

**FLORIDA DEPARTMENT OF TRANSPORTATION
LANDSCAPE AND BONDED AGGREGATE SURFACES
MAINTENANCE MEMORANDUM OF AGREEMENT
WITH THE
CITY OF MIAMI BEACH**

This **AGREEMENT**, entered into on _____, 20____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter called the **CITY**, and collectively referred to as the **PARTIES**.

RECITALS:

- A. The **DEPARTMENT** has jurisdiction over **State Road (SR) 112 (West 41st Street)** from Indian Creek Drive to Collins Avenue, which is located within the limits of the **CITY**; and
- B. The **CITY**, pursuant to **Permit Number 2020-L-691-00005**, has drafted design plans for beautification improvements along SR-112 (West 41st Street) from Indian Creek Drive to Collins Avenue, the limits of which are described in the attached Exhibit 'A' (the **PROJECT LIMITS**), which by reference shall become a part of this **AGREEMENT**; and
- C. The **CITY** will install landscape and bonded aggregate surfaces along SR-112 within the **PROJECT LIMITS**, in accordance with the design plans for Permit Number # 2020-L-691-00005 (the "Project"); and
- D. The **PARTIES** to this **AGREEMENT** mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party with regards to the maintenance of the landscape and bonded aggregate surfaces installed pursuant to the Project; and
- E. The **CITY**, by Resolution No. _____, dated _____, attached hereto as Exhibit 'B', which by reference shall become a part of this **AGREEMENT**, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits contained herein and other good and valuable consideration, the **PARTIES** covenant and agree as follows:

1. RECITALS

The recitals in this **AGREEMENT** are true and correct, and are incorporated herein by reference and made a part hereof.

2. ASSIGNMENT OF MAINTENANCE RESPONSIBILITIES

The **PARTIES** agree that the execution of this **AGREEMENT** shall constitute an assignment of all maintenance responsibilities pertaining to the landscape and bonded aggregate surfaces (collectively the "**IMPROVEMENTS**") within the **PROJECT LIMITS** to the **CITY** upon the **DEPARTMENT's** issuance of the executed Permit to the **CITY**.

3. CITY'S MAINTENANCE RESPONSIBILITIES

So long as the **IMPROVEMENTS** remain in place, the **CITY** shall be responsible for the maintenance of the same. The **CITY** shall maintain the **IMPROVEMENTS** in accordance with all applicable **DEPARTMENT** guidelines, standards, and procedures, which shall include but shall not be limited to the Maintenance Rating Program Handbook, as may be amended from time to time. Additionally, with respect to the landscape, the **CITY** shall maintain same in accordance with the International Society of Arboriculture standards, guidelines and procedures, the latest edition of the "Maintenance Rating Program", and Index 546 of the latest **DEPARTMENT** Design Standards, as may be amended from time to time. The **CITY** shall further maintain the **IMPROVEMENTS** in accordance with the standards set forth in the Project Plans, and in the Project Specifications and Special Provisions. The **CITY's** maintenance obligations shall include but not be limited to:

3.1 General Requirements:

- a. Removing and disposing of litter from **PROJECT LIMITS** in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- b. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.2 through 3.3.

- c. Maintaining a service log of all maintenance operations that sets forth the date of the maintenance activity, the location that was maintained, and the work that was performed.
- d. Submitting Lane Closure Requests to the **DEPARTMENT** when maintenance activities will require the closure of a traffic lane in the **DEPARTMENT's** right-of-way. Lane closure requests shall be submitted through the District Six Lane Closure Information System, to the **DEPARTMENT's** area Permit Manager and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

3.2 Landscape and all associated improvements:

- a. Mowing, cutting and/or trimming and edging the grass and turf within the **PROJECT LIMITS**.
- b. Pruning all plant materials, which include trees, shrubs and ground covers, and parts thereof, including all material from private property encroaching into the **DEPARTMENT'S** Right-of-Way.
- c. All pruning and trimming will follow the Maintenance Rating Program Handbook which specifically requires no encroachment of trees, tree limbs or vegetation in or over travel way (or clear zone) lower than 14.5 feet, or lower than 10 feet over sidewalks.
- d. Removing and properly disposing of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below the standards set forth in the Project Plans and in the Project Specifications, incorporated herein by reference, and all applicable **DEPARTMENT** guidelines, standards and procedures, as may be amended from time to time. All replacement materials shall be in accordance with the Project Plans and the Project Specifications and Special Provisions.
- e. Mulching all plant beds and tree rings.
- f. Removing and disposing of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.

