them, arising out of, in connection with and/or relating to the installation, maintenance and removal of the Sidewalk Shed and/or the Project Owner's access to the Adjacent Premises, unless such damage or loss is caused exclusively by the gross negligence or willful misconduct of the Indemnitees, such indemnification including but not limited to claims by 3<sup>rd</sup> parties against the Indemnitees and extended coverage for claims that arise after the Sidewalk Shed is removed or after the completion date of this Project. Indemnitees will be named as Additional Insureds in Project Owner's extended coverage for completed operations. Project Owner shall perform the work with all reasonable care and shall be responsible for any damage, loss or injury to any real or personal property and for injury to any person arising out of

or in connection with and/or relating to the installation, maintenance and removal of the Sidewalk Shed and/or the Project Owner's access to the Adjacent Premises, unless such damage or loss is caused exclusively by the gross negligence or willful misconduct of the Indemitees.

### **3. MISCELLANEOUS PROVISIONS**

A. This Agreement sets forth the full and complete understanding of the Parties with regard to the subject matter hereof and it supersedes any and all agreements and representations or understandings made or dated prior to the date hereof.

B. The terms herein set forth may only be changed or modified by written agreement signed by all Parties hereto.

C. In the event that any provision or provisions herein are determined to be illegal or unenforceable for whatever reasons, such provision or provisions shall be deemed excised from this document and the remaining provisions shall remain in full force and effect as if the excised provisions were never included herein.

D. This Agreement shall be binding on the Parties hereto, their successors in interest, assigns and/or beneficiaries.

E. All notices and other communications required or contemplated under this Agreement shall be in writing, and shall be delivered by Federal Express or other reputable overnight courier (next business day delivery) pre-paid by the sender and shall be deemed delivered on the next business day following the date of deposit with Federal Express or such other reputable overnight courier for next business day delivery to the parties' addresses set forth above.

F. This Agreement may be executed in counterparts and fax copies of signatures shall have the same effect as original signatures.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed as of the day and year first written above.

**CHARLES HENRY PROPERTIES, LLC**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**X11 FIRST AVE LLC**

By: \_\_\_\_\_  
Name:  
Title:  
Date: