



AGENDA ITEM REQUEST FORM

Item No. 11f

Town Manager's Office

Department Submitting Request

Bud Bentley

Assistant Town Manager BB

REGULAR COMMISSION MTG July 26, 2011

- Presentation Reports X **Consent** Ordinance
- Resolution Quasi Judicial Old Business New Business

SUBJECT TITLE: Memorandum of Understanding (MOU) (Exhibit 1) Between the Town and Kitson & Partners for Landscape Maintenance Obligations for the A1A North Enhancement Project

EXPLANATION: The Town was awarded a \$441,700 Local Agency Program (LAP) grant from the Florida Department of Transportation (FDOT) for Hardscape and Landscape Improvements on SR A1A (North Ocean Drive) from Pine Avenue to Terra Mar Drive. A portion of the project lies within the municipal limits of the Village of Sea Ranch Lakes, specifically the right of way in front of the Sea Ranch Lakes Retail Center (CENTER).

While portions of the project are outside the municipal limits of the Town, installing the enhancements throughout the project limits will provide for an aesthetically consistent and seamless project to the general public.

Kitson & Partners, the property managers for the CENTER, have reviewed the proposed enhancements that are in the right of way adjacent to the CENTER and have agreed to maintain the additional landscaping.

RECOMMENDATION: Commission approval of the MOU (Exhibit 1) is recommended.

Reviewed by Town Attorney
 Yes No

Town Manager Initials CB

EXHIBITS: 1. Memorandum of Understanding

Exhibit 1

This Instrument Prepared by
and Should be Returned To:

MEMORANDUM OF UNDERSTANDING for LANDSCAPE MAINTENANCE SEA RANCH CENTRE

The Town of Lauderdale-By-The-Sea (“TOWN”) has entered into agreements with the Florida Department of Transportation (“FDOT”) to design, construct and maintain certain landscaping improvements on State Road A1A/North Ocean Drive, located within right-of-way owned by FDOT located partially in the TOWN and partially in the Village of Sea Ranch Lakes in front of property owned by the MSKP SEA RANCH, LLC, a Delaware limited liability company, known as Sea Ranch Centre (“CENTER”).

In order to insure proper maintenance of the landscape materials placed within FDOT right of way, TOWN and CENTER agree to the following:

1. In consideration for TOWN constructing certain landscape improvements in FDOT right of way in front of the CENTER in the area shown on **Exhibit “A”** hereto (the “Project”), the CENTER hereby agrees to timely and fully perform all of TOWN’s maintenance and upkeep obligations for plant materials within the Project area, including routine maintenance of all landscape materials in the Project area located in front of the property owned by the Center, as set forth in detail below. The CENTER is legally described in **Exhibit “B”** hereto. This Memorandum of Understanding Agreement does not include any hardscape improvements such as, but not limited to, curbs, sidewalks, crosswalks or bus stop improvements. TOWN acknowledges and agrees that CENTER’S obligations pertaining to the Project as solely and completely contained in this Agreement and CENTER is not a party to TOWN’S agreement with FDOT with respect to the Project.
2. Until such time as the Project is removed from State Road A1A/North Ocean Drive right of way in front of the property owned by the CENTER, the following maintenance standards are to be provided by the CENTER in a commercially reasonable manner:
 - a. Properly water and fertilize all plants, keeping them as free as practicable from disease and harmful insects;
 - b. Properly mulch plant beds;
 - c. Keep the Project area free of weeds;
 - d. Mow and/or cut the grass to the proper length;
 - e. Properly prune all plants, which responsibility includes, removing dead or diseased parts of plants and/or pruning such parts thereof which present a visual hazard for those using the roadway; and
 - f. Remove or replace dead or diseased plants in their entirety, or remove or replace those plants that fall below acceptable standards.
3. The CENTER further agrees to use best efforts to contractually bind any purchaser of the CENTER to be bound by the terms herein, such that the covenants contained herein are covenants that run with the

Exhibit 1

land. As evidence thereof, The CENTER agrees this Memorandum may be recorded in the real estate records relating to the property.

4. The term of this Agreement is for five years from the date of full execution hereof, and thereafter, this Agreement shall renew automatically for one year periods. Either party may terminate this Agreement after the initial five-year term by providing six months written notice to the other in accordance with the notice provision set forth herein. Upon the termination of this Agreement, the parties hereto agree to execute a notice of termination in recordable form stating that the Agreement is of no further force or effect.
5. The CENTER hereby agrees to release the TOWN from and against any and all liability and responsibility in connection with CENTER'S obligations under this Memorandum of Understanding Agreement, and further agrees not to sue or seek any money or damages from the TOWN in connection with this Memorandum, except to the extent any such liability arise from the acts of omissions of TOWN. The CENTER hereby agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the CENTER's performance hereunder, or any negligent acts, errors, or omissions of CENTER related to this Agreement. The CENTER understands and agrees that the covenants and representations relating to this indemnification provision continue in full force and effect subsequent to any termination of this Agreement.

Any notice regarding this Memorandum of Understanding shall be transmitted in writing sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended at the following locations:

Town: Town Manager
 Town of Lauderdale-By-The-Sea
 4501 Ocean Drive
 Lauderdale-By-The-Sea, Florida 33308
 Phone: (954) 776-0576
 Fax: (954) 776-1857

Center: MSKP SEA RANCH, LLC
 c/o Timothy F. Wallace, Vice President
 Kitson & Partners
 4500 PGA Boulevard, Suite 400
 Palm Beach Gardens, Florida 33418.

Phone: (561) 624-4000
Fax: (561) 624-4537
 [signatures on next page]

Exhibit 1

TOWN:

By: _____
Constance Hoffmann, Town Manager

Date: _____

CENTER

MSKP SEA RANCH, LLC, a Delaware limited liability company

By: _____
Timothy F. Wallace, Vice President

Date: _____

Exhibit 1

EXHIBIT "A"

LOCATION OF PROJECT

Exhibit 1

EXHIBIT "B"

DESCRIPTION OF CENTER

A parcel of land in the SE 1/4 of Section 7, Township 49 South, Range 43 East, lying South of Sea Ranch Lakes, according to the Plat thereof, recorded in Plat Book 40, page 29, of the Public Records of Broward County, Florida, and West of State Road A-1-A, more fully described as follows:

Commencing at the South quarter corner of said Section 7, Township 49 South, Range 43 East; thence due East along the South line of said Section 7, a distance of 257.90 feet to the Point of Beginning; thence continuing due East along the said South line of Section 7, a distance of 626.75 feet to a point on the center line of State Road A-1-A; thence North 7° 09' East along the said centerline of State Road A-1-A, a distance of 687.73 feet; thence South 89° 59' West along the South boundary of said Sea Ranch Lakes, a distance of 433.26 feet; thence South 7° 09' West along the East boundary of said Sea Ranch Lakes, (and parallel to the said centerline of State Road A-1-A) a distance of 415.48 feet; thence due West along the South boundary of said Sea Ranch Lakes, (and along a line parallel to and 270.0 feet North of (as measured at right angles) the said South line of Section 7, a distance of 227.38 feet; thence due South along the East boundary of said Sea Ranch Lakes, a distance of 270.0 feet to the Point of Beginning; LESS the claimed right-of-way for State Road A-1-A.