- g. Watering and fertilizing all plants as needed to maintain the plant materials in a healthy and vigorous growing condition.
- h. Repairing irrigation systems and associated components as needed. Paying for all water use and all costs associated therewith.
- i. Repairing decorative lighting systems as needed. Paying for all electricity and all costs associated therewith.
- j. Removing and disposing of litter from roadside and median strips in accordance with all applicable government rules, regulations, policies, procedures, guidelines, and manuals, as amended from time to time.
- k. Repairing all sidewalks damaged by landscaping found inside and outside the **DEPARTMENT's** Right-of-Way.
- l. Removing and disposing of all trimmings, roots, branches, litter, and any other debris resulting from the activities described by 3.A through 3.K.

3.3 Bonded Aggregate Surfaces:

- a. Performing routine and regular inspections of the bonded aggregate surfaces to ensure that the surface is fully functional; identifying damage and/or malfunctions in the surfaces; and repairing and/or replacing damaged bonded aggregate surfaces to ensure surfaces are maintained in accordance with all applicable **DEPARTMENT** guidelines, standards, and all applicable American with Disabilities Act (ADA) requirements, as amended from time to time.
- b. The **CITY** shall conduct annual condition surveys of the bonded aggregate surfaces for gaps, settlement, drop-offs and other deficiencies described in this **AGREEMENT** for the life of the bonded aggregate. Ensure and document in this survey that the surface friction of the bonded aggregate surface meets or exceeds the surface friction of the existing concrete sidewalk areas.

- c. Gaps within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch. Gaps at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- d. Differential settlement within the bonded aggregate surfaces shall not exceed a quarter (1/4) of an inch in depth. Differential settlement at the interface (perimeter) between the bonded aggregate surfaces and the adjacent concrete sidewalk(s) shall not exceed a quarter (1/4) of an inch in depth. This requirement also applies to adjacent areas of existing concrete sidewalk(s) that have been impacted by the trees planted within the bonded aggregate surfaces.
- e. When remedial action is required in accordance with the above requirements, the **CITY** at its own expense shall complete all necessary repairs within ninety (90) days of the date the deficiency is identified.

The **CITY** shall submit all services logs, inspections and surveys to the **DEPARTMENT** Warranty Coordinator as required in the above maintenance responsibilities.

The **DEPARTMENT** may, at its sole discretion, perform periodic inspection of the **IMPROVEMENTS** to ensure that the **CITY** is performing its duties pursuant to this **AGREEMENT**. The Department shall share with the **CITY** its inspection findings, and may use those findings as the basis of its decisions regarding maintenance deficiencies, as set forth in Section 4 of this **AGREEMENT**. The **CITY** is responsible for obtaining copies of all applicable rules, regulations, policies, procedures, guidelines, and manuals, and the Project Specification and Special Provisions, as may be amended from time to time.

4. MAINTENANCE DEFICIENCIES

If at any time it shall come to the attention of the **DEPARTMENT** that the **CITY's** responsibilities as established

herein are not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **CITY MANAGER**, to notify the **CITY** of the maintenance deficiencies. From the date of receipt of the notice, the **CITY** shall have a period of thirty (30) calendar days, within which to correct the cited deficiency or deficiencies. Receipt is determined in accordance with Section 5 of this **AGREEMENT**.

If said deficiencies are not corrected within this time period, the **DEPARTMENT** may, at its option, proceed as follows:

- a. Maintain the **IMPROVEMENTS**, or a part thereof and invoice the **CITY** for expenses incurred; or
- b. Terminate this **AGREEMENT** in accordance with Section 7, remove any or all of the **IMPROVEMENTS** located within the **PROJECT LIMITS**, and charge the **CITY** the reasonable cost of such removal.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To the DEPARTMENT: Florida Department of Transportation
1000 Northwest 111 Avenue, Room 6205
Miami, Florida 33172-5800
Attn: District Maintenance Engineer

To the CITY: City of Miami Beach
1700 Convention Drive
Miami Beach, Florida 33139
Attention: City Manager

Notices shall be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided.

6. REMOVAL, RELOCATION OR ADJUSTMENT OF THE IMPROVEMENTS

- a. The **PARTIES** agree that the **IMPROVEMENTS** addressed by this **AGREEMENT** may be removed, relocated or adjusted at any time in the future, at the **DEPARTMENT's** sole discretion. In the event that the **DEPARTMENT** relocates or adjusts the **IMPROVEMENTS**, the **CITY's** maintenance responsibilities will survive the relocation or adjustment, as long as the materials remain within the **PROJECT LIMITS**.
- b. In the event that the **DEPARTMENT** is required to replace the sidewalk at any time as part of maintenance activities, a roadway project, or related construction activities, the **DEPARTMENT** shall replace the same as a concrete type sidewalk, and the **CITY's** maintenance obligations under this **AGREEMENT** shall terminate. However, the **CITY** may, with the approval of the **DEPARTMENT**, upgrade the sidewalk type at its sole cost and expense with the understanding that the **CITY** shall assume all maintenance obligations for the upgraded sidewalk, and enter into a new maintenance agreement.

7. TERMINATION

In addition to the provisions of Section 6(b) hereunder, this **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **CITY** fails to perform its duties under Section 3 of this **AGREEMENT**, following the thirty (30) days written notice, as specified in Section 4 of this **AGREEMENT**.
- b. In accordance with Section 287.058(1)(c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this **AGREEMENT** unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), of the Florida Statutes.

c. If mutually agreed to by both parties, upon thirty (30) days written advance notice. An agreement to terminate shall be valid only if made in writing and executed with the same formalities as this **AGREEMENT**.

d. By the **CITY**, upon thirty (30) days advance written notice to the **DEPARTMENT**.

Prior to termination of the **AGREEMENT** under this Section, the **CITY** shall, at its sole cost and expense, remove all the **IMPROVEMENTS** and restore the area to a standard concrete sidewalk, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**, and shall further any remaining **IMPROVEMENTS**, and restore the area to the same or similar condition as existed prior to the installment of the **IMPROVEMENTS**, in accordance with the **DEPARTMENT'S** guidelines, standards, and procedures, and to the satisfaction of the **DEPARTMENT**.

8. TERMS

a. The effective date of this **AGREEMENT** shall commence upon execution by the **PARTIES** and shall continue so long as the **IMPROVEMENTS** remain in place until termination as set forth in Section 7.

b. E-Verify

The **CITY** shall:

- i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. **(Executive Order Number 2011-02)**

The **CITY** shall insert the above clause into any contract entered into by the **CITY** with vendors or contractors

hired by the **CITY** for purposes of performing its duties under this **AGREEMENT**.

- c. This writing embodies the entire **AGREEMENT** and understanding between the **PARTIES** hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- d. This **AGREEMENT** shall not be transferred or assigned, in whole or in part, without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT** shall be governed by and constructed in accordance with the laws of the State of Florida. Any provisions of this **AGREEMENT** found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions of the **AGREEMENT**.
- f. Venue for any and all actions arising out of or in connection to the interpretation, validity, performance or breach of this **AGREEMENT** shall lie exclusively in a state court of proper jurisdiction in Leon County, Florida.
- g. A modification or waiver of any of the provisions of this **AGREEMENT** shall be effective only if made in writing and executed with the same formality as this **AGREEMENT**.
- i. The section headings contained in this **AGREEMENT** are for reference purposes only and shall not affect the meaning or interpretation hereof.
- j. No term or provision of this **AGREEMENT** shall be interpreted for or against either Party because the Party or its legal representative drafted the provision.
- k. The **DEPARTMENT** is a state agency, self-insured and subject to the provisions of Section 768.28, Florida Statutes, as may be amended from time to time. Nothing in this **AGREEMENT** shall be deemed or otherwise interpreted as waiving the **DEPARTMENT's** sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

9. INDEMNIFICATION

Subject to Section 768.28, Florida Statutes, as may be amended from time to time, the **CITY** shall promptly indemnify, defend, save and hold harmless the **DEPARTMENT**, its officers, agents, representatives and employees from any and all losses, expenses, fines, fees, taxes, assessments, penalties, costs, damages, judgments, claims, demands, liabilities, attorneys fees, (including regulatory and appellate fees), and suits of any nature or kind whatsoever caused by, arising out of, or related to the **CITY's** exercise or attempted exercise of its responsibilities as set out in this **AGREEMENT**, including but not limited to, any act, action, neglect or omission by the **CITY**, its officers, agents, employees or representatives in any way pertaining to this **AGREEMENT**, whether direct or indirect, except that neither the **CITY** nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the negligence of the **DEPARTMENT**.

The **CITY's** obligation to indemnify, defend and pay for the defense of the **DEPARTMENT**, or at the **DEPARTMENT's** option, to participate and associate with the **DEPARTMENT** in the defense and trial of any claim and any related settlement negotiations, shall be triggered immediately upon the **CITY's** receipt of the **DEPARTMENT's** notice of claim for indemnification. The notice of claim for indemnification shall be deemed received if the **DEPARTMENT** sends the notice in accordance with the formal notice mailing requirements set forth in Section 5 of this **AGREEMENT**. The **DEPARTMENT's** failure to notify the **CITY** of a claim shall not release the **CITY** of the above duty to defend and indemnify the **DEPARTMENT**.

The **CITY** shall pay all costs and reasonable attorney's fees related to this obligation and its enforcement by the **DEPARTMENT**. The indemnification provisions of this section shall survive termination or expiration of this **AGREEMENT**, but only with respect to those claims that arose from acts or circumstances which occurred prior to termination or expiration of this **AGREEMENT**.

