

LANDSCAPE, HEDGING AND PARKING AREA IMPROVEMENT AGREEMENT

THIS LANDSCAPE, HEDGING AND PARKING AREA IMPROVEMENT AGREEMENT (this “Agreement”), dated and effective as of _____, 2025 (the “Effective Date”), is entered into by **SOUTH SHORE HOTEL ASSOCIATES, L.L.C.** (“South Shore”), a Florida limited liability company, and **VILLAGE OF WELLINGTON** (“Wellington”) a Florida municipality located in Palm Beach County, Florida and each referred to herein as a “Party” and together as the “Parties” in accordance with the terms and conditions set forth below.

RECITALS

WHEREAS, South Shore is the owner of real property known as the Chancellor Corporate Center, located at 12008 and 12012 South Shore Blvd., Wellington, Florida 33414 (the “Property”), including surrounding landscaped areas (“Landscaping”) and parking areas (the “Parking Areas”), as more specifically described in the legal description attached as **Exhibit A** hereto; and

WHEREAS, Wellington is the owner of property located at 12300 Forest Hill Blvd., Wellington, Florida 33414, generally referred to as the “Wellington Municipal Complex;” and

WHEREAS, Wellington holds, sponsors and permits multiple public events throughout the year at the Wellington Municipal Complex as part of its recreational programming, including events at the Amphitheater, the Food Truck events, the weekly Lakeside Market and numerous other special events; and

WHEREAS, inadequate space exists at the Wellington Municipal Complex to accommodate all of the parking for the public; and

WHEREAS, the Parties hereto entered into a License Agreement for Use of Chancellor Corporate Center Parking Lot (the “License Agreement”), for the purpose of providing overflow parking for Wellington events at the Village of Wellington Municipal Complex; and

WHEREAS, as consideration for the License Agreement, Wellington agreed that if its use of the Parking Area for public parking resulted in any damage to the Parking Area, or if damage to the landscaping and hedging surrounding the Parking Area was caused by pedestrian or vehicular traffic as a result of its use of the Parking Area, it would pay for the repair/restoration of the Parking Area to return it to its pre-event condition; and

WHEREAS, South Shore and Wellington have agreed that certain damage to the Parking Area and surrounding landscaping and hedging has occurred as a result of the Wellington’s use of the Property for public events; and

WHEREAS, the Parties have agreed that certain improvements are needed for the Parking Area and surrounding landscaping and hedging (the “Parking Area Improvement Project” or “Project”), as more particularly described in Paragraph 2 of this Agreement entitled “*Scope of Work*;” and

WHEREAS, the Wellington Council has determined that Wellington's contribution to the Parking Area Improvement Project serves a public purpose; and

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Village has agreed to contribute certain materials, labor and funding toward the Parking Area Improvement Project.

NOW, THEREFORE, in consideration of the representations, warranties, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Term.** This Agreement is effective upon execution by all Parties. The term of the Agreement is from the effective date and shall terminate upon (i) completion of the Project described herein, (ii) written notification by Wellington to the South Shore of final acceptance of the Project, and (iii) all performance hereunder is complete. In no event shall work begin until issuance of all governmental permits and approvals necessary to construct and complete the Parking Area Improvement Project.

2. **Scope of Work.**

a. Clusia Hedge:

- i. Wellington will, at its expense, supply and install 250 linear feet of 7-gallon Clusia on a 30-inch spacing on the portion of the Property depicted in **Exhibit B**. The Clusia will be 36 to 40 inches tall at the time of installation.
- ii. Wellington will, at its expense, supply and install mulch with the initial planting only.
- iii. Wellington will also, at its expense, supply and install 250 linear feet of silt fencing to deter pedestrian traffic while the Clusia grows in.
- iv. The new hedge material will be watered in at the time of installation. The Village of Wellington will not be responsible for the irrigation of the hedge after installation.
- v. The existing irrigation must be made sufficient and confirmed by Wellington to be in good working order before the installation takes place.
- vi. The foregoing materials to be supplied by Wellington for the Clusia Hedge are provided "As Is" and Wellington makes no warranty, express or implied, as to their merchantability or fitness for a particular purpose.

