

RESOLUTION No. 20-212

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE INSTALLATION OF PUBLIC ART (“SEATED FIGURE IN RED” AND “YELLOW DOG”) AT THE SANCTUARY AT DORAL DEVELOPMENT PROJECT LOCATED AT 9400 NW 41 STREET, DORAL, FLORIDA, PURSUANT TO THE CITY’S PUBLIC ART PROGRAM; PROVIDING FOR RECORDATION; PROVIDING FOR A MAINTENANCE AGREEMENT, PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 15, 2015, the City of Doral (the “City”) implemented the Public Arts Program to guide the placement of public art within private and public new developments throughout the city; and

WHEREAS, the intent of the City’s Public Arts Program is to stimulate the area’s cultural environment, heritage, diversity, and create unique community character through public and private artworks integrated into the architecture, infrastructure, and landscape of new developments; and

WHEREAS, Sanctuary at Doral, LLC., Sanctuary Development, (hereafter referred to as the “Applicant”) is constructing a mixed-use project, previously approved by City Council, at 9400 NW 41 Street, Doral, FL (the “Project”). The Applicant has elected the option to install artwork within the project as specified in Chapter 75 “Public Arts Program” of the City’s Code; and

WHEREAS, on September 16, 2020, the City’s Public Arts Program Advisory Board held a meeting and received testimony from the Applicant regarding their art in public places proposal for the Project located at 9400 NW 41 Street, Doral, FL; and

WHEREAS, after evaluating the Applicant’s proposal and considering all testimony, the Public Arts Program Advisory Board voted to unanimously recommend the proposal to the Mayor and the City Council for approval; and

WHEREAS, Staff respectfully recommends approval from the Mayor and the City Council of the Public Arts Program application submitted by the Applicant.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. The Mayor and the City Council hereby approve the Public Arts Program application by Sanctuary at Doral, LLC., for Sanctuary at Doral development located at 9400 NW 36th Street, Doral, FL, attached hereto as “Exhibit A.”

Section 3. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of Chapter 75 of the Land Development Code and this Resolution.

Section 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Cabrera and upon being put to a vote, the vote was as follows:

| | |
|------------------------------|-----|
| Mayor Juan Carlos Bermudez | Yes |
| Vice Mayor Christi Fraga | Yes |
| Councilwoman Digna Cabral | Yes |
| Councilman Pete Cabrera | Yes |
| Councilwoman Claudia Mariaca | Yes |

PASSED AND ADOPTED this 14 day of October, 2020.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY

EXHIBIT “A”

Preferable → 11:00 AM

CITY OF DORAL PUBLIC ARTS PROGRAM APPLICATION SUBMITAL CHECKLIST

Please take a moment and read carefully. This completed and signed form must accompany your Public Arts Program Application.

Applicant must:

- Read and review Public Arts Program Ordinance
- Submit completed Public Arts Program Application form:
 - 1st Page – Applicant/Property Owner Information, Architect/Contractor Information
 - 2nd Page – Project Information
 - 3rd Page – Public Arts Program Requirement options
- Submit preliminary sketches, photographs or other documentation describing the nature of the proposed artwork
- Submit an appraisal or other evidence of the value of the proposed artwork including acquisition and installation costs
- Submit preliminary plans with detailed information required by the City to evaluate the location of the artwork and its compatibility with the proposed development project and/or with the character of adjacent developed parcels and the existing neighborhood. Evaluation requirements for proposed location to be considered:
 - Works of art shall be located in areas where residents and visitors live and congregate and shall be accessible and visible to the public
 - Areas used by tourists, including parks and thoroughfares, at public or governmental facilities
 - The artwork's appropriateness to the site and permanence of the work considering the environmental conditions at the site
 - The aesthetic quality and harmony with the existing on-site improvements and neighborhood
- Submit a narrative statement to the city to demonstrate that the artwork will be displayed in a public place
- Submit a written agreement executed by the artist who created the artwork, in which he or she expressly waives all rights that can be waived under applicable state and federal laws. The artist of approved artwork shall grant to the City an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for city-related purposes, and grant to the city the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the city attorney
- When artwork is to be placed on private property, submit a written statement executed by the property owner and approved by the city attorney that requires the landowner or his or her successors and assigns to defend, indemnify and hold the city harmless against any liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from any claim, action or liability related to the artwork
- Submit a statement indicating property owner's willingness to maintain the art work in compliance with section 75-114 of the Ordinance



Accepted By: Elizabeth Alvarez
Date: 7/24/2020

CITY OF DORAL – PUBLIC ARTS PROGRAM PROJECT APPLICATION FORM

This form is to be completed and submitted to the Planning and Zoning Department at the time of application submittal.

PLEASE PRINT

Sanctuary at Doral, LLC
Applicant/Property Owner

201 Sevilla Suite 300
Address

Coral Gables

City
786-437-8658

Telephone
786-438-3151

Fax

33134

Zip Code
305-484-0131

Cell Phone
asuarez@shomagroup.com

E-mail

MSA Architects
Architect/Contractor

8950 SW 74th. Ct – Suite 1513
Address

Miami

City
305-273-911

Telephone

Fax

33156

Zip Code

Cell Phone
jsaumell@msaarchitectsinc.com

E-Mail

Sanctuary at Doral, LLC

Property Owner

201 Sevilla Suite 300
Address

Coral Gables

City
786-437-8658

Telephone
786-438-3151

Fax

33134

Zip Code
305-484-0131

Cell Phone
asuarez@shomagroup.com

E-Mail

PROJECT INFORMATION

Building Permit #: Residential 2017-120633, Retail#1 2017-120627, Retail#2 2017-120626
Sanctuary at Doral

Project Name

9400 NW 41st Street, Doral FL

Project Address

This project is:

New Construction

Rehabilitation/ Tenant Improvements

Estimated Square Footage of this Project: 532,792 SqFt

Proposed Use of this Space: Mixed Use – Rental
Community

Total Project Construction Cost: \$ 45,000,000.00

(Total Value of the Construction of, or Reconstruction Work on, Structures as STS (or verified) by the Building Official in Issuance of Building Permit for Construction and Reconstruction. Ordinance No. 2015-09, Section 75-101(d))

Minimum Art Allocation: \$ 760,000.00

(Government Development Projects shall provide for the acquisition of works of arts equivalent in value to not less than 1.5% of the Total Project Construction Cost. Non-Municipal Development Projects shall provide for the acquisition of works of arts equivalent in value to not less than 1.0% of the Total Project Construction Cost. Ordinance No. 2015-09, Section 75-107(a-b))

Anticipated Commencement Date of Construction: January 2019

[This section of the Application was left blank intentionally]

HOW IS THE PROJECT SATISFYING THE CITY PUBLIC ARTS PROGRAM REQUIREMENT?

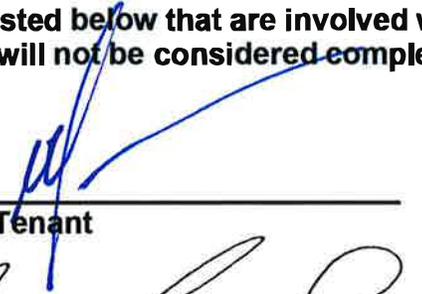
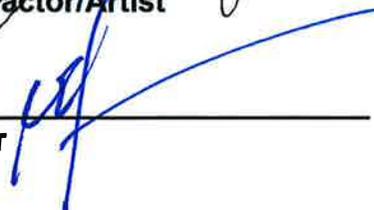
() Non-Governmental Development Projects may pay 1% of the project valuation as determined/verified by the Building Official into the City's Public Arts Fund. Ordinance No. 2015-09, Section 75-101(n). The Government Development Projects shall provide for the acquisition of work art consistent with the requirements set forth in Ordinance No. 2015-09, Section 75-107(a);

Commission original art work to be installed on the property (subject to approval by the City's Art Program Advisory Board. Ordinance No. 2015-09, Section 75-106). Complete the Artist and Artwork Information Form;

() Donate art work (subject to approval by the subject to approval by the City's Art Program Advisory Board. Ordinance No. 2015-09, Section 75-106). Complete the Artist and Artwork Information Form;

We, the undersigned, have read and understood the City of Doral Public Arts Program Ordinance and the requirements outlined in this application. We understand that we must comply with the provisions of the Ordinance prior to a final inspection and the City's issuance of a Certificate of Occupancy for the development or remodeling activity proposed above. We agree to cooperate with City Building Official and/or designated staff to fulfill the terms and guidelines applicable to the activity proposed above. In addition, a covenant will be recorded at the completion of the project to ensure compliance with the City's Public Arts Program Ordinance and related administrative regulations.

All parties listed below that are involved with the project are required to sign. This application will not be considered complete until all necessary signatures have been obtained.

| | |
|--|--------------------------|
|  _____ | <u>6/11/2020</u> Date |
|  _____ | <u>6/11/2020</u> Date |
|  _____ | <u>6/11/2020</u> Date |

**For further information, please contact:
Public Arts Coordinator at (305) 593-6630
Planning and Zoning Department**



**CITY OF DORAL
PUBLIC ARTS PROGRAM
ARTIST AND ARTWORK INFORMATION FORM**

This form is to be completed by the Artist and submitted to the Public Arts Coordinator in the Planning and Zoning Department with your building plan at the time of applicant submittal.

1. Artist Name: Dr. Simon Ourian
Address: 444 Drive Camden Drive
City/State: Beverly Hills, CA 90210
Telephone: 310-651-6267 Email Address: SimonOurian@epione.com
Artist bio and the development of art pieces inspiration statements provided as an attachment
2. Description of the Site: Mixed Use – Retail and Residential rental community
3. Description of the Proposed Artwork (Include Rendering, Maquette, Drawing, Etc.):
Woman Sculpture “Seated Figure in Red” Resin with Hyper gloss lacquer paint
Dog Sculpture “Yellow Dog” Resin with Hyper gloss lacquer paint
4. Dimensions of Artwork: 1. “Seated Figure in Red” L 7’-2” x W 4’-11” x H 7’-1”
2. “Yellow Dog” L 5’-11” x W 4’-11” x H 7’-3”
5. Description of Art Project Foundation or Base: Aluminum base veneered with stone slab
6. Location of Artwork (Provide Site Plan): Site plan provided – ART SUBMITTAL
7. Landscape Description: As per approved Landscaping plans – By the city of Doral
8. Lighting Description: As per approved Landscaping plans – By the city of Doral
9. Maintenance Description: Light detergent and water mix and water rinsing

(Note: All artwork placed on the site of a development project shall remain the property of the owner of the site; artwork acquired by the City pursuant to Section 75-106 shall remain the property of the City. The obligation to provide all maintenance necessary to preserve and maintain the artwork in good

condition shall remain with the owner of that site and the owner's successors and assignee, unless agreed to otherwise by resolution of the City Mayor and Council. Application for such request and all associated fees with processing same shall be borne by the applicant.)

10. Artwork Selling Price: ~~\$380,000.00~~ (2) = \$760,000.00

Simon Ourian Fine Art

444 N Camden Drive
Beverly Hills, CA 90210
310-651-6267

Invoice #4102

Dr. Ourian's Yellow Dog is a large-scale expression of hyper reality and the dynamism experienced encountering significant moments in everyday life. The minimalist almost futuristic style employed in the form of this sculpture is a nod to pop culture and the phenomenon of life in a digital age.



Artist
Dr. Simon Ourian

Title
Yellow Dog

Edition
1/1

Medium
Resin with Hyper
gloss lacquer paint

Size
1.8 x 1.05 x 2.21m

| Item | Qty | Unit price | Total price |
|------------|-----|--------------|--------------|
| Yellow Dog | 1 | \$380,000.00 | \$380,000.00 |

Notes:

Subtotal **\$380,000.00**

\$380,000.00

Simon Ourian Fine Art

444 N Camden Drive
Beverly Hills, CA 90210
310-651-6267

Invoice #4101

Dr. Ourian's Seated Figure in Red evokes Renaissance motifs of striving for idealized perfection while attaining balance and harmony. This large-scale figure is a polished picture of serenity while at the same time a compelling story intertwining classical technique and contemporary art ideals.

**Artist**

Dr. Simon Ourian

Title

Seated Figure in Red

Edition

1/1

Medium

Resin with Hyper
gloss lacquer paint

Size

2.18 x 1.5 x 2.15m

| Item | Qty | Unit price | Total price |
|----------------------|-----|--------------|--------------|
| Seated Figure in Red | 1 | \$380,000.00 | \$380,000.00 |

Notes:

Subtotal **\$380,000.00**

\$380,000.00



WOMAN SCULPTURE
L 7'2" X W 4'11" X H 7'1"
308 LBS



DOG SCULPTURE
L 5'11" X W 4'11" X H 7'3"
308 LBS



Sanctuary at Doral, LLC

201 Sevilla Ave. Suite 300,
Coral Gables FL 33134
786-437-8658

June 11, 2020

City of Doral Public Arts Program
8401 NW 53rd Terrace, Doral FL. 33166

Dear sirs or Madam,

The following statement is to comply with the City of Doral Public Arts Program, where Sanctuary at Doral, LLC is donating the art pieces shown in the attached application as specified in the master development agreement of this project.

We feel that these art pieces will enhance the public areas of the City of Doral. The strategic locations selected will welcome all visitors and residents of this great mixed-use development with an astounding splendor.

Warmest regards,

Sanctuary at Doral, LLC

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

LICENSE AGREEMENT FOR ARTWORK

THIS LICENSE AGREEMENT FOR ARTWORK (hereinafter "Agreement") is made and entered into effective as of this ___ day of July 2020 ("Effective Date") by and between SIMON OURIAN (hereinafter "Artist"), and the CITY OF DORAL, a political subdivision of the State of Florida (hereinafter the "City"). Artist and the City may be referred to individually as a "Party" or collectively as the "Parties."

R E C I T A L S

WHEREAS, Artist has produced the work of art (the "Artwork") depicted in the attached Exhibit "A", which is incorporated herein by reference and made a part hereof; and

WHEREAS, Artist desires to allow the City to reproduce and distribute two-dimensional reproductions of the Artwork for City-related purposes, pursuant to the terms and conditions set forth herein.

W I T N E S S E T H

NOW THEREFORE, for and in consideration of the mutual covenants of the set forth in this Agreement, together with other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Artist and the City hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true and correct, and they are hereby incorporated by reference, as if fully set forth herein.

2. Location. The Artwork is located at the residential project commonly known as "Sanctuary at Doral" at 9400 NW 41st Street, Doral, Florida 33178 (the "Property").

3. Grant of License and Use.

a) Subject to the terms and conditions hereof, Artist hereby grants to the City an unlimited, perpetual, non-exclusive, royalty-free, irrevocable license to reproduce and distribute an unlimited number of two-dimensional reproductions of the Artwork for City-related purposes; and further grants to the City the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the Artwork.

b) Artist shall retain ownership of the original Artwork produced under this Agreement and shall, without limitation, have all rights to the original Artwork, except as otherwise provided in this Agreement.

c) Artist hereby acknowledges the rights of integrity and attribution conferred by Section 106A (a), paragraphs (2) and (3) of Title 17 of the U.S. Code, and any other rights of the same nature granted by federal, state or international laws, and of its own free will hereby waives such rights with respect to the City's above-described reproduction and distribution of the Artwork.

4. Indemnification. To the fullest extent permitted by law, Artist hereby agrees to defend, indemnify and hold the City, and its respective heirs, personal representatives, successors and assigns harmless from and against any and all claims, liability, liens, costs, losses, damages, expenses and demands, including reasonable attorneys' fees and costs at trial and all appellate levels, arising from, in connection with, or related to any claim, action or liability related to the Artwork, including alleged or actual infringement and/or misappropriation by Artist of any copyright, patent, trademark, trade secret or other

proprietary or intellectual property right of any third-party in or to the Artwork. Artist shall have no liability or obligation to the City under this Article 3 to the extent that any claim, action, or suit arises out of or results from any alterations or modifications of the Artwork not created by Artist. The indemnity obligation set forth herein shall survive termination of this Agreement.

5. Attribution. Owner and City shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice, as applicable, where practicable:

“Yellow Dog” © 2019 by Simon O
and
“Seated Figure in Red” © 2019 by Simon O

Failure to include such foregoing credit line and notice in any reproductions shall not constitute a breach of this Agreement.

6. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or sent by email and addressed as follows:

Notices to Artist: Simon Ourian
444 N. Camden Drive
Beverly Hills, CA 90210
Telephone:
Facsimile:
E-mail:

Notices to the City: Albert P. Childress
City Manager
City of Doral
8401 Northwest 53rd
Terrace, Doral, FL 33166

Copy to: Luis Figueredo, Esq.
City Attorney

Doral, FL
Telephone:
Facsimile:

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication sent as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by email. Such notices shall be deemed received (x) on the date of delivery, if delivered by hand or overnight express delivery service; (y) on the date indicated on the return receipt if mailed; or (z) on the date of transmission, if sent by email. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing.

7. Public Records. Artist acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of

Chapter 119, Florida Statutes. Artist agrees to maintain public records in Artist's possession or control in connection with Artist's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Artist shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Artist, whether finished or unfinished, shall become the property of City and shall be delivered by Artist to the City Manager, at no cost to the City, within seven (7) days of termination of this Agreement. All such records stored electronically by Artist shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of this Agreement, Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Artist shall be withheld until all documents are received as provided herein. Artist's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

8. Assignment and Sub-Licenses. The City may not assign or otherwise transfer any portion of the license granted under this Agreement without the prior written consent of Artist. Any breach of this provision shall be deemed a material breach and cause for termination of this Agreement.

9. No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership, principal and agent relationship, or any other similar arrangement between City and Artist. Nothing in this Agreement will be construed to affect in any way the City's rights, privileges, and immunities, including the provisions and monetary limitations of Section 768.28(5), Florida Statutes, which limitations are applicable regardless of whether such provisions would otherwise apply.

10. Governing Law. This Lease and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida, without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida. Exclusive venue for any and all claims arising out of or relating to this Agreement shall be in Miami-Dade County, Florida. Each Party hereto hereby submits to the personal jurisdiction of the courts in Miami-Dade County, State of Florida in connection with any claim or dispute arising from or related to this Agreement, and hereby waives any claim of forum *non-conveniens* with respect to such court.

11. Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

12. Time is of the Essence. Time is of the essence with respect to all dates set forth herein.

13. Attorneys' Fees. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity, including the right to seek specific performance of the terms and conditions of this Agreement and the right to seek damages upon the breach of this Agreement. The prevailing party in any action brought to enforce the terms and provisions of this Agreement shall be entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

14. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

15. **Entire Agreement; Execution.** This Agreement, which includes any Exhibits attached hereto and incorporated herein by reference, constitutes the entire understanding and agreement between the City and Artist with respect to the subject matter hereof and may not be changed, altered or modified except by written instrument signed by the City and Artist. No prior agreement, discussions or understanding pertaining to the same shall be of any force or effect, the same having been superseded by this Agreement. Each of the parties to this Agreement has participated fully in the negotiation and preparation hereof and, accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any person or entity. This Agreement may be executed in any number of counterparts, each of which shall be treated as an original, and all of such counterparts together shall be deemed to constitute one original agreement.

ATTEST:

CITY OF DORAL

Connie Diaz, City Clerk

By: _____
Albert P. Childress
Acting City Manager

Date: _____

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE USE AND
RELIANCE OF THE CITY OF DORAL
ONLY**

Luis Figueredo, Esq.
City Attorney

WITNESSES:

SIMON OURIAN

Print Name: _____

Signature: _____

Date: _____

Print Name: _____

JOINDER

The undersigned hereby joins in the foregoing License Agreement for Artwork to which this joinder is attached solely for the purpose of consenting to and agreeing to comply with Article 3, Article 5, and the maintenance obligations set forth in Section 75-114 of the Code of Ordinances for the City of Doral, Florida.

SANCTUARY AT DORAL, LLC
a Delaware limited liability company

By: 
Name: _____
Title: **MASOUD SHOJAEI**
 Manager


Artist

Exhibit "A"

THE ARTWORK


Artist

ARTWORK INSTALLATION AND MAINTENANCE AGREEMENT

This ARTWORK INSTALLATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this ___ day of July 2020, in the City of Doral Florida, by and between SANCTUARY AT DORAL, LLC, a Delaware limited liability company ("Owner"), SIMON OURIAN ("Artist") and the City of Doral ("City").

RECITALS

WHEREAS, the City understands the importance of art in public places and the role that it plays in preserving our culture, conveying the history of our community, beautifying the city, and advancing the arts; and

WHEREAS, the City has adopted a Public Arts Program codified in Chapter 75 of the Code of Ordinances; and

WHEREAS, the Artist has submitted a proposal to design, fabricate, install and donate to the City the artwork described in the attached Exhibit "A" ("Artwork") at the following described location: 9400 NW 41st Street, Doral, Florida 33178; and

WHEREAS, on _____, the Public Art Program Committee approved the Artist's Artwork proposal (as described in the attached Exhibit "A" and incorporated herein by reference) and accepted the donation based on the conditions set forth in this Agreement; and

WHEREAS, to comply with the City's sections of the code of ordinances regulating art in public places, Owner, Artist, and City desire to execute an agreement establishing the Parties' rights and responsibilities with respect to the installation, maintenance, and ownership of the Artwork.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions

1.1 "Artwork" means durable creations that can be original or limited editions of art including, but not be limited to, sculptures, art works, monuments, frescoes, fountains, paintings, stained glass, murals, or ceramics and may include architectural designs, components or structures. The "artwork" medium can include, but not be limited to, glass, steel, bronze, wood, stone and concrete. For purposes of the art program, "artwork" does not include the following:

- i. Directional elements, such as signage or graphics.
- ii. Objects that are mass produced in a standard design.
- iii. Landscape gardening, unless substantially comprising durable elements defined as "artwork" under this section.

1.2 "**Commercial**" means words or images used elsewhere in the marketplace for the purpose of promoting a particular business, product, service, cause, place, or brand.

1.3 "**Commercial Element**" means art that by virtue of its location or proximity to a business may serve a minimal commercial purpose. If that art were in a different location, it would be considered pure art and not commercial in nature.

1.4 "**Good Condition**" means that the Artwork is free of dirt, debris, and any other object or substance interfering with the public's view of the Artwork.

2. Owner's Covenants

2.1 **Compliance with Section 75-106.** Owner covenants that Owner has complied with Section 75-106 of the Code of Ordinances entitled "Application Procedures for placement of artwork on private property.

2.2 **Authorization.** Owner covenants that Owner owns the property located at 9400 NW 41st Street, Doral, Florida 33178 (the "**Property**"), is authorized to permit the installation of the approved Artwork upon _____ of the Property, and will permit Artist to do so following this Agreement's execution.

2.3 **Maintenance and Repair.** Owner and Artist covenant to maintain and repair the Artwork during the term of this Agreement in accordance with the terms and conditions provided for in Section 75-114 of the Code of Ordinances so that the Artwork is at all times in a state of Good Condition.

3. Artist's Covenants

3.1 **Installation.** Artist covenants to complete installation of the Artwork in accordance with the building permit issued and specifications as approved by the City.

3.2 **Necessary Artistic Repairs.** Artist covenants to assist Owner in making any necessary repairs to the Artwork.

3.3 **Maintenance.** Artist covenants adhere to the maintenance plan submitted to the City pursuant to Section 75-115 of the Code of Ordinances.

4. Term, Termination, and Extension

4.1 **Term.** This Agreement shall have a term of twenty-five (25) years from the date of execution, unless terminated pursuant to this Article 4.

4.2 **Owner's Termination.** Owner may elect to terminate this Agreement if Artist fails to install the Artwork as specified in this Agreement.

4.3 **City's Termination.** City may elect to terminate this Agreement if the Artwork is not maintained in accordance with the maintenance plan.

4.4 If this Agreement is terminated prior to the 25-year term, Owner understands and agrees that he will be responsible for the Public art in-lieu fee required under Chapter 75 of the Code of Ordinances.

5. Specifications

5.1 The Artwork shall be consistent with the preliminary sketches, photographs or other documentation previously submitted and approved by the City.

5.2 **Artistic Freedom.** The provisions of this Article 5 shall not in any way limit or restrict Artist's right to include content that is not commercial, indecent, or obscene.

5.3 **Sponsor and Artist Identification.** In no event shall the name of a sponsor, a sponsor product likeness, or the Artist's signature individually comprise more than one (1) percent of the Artwork.

5.4 **Configuration and Dimensions.** The Artwork shall be of the same configuration and dimensions as the scale rendition preliminarily approved by the City.

6. Installation

6.1 **Time of Installation.** Owner and Artist shall begin installing the Artwork as soon as reasonably practicable after this Agreement's execution and receipt of all required permits.

6.2 **Notice of Installation.** Owner shall provide advance notice in writing to the City of the date and time Owner and Artist intend to install the Artwork. Artist may thereafter proceed with the installation if Owner is not present, unless Owner notifies Artist in writing otherwise.

6.3 **Materials.** Artist shall be responsible for providing, at its cost, all materials necessary to install the artwork.

6.4 **Landscape Protection and Removal.** To the extent reasonably practicable under the circumstances, Owner and Artist shall take care to protect any landscaping on the Property during installation. If installation requires the removal of any landscaping on the Property, Owner shall be responsible for replacing the landscaping after completing installation.

7. Maintenance and Repairs

7.1 **Maintenance and Repairs.** Owner shall be responsible for maintaining the Artwork in Good Condition at all times while this Agreement is in force. If, for any reason, the Artwork is not so maintained, as reasonably determined by City, City shall notify Owner of the need to perform maintenance and/or repairs and identify the actions necessary for compliance with this provision. If, after thirty (30) days from the date of the City's notification to Owner of the need for maintenance and/or repairs, Owner has not performed the actions identified by City as being necessary for compliance with this provision, City may enter Owner's property and perform any necessary maintenance and/or repairs at Owner's expense.

7.2. **Access.** Owner hereby grants City and Artist a right of access to the Property to perform maintenance and repairs required pursuant to this Agreement, and otherwise to ensure the

Artwork remains in Good Condition while this Agreement is in force. The license shall continue for a period of twenty-five (25) years from the date of this Agreement's execution.

8. Removal

8.1 **Removal by City.** City may remove the Artwork at Owner's expense if Owner fails to maintain the Artwork in Good Condition as provided in Section 7.1 above.

8.2 **Removal by Owner.** Owner may remove the Artwork at Owner's expense if Owner reasonably determines that the Artwork is harming the Property or limiting Owner's ability to use the Property for the purpose for which it is intended; *provided* that Owner shall provide the City with sixty (60) days' notice that Owner intends to remove the Artwork at the end of the notice period. If possible, Owner shall work with Artist and the City to find another suitable site for the Artwork. If Owner is unable to find a suitable site for the Artwork acceptable to the City, Owner shall pay the City the Public art in-lieu fee.

9. Insurance and Indemnification

9.1 **Insurance.** Owner and Artist shall obtain adequate commercial general liability insurance, both in type and amount, as reasonably determined by the City Manager.

9.2 **Indemnification and Coordination.** Owner and Artist hereby agree: (i) to jointly and severally indemnify City for any costs the City incurs in connection with the Artwork caused by the actions of the Owner or Artist, their officers, employees, or agents, or any person who was under their control insofar as permitted by law. Further, Owner and Artist hereby agree to hold harmless, indemnify, and defend the City of Doral, its officials, members, agents, and employees against any claims, costs, damages, demands, liability, and notices, or any of these, arising or resulting from any claims of damage or injury proximately caused by actions of either party in connection with the Artwork, regardless of whether the City is actively negligent or passively negligent, except to the extent those claims, costs, damages, demands, liability, and notices, or any of these, were caused by the negligence or willful misconduct of City; and (ii) to cooperate with the City to respond to specific risks, hazards, and dangers to public health and safety that are reasonably foreseeable consequences of the activity contemplated by this Agreement.

10. Intellectual Property

10.1 **Copyright.** Subject to the restrictions and usage rights and licenses granted to the City hereunder, and unless otherwise agreed to by the parties in writing, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Artwork.

10.2 **Intellectual Property License.** Artist hereby grants to Owner, and to Owner's agents, authorized contractors and assigns, and to City an unlimited and irrevocable license to do the following with respect to the Artwork:

- (i) Owner may use and display the Artwork on the Property.
- (ii) Owner and City may make, display, and distribute, and authorize the making,

display, and distribution of photographs and other reproductions of the Artwork. Owner and City may use such reproductions for any Owner-related or City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic, and multimedia publicity. Owner and City shall ensure that such reproductions are made in a professional and tasteful manner, in their sole and reasonable judgment. Owner and City shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice where practicable: “[Yellow Dog]” © [2019] by [Simon O] and “[Seated Figure in Red]” © [2019] by [Simon O]. Failure to include such credit line and notice in any reproductions shall not constitute a breach of this Agreement. Neither Owner nor City may license or sublicense its rights for any private or commercial purpose. This license granted hereunder does not include the right to sell photographs or reproductions of the Artwork or to reproductions.

10.3 Third Party Infringement. Artist represents and warrants that the Artwork is the sole work of the Artist and does not infringe the intellectual property rights of any third parties. Neither Owner nor City is responsible for any third-party infringement of Artist’s copyright or for protecting Artist’s intellectual property rights. Further, Artist agrees to indemnify Owner and City against any claims brought against Owner or City alleging that the Artwork infringes the intellectual property rights of any third parties.

10.4 Publicity. Owner and City shall have the right to use Artist’s name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork. Artist shall be reasonably available to attend any ceremonies related to the Artwork.

10.5 Trademark. In the event that Owner’s or City’s use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, Owner and City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

10.7 Waiver of Artist’s Rights. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist hereby waives any and all claims, arising at any time and under any circumstances, against Owner and City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) and any other local, state, federal or international laws that convey rights of the same nature or any other type of moral right protecting the integrity of works of art. Specifically, Artist hereby waives any and all such claims against Owner or any future owners of the Property, and its agents, officers and employees, and City. Artist hereby represents and warrants that the Artist is authorized to sign this waiver.

11. Miscellaneous Provisions

11.1 Limitation of Liability. Under no circumstances shall one party to this Agreement be liable to the other party for any special, consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this Agreement, or any activities performed in connection with this Agreement, regardless of whether a claim made by that party is based on contract or tort.

11.2 **Survival**. The provisions contained in Articles 9 and 10 hereof shall survive the expiration or termination of this Agreement.

11.3 **Modification and Amendment**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

11.4 **Governing Law; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

11.5 **Headings**. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

11.6 **Entire Agreement**. This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written provisions.

11.7 **Counterparts**. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

11.8 **Relationship of the Parties**. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either Party except those expressly granted herein.

11.9 **Attorney Fees**. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its reasonable attorney's fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney's fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature:

Attest:

CITY OF DORAL

Connie Diaz, City Clerk

By: _____
Albert P. Childress, Acting City Manager

Date: _____

Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:

Luis Figueredo, Esq.
City Attorney

OWNER

SANCTUARY AT DORAL LLC

By: _____
Its: _____
Date: _____
Monahan
7/21/2020

Artist

SIMON OURIAN

Signature: _____
Date: _____
[Handwritten Signature]