The **CITY's** evaluation of liability or its inability to evaluate liability shall not excuse the **CITY's** duty to defend

and indemnify the **DEPARTMENT** under the provisions of this section. Only an adjudication or judgment, after the highest appeal is exhausted, specifically finding the **DEPARTMENT** was solely negligent shall excuse performance of this provision by the **CITY**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION:

BY: _____
CITY Manager

BY: _____
District Director of
Transportation Operations

ATTEST: _____ (SEAL)
CITY Clerk

ATTEST: _____
Executive Secretary

LEGAL REVIEW:

BY: _____
CITY Attorney

BY: _____
District Chief Counsel

EXHIBIT 'A'

PROJECT LIMITS

Below are the limits of the **IMPROVEMENTS** to be maintained by the **CITY** under this **AGREEMENT**.

State Road Number: 112

Local Street Names: West 41st Street

Agreement Limits: Indian Creek Drive to Collins Avenue

County: Miami-Dade

EXHIBIT 'B'

CITY OF MIAMI BEACH RESOLUTION

To be herein incorporated once ratified by the **CITY** Board of Commissioners.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A LANDSCAPE MAINTENANCE MEMORANDUM OF AGREEMENT (MMOA), ATTACHED AS EXHIBIT 1, BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND SUKKAH MIAMI BEACH ACQUISITIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY ("OWNER"), TO DESIGN, CONSTRUCT, AND INSTALL LANDSCAPING AND ASSOCIATED IMPROVEMENTS ("IMPROVEMENTS") OF THE PROPERTY AND IN CERTAIN PORTIONS OF THE PUBLIC RIGHT-OF-WAY ABUTTING THE PROPERTY, LOCATED AT 4000 COLLINS AVENUE ("PROPERTY"), AND EXECUTE A DECLARATION OF RESTRICTIVE COVENANTS, ATTACHED HERETO AS EXHIBIT 2, WHICH COVENANT TRANSFERS RESPONSIBILITY OF THE LANDSCAPING IMPROVEMENTS AND MAINTENANCE COSTS ASSOCIATED WITH THE MMOA TO THE OWNER, IN CONNECTION WITH THE REDEVELOPMENT OF THE PROPERTY AS A HOTEL DEVELOPMENT.

WHEREAS, the applicant, Sukkah Miami Beach Acquisitions LLC, a Delaware Limited Liability Company, is the owner of the property located at 4000 Collins Avenue, as identified by Miami-Dade County Folio No. 02-3226-001-1930; and

WHEREAS, The Historical Preservation Board (File No. HPB17-0097), requested that the proposed Continental Hotel development at 4000 Collins Avenue install landscaping encroachments in the public right-of-way; and

WHEREAS, the City requires that the owner design, construct, and install landscaping and associated improvements on the Property and in certain portions of the public right-of-way abutting the property, in accordance with the Hardscape Plan, Planting Plan, Plant List and Specifications, Irrigation Plan, Irrigation Specifications, and Lighting Plan; and

WHEREAS, the owner has applied to the City for permission to install the improvements within the right-of-way, according to these Plans. The Florida Department of Transportation (FDOT) has jurisdiction over State Road (SR) 112 West 41st Street, from Indian Creek Drive to Collins Avenue, which abuts the Property. Pursuant to this request, FDOT has approved the development's request for work within 41st Street right-of-way; and

WHEREAS, FDOT allows private development to install landscaping along urban corridors as part of a private development projects, as long as the municipality agrees to execute a Landscape Maintenance Memorandum of Agreement (MMA) with FDOT, accepting full maintenance responsibility of the landscaped area. The City of Miami Beach has executed several similar agreements in the past where landscaping was installed; and

WHEREAS, current City ordinance requires the adjacent property owner to maintain all items. In addition to adherence to approved site plans, the City will have the property owner record a covenant regarding their responsibility to adequately maintain these items as required by FDOT at no cost to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby that the Mayor and City Commission hereby approve and authorize the Mayor and the City Clerk to execute a Landscape Maintenance Memorandum of Agreement (MMOA), attached as Exhibit 1, between the City of Miami Beach ("City") and Sukkah Miami Beach Acquisitions LLC, a Delaware limited liability company ("Owner"), to design, construct, and install landscaping and associated improvements ("Improvements") of the property and in certain portions of the public right-of-way abutting the property, located at 4000 Collins Avenue ("Property"), and execute a declaration of restrictive covenants, attached hereto as Exhibit 2, which covenant transfers responsibility of the landscaping improvements and maintenance costs associated with the MMOA to the owner, in connection with the redevelopment of the property as a hotel development.

PASSED and ADOPTED this _____ day of _____, 2020.

DAN GELBER, MAYOR

ATTEST:

RAFAEL E. GRANADO, CITY CLERK