b. Paving Work:

- i. Wellington will contribute the sum of not to exceed \$25,000.00 toward the necessary repairs to the asphalt portion of the Parking Area. The nature and extent of the needed repairs is to be determined by South Shore Hotel Associates, LLC. The payment shall be due no later than 30 days after Wellington's final acceptance of the Paving Work.
- ii. South Shore is responsible for the professional quality, technical accuracy, and timely completion of the paving portion of the Project.

- iii. South Shore shall be responsible for submitting and obtaining a sealcoating and striping engineering permit for the proposed repair areas. The permit will be reviewed by Wellington Engineering Staff to ensure compliance with the Wellington Engineering Standards Manual.
 - iv. Wellington will waive all engineering permit and inspection fees for the permit.
 - v. South Shore shall provide all materials, labor, other facilities, and equipment necessary for the Paving Work and shall fully undertake and implement the engineering design, survey, permitting, and paving for the proposed Parking Area Improvement Project within the Property described in **Exhibit A**.
- c. Wellington shall make such inspections of the Project and the work as it deems necessary and shall conduct a final acceptance inspection of the Project when completed and finished in all respects.
 - d. Upon completion of the Project, Wellington's Engineering Department will conduct a final inspection to close the permit.
 - e. South Shore, its successors and assigns, shall be responsible for ongoing maintenance of all improvements made to the Property pursuant to the Scope of Work set forth above.

3. **Construction Timeline:** In no event shall the Project construction timeline extend longer than 120 days following issuance of any governmental approvals necessary to construct the Project.

4. **Recordkeeping.** South Shore shall keep the records of receipts and expenditures, copies of all reports submitted to the Wellington, and copies of all invoices and supporting documentation for at least three years after expiration of this Agreement and will provide such records to Wellington upon completion of the Project and as required backup for payment and release of funds referenced in Paragraph 2(b)(i) above.

5. **Permit.** South Shore shall comply with all applicable federal, state, and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. South Shore shall obtain all governmental permits necessary to implement the Project.

6. **Public Records.** Records of South Shore that are made or received during performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of Chapter 119 of the Florida Statutes, as amended.

7. **Liability and Insurance.** Each party is responsible for all personal injury and property damage attributable to any negligent acts or omissions of that respective party, its officers, employees and agents. South Shore shall be responsible for obtaining adequate insurance coverage. Nothing contained herein shall be construed or interpreted as denying to any party any

remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in Section 768.28 of the Florida Statutes, as amended, nor as consent to be sued by third parties. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations.

8. Non-Waiver of Regulatory Authority. Nothing contained herein shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the Wellington as it now or hereafter exists under applicable laws, rules and regulations.

9. Termination. If either party materially fails to fulfill its obligations under this Agreement, the nonbreaching party shall provide written notice of the breach to the breaching party, citing the specific nature of the breach. The breaching party shall have 30 days to cure the breach or such other time frame as agreed to by the parties.

10. Governing Law, Venue, Attorney's Fees, and Waiver of Right to Jury Trial. This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Palm Beach County; (2) each party shall bear its own attorney's fees, including appellate fees; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER AS CLAIM, CAUSE OF ACTION, COUNTER-CLAIM, AFFIRMATIVE DEFENSE, OR OTHERWISE) IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS AGREEMENT, THE TRANSACTION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), ACTIONS OR INACTIONS BY OR AMONG THE PARTIES HERETO.

11. Force Majeure. The Parties shall not be liable or responsible to each other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any obligation imposed under this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by a Force Majeure Event. "Force Majeure Event" means strikes; lock outs; labor or work force shortages or interruptions; inability to procure materials or supplies; failure or insufficiency of electricity, water, sewer, gas or other utilities; governmental compulsory acquisitions, expropriations, seizures or requisitions; widespread material curtailment or unavailability of governmental services or functions; riots; terrorist acts or threats of terrorist acts; insurrection or civil commotion or disorder; Public Health Concerns (as defined below); acts of God or natural disaster, including without limitation, damaging storms, cyclones, typhoons, hurricanes, tornadoes, blizzards, earthquakes, volcanic activity, landslides, tidal waves, tsunamis, floods, or damage or destruction by lightning; explosions, fires or other destruction; armed conflict or war (whether declared or not); or any reason beyond a party's control. For purposes of this Agreement,

“Public Health Concern” means any one or more of the following: epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; any of which result in governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including, but not limited to, governmentally mandated closure, quarantine, “stay-at-home”, “shelter-in-place” or similar orders or restrictions. The failure or inability of either party to perform its obligations in this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay, but not more than thirty (30) days in the aggregate.

12. Severability. If any part of any provision of this Agreement or any other agreement contemplated hereby shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions hereof or of said agreement, document, or writing.

13. Assignment. This Agreement may not be assigned by any party unless prior written approval is granted by the non-assigning party.

14. Binding Effect. This Agreement shall be binding upon, and will inure to the benefit of, the parties and their respective successors and assigns.

15. Cooperation with Inspector General. Pursuant to Ordinance No. 2011-009, Palm Beach County has established the Office of the Inspector General, which is authorized to review Wellington contracts and records. The Parties shall fully cooperate with the Inspector General and shall provide access to the records in the manner provided herein for Wellington to inspect such records. Failure to cooperate with the Inspector General, or interfering with or impeding any investigation of the Inspector General, shall be a violation of County Ordinance 2009-049 and shall be punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between Wellington, Owner and Developer pertaining to the subject matter of this Agreement, whether oral or written.

17. Modification of Agreement. This Agreement may be modified only by a written amendment executed by all Parties to the Agreement.

18. Waiver. The failure of Wellington at any time to require performance by South Shore of any term of this Agreement shall in no way affect the right of Wellington thereafter to enforce same. Nor shall waiver by Wellington of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by Wellington. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

19. **Notices.** All notices, demands, requests or other communications which may be or are required to be given or made by any Party to any other Party pursuant to this Agreement or any other Transaction Document shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by FedEx or similar receipted delivery or by email delivery as follows:

If to WELLINGTON : **VILLAGE OF WELLINGTON**
 Attn: Village Manager
 12300 Forest Hill Boulevard
 Wellington, Florida 33414

With a copy to: **Village Attorney**
 12300 Forest Hill Boulevard
 Wellington, Florida 33414

If to SOUTH SHORE: **SOUTH SHORE HOTEL ASSOCIATES, L.L.C.**
 c/o Kevin Shapiro
 3222 Commerce Place, Suite C
 West Palm Beach, FL 33407

Each notice, demand, request, or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee or at such time as delivery is refused by the addressee upon presentation.

20. **Effective Date.** Each party is signing this Agreement on the date below their signature. The date of the last signature shall be the Effective Date of the Agreement and shall be inserted in the introductory paragraph of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

ATTEST:

THE VILLAGE OF WELLINGTON

By: _____
Chevelle D. Hall, Village Clerk

By: _____
Michael J. Napoleone

Its: _____

Approved as to form and legal sufficiency:

By: _____
Laurie Cohen, Village Attorney

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

WITNESSES:

**SOUTH SHORE HOTEL
ASSOCIATES, LLC**

Print Name and Address:

By: _____

Name:

Title:

Name and Address: Print

STATE OF _____ }
COUNTY OF _____ } SS:

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization this ____ day of _____, 2024 by _____, as _____ of **SOUTH SHORE HOTEL ASSOCIATES, L.L.C.**, a Florida limited liability company, on behalf of said company. He/she (check one) () is personally known to me or () has produced _____ as identification.

Notary Public
State of Florida
Print Name:
My Commission Expires: