

BAL HARBOUR

- V I L L A G E -

Village Council
Regular Meeting Agenda
November 20, 2018
At 7:00 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

CALL TO ORDER/ PLEDGE OF ALLEGIANCE

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

PRESENTATIONS AND AWARDS

2018 Police Semi-Annual Review

CONSENT AGENDA

C6 - COUNCIL MINUTES

C6A October 16, 2018 Regular Council Meeting Minutes
[RegularCouncilMeetingMinutres_Oct16_2018.pdf](#)

C7 - RESOLUTIONS

C7A BHI Basketball Interlocal

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF BAY HARBOR ISLANDS; PERMITTING THE TOWN TO UTILIZE THE BAL HARBOUR PARK BASKETBALL COURT TO PROVIDE CHILDREN'S BASKETBALL PROGRAMING DURING THE RENOVATION OF THE TOWN'S BASKETBALL FACILITY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - BHI Basketball Interlocal](#)
[Council Memorandum - BHI Basketball Interlocal](#)

[3ED1104-Revised_Resolution_Approving_Interlocal.DOC.pdf](#)
[Attachment 1 - Interlocal Agreement with Bay Harbor Islands](#)

- C7B** Liquor License - Viva on the Ocean
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE DETERMINATION OF THE VILLAGE BUILDING OFFICIAL THAT THE VIVA ON THE OCEAN APPLICATION TO THE STATE OF FLORIDA DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO FOR AN 11C LICENSE IS COMPATIBLE WITH THE VILLAGE ZONING REGULATIONS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.
[Item Summary - Liquor License - Viva on the Ocean](#)
[Council Memorandum - Liquor License - Viva on the Ocean](#)
[Resolution - Liquor License - Viva on the Ocean](#)
[Attachment 1 - License Application](#)
- C7C** 2019 South Beach Wine and Food Festival
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING ENTERING INTO AN AGREEMENT WITH THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES / FOOD NETWORK & COOKING CHANNEL SOUTH BEACH WINE & FOOD FESTIVAL FOR BAL HARBOUR VILLAGE TO SERVE AS A SILVER SPONSOR OF THE 2019 SOUTH BEACH WINE AND FOOD FESTIVAL
[Item Summary - SOBE Food and Wine](#)
[Council Memorandum - SOBE Food and Wine](#)
[Resolution - SOBE Food and Wine.pdf](#)
[Attachment 1 - SOBE Food and Wine Sponsorship Agreement \(Draft\)](#)

R1A - MANAGER'S MEMO

Application for Site Plan Amendment - Bal Harbour Shops
[Manager's Memorandum - Application for Site Plan Amendment - Bal Harbour Shops](#)
[Attachment 1 - Letter from ShubinBass regarding BHS Amendments](#)
[Attachment 2 - BHS Application For Site Plan Approval](#)

R5 - ORDINANCES

- R5A** Accessory Use in Rear Setback - Second Reading
AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-268 "ADDITIONAL STANDARDS FOR GRANDFATHERED APARTMENT-HOTEL PROJECTS" TO

ADDRESS THE USE OF STRUCTURES IN THE REAR SETBACK; PROVIDING FOR DEFINITIONS, SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

[Item Summary - Accessory Use](#)

[Council Memorandum - Accessory Use](#)

[Ordinance - Accessory Use \(Second Reading\).pdf](#)

- R5B** Setbacks in Residential Districts - First Reading
AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 “ZONING” OF THE CODE OF ORDINANCES, BY AMENDING SECTION 21-1 “DEFINITIONS AND RULES OF CONSTRUCTION,” SECTION 21-127 “SETBACKS” [IN THE R-2 DISTRICT] AND SECTION 21-354 “PROJECTIONS INTO SETBACK AREAS,” ALL TO ADDRESS ENCROACHMENTS AND PROJECTIONS INTO SETBACKS OR YARDS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

[Item Summary - Setbacks in Residential Districts](#)

[Council Memorandum - Setbacks in Residential Districts](#)

[Ordinance - Setbacks in Residential Districts.pdf](#)

- R5C** Bal Cross Ordinance
AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 “ZONING,” ARTICLE III “DISTRICT REGULATIONS,” DIVISION 11 “B BUSINESS DISTRICT,” SECTION 21-320 “TRAFFIC LEVEL; APPROVAL OF TRAFFIC ANALYSIS” OF THE CODE OF ORDINANCES TO REMOVE RESTRICTION ON ACCESS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.

[Council Memorandum - Bal Cross Ordinance](#)

[Ordinance - Bal Cross Ordinance](#)

[Attachment 1 - 1120 BHS - Bal Cross](#)

- R5D** Business District Parking Amendments - First Reading
AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; , AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 “ZONING,” ARTICLE V “OFF-STREET PARKING FACILITIES;” PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE

[Ordinance - Off-Street Parking Amendment](#)

[Council Memorandum - Offstreet Parking](#)

[Attachment 1 - Walker BHS Parking Report Update](#)

[Attachment 2 - Walker Off-Peak Demand Memorandum](#)

- R5E** Noise Ordinance - First Reading (Final)
AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE

OF ORDINANCES BY AMENDING CHAPTER 11 “NUISANCES,” ARTICLE II “NOISE,” SECTION 11-32 “CONSTRUCTION NOISE IN THE “B” BUSINESS DISTRICT;” PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

[Item Summary - Noise Ordinance \(First Reading\)](#)

[Council Memorandum - Noise Ordinance \(First Reading\)](#)

[Ordinance - Noise Ordinance \(First Reading\).pdf](#)

R5F Medicare Supplement Insurance Policy

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 2 “ADMINISTRATION” OF THE CODE OF ORDINANCES, BY AMENDING ARTICLE II, “VILLAGE COUNCIL,” SECTION 2-27 “MEDICARE SUPPLEMENT INSURANCE POLICY,” TO EXPAND MEDICARE SUPPLEMENT INSURANCE COVERAGE ELIGIBILITY TO ALL VILLAGE COUNCILMEMBERS WHO LEAVE THE COUNCIL AFTER COMPLETING TWO (2) FULL TERMS; ESTABLISHING ELIGIBILITY FOR THE EXPANSION OF MEDICARE SUPPLEMENT INSURANCE COVERAGE; AUTHORIZING VILLAGE OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO PROVIDE POST-SERVICE MEDICARE SUPPLEMENT INSURANCE COVERAGE TO VILLAGE COUNCILMEMBERS; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR SEVERABILITY, INCLUSION IN CODE, CONFLICTS, AND AN EFFECTIVE DATE.

[Item Summary - Medicare Supplement Insurance Policy](#)

[Council Memorandum - Medicare Supplement Insurance Policy](#)

[Ordinance - Medicare Supplement Insurance Policy](#)

R7 - RESOLUTIONS

R7A First Amendment to Bal Harbour Shops Development Agreement

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN BAL HARBOUR SHOPS, LLLP AND BAL HARBOUR VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THE FIRST AMENDMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

[Council Memorandum - First Amendment to the BHS Development Agreement](#)

[Resolution - First Amendment to the BHS Development Agreement](#)

[Attachment 1 - First Amendment to Development Agreement v1](#)

[Attachment 2 - Redlined Amended BHS Development Agreement](#)

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

- R9A** Discussion on issues of mold and fire safety raised at The Plaza - Mayor Groisman
[Discussion Item - Mold and Fire at The Plaza](#)
- R9B** Discussion Regarding the placement of the mobile mats on Bal Harbour Beach - Councilman David Albaum
[Discussion Item - Discussion Regarding the placement of the mobile mats on Bal Harbour Beach](#)
[Attachment 1 - Mobi Mats Supporting Material](#)
- R9C** Discussion Regarding Upcoming Meeting Dates - Village Manager
[Discussion Item - Discussion Regarding Upcoming Meeting Dates](#)
[Attachment 1 - Council Meeting Dates 2019](#)

R9D - PUBLIC COMMENT

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

[R11A1_Lobbyist Registration Report as of November11_2018.pdf](#)

R12 - VILLAGE ATTORNEY REPORT

END OF REGULAR AGENDA

ADJOURNMENT

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

Any person who acts as a lobbyist, pursuant to Village Code Section 2-301 (Lobbyists), must register with the Village Clerk, prior to engaging in lobbying activities before Village staff, boards, committees, and/or the Village Council. A copy of the Ordinance is available in the Village Clerk's Office at Village Hall.

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure

that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

All Village Council meeting attendees, including Village staff and consultants, are subject to security screening utilizing a metal detector and/or wand, prior to entering the Council Chamber, Conference Room, or other meeting area located within Village Hall. This is for the safety of everyone. Thanks for your cooperation.

BAL HARBOUR

- V I L L A G E -

Mayor Gabriel Groisman
Assistant Mayor Seth E. Salver
Councilman David J. Albaum
Councilwoman Patricia Cohen
Councilman Jeffrey P. Freimark

Village Manager Jorge M. Gonzalez
Village Clerk Dwight S. Danie
Village Attorneys Weiss Serota
Helfman Cole & Bierman, P.L.

Bal Harbour Village Council

Regular Council Meeting Minutes

October 16, 2018

At 7:00 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

CALL TO ORDER/ PLEDGE OF ALLEGIANCE - Mayor Groisman called the meeting to order at 7:00 PM.

The following were present:

Mayor Gabriel Groisman
Assistant Mayor Seth Salver
Councilman David Albaum
Councilwoman Patricia Cohen
Council Jeffrey Freimark

Also present:

Jorge M. Gonzalez, Village Manager
Dwight S. Danie, Village Clerk
Susan Trevarthen, Village Attorney

The Pledge of Allegiance was led by Mayor Groisman.

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

Mayor Groisman withdrew Agenda Item R9C regarding mold and fire safety at the Plaza and Mr. Gonzalez withdrew the Presentation Item PA3 regarding the G.M.C.V.B.

PRESENTATIONS AND AWARDS

PA1 Cancer Awareness / Breast Cancer Awareness - Silvia Vanni, from the Mystic Force Foundation, presented.

PA2 MPS Awareness - Avram Joseph and Monica Anaya, from the MPS Superhero Foundation, presented.

=

PA3 The Greater Miami Convention & Visitors Bureau (G.M.C.V.B.) **Withdrawn**

The Regular Council Meeting was recessed at 7:24 PM. to conduct the Local Planning Agency Meeting, and reconvened at 8:10 PM.

CONSENT AGENDA

C6 - COUNCIL MINUTES

- C6A** September 12, 2018 First Budget Hearing Minutes
- C6B** September 17, 2018 - Second Budget Hearing and Regular Council Meeting Minutes

C7 - RESOLUTIONS

- C7A** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH CHEN MOORE AND ASSOCIATES, INC. FOR THE PROVISION OF ENGINEERING AND SURVEY SERVICES FOR THE DESIGN OF THE EXISTING SIXTEEN INCH (16") DIAMETER EMERGENCY WATER TRANSMISSION LINE REPLACEMENT ALONG PARK DRIVE, IN THE AMOUNT NOT TO EXCEED ONE HUNDRED THIRTY SIX THOUSAND ONE HUNDRED SIXTY DOLLARS (\$136,160); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

- C7B** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH CALVIN, GIORDANO & ASSOCIATES, INC. (CGA) FOR THE PROVISION OF PROFESSIONAL ENGINEERING, SURVEYING AND BIDDING SERVICES RELATED TO THE DESIGN OF THE RESIDENTIAL WATER SERVICE RELOCATION, NEW WATER TRANSMISSION LINES AND IDENTIFIED STORM WATER SYSTEM REPAIRS ASSOCIATED WITH THE 3-A UTILITY INFRASTRUCTURE IMPROVEMENT PROJECT IN THE AMOUNT NOT TO EXCEED ONE HUNDRED THIRTEEN THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$113,720); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

- C7C** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH COASTAL SYSTEMS INTERNATIONAL, INC. FOR THE PROVISION OF PROFESSIONAL CONSULTING SUPPORT SERVICES TO THE BAL HARBOUR VILLAGE COASTAL MANAGEMENT PROGRAM IN THE AMOUNT NOT TO EXCEED ANNUAL BUDGETARY ALLOCATIONS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

C7D A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING AN AGREEMENT FOR THE PURCHASE OF VEHICLES FOR THE VILLAGE POLICE AND PUBLIC WORKS DEPARTMENTS IN THE AMOUNT OF ONE HUNDRED FORTY FIVE THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$145, 667); APPROVING AN AGREEMENT FOR THE PURCHASE OF EMERGENCY LIGHTING EQUIPMENT FOR THE VEHICLES IN THE AMOUNT OF SEVEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$7,620); DECLARING CERTAIN VILLAGE OWNED VEHICLES TO BE SURPLUS PROPERTY; AUTHORIZING THE SALE OF SURPLUS PROPERTY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilwoman Cohen left the dais at 8:10 PM.

MOTION: A Motion to approve the Consent Agenda was moved by Councilman Jeffrey Freimark and seconded by Assistant Mayor Seth Salver.

VOTE: The Motion passed by unanimous voice vote (4-0).

Councilwoman Cohen returned to the dais at 8:12 PM.

R5 - ORDINANCES

R5A

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES CHAPTER 2 "ADMINISTRATION," ARTICLE 1 "IN GENERAL," BY CREATING SECTION 2-5 "VILLAGE SEAL" TO ADOPT AND DESIGNATE THE VILLAGE'S OFFICIAL SEAL; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE. (Second Reading)

Mr. Gonzalez introduced the item stating that the design for the Village Seal, having been approved as part of the Village's overall branding process, was an elegant update, and could be seen on the entryways to Village Hall and the Police Administration Building.

Babak Raheb (128 Balfour Drive) commented that the seal design was not as decorative as other designs, to which the Manager explained this was the seal that was used to attest documents and was not the Village Logo.

MOTION: A Motion pass the ordinance on second reading was moved by Assistant Mayor Seth Salver and seconded by Councilman Jeffrey Freimark.

Beth Berkowitz (10160 Collins Ave) asked why the font on the Village Seal was not the same as approved by the Village, to which it was explained that font was exactly the same font that was approved by the Resort Tax Committee and the Village Council.

ROLL CALL:

ROLL CALL	Yes	No
Mayor Gabriel Groisman	X	
Assistant Mayor Seth E. Salver	X	
Councilman David J. Albaum	X	
Councilwoman Patricia Cohen	X	
Councilman Jeffrey P. Freimark	X	

VOTE: the ordinance passed on second reading by unanimous roll call vote (5-0).

R5B AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, BY AMENDING SECTION 21-1 "DEFINITIONS AND RULES OF CONSTRUCTION," SECTION 21-127 "SETBACKS" [IN THE R-2 DISTRICT] AND SECTION 21-354 "PROJECTIONS INTO SETBACK AREAS," ALL TO ADDRESS ENCROACHMENTS AND PROJECTIONS INTO SETBACKS OR YARDS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE. **DEFERRED**

R5C AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-268 "ADDITIONAL STANDARDS FOR GRANDFATHERED APARTMENT-HOTEL PROJECTS" TO ADDRESS THE USE OF STRUCTURES IN THE REAR SETBACK; PROVIDING FOR DEFINITIONS, SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

Mr. Gonzalez summarized the Local Planning Agency's discussion and action on this item.

MOTION: A Motion to pass the ordinance on first reading was moved by Assistant Mayor Seth Salver and seconded by Councilman Jeffrey Freimark.

There was no public comment.

ROLL CALL:

ROLL CALL	Yes	No
Mayor Gabriel Groisman	X	
Assistant Mayor Seth E. Salver	X	
Councilman David J. Albaum	X	
Councilwoman Patricia Cohen	X	
Councilman Jeffrey P. Freimark	X	

VOTE: the Motion passed on first reading by unanimous roll call vote (5-0).

R7 - RESOLUTIONS

R7A A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE COMMERCIAL CONTRACT AND ADDENDUM BETWEEN BAL HARBOUR VILLAGE AND ANTONIO PROPERTY LLC FOR THE PURCHASE OF PROPERTY LOCATED AT 1840 NE 144 STREET, NORTH MIAMI, FLORIDA, IN AN AMOUNT NOT TO EXCEED ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000). PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez described the item as another step in the development of the waterfront park which required the relocation of the public works facility. He said that the proposed site is directly across the street from a North Miami public works facility and that they have indicated a willingness to enter into an interlocal agreement to share fueling, carwash and other fleet facilities. He described the steps to be taken for closing and that he would be seeking credits for the existing condition of the roof. He said that he planned to have the building rated to withstand a Category 4 hurricane.

Councilman Albaum asked if a formal appraisal had been done, to which Mr. Gonzalez replied that had been done and he added that the property value will continue to increase give the proximity of a proposed Brightline train stop.

Babak Raheb (128 Balfour Dr.) commented that the \$1.6 million seemed high and suggested obtaining another appraisal and to perhaps look at other properties.

Beth Berkowitz (10160 Collins Ave.) commented that she thought that the price was hefty and asked how the Village would pay for the property, to which Mr. Gonzalez replied that the price was a function of the buyer/seller, and that Village had issued bonds in 2012 and proposed that moneys be drawn from that escrow.

Brian Mulheren (10245 Collins Ave.) asked what the total cost would be to make the building useable, to which Mr. Gonzalez replied that he estimated \$600,000. Mr. Mulheren added that the Village should invest more to make withstand hurricanes.

MOTION: A Motion to approve the Resolution was moved by Mayor Gabriel Groisman and seconded by Councilwoman Patricia Cohen.

VOTE: The Motion passed by unanimous voice vote (5-0).

R7B A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; RATIFYING THE USE OF THE LISTED VENDORS BY THE VILLAGE MANAGER; AFFIRMING THE VILLAGE MANAGER'S AUTHORITY UNDER SECTION 2-141; AND PROVIDING AN EFFECTIVE DATE.

Mr. Gonzalez summarized the item that was deferred from the September 17, 2018 Village Council Meeting, explaining that the payments to the vendors listed with the resolution, approach, and might exceed the Manager's \$20,000 spending limit.

Mayor Groisman added that he would like the resolution to be amended so that the Village Council would be provided written notice when any vendor cross the \$20,000 threshold and any \$10,000 increment thereafter.

There was no public comment.

MOTION: A Motion to amend the Resolution to direct the Manager to notify the Village Council in writing (LTC) if payments to a vendor passed the \$20,000 threshold in aggregate and of every \$10,000 increment thereafter was moved by Mayor Gabriel Groisman and seconded by Councilman David Albaum.

VOTE: the Motion passed by unanimous voice vote (5-0).

MOTION: A Motion to approve the Resolution as amended was moved by Mayor Gabriel Groisman and seconded by Councilman Jeffrey Freimark.

VOTE: the Motion passed by unanimous voice vote (5-0).

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A 2018 Holiday Décor

Mr. Gonzalez introduced the item explaining that he was looking for guidance from Council on whether to continue to display the Roto Relief sculpture at Founders' Circle

during Art Basel, thus relocating the holiday tree, or to remove the sculpture so that the holiday tree could be displayed there.

Councilman Albaum stated that he was opposed to moving the holiday tree. Councilman Freimark agreed.

Mayor Groisman agreed and added that the holiday tree should be made even more spectacular, and he added that he supported the continued display of art at Founders' Circle for the rest of the year.

Councilwoman Cohen stated that the holiday tree would be stunning in front of the Oceana, and that Founders' Circle should be utilized to display curated art.

Buzzy Sklar (10275 Collins Ave.) stated that people may not understand the helicopter and that the holiday tree was a tradition. He stated that there should be ways to bring in artists to enhance the holiday tree, tying it in with Art Basel.

Beth Berkowitz (10160 Collins Avenue) suggested that Claire Breukel be enlisted to enhance the holiday tree, to which Mr. Gonzalez explained that the Village is in the last year of a 3-year contract for holiday lights, so that utilizing Claire for this purpose would need to wait. He added that the ideas and budget for art at the Founders' Circle needed to be discussed more at the Resort Tax Committee, Budget Committee and Village Council since the Village would effectively have 10-month exhibits.

Councilman Freimark added that the long-term strategic plans for Village Hall and the Collins Corridor should be taken into consideration if the Village was to consider investing in more permanent art installations.

Brian Mulheren (10245 Collins Ave.) agreed that the holiday installations at Founders' Circle bring the community together and suggesting installing art at the park in front of the guard house.

David Kwiat (10185 Collins Ave.) commented that he preferred buying art to renting art, to which Mr. Gonzalez added that most public art programs are building collections, not building borrowed art.

Mr. Gonzalez summarized that the holiday tree will be going up and the helicopter would be coming down.

R9B Health Insurance Options for Elected Officials

Mr. Gonzalez introduced the item stating that the current code allows the Village to purchase Medicare supplement insurance for councilmembers that have served two consecutive terms and are Medicare-eligible when they leave office and asked the Council if it would be interested in pursuing expanding that benefit to allow for all councilmembers

that have served two consecutive terms when they become Medicare eligible regardless of their age when they leave office.

Mayor Groisman asked when the existing ordinance was passed to which Ms. Trevarthen replied 2002, with an amendment in 2005. Mayor Groisman then asked what the total proposed annual cost would be for each councilmember, to which Ramiro Inguanzo, Assistant Village Manager, responded that the Village Code limits it to the prevailing cost for providing group health insurance to individual councilmembers, which he estimated to be around \$10,000 per year.

Mayor Groisman then asked how many former councilmembers are currently utilizing the benefit, to which Mr. Inguanzo responded that two, Councilman Jaime Sanz, and Mayor Martin Packer, qualified and chose to utilize the benefit.

Mayor Groisman questioned if the Council could pass legislation that benefitted the sitting members, then asked the Village Attorney to research and provide a legal opinion on whether or not the ordinance could be retroactive, and where the line should be drawn on how retroactive.

Babak Raheb (128 Balfour Dr.) commented the proposed changes to the ordinance would be unfair to former councilmembers and that it was too much of a big parachute for councilmembers and too much of an obligation for residents.

Penny Sepler (10275 Collins Ave.) commented that now that councilmembers are receiving a substantial salary, this additional benefit would be a lot of money.

Brian Mulheren (10245 Collins Ave.) commented that just like Village employees vest for pension benefits after 10 years of service, councilmembers should also vest for this benefit after the same amount of time. Mayor Groisman added that part-time employees do not vest, to which Mr. Mulheren responded that this should be a special case for Councilwoman Cohen.

David Kwiat (10185 Collins Ave.) commented that whether or not the Council decides to act, the current code is biased and prejudiced.

Buzzy Sklar (10275 Collins Ave) commented that the existing code is not fair and represents reverse age discrimination.

Dina Cellini (211 Bal Cross Drive) commented that the Council should explore withdrawing the existing benefit, and said that a service of eight years would not merit a life-time benefit.

Mayor Groisman agreed that the legality of the current code was inherently unfair and questioned how it gotten past legal review. He added that it may be time to revisit putting an end to the policy.

Councilman Albaum agreed and asked if there were some other way to compensate Councilwoman Cohen for her service.

Assistant Mayor Salver stated that the only way to make the present code fair, is to make it apply to all qualified councilmembers regardless of their age upon leaving service, to which Councilman Freimark expressed his agreement.

Ms. Trevarthen added this proposal had never been about Councilwoman Cohen and that there is no case law on retroactivity, to which Mayor Groisman responded that in being completely transparent, we should call it what it is. He said that there was an openness by the Council to explore extending the benefit so that it would apply to Councilwoman Cohen. Councilman Freimark agreed, adding that the Council should have had this conversation during the discussions to increase salaries.

There was a general consensus by the Council to ask staff to research amending the code to have it apply to all members when they are Medicare eligible regardless of their age after serving two terms and to research the legality of making it retroactive.

R9C Discussion on issues of mold and fire safety raised at The Plaza - Mayor Groisman - **Withdrawn**

R9D Discussion regarding the Village's Website - Councilman Freimark
Councilman Freimark expressed his opinion website content needed to be kept current and that he had spoken earlier with Ramiro Inguanzo and Dolores Mejia , who had told him that they are putting mechanisms into place to do so, including utilizing links to social media.

R9E Discussion regarding Art in Pietrasanta, Italy - Councilwoman Cohen
Councilwoman Cohen presented a video that she had taken from a recent visit to Pietrasanta, showing an art exhibit, that she said could have been shared with the Village if we had continued to build our relationship.

R9F - PUBLIC COMMENT

Buzzy Sklar (10275 Collins Ave.) suggested Village look into purchasing hybrid or electric vehicles when possible.

Babak Rahab (128 Balfour Dr.) suggested that the Village develop a plan for managing nuisance iguanas and snakes.

Penny Sepler (10275 Collins Ave.) thanked Councilwoman Cohen for all that she had done for the Village.

Dina Cellini (211 Bal Cross Dr.) said that she had spoken with people from the Fish and Wildlife Service, and that they would be willing to conduct a workshop regarding developing a comprehensive effort to deal with nuisance iguanas.

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

R12 - VILLAGE ATTORNEY REPORT

END OF REGULAR AGENDA

ADJOURNMENT The meeting was adjourned at 10:01 PM.

Mayor Gabriel Groisman



Attest:

Dwight S. Danie, Village Clerk

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF BAY HARBOR ISLANDS; PERMITTING THE TOWN TO UTILIZE THE BAL HARBOUR PARK BASKETBALL COURT TO PROVIDE CHILDREN'S BASKETBALL PROGRAMING DURING THE RENOVATION OF THE TOWN'S BASKETBALL FACILITY

Issue:

Should the Village Council approve the Interlocal Agreement with the Town of Bay Harbor Islands to utilize the Bal Harbour Park basketball court to provide Town children's basketball programs?

The Town of Bay Harbor Islands Community Services Department delivers children's afterschool basketball programming at the Ruth K. Broad Bay Harbor K-8 Center. This program includes students who reside within the Town of Bay Harbor Islands as well as Bal Harbour Village.

Due to a planned renovation at this facility, the basketball court will not be available for an extended period of time. In order to continue offering this program, the Town of Bay Harbor Islands has requested to use the Bal Harbour Village Park basketball court for their basketball program. Bal Harbour Village provides children's basketball programming on Tuesdays and Thursdays from 5:00 pm until 7:00 pm.

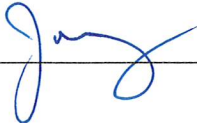
The Town of Bay Harbor Islands is requesting access and use of the basketball court on Mondays and Wednesdays between the hours of 2:30 p.m. and 5:30 p.m. beginning on January 7, 2019 through May 29, 2019. The requested days and times do not conflict with the current or planned programming provided by Bal Harbour Village. The Town has agreed that the senior residents of the Village will have access to all of the Town's facilities at the same rates as Town residents.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Financial Information:

	Amount	Account	Account #
1			

Sign Off:

Chief Financial Officer	Director Parks & Public Spaces	Village Manager
Amber Riviere	John A. Oldenburg	Jorge M. Gonzalez
		

AGENDA ITEM _____

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF BAY HARBOR ISLANDS; PERMITTING THE TOWN TO UTILIZE THE BAL HARBOUR PARK BASKETBALL COURT TO PROVIDE CHILDREN'S BASKETBALL PROGRAMING DURING THE RENOVATION OF THE TOWN'S BASKETBALL FACILITY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Resolution.

BACKGROUND

The Town of Bay Harbor Islands Community Services Department delivers children's afterschool basketball programming at the Ruth K. Broad Bay Harbor K-8 Center. This program includes students who reside within the Town of Bay Harbor Islands as well as Bal Harbour Village. Due to a planned renovation at this facility, the basketball court will not be available for an extended period of time. In order to continue offering this program, the Town of Bay Harbor Islands has requested to use the Bal Harbour Village Park basketball court for their basketball program.

ANALYSIS

Bal Harbour Village provides children's basketball programming on Tuesdays and Thursdays from 5:00 pm until 7:00 pm. The Town of Bay Harbor Islands is requesting access and use of the basketball court on Mondays and Wednesdays between the hours of 2:30 p.m. and 5:30 p.m. beginning on January 7, 2019 through May 29, 2019. The requested days and times do not conflict with the current or planned programming provided by Bal Harbour Village. The Town has agreed that the senior residents of the Village will have access to all of the Town's facilities at the same rates as Town residents.

If the request is approved, all park users during the requested program period will be signed in by Village staff as guests of Bal Harbour Village ("Town of Bay Harbor Islands").

CONCLUSION

The request from the Town of Bay Harbor Islands to utilize the Village basketball court at Bal Harbour Park does not conflict with Village provided program delivery. Therefore I recommend the ratification of this Resolution approving the Interlocal Agreement with the Town of Bay Harbor for the use of the basketball court at Bal Harbour Park as detailed within the agreement.

RESOLUTION NO. 2018-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF BAY HARBOR ISLANDS; PERMITTING THE TOWN TO UTILIZE THE BAL HARBOUR PARK BASKETBALL COURT TO PROVIDE CHILDREN'S BASKETBALL PROGRAMING DURING THE RENOVATION OF THE TOWN'S BASKETBALL FACILITY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bal Harbour Village owns and maintains a basketball court at Bal Harbour Park; and

WHEREAS, the Town of Bay Harbor Islands provides an after-school basketball program on the Town's basketball courts for the students of Ruth K. Broad Bay Harbor K-8, a program that includes students from the Village; and

WHEREAS, the Town's basketball courts will be unusable for a period of time due to construction; and

WHEREAS, the Village agrees to enter into an Interlocal Agreement to allow the Town to have access to and use of the Village Basketball Court for the Town Basketball Program, subject to the terms and conditions set forth within the Interlocal Agreement; and

WHEREAS, the Town will allow the Village's senior residents to access all of its facilities at the same rates as Town residents for the duration of the Interlocal Agreement; and

WHEREAS, the Village finds this Interlocal Agreement to be in the best interest of the Village and its residents.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Village Approval. That the Village Council hereby approves the Interlocal Agreement in substantially the form attached hereto as Exhibit "A", and incorporated herein.

Section 3. Authorization of Village Officials. That the Village Council authorizes the Village Manager to finalize and execute an agreement in substantially the form attached.

Section 4. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this ___ day of November, 2018.



Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT ("Agreement") is made and entered into by and between the Town of Bay Harbor Islands ("Town") and the Village of Bal Harbour ("Village") on this _____ day of _____, 2018.

WHEREAS, Village owns and maintains a basketball court at 701 96th Street Bal Harbour FL 33154 ("Village Basketball Court");

WHEREAS, Town provides an after-school basketball program on the Town's basketball courts for the students of Ruth K. Broad Bay Harbor K-8, which program includes students from the Village ("Town Basketball Program");

WHEREAS, the Town's basketball courts will be unusable for a period of time due to construction; and

WHEREAS, Village agrees to allow the Town to have access to and use of the Village Basketball Court for the Town Basketball Program, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Village agree to enter into this Agreement, based upon the following terms and conditions:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein.

2. **Town Use**. Town may use the Village Basketball Court for the Town Basketball Program on Mondays and Wednesdays between the hours of 2:30 p.m. and 5:30 p.m. beginning on January 7, 2019 through May 29, 2019 ("Town Use"). Town residents utilizing the Village Basketball Court shall be treated as guests of the Village Basketball Court and subject to any applicable rules and regulations of the Village. Village agrees not to schedule conflicting programming on the Village Basketball Court during the hours which the Town

3. **Village Use**. Village senior residents shall have access to all Town facilities at the same rate as Town senior residents during the term of this Agreement. For the purposes of this section, senior residents shall be defined as residents aged 65 or older.

4. **Program Cancellation**. Village reserves the right to cancel Town Basketball Program dates in the event of unforeseen circumstances. Village shall provide notice

to Town three (3) days prior to the Town Basketball Program date or as soon as practicably possible in the event the Village exercises its right to cancel programming, whichever date is sooner.

5. **Termination.** Either party may terminate this Agreement by serving 10 days notice to the party designated to receive notice under Section 12, Notice.

6. **Indemnification:** To the extent permitted by law, Town agrees to defend, indemnify and save harmless the Village from all claims and lawsuits, provided that such claims and lawsuits are attributable to bodily injury and such claims are caused by a negligent act or omission of the Town in connection with the Town Basketball Program (“Indemnification”). However, in no event shall Indemnification constitute a waiver of the Town’s sovereign immunity or otherwise require the Town to be liable to Village or any third (3rd) party for any amount in excess of the limitations set forth in Fla. Stat. Sec. 768.28 and any other laws applicable to municipal sovereign immunity or municipal limitations applicable to tort actions.

7. **Control of Property. Repair and Maintenance.** At all times during the Town Use, the Village shall maintain its jurisdiction and all its property rights over the Village Basketball Court and be responsible for all repair and maintenance applicable thereto.

8. **Prevailing Party Attorneys’ Fees.** In the event of a dispute between the parties that arises out of or relates to this Agreement, the prevailing party shall be entitled to recover against the non-prevailing party all reasonable legal fees and costs incurred by the prevailing party on all levels and proceedings including all trial courts and appellate courts. The prevailing party shall also be entitled to receive from the non-prevailing party all attorneys’ fees and costs incurred in connection with a determination by the court(s) as to the reasonable attorneys’ fees and costs to be awarded pursuant to this paragraph.

9. **Venue.** The parties understand and agreed that this Agreement was executed in Miami-Dade County, Florida and that all payments for services rendered shall be made in Miami-Dade County, Florida. The parties further agree that, irrespective as to whether venue may also lie in any other county or jurisdiction, the exclusive venue for any action arising out of or relating to the instant Agreement shall be Miami-Dade County, Florida. This Agreement shall be governed by the laws of the State of Florida. The parties understand and agree that the instant paragraph is a material inducement for the execution of this Agreement.

10. **Waiver Of Jury Trial.** **TO THE FULLEST EXTENT ALLOWED BY LAW, THE RESPECTIVE PARTIES HERETO DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST**

THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

11. **Counterparts.** This Agreement may be executed in a number of counterparts and transmitted by facsimile or email as a .PDF attachment, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

12. **Notice.** All notices shall be in writing and sent to the parties' via certified mail, return receipt requested, or an authorized delivery service (including Federal Express, United Parcel Service, USPS, or DHL) to their addresses set forth below:

If to Town: Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
ATTN: Town Manager

With a copy to:

Frank C. Simone, Esquire
FRANK SIMONE, P.A.
701 Brickell Avenue, Suite 1550
Miami, Florida 33131

If to the Village: Village of Bal Harbour
655 96th Street
Bal Harbour, FL 33154
ATTN: Village Manager

13. **Merger. Entire Agreement. Amendments.** This Agreement constitutes the entire agreement between the parties, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, either oral or written, between them concerning this Agreement other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon the parties unless they are in writing and signed by both the Town and Village.

14. **Authority.** Each party represents that all requirements for the approval of this Agreement have been undertaken and performed including, but not limited to, the approval of the Agreement by each municipality's council, and that each manager has the authority to execute and bind their respective municipality to this Agreement.

WHEREFORE, the parties hereby executed this Agreement on this _____
day of _____, 2018.

TOWN OF BAY HARBOR ISLANDS

VILLAGE OF BAL HARBOUR

By: _____
J.C. Jimenez,
Town Manager

By: _____
Jorge Gonzalez,
Village Manager

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE DETERMINATION OF THE VILLAGE BUILDING OFFICIAL THAT THE VIVA ON THE OCEAN APPLICATION TO THE STATE OF FLORIDA DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO FOR AN 11C LICENSE IS COMPATIBLE WITH THE VILLAGE ZONING REGULATIONS

Supporting Data (Surveys, Environmental Scans, etc.):

N/A

Issue:

Should the Village Council accept the determination of the Village Building Official that the Viva On The Ocean application to the State of Florida Department of Alcoholic Beverages and Tobacco for a 11C license is compatible with the Village Zoning regulations?

Item Summary/Recommendation:

The location of Viva On The Ocean is in compliance with the Village's Zoning regulations for establishments authorized to sell alcoholic beverages. There are similar zoning locations with alcoholic beverage licenses including hotel and other residential buildings on the ocean front.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.

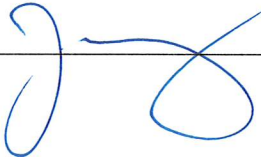
Advisory Board Recommendation:

N/A

Financial Information:

	Amount	Account	Account #
1	N/A	--	--

Sign Off:

Building Department		Village Manager
Graciela Escalante		Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: November 20, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE DETERMINATION OF THE VILLAGE BUILDING OFFICIAL THAT THE VIVA ON THE OCEAN APPLICATION TO THE STATE OF FLORIDA DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO FOR AN 11C LICENSE IS COMPATIBLE WITH THE VILLAGE ZONING REGULATIONS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending the Council review this application for a liquor license and vote on the Resolution.

BACKGROUND

Viva On The Ocean, formerly the Harbour House Café, located at 10275 Collins Avenue is submitting DBPR ABT - 6001 - Division of Alcoholic Beverages and Tobacco Application for new Alcoholic Beverage License to the State of Florida Department of Business and Professional Regulation. As part of said application, the zoning authority governing the business location is required to review and sign the application for approval. In the Village of Bal Harbour, the zoning authority is the Village Building Official. As part of the application review, the Building Official examined the Village Zoning Code. Two sections primarily dictate the permissible locations of such establishments. The Ocean Front district zoning regulations, and section Sec. 4-3. - *Sale prohibited in filling stations, theaters; sales near churches, schools.* Such section reads:

- (a) *No liquor, beer or wine shall be sold in any gasoline filling station or motion picture theater, including any room opening directly or indirectly into or having a direct connection with any motion picture theater.*
- (b) *No liquor, beer or wine shall be sold within 300 feet of any church, nor within 300 feet of any public school property, nor any property upon which there is maintained a private school operated for the instruction of minors in the common branches of learning, except such places of business as were established at the time of the adoption of this section. In ascertaining the proximity of any school or church referred to in this subsection, the method of measurement shall be made or taken from the main or front entrance of the church or school or the main or front place of such business along the route of ordinary pedestrian traffic along the public thoroughfare.*

The location of Viva On The Ocean is in compliance with the above. Therefore, the zoning approval may be granted.

Historically however, the Village of Bal Harbour has had cases where the approval of the requested license has gone to Council in the form of a resolution. Records show that there are dozens of locations on Collins Avenue in the past with licenses to sell alcoholic beverages. There are also several locations in similar zoning districts with active licenses to sell alcoholic beverages such as the one being sought by the applicant. Some of the residential locations are:

- Bal Harbour 101 Restaurant at 10155 Collins Avenue
- Bal Harbour Tower Condo at 9999 Collins Avenue
- The Ballerina Beach Club at 10201 Collins Avenue
- The Palace Café at 10101 Collins Avenue
- The Balmoral Café, located at 9801 Collins Avenue

Locations that are non-residential on the ocean front with active licenses to sell alcoholic beverages include:

- Sea View Terrace Restaurant at 9909 Collins Avenue
- Pool Bar and Grill at 10295 Collins Avenue (Ritz-Carlton)
- Mister Collins at 10295 Collins Avenue (Ritz-Carlton Seldar Miami Holdings, 3 licenses at 9703 Collins Avenue (St. Regis)

CONCLUSION

The location of Viva On the Ocean is in compliance with the Village's zoning regulations for establishments authorized to sell alcoholic beverages. Therefore, I am recommending approval of this resolution.

Attachment:

1. Viva On The Ocean Cafe - DBPR ABT - 6001 application

RESOLUTION NO. 2018_____

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE DETERMINATION OF THE VILLAGE BUILDING OFFICIAL THAT THE VIVA ON THE OCEAN APPLICATION TO THE STATE OF FLORIDA DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO FOR AN 11C LICENSE IS COMPATIBLE WITH THE VILLAGE ZONING REGULATIONS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Viva On The Ocean, located at 10275 Collins Avenue, has submitted an application to the State of Florida Division of Alcoholic Beverages and Tobacco for an 11C license for the sale of alcoholic beverages and tobacco (the "Application"); and

WHEREAS, the Application contains a section for completion of the Village confirming that the Application complies with the Village zoning regulations regarding the sale of alcoholic beverages; and

WHEREAS, the official generally charged with implementing Chapter 21, Zoning, is the Building Official; and

WHEREAS, the Village Building Official has determined that the Application is compatible with Village zoning regulations.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Approved. That the above stated recitals are hereby adopted and confirmed.

Section 2. Determination Accepted. That the determination of the Village Building Official that the Application is compatible with the Village zoning regulations is hereby accepted.

Section 3. Implementation. That the Village Manager is hereby directed to take any action necessary to implement the purposes of this Resolution.

Section 4. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this November 20, 2018.

Gabriel Groisman, Mayor



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR USE AND
RELIANCE OF BAL HARBOUR VILLAGE

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

**DBPR ABT-6001 – Division of Alcoholic Beverages and Tobacco
Application for New Alcoholic Beverage License**

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**DBPR Form
ABT-6001
Revised 08/2013**

If you have any questions or need assistance in completing this application, please contact the Division of Alcoholic Beverages & Tobacco's (AB&T) local district office. Please submit your completed application and required fee(s) to your local district office. This application may be submitted by mail, through appointment, or it can be dropped off. A District Office Address and Contact Information Sheet can be found on AB&T's web site at the link provided below:

http://www.myflorida.com/dbpr/abt/district_offices/licensing.html

SECTION 1 - CHECK LICENSE CATEGORY				
License Series Requested 2COP	Type/Class Requested SFS	Do you wish to purchase a Temporary License? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Child License Requested	Number of Child Licenses Requested			
<input checked="" type="checkbox"/> Retail Alcoholic Beverages	<input type="checkbox"/> Alcoholic Beverage Manufacturer			
<input type="checkbox"/> Beer/Wine/Liquor Wholesaler	<input type="checkbox"/> Passenger Waiting Lounge			
<input type="checkbox"/> Retail Tobacco Products Dealer Permit (must check one or more of the below)				
<input type="checkbox"/> Pipes <input type="checkbox"/> Over the Counter <input type="checkbox"/> Vending Machine				
SECTION 2 – LICENSE INFORMATION				
If the applicant is a corporation or other legal entity, enter the name and the document number as registered with the Florida Department of State Division of Corporations on the line below.				
FEIN Number 82-52116273	Business Telephone Number 305-888-6022 ext.	E-Mail Address (Optional) vivabrazilfl@icloud.com		
Full Name of Applicant(s): (This is the name the license will be issued in) Lucky OCEAN CORP.				Department of State Document # P18000033719
Business Name (D/B/A) VIVA ON THE OCEAN				
Location Address (Street and Number) 10275 Collins Ave #1401 Miami Beach, FL 33154				
City BAL Harbour	County DADE	State FL	Zip Code 33154	
Mailing Address (Street or P.O. Box) 11657 S. 21st Ave.				
City Hollywood		State FL	Zip Code 33020	
Contact Person - This section is optional, see application instructions for details				
Contact Person LUCIANO SILVA		Telephone Number 954-549-6255 ext.		
E-Mail Address (Optional) vivabrazilfl@icloud.com				
Mailing Address (Street or P.O. Box) 11657 S. 21st Ave				
City Hollywood		State FL	Zip Code 33020	

ABT District Office Received Date Stamp

NOV 6 - 9 PM 2018

RECEIVED
BAL HARBOUR VILLAGE

SECTION 3 - RELATED PARTY PERSONAL INFORMATION

This section must be completed for each person directly connected with the business, unless they are a current licensee.

1.	Business Name (D/B/A) del VIVA DIN THE OCEAN					
2.	Full Name of Individual LUCIANO SILVA					
	Social Security Number*		Home Telephone Number		Date of Birth	
	594-45-0646		954-549-6255		02/20/76	
	Race	Sex	Height	Weight	Eye Color	Hair Color
	W	M	5'10"	235	Brown	Brown
3.	Are you a U.S. citizen? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, immigration card number or passport number: I-# 099-199-551					
4.	Home Address (Street and Number) 3130 NE 190th St Apt 103					
	City Aventura				State FL	Zip Code 33180
5.	Do you currently own or have an interest in any business selling alcoholic beverages, wholesale cigarette or tobacco products, or a bottle club? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.					
	Business Name (D/B/A) VIVA BRAZIL				License Number BEV1621222	
	Location Address 1157 S. 21st Ave, Hollywood FL, 33020					
6.	Have you had any type of alcoholic beverage , or bottle club license, or cigarette, or tobacco permit refused, revoked or suspended anywhere in the past 15 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.					
	Business Name (D/B/A)				Date	
	Location Address					
7.	Have you been convicted of a felony within the past 15 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below and provide a Copy of the Arrest Disposition , as requested in the Application Requirements checklist.					
	Date		Location			
	Type of Offense					
8.	Have you been convicted of an offense involving alcoholic beverages or tobacco products anywhere within the past 5 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below and provide a Copy of the Arrest Disposition , as requested in the Application Requirements checklist.					
	Date		Location			
	Type of Offense					

9. Have you been arrested or issued a notice to appear in any state of the United States or its territories within the past 15 years? Yes No
 If yes, provide the information requested below and a **Copy of the Arrest Disposition**.
Attach additional sheet if necessary.

Date	2013	Location	Orlando, FL - Disposition on file
Type of Offense	Misdemeanor - Dismissed		

10. Do you meet the standards of the moral character rule?
 Yes No

11. Are you an officer or employee of the Division of Alcoholic Beverages and Tobacco; are you a sheriff or other state, county, or municipal officer, including reserve or auxiliary officers, certified by the state as such, with arrest powers, whose certification is current and active?
 Yes No

NOTARIZATION STATEMENT

"I swear under oath or affirmation under penalty of perjury as provided for in Sections 559.791, 562.45 and 837.06, Florida Statutes, that I have fully disclosed any and all parties financially and or contractually interested in this business and that the parties are disclosed in the Disclosure of Interested Parties of this application. I further swear or affirm that the foregoing information is true and correct."

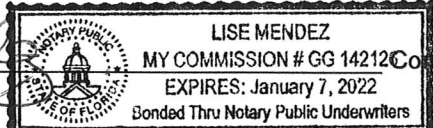
STATE OF FL
 COUNTY OF DADE

Luciano Silva
 APPLICANT SIGNATURE

The foregoing was () Sworn to and Subscribed OR () Acknowledged before me this 9 Day of November, 2018, By LUCIANO SILVA who is () personally (print name of person making statement)

known to me OR () who produced _____ as identification.

Lise Mendez
 Notary Public



Commission Expires: 1/7/2022

(ATTACH ADDITIONAL COPIES AS NECESSARY)

***Social Security Number**

Under the Federal Privacy Act, disclosure of Social Security numbers is voluntary unless a Federal statute specifically requires it or allows states to collect the number. In this instance, disclosure of social security numbers is mandatory pursuant to Title 42 United States Code, Sections 653 and 654; and sections 409.2577, 409.2598, and 559.79, Florida Statutes. Social Security numbers are used to allow efficient screening of applicants and licensees by a Title IV-D child support agency to assure compliance with child support obligations. Social Security numbers must also be recorded on all professional and occupational license applications and are used for licensee identification pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), 104 Pub.L.193, Sec. 317. The State of Florida is authorized to collect the social security number of licensees pursuant to the Social Security Act, 42 U.S.C. 405(c)(2)(C)(I). This information is used to identify licensees for tax administration purposes. This information is used to identify licensees for tax administration purposes, and the division will redact the information from any public records request.

**SECTION 4 – DESCRIPTION OF PREMISES TO BE LICENSED
TO BE COMPLETED BY THE APPLICANT**

Business Name (D/B/A)

1.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the proposed premises movable or able to be moved?
2.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is there any access through the premises to any area over which you do not have dominion and control?
3.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the business located within a Specialty Center? If yes, check the applicable statute: <input type="checkbox"/> 561.20(2)(b)1, F.S. or <input type="checkbox"/> 561.20(2)(b)2, F.S.
4.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there any mobile vehicles used to sell or serve alcoholic beverages?
5.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there more than 3 separate rooms or enclosures with permanent bars or counters?

Neatly draw a floor plan of the premises in ink, including sidewalks and other outside areas which are contiguous to the premises, walls, doors, counters, sales areas, storage areas, restrooms, bar locations and any other specific areas which are part of the premises sought to be licensed. A multi-story building where the entire building is to be licensed must show the details of each floor.

See attachment 1

SECTION 5 - APPLICATION APPROVALS			
Full Name of Applicant: (This is the name the license will be issued in) LUCKY OCEAN CORP.			
Business Name (D/B/A) VIVA ON THE OCEAN			
Street Address 10275 COLLINS AVE.			
City BAL HARBOUR	County DADE	State FL	Zip Code 33154

ZONING TO BE COMPLETED BY THE ZONING AUTHORITY GOVERNING YOUR BUSINESS LOCATION	
<p>A. The location complies with zoning requirements for the sale of alcoholic beverages or wholesale tobacco products pursuant to this application for a Series: _____ Type: _____ license.</p> <p>B. This approval includes outside areas which are contiguous to the premises which are to be part of the premises sought to be licensed and are identified on the sketch?" <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Check either: Please do not skip, this is important for license fee sharing <input type="checkbox"/> Location is within the city limits or <input type="checkbox"/> Location is in the unincorporated county</p>	
<p>Signed _____ Date _____</p> <p>Title _____ This approval is valid for ____ days.</p>	

SALES TAX TO BE COMPLETED BY THE DEPARTMENT OF REVENUE	
<p>The named applicant for a license/permit has complied with the Florida Statutes concerning registration for Sales and Use Tax.</p> <p>1. This is to verify that the current owner as named in this application has filed all returns and that all outstanding billings and returns appear to have been paid through the period ending _____ or the liability has been acknowledged and agreed to be paid by the applicant. This verification does not constitute a certificate as contained in Section 213.758 (4), F.S. (Not applicable if no transfer involved).</p> <p>2. Furthermore, the named applicant for an Alcoholic Beverage License has complied with Florida Statutes concerning registration for Sales and Use Tax, and has paid any applicable taxes due.</p>	
<p>Signed _____ Date _____</p> <p>Title _____ Department of Revenue Stamp</p> <p>This approval is valid for ____ days.</p>	

HEALTH TO BE COMPLETED BY THE DIVISION OF HOTELS AND RESTAURANTS OR COUNTY HEALTH AUTHORITY OR DEPARTMENT OF HEALTH OR DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES	
<p>The above establishment complies with the requirements of the Florida Sanitary Code.</p>	
<p>Signed _____ Date _____</p> <p>Title _____ Agency _____</p> <p>This approval is valid for ____ days.</p>	

SECTION 6 - APPLICANT ENTITY FELONY CONVICTION

Business Name (D/B/A)

VIVA OCEAN

Has the applicant entity been convicted of a felony in this state, any other state, or by the United States in the last 15 years?

Yes No

If the answer is "Yes," please list all details including the date of conviction, the crime for which the entity was convicted, and the city, county, state and court where the conviction took place.

(Attach additional sheets if necessary)

**SECTION 7 - SPECIAL LICENSE REQUIREMENTS
(DOES NOT APPLY TO BEER AND WINE LICENSES)**

Please check the appropriate box of the license for which you are applying. Fill in the corresponding requirements for the license type sought.

Quota Alcoholic Beverage License Specialty Alcoholic Beverage License (e.g. SRX, S, etc)
 Club Alcoholic Beverage License

This license is issued pursuant to 501.20(2)(4) Florida Statutes or Special Act, and as such we acknowledge the following requirements must be met and maintained:

- 2500 sq. ft. service area
- equipped to serve meals to 150 persons at a time
- derive at least 51% gross food & bev. sales from M/A beverages
- may not operate as a package store
- may not sell intoxicating beverages after hours of serving/ consumption of food have elapsed.
- license may not be moved to a new location.

Please initial and date:

Applicant's Initials _____ Date _____

SECTION 8 – DISCLOSURE OF INTERESTED PARTIES

Note: Failure to disclose an interest, direct or indirect, could result in denial, suspension and/or revocation of your license. You MUST list all persons and entities in the entire ownership structure. To determine which of those persons must submit fingerprints and a Related Party Personal Information, sheet, see the fingerprint section in the application instructions.

Business Name (D/B/A)

VIVA ON THE OCEAN

1. When applicable, complete the appropriate section below. Attach extra sheets if necessary.

Title/Position	Name	Stock %
CORPORATION – List all officers, directors, and stockholders		
P, D	LUCIANO SILVA	95%
T, S, D	RHIANOUN SILVA	5%

GENERAL PARTNERSHIP – List all general partners		

LIMITED LIABILITY COMPANY – List all managers (member & non-member), directors, officers, and members		

LIMITED PARTNERSHIP – List all general and limited partners.		

LIMITED LIABILITY PARTNERSHIP – List all partners		

Bar Manager (Fraternal Organizations of National Scope only):

OTHER INTERESTS

These questions must be answered about this business for every person or entity listed as the applicant

1. Are there any persons or entities not disclosed who have loaned money to the business?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2. Are there any persons or entities not disclosed that derive revenue from the license solely through a contractual relationship with the licensee, the substance of which is not related to the control of the sale of alcoholic beverages, or is exempt by statute or rule?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Are there any persons or entities not disclosed that have the right to receive revenue based on a contractual relationship related to the control of the sale of alcoholic beverages?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4. Are there any persons or entities not disclosed who have a right to a percentage payment from the proceeds of the business pursuant to the lease?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
5. Are there any persons or entities not disclosed who have guaranteed the lease or loan?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Are there any persons or entities not disclosed who have co-signed the lease or loan?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
7. Is there a management contract, franchise agreement, or concession agreement in connection with this business?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
8. Have you or anyone listed on this application, accepted money, equipment or anything of value in connection with this business from any industry member as described in 61A-1.010, Florida Administrative Code?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If you answered yes to any of the above questions, a copy of the agreement must be submitted with this application. The terms of the agreement may require the interested persons or parties related to an entity to submit fingerprints and a related party personal information sheet.

SECTION 9 - AFFIDAVIT OF APPLICANT
NOTARIZATION REQUIRED

Business Name (D/B/A)

VIVA ON THE OCEAN

"I, the undersigned individually, or on behalf of a legal entity, hereby swear or affirm that I am duly authorized to make the above and foregoing application and, as such, I hereby swear or affirm that the attached sketch is a true and correct representation of the entire area and premises to be licensed and agree that the place of business, if licensed, may be inspected and searched during business hours or at any time business is being conducted on the premises without a search warrant by officers of the Division of Alcoholic Beverages and Tobacco, the Sheriff, his Deputies, and Police Officers for the purposes of determining compliance with the beverage and retail tobacco laws."

"I swear under oath or affirmation under penalty of perjury as provided for in Sections 559.791, 562.45 and 837.06, Florida Statutes, that the foregoing information is true and that no other person or entity except as indicated herein has an interest in the alcoholic beverage license and/or tobacco permit, and all of the above listed persons or entities meet the qualifications necessary to hold an interest in the alcoholic beverage license and/or tobacco permit."

STATE OF FL

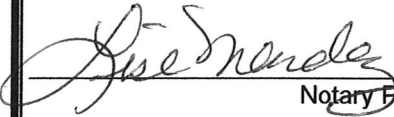
COUNTY OF DADE

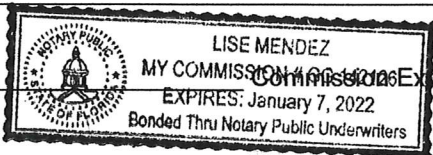

APPLICANT/ AUTHORIZED REPRESENTATIVE NAME

APPLICANT/ AUTHORIZED REPRESENTATIVE SIGNATURE

The foregoing was () Sworn to and Subscribed OR Acknowledged before me this 9 Day
of November, 2018, By LUCIANO SILVA who is () personally
(print name(s) of person(s) making statement)

known to me OR () who produced _____ as identification.


Notary Public



Expires: 1/7/2022

SECTION 10 - CURRENT LICENSEE UPDATE DATA SHEET

This section is to be completed for all current alcoholic beverage and/or tobacco license holders listed on the application to ensure the most up to date information is captured.

Business Name (D/B/A) VIVA ON THE OCEAN

Last Name SILVA First LUCIANO M.I. F

Current Alcohol Beverage and/or Tobacco License Permit/Number(s) BEV11621222

Date of Birth 02/20/70 Social Security Number* 594-45-0646

Street Address 3120 NE 190th St Apt. 103

City Aventura State FL Zip Code 33180

Last Name _____ First _____ M.I. _____

Current Alcohol Beverage and/or Tobacco License Permit/Number(s) _____

Date of Birth _____ Social Security Number* _____

Street Address _____

City _____ State _____ Zip Code _____

Last Name _____ First _____ M.I. _____

Current Alcohol Beverage and/or Tobacco License Permit/Number(s) _____

Date of Birth _____ Social Security Number* _____

Street Address _____

City _____ State _____ Zip Code _____

Last Name _____ First _____ M.I. _____

Current Alcohol Beverage and/or Tobacco License Permit/Number(s) _____

Date of Birth _____ Social Security Number* _____

Street Address _____

City _____ State _____ Zip Code _____

Last Name _____ First _____ M.I. _____

Current Alcohol Beverage and/or Tobacco License Permit/Number(s) _____

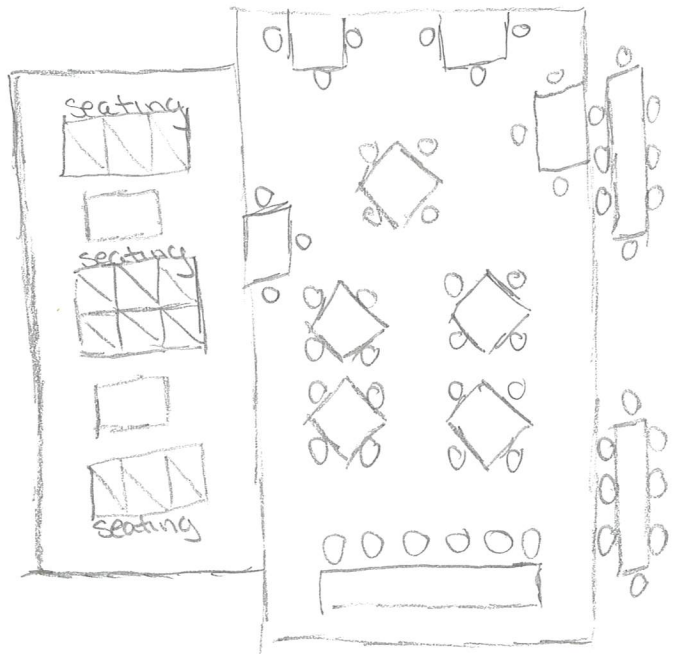
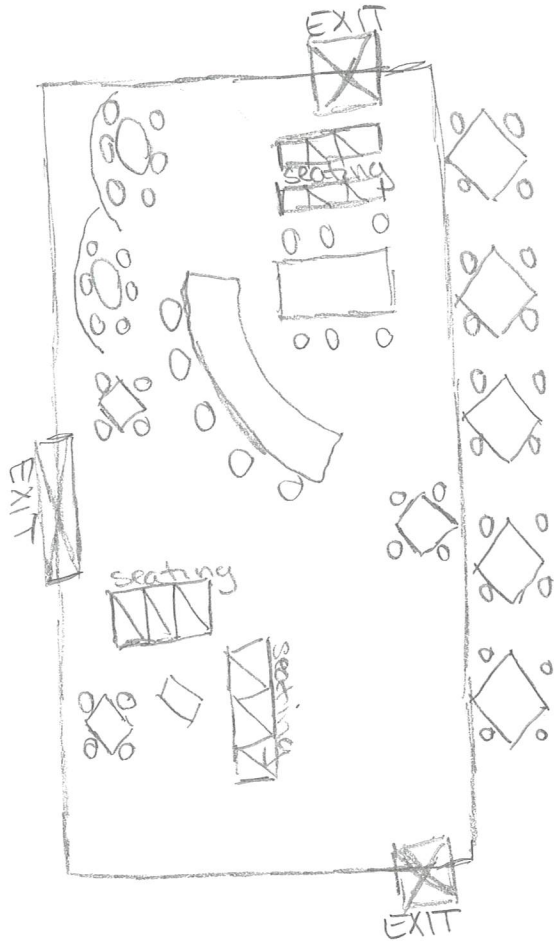
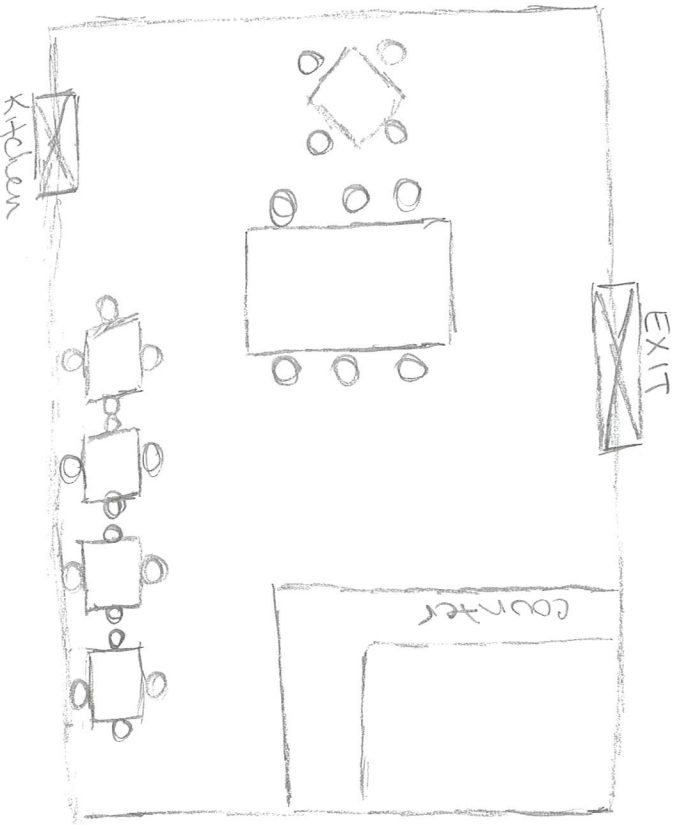
Date of Birth _____ Social Security Number* _____

Street Address _____

City _____ State _____ Zip Code _____

THE HARBOUR VILLAGE
RECEIVED

2018 NOV -9 PM 1:31



attachment 1

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING ENTERING INTO AN AGREEMENT WITH THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES / FOOD NETWORK & COOKING CHANNEL SOUTH BEACH WINE & FOOD FESTIVAL FOR BAL HARBOUR VILLAGE TO SERVE AS A SILVER SPONSOR OF THE 2019 SOUTH BEACH WINE AND FOOD FESTIVAL

Issue:

Should the Village serve as a silver sponsor of the South Beach Wine and Food Festival at a \$30,000 contribution level?

Item Summary/Recommendation:

The South Beach Wine and Food Festival (SBWFF) is an annual wine and spirits events showcasing many of the world's top chefs, producers and vendors of gourmet products, and culinary personalities. In our on-going efforts to position Bal Harbour Village as a high-end destination to live, work, visit and play in, the Village continuously explores opportunities to create appropriate strategic alliances and partnerships. The Silver sponsorship level at SBWFF includes being recognized as a sponsor of the entire festival, the creation of a "Bal Harbour Series" consisting of three dinners in Bal Harbour, the Bal Harbour Village logo on welcome banners at the Grand Tasting Village in Miami Beach, electronic recognition on SBWFF's website and electronic communications, as well as additional print and media recognition. In addition, as part of our sponsorship, Bal Harbour residents shall be entitled to a 15% discount on tickets to the "Bal Harbour Series" dinners. Funding for this event was included in the FY 2018-2019 Resort Tax Budget.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION

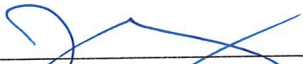
Advisory Board Recommendation:

The Resort Tax Committee discussed and recommended funding of this event during the FY 2018-19 budgeting process and funding of this event was included in the FY 2018-19 Resort Tax Budget. At the November 2, 2018 Resort Tax Committee meeting the proposed details of the Bal Harbour dinners were discussed with suggestions made about how to better leverage this event to promote Bal Harbour Village.

Financial Information:

	Amount	Account	Account #
1	\$30,000	Resort Tax Fund	1052504892

Sign Off:

Assistant Village Manager	Chief Financial Officer	Village Manager
Ramiro Inguanzo	Amber Riviere	Jorge M. Gonzalez
		

AGENDA ITEM _____

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: November 20, 2018

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING ENTERING INTO AN AGREEMENT WITH THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES / FOOD NETWORK & COOKING CHANNEL SOUTH BEACH WINE & FOOD FESTIVAL FOR BAL HARBOUR VILLAGE TO SERVE AS A SILVER SPONSOR OF THE 2019 SOUTH BEACH WINE AND FOOD FESTIVAL; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

It is recommended that the Village Council approve this agreement for Bal Harbour Village to serve as a Silver sponsor of the 2019 South Beach Wine and Food Festival (SOBEWFF).

BACKGROUND

In our on-going efforts to position Bal Harbour Village as a high-end destination to live, work, visit and play in, the Village continuously explores opportunities to create appropriate strategic alliances and partnerships. As part of these efforts, last year, the Village was a first-time sponsor of the South Beach Wine & Food Festival.

Funding for the sponsorship of the 2019 South Beach Wine & Food Festival was included in the Fiscal Year (FY) 2018-19 Resort Tax Budget.

The South Beach Wine and Food Festival (SBWFF) is an annual wine and spirits events showcasing many of the world's top chefs, producers and vendors of gourmet products, and culinary personalities. This event is hosted by Florida International University (FIU) School of Hospitality and Tourism Management. Proceeds from the festival go to the school's teaching restaurant and the Southern Wine & Spirits Beverage Management Center at FIU. The South Beach Wine and Food Festival has become one of the nation's premier food festivals. Spanning four days and presented by the Food Network & Cooking Channel, it is a star-studded event that draws top talent from the culinary and wine industries. Our conversations with the producers of the SBWFF last year yielded the creation of the "Bal Harbour Series" in the festivals line-up as part of a sponsorship package. The Bal Harbour series will again be included this year and will again feature three intimate, high-end dinners held in Bal Harbour Village at the Artisan Beach House at the Ritz-Carlton, Bal Harbour, the St. Regis, Bal Harbour, and the Sea View Hotel on three evenings during the festival.

The Resort Tax Committee discussed and recommended funding of this event during the FY 2018-19 budgeting process and funding of this event was included in the FY 2018-19 Resort Tax Budget. At the November 2, 2018 Resort Tax Committee meeting the proposed details of the Bal Harbour dinners were discussed with suggestions made about how to better leverage this event to promote Bal Harbour Village.

The following are the three events which will take place in Bal Harbour Village:

- **Friday, February 22, 2019 - Shabbat Kosher Dinner** - featuring chefs Einat Admony, Amos Sion, Zak Stern, and Adeena Sussman and taking place at the Sea View Hotel in the outside pool area and terrace will consist of a family style dinner setting. After their SOBEWFF debut last year, cookbook author Adeena Sussman and celebrated baker Zak Stern are back to host a Kosher Shabbat dinner. Together with Einat Admony, chef/owner of New York City's popular Balaboosta and Taïm restaurants, and Amos Sion, chef/owner of Helena in the coastal Israeli town of Caesarea, they will serve up classic dishes featuring the modern touches that have made them some of the biggest names in modern Jewish cuisine, all perfectly paired with wines from the Southern Glazer's Wine & Spirits portfolio. This is the only planned Kosher event in the entire 2019 festival.
- **Saturday, February 23, 2019 - Italian Cuisine** - featuring chefs Matthew Accarrino, Evan Funke, and Ryan Hardy at the Ritz-Carlton, Bal Harbour. Chef Matthew Accarrino is the Food & Wine Best New Chef (2014) at the helm of the Italian-inspired Michelin-starred restaurant SPQR in San Francisco. Chef Accarrino is known for blending deeply personal touches with expertly honed techniques to create dishes that are both refined and full of heart. He is joined by Chef Ryan Hardy, the face behind New York City media darling hotspots Charlie Bird and Pasquale Jones, and Chef Evan Funke, a James Beard Award-nominee and the mind behind the James Beard Award semifinalist for Best New Restaurant of the Year, Felix Trattoria. Also known for his soulful yet innovative Italian fare, Hardy returns to the Festival to collaborate with Accarrino and Funke to bring their signature style of Italian-centric comfort cuisine in the elegant coastal sanctuary of The Ritz-Carlton Bal Harbour.
- **Saturday, February 23, 2019 - Flavors of the World** - featuring chefs Bradley Kilgore and Dan Perretta. Chef Bradley Kilgore, a 2018 James Beard Award semifinalist, is one of the most recent faces making waves nationwide and drawing attention to South Florida's rapidly growing culinary scene. For this special Festival dinner, he will be joined by Executive Chef Dan Perretta of The Aviary Chicago, IL and New York City. Together, this celebrated duo will curate a dining experience at the exclusive conclave of The St. Regis Bal Harbour Resort filled with not only their world-class talents, but influenced by the flavors of the world - and perfectly paired with wines from the Southern Glazer's Wine & Spirits portfolio. This is a one-of-a-kind dinner that is already sold out after only being posted on the SOBEWFF website for just a few days.

In addition to the "Bal Harbour Series" as part of the SOBEEFF, the Silver level sponsorship includes being recognized as a sponsor of the entire South Beach Wine and Food Festival, the Bal Harbour Village logo on welcome banners at the Grand Tasting Village in Miami Beach, electronic recognition on Festival's website and electronic communications, as well as additional print, media and social media recognition. In addition, as part of our sponsorship, Bal Harbour residents shall be entitled to a 15% discount on tickets to the "Bal Harbour Series" dinners.

Also being discussed as part of the Village's sponsorship and in partnership with the Bal Harbour Shops, an additional event is being planned although not yet finalized. This event would be included as part of the SOBEEFF Bal Harbour Series and will be an intimate chocolate and wine pairing to take place at the Bal Harbour Shops at some point over the SOBEEFF. Details are still being finalized but if event proceeds, there shall not be any additional costs or change in the Village's sponsorship amount.

Attached is a copy of the Sponsorship Agreement (Attachment A).

CONCLUSION

Sponsorship of the South Beach Wine and Food Festival is a good opportunity for Bal Harbour Village to formally participate in a major culinary event taking place in South Florida and to capitalize on the positive public relations associated with this event.

ATTACHMENTS

1. Attachment A: Bal Harbour Village / South Beach Wine and Food Festival Sponsorship Agreement

RESOLUTION NO. 2018-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING ENTERING INTO AN AGREEMENT WITH THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES / FOOD NETWORK & COOKING CHANNEL SOUTH BEACH WINE & FOOD FESTIVAL FOR BAL HARBOUR VILLAGE TO SERVE AS A SILVER SPONSOR OF THE 2019 FESTIVAL; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bal Harbour Village continuously explores opportunities to create strategic partnerships that fortify the Village's efforts to be positioned as a high end destination to live, work, and play; and

WHEREAS, in 2018, the Village was a first-time sponsor of the South Beach Wine and Food Festival ("Festival") and found that the sponsorship provided the Village with an excellent opportunity to formally participate in a major local culinary event and to capitalize on the positive public relations associated with this sponsorship; and

WHEREAS, in exchange for Village sponsorship, the festival will create a three (3) part feature of the Village entitled the "Bal Harbour Series", provide sponsorship recognition throughout the entire festival, and place the Village logo on prominent banners and insignia throughout the event; and

WHEREAS, this Council has determined that it is in the best interest of the Village to approve the agreement to continue to serve as a Silver Sponsor for the festival in the amount of thirty thousand dollars (\$30,000); and

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. That the Agreement to serve as a Silver Sponsor for the festival is hereby approved in the amount of thirty thousand dollars (\$30,000).

Section 3. Implementation. That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

Section 4. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this ____ day of November, 2018.



Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.



**Bal Harbour Village
SPONSORSHIP AGREEMENT**

Sponsor: Bal Harbour Village
Address: 655 96th Street, Bal Harbour, FL 33154

The Florida International University Board of Trustees, a charitable governmental unit qualifying for Federal tax exemption pursuant to Internal Revenue Code (“I.R.C.”) section 115(1) (“FIU”), as administrator and co-producer of the **Food Network & Cooking Channel South Beach Wine & Food Festival** (collectively, the “Festival”), thanks Sponsor for its commitment as a Silver sponsor of the 2019 Festival. This Sponsorship Agreement (the “Agreement”) shall commence as of the last date signed below (the “Effective Date”) and shall continue through and including **May 1, 2019**, unless otherwise terminated pursuant to the terms hereof. In consideration of the terms outlined herein, the parties agree as follows:

I. SPONSOR’S CONTRIBUTION *(please put N/A if not applicable):*

A. Cash Contribution: \$30,000 **Payment Due Date:** November 30, 2018
B. In-Kind Contribution: N/A

II. SPONSOR’S SPONSORSHIP BENEFITS *(please put N/A if not applicable):*

- A. **Level:** Sponsor will be recognized as a Silver sponsor of the 2019 Festival.
- B. **General Festival Recognition:** Sponsor will receive tiered level logo recognition on the welcome banners at the Grand Tasting Village.
- C. **Participating Event(s):**

¹ Event Appendix #:	*Event Name:	Event Recognition:	# of Credentials:
A	Shabbat Dinner hosted by Einat Admony, Amos Sion, Zak Stern & Adeena Sussman	Supporting Sponsor	N/A
A	Dinner hosted by Brad Kilgore and Dan Perretta	Supporting Sponsor	N/A
A	Dinner hosted by Matthew Accarrino, Evan Funke and Ryan Hardy	Supporting Sponsor	N/A

*The above-listed event(s) shall each be known individually as an “Event” and collectively as the “Events.”

¹ The Appendix for each above-listed Event and/or Opportunity (as applicable) is attached to the back of this Agreement (under the related Appendix #) and is hereby incorporated by this reference. Sponsor acknowledges, understands and agrees that, in addition to the terms of this Agreement, the terms outlined in each Appendix shall govern Sponsor’s involvement in the related Event and/or Opportunity and Sponsor agrees to abide by the terms outlined therein.

III. **TERMS AND CONDITIONS.** In addition to the above-listed Event Appendices and Opportunity Appendices, as applicable (each, an "Appendix" and collectively, the "Appendices"), Sponsor's involvement with the Festival shall be governed by the following terms and conditions:

1. **Entertainment**

- A. **Benefit Package.** The Festival will work with Sponsor to create a customized package of hospitality benefits from a variety of Festival-provided options that will include tickets (at retail prices, plus tax) to relevant Festival events valued at an amount not to exceed six percent (6%) of Sponsor's Cash Contribution ("Ticket Credits"). Seated Events, such as the Tribute Dinner, will not be included in the Benefit Package. Ticket orders should be placed with the Festival's Internal Ticketing Manager as soon as possible to ensure availability of first choice; exact ticket allocations are subject to availability. **No ticket orders will be accepted by the Ticketing Manager, and no Ticket Credits may be redeemed by Sponsor, after Wednesday, February 13, 2019.**
- B. **Ticket Purchases.** Additional ticket purchases, including for Seated Events, may be purchased at cash value by Mastercard credit card or other charge card payments, subject to applicable 7% Florida Sales Tax. All ticket orders are subject to availability.
- C. **Complimentary Tickets.** In addition to the aforementioned Benefit Package, Sponsor shall also receive the following complimentary allotment of tickets:
 - o Four (4) tickets to each of the Events specified on the front page of this Agreement.
- D. **Distribution.** No tickets shall be distributed until Sponsor's Contribution has been paid in full and/or all elements of Sponsor's activation plan and design are approved. **Subject to the foregoing requirements, tickets will be distributed 2-3 weeks prior to the Festival.**

2. **Credentials**

The Festival provides credentials for **operational working personnel** directly related to the activation of Sponsor's footprints for the day(s) and Events that Sponsor has a Festival approved activation, footprint or build out. For example, executives and sales personnel are not eligible for operational working credentials and must be ticketed. Terms related to Sponsor's receipt of any credentials are as follows:

- A. Sponsor will receive credentials for working access to each Event in the amount specified on the front page of this Agreement. Sponsor acknowledges that such working access does not grant the bearer a seat at any seated events; seats are reserved for ticketed guests.
- B. All credentials for set up and breakdown personnel are included within this allocation of credentials to Sponsor; the Festival will not allocate separate credentials for set up and breakdown personnel.
- C. **IMPORTANT NOTICE: CREDENTIALS ARE ISSUED ON-SITE AT THE FESTIVAL. NO CREDENTIAL SHALL BE ISSUED UNLESS SPONSOR'S CONTRIBUTION IS PAID IN FULL.**
- D. No person shall be granted access to the Event site without a valid credential or ticket. This requirement will be strictly enforced. All workers, including those assisting with load-in and set-up, as well as any private photographer, videographer or other media-type personnel working directly for the Sponsor, must visibly display a valid credential at all times beginning on **Wednesday, February 20, 2019.**
- E. If Sponsor desires to utilize a photographer and/or videographer for Sponsor's own purposes (e.g., to document Sponsor's activation), such photographer(s) and/or videographer(s) will not be considered to be press and **must utilize Sponsor's tickets and/or credentials to gain access to the Event**; Festival shall not permit any other access. Additionally, Sponsor must fill out the appropriate form(s) (links provided below) to notify the Festival of such plans by **Friday, January 25, 2019.** Sponsor is responsible for communicating Festival's photo/video/filming guidelines outlined on the form(s) to any such photographers/videographers.

Photography: <http://corporate.sobewff.org/forms/2019-sobewff-photo-permission-form/>
 Videography: <http://corporate.sobewff.org/forms/2019-sobewff-filming-permission-form/>
- F. Additional credentials (over and above Sponsor allotted amount) may be available and must be requested prior to the Event. Sponsor acknowledges that the Festival is not responsible for and cannot guarantee the availability of credentials for any reason, whether for purchase or otherwise.

3. **Press**

- A. **Press Registration.** All press must apply for access to the Festival through the Festival's Public Relations department no later than **Monday, January 14, 2019** (<http://sobewff.org/media/press-access/>). Due to legal guest capacity and/or inventory control limitations, Festival will not have guest lists at registration and will not provide access to any members of the press or other guests, unless they have been previously approved and ticketed or credentialed by the Festival.
- B. **Press Access.** If Sponsor desires to use its tickets and/or credentials to invite press to cover the Festival, Sponsor must submit the press names to the Festival's Public Relations Director for approval no later than **Friday, February 1, 2019.** Sponsor must receive the Festival's approval prior to any transfer. Additionally, due to the Festival's overarching policies regarding filming of content at Festival events, all press video/filming access plans are subject to the Festival's review and approval.
- C. **Attending Media List.** Attending media list shall be released ten (10) days prior to the start of the Festival.

4. Print and Media Recognition

- A. If this Agreement is executed prior to **Monday, October 29, 2018**, and Sponsor has timely submitted its logo to the Festival per paragraph 8 (Logo and Sponsorship Acknowledgement Guidelines) of this Agreement, Sponsor will receive the following recognition in the editorial pages of the *Official Guide to the 2019 South Beach Wine & Food Festival*:
1. Logo recognition (or line listing, as appropriate, as determined by the Festival) on the sponsor acknowledgement page.
 2. Logo recognition (or line listing, as appropriate, as determined by the Festival) on the event-specific pages for the Event(s) listed above.
- B. Festival will secure the opportunity for Sponsor to purchase an ad in the *Official Guide to the 2019 South Beach Wine & Food Festival* at a discount off the published rack rate. See **Exhibit A** attached hereto for details.
- C. Sponsor's logo or line listing (as appropriate, as determined by Festival) will appear with logos or line listings of all major sponsors in one full-page "thank you" advertisement running the weekend of the Festival in a newspaper publication of major circulation such as The Miami Herald.
- D. Sponsor will receive recognition (logo or line-listing as appropriate, as determined by Festival) in select print advertising in local and national publications.
- E. Sponsor will receive recognition (logo or line-listing as appropriate, as determined by Festival) in select print promotional materials distributed to local, national and international media.
- F. Sponsor will have the opportunity to produce press releases promoting its participation in the Festival, however all such press releases must be approved in advance by the Festival. All approved press releases shall be housed on the Festival's website in the press room.

5. Electronic Recognition

- A. Sponsor's logo (or line listing, as appropriate, as determined by the Festival) will appear on the following pages of the Festival's website, with a link to the Sponsor's website:
- Sponsor Level: Silver
 - On the event-specific pages for the Event(s) listed on the front page of this Agreement, if applicable.
- B. Sponsor's logo or line listing, as appropriate, as well as Sponsor's contribution of a mutually-agreed upon auction item, if any, will be placed on the Festival's Online Auction website pursuant to the terms outlined throughout this Agreement, and at any one of the following sites:
- The Holiday Online Auction, taking place from mid-November 2018 through mid-December 2018.
 - The Main Online Auction, taking place from January 2019 through March 2019.
- C. Any logo recognition and link will remain on the Festival website from the Effective Date of this Agreement until **May 1, 2019**.

6. Gifting. Sponsor will receive the following gifting opportunities:

- A. **Trade Day Gift Bag Inclusion** – the opportunity to include a promotional item or sample to be included in all 5,000 Trade Day gift bags distributed to attendees.
- B. **Grand Tasting Gift Bag Inclusion** – the opportunity to include a promotional item or sample to be included in all 12,000 Grand Tasting gift bags distributed to attendees.

*Weight and size restrictions will apply. Limited placement opportunities available. Paper materials (e.g., pamphlets, promotional literature or brochures) are strongly discouraged. Whenever possible, printed pieces should be produced using 100% recycled materials, and they should not exceed two (2) ounces in weight. All promotional/gift items should not exceed eight (8) ounces in weight. All items must be approved in advance by the Festival no later than **Monday, January 14, 2019**.*

7. 2019 Festival Auctions. Sponsor will have the opportunity to donate a mutually-agreed upon auction item to one of the Festival's Online Auctions. Sponsor's logo or line listing, as appropriate, as determined by the Festival, as well as a full description and photo of the Sponsor's auction item, will be placed on one or more of the Festival's Online Auction websites during these time frames:

- A. The Holiday Online Auction will take place from mid-November 2018 through mid-December 2018.
- B. The Main Online Auction will take place from January 2019 through March 2019.

Festival warrants and represents that its Online and Silent Auctions will be conducted in accordance with applicable law, including but not limited to the auctioning of items that contain alcohol content.

8. Logo and Sponsorship Acknowledgement Guidelines.

- A. All recognition to be received by Sponsor in accordance with this Agreement, including but not limited to Electronic Recognition and Print & Media Recognition, shall be subject to and in accordance with these Guidelines.
- B. The Festival shall be entitled to reject any logo submissions which do not adhere to the requirements outlined herein, without any further liability to the Festival.

- C. Sponsor must complete a "sponsor intake form" (which includes Sponsor's logo submission) **within two (2) business days after execution of this Agreement**. The form can be found here: <http://corporate.sobewff.org/forms/2019-sobewff-sponsor-intake-form/>. Within two (2) business days after the Festival's receipt of the Sponsor's completed intake form, Sponsor's logo recognition benefits will be included in all applicable formats which are still available to Sponsor (i.e., website recognition, other electronic recognition). Sponsor will not receive any such benefits until the Agreement is finalized and the completed form (and logo) are received by the Festival. Sponsor acknowledges that Festival shall not be obligated to provide recognition benefits to Sponsor for which recognition deadlines have already passed. Any requested logo changes by Sponsor submitted to the Festival after **Friday, January 4, 2019** will not be guaranteed to be used for printed materials. Any reprinting costs associated with a Sponsor's logo change shall be the sole responsibility of the Sponsor.
- D. Sponsor shall utilize the following pre-approved verbiage when acknowledging their sponsorship of the Festival:
1. "A proud sponsor of the Food Network & Cooking Channel South Beach Wine & Food Festival."
 2. "[Sponsor] is honored to support the 2019 Food Network & Cooking Channel South Beach Wine & Food Festival."
 3. "[Sponsor] is honored to support SOBEEFF@."
 4. "[Sponsor] is honored to support the 2019 South Beach Wine & Food Festival@."

9. **Festival Licensing Rights.**

A. **Grant of Rights.**

1. **Festival Marks.** Festival shall provide Sponsor with the limited, non-exclusive, right to use Festival marks and logos, as provided to the Sponsor by the Festival ("Festival Marks") on a royalty-free basis, in promotions, advertising and website identification for the purpose of Sponsor leveraging its sponsorship position. Sponsor must obtain the prior written approval of Festival as to all proposed promotional, advertising, identification or other materials prepared by Sponsor pursuant to this paragraph prior to their publication, circulation, or display. Sponsor shall place the indicia "SM" or "TM" next to each use of any Festival Mark.
2. **Sponsor Marks.** The Festival shall have the limited, non-exclusive right to use Sponsor's trademarks and logos, as provided to the Festival by Sponsor ("Sponsor's Marks") on a royalty-free basis for the exclusive purpose of implementing the various sponsorship benefits set forth in this Agreement, including, but not limited to, providing Sponsor with logo recognition in promotions, advertising, website identification or other Festival-related materials. The Festival will not use Sponsor's Marks for any purpose other than those set forth in this Agreement.

B. **License Duration.** This limited license is granted for the duration of the 2019 Festival or as otherwise specified in this Agreement. All rights and privileges granted to each party by this limited license shall immediately expire on the date of expiration or earlier termination of this Agreement.

C. **Goodwill.** Sponsor and the Festival recognize the great value of the goodwill associated with each party's intellectual property. Each party acknowledges that the other party has an interest in maintaining and protecting the image and reputation of its respective intellectual property, and that the other party's intellectual property must be used in a manner consistent with the standards established by that party.

D. **No Assignment.** This limited license and all rights and duties hereunder are personal to Sponsor and shall not, without the written consent of the Festival, be assigned, mortgaged, sublicensed or otherwise encumbered or transferred by Sponsor or by operation of law.

E. **No Joint Venture.** This Agreement does not authorize Sponsor to do business under the name of "South Beach Wine & Food Festival" or "Florida International University" or any name similar thereto, or to enter into any contracts or agreements of any type in the name of, or on behalf of any of these parties. The Sponsor is not empowered to state or simply imply, either directly or indirectly, that Sponsor or its activities, other than pursuant to the limited license permitted herein, are supported, endorsed or sponsored by the Festival and upon the direction of the Festival shall issue express disclaimers to the effect. Nothing herein shall be construed to place the parties in the relationship of partners or joint venturers, nor shall any similar relationship be deemed to exist between them.

10. **Other Provisions**

A. **Opportunity Deadlines.** The Festival shall notify Sponsor of all deadlines for any "opportunity" outlined in this Agreement (including all appendices) which does not provide a clear deadline. Deadline notices shall be provided to Sponsor in writing, which may include e-mail. All opportunities must be accepted or rejected by the deadline provided, or Sponsor risks losing such opportunity.

B. **Preferred Vendors.** Festival will provide access to preferred décor/activation and catering vendors, attached hereto as **Exhibit B**.

C. **Confidentiality.**

1. Sponsor agrees to keep confidential the terms of this Agreement (including, but not limited to, financial terms) and not to reveal such terms to any third party that is not under Sponsor's common ownership and control, with the exception that (i) disclosure of the terms hereof to Sponsor's legal and financial advisors shall not be a breach, provided that such advisors are

- expressly made aware of and agree to be bound by this confidentiality agreement, and (ii) Sponsor shall be entitled to make disclosures to the extent required by law or appropriate court order. Notwithstanding the foregoing, Sponsor may make incidental reference to the fact that it has entered into this Agreement to the limited extent necessary to activate the sponsorship benefits conferred herein.
2. The Festival agrees to keep confidential the terms of this Agreement and any of Sponsor's information provided to the Festival and the Festival shall not reveal such terms to any third party, with the exception that (i) the Festival shall be entitled to make disclosures to the extent required by law or appropriate court order, and (ii) such information shall only be considered confidential to the extent permissible pursuant to law. Notwithstanding the foregoing, the Festival may make incidental reference to the fact that it has entered into this Agreement to the limited extent necessary to activate the sponsorship benefits conferred herein.
- D. **Public Records.** The Festival is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and the Festival will respond to such public records requests as required by the law. This provision shall survive the expiration or earlier termination of this Agreement.
- E. **Loss/Theft.** Sponsor is solely responsible for the security of all goods, property, equipment, materials, product or any other items ("Sponsor's Property") that it or its contractors, agents, or other representatives bring to the Festival. The Festival shall have no obligation or liability whatsoever for any loss, misplacement or theft of Sponsor's Property.
- F. **Compliance with Applicable Laws & Permits.** The parties shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all other governmental requirements, in performing under this Agreement. Sponsor acknowledges and agrees that Sponsor has and will at all times maintain all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under this Agreement. The Festival agrees that it will obtain in advance all state and local event permits and licenses that the Festival is required to obtain to conduct the Event(s), including all alcohol beverage permits or licenses.
- G. **Alcohol Beverage Law Representations.**
1. If Sponsor is supplying and/or serving alcohol (including beer, wine and/or spirits), Sponsor, warrants, represents and agrees with the following statements:
 - i. This Agreement is entered into solely for the marketing and promotional rights described herein and that Sponsor's rights under this Agreement is in no way conditioned on any agreement or understanding that any person, firm or company affiliated with or otherwise related to the Festival will be required to purchase or sell any alcohol beverage produced, sold, offered for sale, or served by Sponsor, or refrain from purchasing, selling, or serving any competing products. By entering into this Agreement, Sponsor does not agree, expect, or intend to induce the purchase of any alcohol beverage produced, sold or offered for sale by Sponsor.
 - ii. Sponsor has no agreement with any alcohol beverage retail licensee related to or respecting this Agreement.
 - iii. All tickets sold as set forth in this Agreement to the various events are for the benefit of the Festival only.
 - iv. Any alcohol served or visible on-site must be approved by the Festival in advance and must be distributed by Southern Glazer's Wine and Spirits of Florida.
 - v. Sponsor acknowledges that any and all alcohol beverages donated in connection with the Event(s) that remain unused at the end of the Event(s) shall be immediately disposed of by Sponsor and/or removed from the Event Location(s) within the assigned breakdown time, as detailed in the appropriate Appendix. Absolutely no alcohol beverages may remain at the Event Location after the assigned breakdown time. Should the Sponsor wish to keep any unused product at the conclusion of the Event, it is the responsibility of the Sponsor to make arrangements in advance for any unused product to be removed from the site within the assigned breakdown time, and to clear those prior arrangements on site with the Festival's Supplier Coordinator. The Festival has no responsibility or liability to the Sponsor for any unused product once the Event has concluded. Festival policy does NOT permit the solicitation of on-site sales by sponsors; no cash and carry activity will be permitted at any time.
 2. The Festival represents that no monies paid for the sponsorship rights identified in this Agreement are intended to be or will be passed on by the Festival to any alcohol beverage retail licensee as an inducement to any such retailer to purchase any alcohol beverage produced, sold or offered for sale by Sponsor, nor will any such monies be used to defray any costs that any alcohol beverage retailer would incur in the conduct of its business, including, but not limited to, the purchase of advertising. The Festival further represents that it is not a licensed retailer of alcohol beverages and that no money paid by Sponsor shall directly or indirectly be paid to a retailer of alcohol beverages.
- H. **No Third Party Rights.** This Agreement does not and is not intended to confer any rights or remedies to any party other than the parties to this Agreement. Sponsor acknowledges that no branding or benefits relating to the Festival shall be made available to any entity other than Sponsor, except upon the Festival's advance written approval.
- I. **Indemnification.** Sponsor shall indemnify, defend and hold harmless the Festival, FIU, its Board of Trustees, the Florida Board of Governors, the State of Florida, and their respective directors, officers, agents and employees, from and against any and all damages, losses and all claims, counterclaims, suits, demands, actions, causes of action, setoffs, liens, attachments, debts, judgments, liabilities or expenses including, without limitation, attorney's fees and legal costs, by reason of any claim, suit or judgment arising or alleged to arise from, or relating to: (1) any breach by Sponsor of any term or provision of this Agreement;

(2) any negligent acts or willful misconduct of Sponsor, its employees, agents, representatives, contractors, or subcontractors; or (3) any claim or liability involving fraud, misrepresentation, patent, copyright, trade secret, or trademark infringement in connection with Sponsor's Marks, product(s) and/or service(s), as applicable.

- J. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida and any dispute arising hereunder shall be resolved in the State courts located in Miami-Dade County, Florida.
- K. **Payment.** All payments due from Sponsor, if any, as outlined on the front page of this Agreement, shall be in the form of wire transfer, checks, Mastercard credit card or other charge card payments made payable to "Florida International University" and shall be due on or before the Due Date listed on the front page of this Agreement. If Sponsor fails to make payment by the Due Date, Sponsor agrees to pay a late fee in the amount of 3% (three percent) of Sponsor's Cash Contribution. Additionally, should Sponsor fail to make payment prior to the start of the 2019 Festival, Sponsor shall not be permitted to access the 2019 Festival or any Festival Event(s), including those for which it is involved, until payment is received by the Festival. If the Festival and/or any applicable Festival Event(s) conclude without the Festival receiving payment from Sponsor, Sponsor agrees to reimburse the Festival for all costs incurred by the Festival related to Sponsor and for all marketing/publicity benefits received by Sponsor.
- L. **Failure to Make In-Kind Contribution.** If Sponsor is making an In-Kind Contribution, if any, as outlined on the front page of this Agreement, and Sponsor fails to make such In-Kind Contribution prior to the start of the 2019 Festival, Sponsor shall not be permitted to access the 2019 Festival or any Festival Event(s), including those for which it is involved, until the In-Kind Contribution is received by the Festival. If the Festival and/or any applicable Festival Event(s) conclude without the Festival receiving the In-Kind Contribution from Sponsor, Sponsor agrees to reimburse the Festival for all costs incurred by the Festival related to Sponsor and for all marketing/publicity benefits received by Sponsor.
- M. **Notices.** Any notices to be made hereunder shall be made in writing and shall be sent by hand delivery, email, overnight courier or certified United States mail, return receipt requested, with postage prepaid. Each party may, by notice to the other party as provided herein, change the address to which notices or payments thereafter shall be sent:

Notices to Sponsor shall be sent to:

Bal Harbour Village

655 96th Street, Bal Harbour, FL 33154

Attn: Jorge M. Gonzalez, Village Manager

Phone: 305-993-7321; E-mail: jgonzalez@balharbourfl.gov

Notices to the Festival shall be sent to:

Florida International University

c/o South Beach Wine & Food Festival HQ

1600 NW 163 St. Miami, FL 33169

Attn: Kristen Sofge, Associate Director, South Beach Wine & Food Festival

- N. **Waiver & Amendments.** The failure of either party hereto to insist in any instance upon the strict performance of any provision of this Agreement or to exercise any election contained herein shall not be construed as a waiver or relinquishment for the future of such provision or election. No waiver, modification or amendment by any party shall have been deemed to have been made unless expressed in writing by such party.
- O. **Severability.** In the event that any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be ineffective as to such jurisdiction solely to the extent necessary to render such provision valid, legal and enforceable, and without invalidating or affecting the remaining provisions hereof or affecting the validity, legality or enforceability of such provisions in any other jurisdiction.
- P. **Force Majeure.** If either party is unable to perform any obligation hereunder by reason of any event beyond such party's reasonable control, including, but not limited to, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, strike, lockout or labor dispute, war (declared or undeclared), terrorist threat or activity, or any federal state or local government law, order, or regulation, order of any court or jurisdiction, or other cause not reasonably within either party's control (each a "Force Majeure" event or occurrence), such party shall be excused from performance if and so long as it is prevented from performing such obligations, except for payment obligations. In the event of an actual or threatened Force Majeure event, the defaulting party shall nonetheless exercise its best efforts to avoid and timely cure such default.
- Q. **Insurance.** Sponsor shall, at minimum, have and maintain the types and amounts of insurance that cover the Sponsor, and if applicable, its subcontractor's exposure in performing this Agreement. The Festival, as a part of FIU is a public body corporate entity, warrants and represents that it is self-funded for liability insurance; the Festival is not required to obtain additional insurance for this Agreement. The Festival is not liable for the acts of third parties or the consequences of the acts of third parties.
- R. **Representations.** Sponsor represents and warrants that it is not on the Convicted Vendor List (see Florida Statutes §287.133(2)(a)). Sponsor also assumes such risk with respect to the willful or negligent acts or omissions of Contractor's subcontractors or persons otherwise acting or engaged to act at the instance of Sponsor in furtherance of Sponsor fulfilling

Sponsor's obligations under this Agreement.

- S. **Sovereign Immunity.** Nothing in this Agreement shall be construed as the Festival 's indemnification of Sponsor or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.
- T. **Signatures.** The parties hereby acknowledge and agree that this Agreement may be signed electronically and that such electronic or facsimile signatures shall be deemed an original for all purposes. The parties represent and warrant that any person signing this Agreement electronically or causing this Agreement to be signed electronically has the authority to do so and that such electronic signature shall be sufficient to bind the respective party under this Agreement.
- U. **Authority.** Sponsor represents and warrants that the Agreement has been duly authorized, executed and delivered by and on behalf of the Sponsor and constitutes the valid, binding and enforceable agreement in accordance with the terms hereof. If the Agreement is signed by the Sponsor's representative or agent, such representative or agent represents and warrants that: (1) it is duly authorized to act for and on behalf of the Sponsor, (2) that it is authorized to enter into the Agreement, and (3) that it shall be jointly and severally liable for any breach of the Agreement.
- V. **Entire Agreement.** This Agreement, along with any and all exhibits and appendices attached hereto, sets forth the entire understanding between the parties and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether written or oral, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Sponsor acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein.

SPONSOR ACKNOWLEDGES AND AGREES THAT THE FESTIVAL SHALL NOT CONFER ANY SPONSORSHIP BENEFITS WHATSOEVER TO SPONSOR UNTIL SUCH TIME AS A FULLY EXECUTED CONTRACT BETWEEN THE FESTIVAL AND SPONSOR IS IN PLACE.

By signing below, Sponsor represents that Sponsor has had the opportunity to review this Agreement and agrees with all of the terms and conditions contained herein. The duly authorized representatives of the parties hereby execute this Agreement as of the Effective Date.

AGREED:

Bal Harbour Village

AGREED:

The Florida International University Board of Trustees:

DO NOT SIGN THIS DRAFT

Jorge M. Gonzalez

Christina Jardim

Village Manager

Director, Enterprise Development

Bal Harbour Village

Florida International University

Date: _____

Date: _____

EVENT APPENDIX A

The Event(s):

Event Name: Shabbat Dinner hosted by Einat Admony, Zak Stern and Adeena Sussman (an "Event")
 Description: Sea View Hotel, 9909 Collins Avenue, Bal Harbour
 Location: _____
 Date(s) of Event: Friday, February 22, 2019 Time of Event: 7pm – 10pm
 Price Per Ticket: \$275 Event Capacity: TBD

Event Name: Dinner hosted by Brad Kilgore and Dan Perretta (an "Event")
 Description: _____
 Location: The St. Regis Bal Harbour Resort, 9703 Collins Avenue, Bal Harbour
 Date(s) of Event: Saturday, February 23, 2019 Time of Event: 7pm – 10pm
 Price Per Ticket: \$250 Event Capacity: 120

Event Name: Dinner hosted by Matthew Accarrino, Evan Funke and Ryan Hardy (an "Event")
 Description: _____
 Location: The Ritz-Carlton Bal Harbour, 10295 Collins Avenue, Bal Harbour
 Date(s) of Event: Saturday, February 23, 2019 Time of Event: 7pm – 10pm
 Price Per Ticket: \$250 Event Capacity: 90

Terms related to the Event(s):

1. **Supporting Sponsorship.** Sponsor will be recognized as a supporting sponsor of three (3) Events that the Festival will produce at mutually agreed upon Bal Harbour Village venues. The Festival will separately contract with each venue for the details of these Events. The Festival will manage all aspects of the dinners not provided by the venues.
2. **On-Site Recognition.** Sponsor will receive recognition on all relevant signage related to this Event, and in any verbal recognition of the Event's sponsors by host or Festival representative.
3. **Gift Bag.** Sponsor shall have the opportunity to distribute a branded gift bag and/or branded takeaway to all attendees of this Event.
4. **Resident Discount.** Sponsor will have the opportunity to promote and distribute a discount code for its residents that will entitle them to a 15% discount on tickets to these three (3) Events. The code will be BALHARBOUR15 and will be valid beginning on **Monday, October 22, 2018** until the events sell out.

Festival shall reject any elements of Sponsor's activation that utilizes product that is in direct conflict with a Sponsor receiving category exclusivity at the Festival. Festival shall notify Sponsor of any exclusive sponsorships that may be applicable to Sponsor's activation as early as practicable prior to the activation deadline. The Festival's title partners Food Network and Cooking Channel shall retain the right to display any Food Network or Cooking Channel branded elements within Sponsor's footprint(s) regardless of category exclusivity.

EXHIBIT A
Official Guide



OFFICIAL FESTIVAL GUIDE



READER DEMOGRAPHICS

\$200K+
HHI

25-54
Age

42%
Male

57.5%
Female

In 2018, the Festival held 90+ events with **over 60,000 attendees**

The Festival returns to South Florida from **Wednesday, February 20 through Sunday, February 24, 2019**, with a star-studded cast of characters, from world-renowned chefs and sommeliers to pastry chefs and celebrity television personalities, all showcasing their talents for thousands of Festival-goers.

Attendees will enjoy one-of-a-kind events and interactive culinary experiences. With over 90 events spanning five days and more than 400 celebrated chefs, culinary personalities and winemakers and spirits producers in attendance, the Guide will serve as the go-to publication for more than 700,000 qualified readers.

Readers will engage with the guide—which will have a 2x pass-along rate—for all of their Festival needs, and a digital edition of the guide will be sent to opt-in subscribers across both HCP Media and the **Food Network & Cooking Channel South Beach Wine & Food Festival**. Advertisers can enjoy special features with the digital edition, like live links to advertisers' websites (display ad must include an active URL/website address).

PRINT DISTRIBUTION

- ◆ Miami Herald
- ◆ INDULGE Magazine
- ◆ Visitors Guide Magazine
- ◆ Miami New Times
- ◆ The New York Times
- ◆ Biscayne Times
- ◆ Books & Books
- ◆ Florida International University

DIGITAL DISTRIBUTION

- ◆ SOBEWFF® e-newsletter subscribers: **380,000**
- ◆ Dedicated email/subscription offer with a contest opportunity to win tickets to the Festival



RATES & SPECIFICATIONS

ADVERTISING RATES

Full Page.....	\$6,930
Full Page (Non-Sponsor Rate).....	\$9,240
Half Page.....	\$3,475
Half Page (Non-Sponsor Rate).....	\$4,675

*Sponsors rates only applicable to clients who are official sponsors of the Food Network & Cooking Channel South Beach Wine & Food Festival. Barter and/or trade rates are not applicable to the guide. Any deviation from stated rates are subject to approval.

COLOR DISPLAY SPECS

Full Page (Trim): 7" x 9"
Full Page (Bleed): 7.25" x 9.25"
Half Page: 3.125" x 8.5"

* Live text area for full page ads should be 6.5" x 8.5".

CLOSING DATES

Deadline for Space reservation: **Nov. 1**
 Deadline for Materials: **Nov. 8**



AD MATERIAL REQUIREMENTS*

1. Electronic files are to be sent in Macintosh format only. Accepted programs include Adobe Photoshop and Adobe InDesign. Include all PostScript and screen fonts. Include all images as JPEG or TIFF in high resolution (at least 300 DPI at 100 percent) as CMYK. If files are not provided as CMYK, then we will be forced to convert the color and we cannot guarantee an exact match of color on press. PDF/X-1a files are preferred.
2. A color proof must accompany each ad for all formats, otherwise HCP Media will not accept liability for files that do not print correctly.*
3. Live material not intended to bleed must be kept at least 3/8" from all sides to allow for trim.
4. Live matter in the facing-page subject cannot be closer than 3/8" to the gutter.

*If a high-quality color proof/Matchprint such as Kodak Approvals or Epson (or similar analog proofs with a color control bar) are not provided, then we cannot guarantee color. Please note that all proofs must be made according to SWOP standard. Proofs that do not meet these criteria cannot be used for color matching.

ADVERTISING INQUIRES

Lisa Magnus
 Global Director of Luxury Accounts
E Lmagnus@hcpmedia.com
T 305-376-5257

PRODUCTION DEPARTMENT

Luisa Zelaya-Morillo
 Director of Production
E LZelaya@hcpmedia.com
T 305-376-5254

Marisa Beazel
 President & Publisher
E MBeazel@hcpmedia.com
T 305-376-2686

HCPMDE



EXHIBIT B



PREFERRED VENDORS 2019

CATERING | **FARE TO REMEMBER**
 CREATIVE CATERING
 Contact Name: Nestor Ortiz
 Email: Nestor@faretoremember.com
 Address: 17225 S. Dixie Hwy, Ste 203, Palmetto Bay, FL 33157
 Phone: 786.250.5387 | Fax: 786.592.2294
 Website: www.faretoremember.com

CATERING | **GREAT PERFORMANCES**
 Celebrate Food.
 Contact Name: Josh Satterthwaite
 Email: josh.satterthwaite@greatperformances.com
 Phone: 917.417.8357 | Fax: 212.727.2820
 Website: www.greatperformances.com

CORPORATE PROMOTIONAL BRANDING | **BOUNDLESS NETWORK**
 Contact Name: Alex Gold
 Email: agold@boundlessnetwork.com
 Address: 1601 Rio Grande St., Ste. 410, Austin, TX 78701
 Phone: 512.910.7943 | Cell: 713.725.8855
 Website: www.boundlessnetwork.com

DÉCOR | **DECO PRODUCTIONS**
 D.E.C.O. PRODUCTIONS
 Contact Name: Nicholas Zazzera
 Email: nzazzera@decoproductions.com
 Address: 14350 NW 56th Court #100, Miami, FL 33054
 Phone: 305.558.0800 ext 305 | Cell: 786.202.0957 | Fax: 305.825.8808
 Website: www.decoproductions.com

DÉCOR | **JUST TO PLEASE YOU**
 JUST TO PLEASE YOU
 Contact Name: Javier Pastrana
 Email: javier@justtopleaseyou.com
 Address: PO Box 190871, Miami, FL 33139
 Phone: 786.357.4888 | Fax: 305.763.8417
 Website: www.justtopleaseyou.com

DÉCOR | **SECRET SAUCE**
 Contact Name: Yoana Obregon Mendez
 Email: yoana@wearthesecretsauce.com
 Address: 225 NE 65th St., Miami, FL 33138
 Phone: 786.200.0292
 Website: www.wearthesecretsauce.com

DÉCOR | **WARREN MOORE EVENTS**
 Warren Moore Events
 International Parties & Specialty Events
 Contact Name: W. Dale Moore
 Email: dale@wmooreevents.com
 Address: 18506 NE 5th Ave., Miami Gardens, FL 33179
 Phone: 305.652.5983
 Website: www.wmooreevents.com

DÉCOR | **WOW FACTOR**
 WOW MKTG
 Contact Name: Yoly Garcia
 Email: yoly@wowfactorusa.com
 Address: 800 Douglas Rd. Ste 105, Coral Gables, FL 33134
 Phone: 305.273.8373 ext 200 | Fax: 305.273.8390
 Website: www.wowfactorusa.com

DISPOSABLE DRINKWARE | **TOSSWARE**
 DRINK • TOSS • RECYCLE
 Contact Name: Kari Willis
 Email: KWillis@tossware.com
 Phone: 714.504.1145
 Website: www.tossware.com

PRINTING | **SOUTHEASTERN PRINTING**
 complexity made simple
 Contact Name: Cathy Brewer
 Email: cbrewer@seprint.com
 Address: 950 SW 8th Street, Hialeah, FL 33010
 Phone: 954.275.1893
 Website: www.seprint.com

PROMOS/ WAREHOUSING | **SOUTHEASTERN COMMUNICATIONS**
 from imprint to impact
 Contact Name: Cathy Brewer or Marty Harris
 Email: cbrewer@seprint.com or martyh@sepcommunications.com
 Address: 90 SE 4th Ave, Suite 2, Delray Beach, FL 33483
 Phone: 954.275.1893 or 561.866.1800
 Website: www.sepswag.com

PROMOTIONAL | **IT'S ALL ABOUT BRANDING, LLC.**
 Its All About Branding.com
 Contact Name: Elizabeth Ray
 Email: Elizabeth@ray-productions.com
 Phone: 305.915.1718
 Website: www.ItsAllAboutBranding.com

RENTALS | **EVENTS ON THE LOOSE**
 EVENTS ON THE LOOSE
 Contact Name: Michelle Suero
 Email: michelle@eventsontheloose.com
 Address: 1310 W South Powerline Road, Deerfield Beach, FL 33442
 Phone: 954.350.0479
 Website: www.eventsontheloose.com

RENTALS | **PANACHE EVENTS**
 PANACHE EVENTS
 Contact Name: Allison Gilchrest
 Email: allisongilchrest@panachepartyrental.com
 Address: 2009 NW 25th Ave., Pompano Beach, FL 33069
 Phone: 954.971.8484 | Cell: 954.410.0191
 Website: www.classicpartyrentals.com

SIGNAGE | **METRO SIGNS, INC.**
 METRO
 Contact Name: Abbey Freese
 Email: abbey@metrosignsinc.com
 Address: 1220 South State Rd 7, Hollywood, FL 33023
 Phone: 954.983.6662 ext 216
 Website: www.metrosignsinc.com

SOCIAL MEDIA ENHANCEMENT | **FOODIE TRIBE**
 FOODIE TRIBE
 Contact Name: Katy Coffield
 Email: info@foodietribe.org
 Address: 223 Zamora Ave., Apt 3, Coral Gables, FL 33134
 Phone: 786.543.1123 | Fax: 786.390.8510
 Website: www.foodietribe.org

STAFFING & BARTENDERS | **BORROW A BARTENDER**
 BORROW A BARTENDER
 Contact Name: Joseph Janusz
 Email: borrowbartender@gmail.com
 Address: 292 NE 71st St, Miami, FL 33138
 Phone: 305.244.9966
 Website: www.borrowbartender.com


Last updated: 06.07.18

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: November 20, 2018

SUBJECT: **Application for Site Plan Amendment - Bal Harbour Shops**

BACKGROUND

Site Plan Approval

On May 16, 2017, the Village Council approved the Bal Harbour Shops Site Plan application and a Development Agreement to allow for their proposed expansion. Resolution No. 2017-1077 approved the Site Plan with a variety of conditions which were required to address pending issues, mitigate the impact of construction, and generally improve the development overall. Subsequent to the approval of the Site Plan and in furtherance of the conditions of the Site Plan resolution, the Village and representatives of BHS have continued to meet. At these meetings, many of the conditions and how they can be best implemented are discussed. Village staff tracks the stipulations of the Development Agreement as well as the Site Plan conditions to ensure that all requirements are met.

2017 Minor Site Plan Modifications

On August 10, 2017 (after discussion with staff), the BHS transmitted a formal request for administrative approval of minor modifications to the approved site plan that are required to either fully or partially conform to several conditions in the resolution. I reviewed the scope of those modifications in accordance with the Code's site plan procedures, and concluded that none of them triggered a site plan amendment.

Generally, the 2017 minor site plan modification proposed to consolidate the two approved underground parking structures (1. Along the southern edge of the property on 96th Street and 2. At the northeast area of the property adjacent to the existing Neiman Marcus store) into one consolidated underground parking structure to be constructed under the footprint of the new approved retail buildings (the current location of the parking garage). As proposed, the modification did not materially affect or change the aesthetics of the project, the facades of the approved buildings or how the project generally looked at ground level or above to residents or patrons. The modification did not change the approved parking counts; however, the ratio of self-parking to valet parking was improved. In addition, the loading and delivery bay area within the above ground parking structure

along 96th Street was enlarged and was able to better accommodate delivery trucks throughout the day. Circulation patterns for traffic and pedestrians were modified to make them safer.

In addition to addressing (partially or fully) as many as 16 of the conditions of approval, the consolidation of the underground parking structures reduced the impact on traffic at 96th Street and resulted in an overall shortened construction period for the project. A revised phasing plan was submitted, for an estimated 84 months of construction. The proposed modification included favorable recommendations from the project's Parking Consultant (Walker Parking) and Traffic Consultants (Fandrei Consulting, Inc.)

The proposal was also reviewed favorably by the Village Planner (Michael Miller) and Traffic Consultant (The Corradino Group). In our review, we noted that the modifications provided for an improved project, with significant improvements to the site circulation, traffic safety and an overall enhanced pedestrian experience.

The Village Attorney and I reviewed the proposed modification, and I determined that it did not trigger a site plan amendment (whether minor, which is administratively approved, or major, which requires Council approval) pursuant to our Village Code. Notwithstanding that I felt it appropriate to discuss the application with the Village Council at its November 21, 2017 meeting. After this discussion, I issued a letter approving the requested modifications in the 2017 minor site plan modification.

2018 Proposed Site Plan Amendment

The Village and representatives from BHS have continued to meet on a regular basis to monitor the project progress and address issues as they may arise. Over the last several months, the discussions have focused on the BHS desire to submit another amendment application for consideration. On October 22, 2018 (after discussions with staff), BHS transmitted a formal request for approval of a revised site plan, proposed text amendments and proposed amendments to the development agreement. As with the previous modification, the 2018 proposed amendment would not materially affect or change the aesthetics of the project, the facades of the approved buildings, or how the project will generally look at ground level to residents or patrons.

The following is the Project summary provided by the applicant:

The revisions include: the removal of three levels of underground parking; a dedicated pedestrian access through the 96th Street garage entrance; an increased truck loading area; improved valet circulation; enhanced truck queuing and maneuverability; improved Collins Plaza; joint Collins entrance for BHS and the New Village Hall; increased public easements and right-of-way improvement areas. There are many positive cumulative impacts that flow as a result of the proposed revisions, including improvements to the overall on-site circulation, queuing, and pedestrian access and circulation. In

addition, the construction immediately adjacent to operating roadways will be reduced as there will no longer be underground garages constructed in these areas. Moreover, the elimination of the underground parking allows for an overall shortened construction period. This Amendment also provides for the construction of New Village Hall early on in the construction of the Project rather than after the completion of the Project, which allows for the transfer of New Village Hall and the Fairfield site several years earlier than the currently approved plan. As such, this amendment improves and enhances the approved plans and address many of the required Resolution conditions.

ANALYSIS

1. Phased Development Dependent on Documented Parking Demand

The 2018 proposed amendment would allow the project to be developed in phases, with less of the approved buildable gross floor area (GFA) coming on line in the immediate horizon. Future phases would depend on parking demand reductions that could result from continued innovations in ride hailing services (Uber, Lyft, etc.) and further developments in autonomous vehicle and other similar technologies, well into the future. This future phase would be dependent on demonstrated empirical data and actual evidence of the then existing parking demand.

As mentioned, the BHS would not construct the approved underground parking; instead, it would use the currently approved third floor area in the new retail buildings for parking in the near term, along with the new parking garage along 96th Street. By addressing their parking demand in this manner, the overall timeline for construction and the overall gross leasable area (GLA) are reduced. The ability to later build out this floor is triggered by administrative approval of a demonstrated reduction in parking demand equal to or in excess of the impact of the conversion on the parking demand of the overall project.

2. Alternative Northern Entrance

In early 2018, the BHS proposed to revise the northern entrance to the project to implement the condition of approval encouraging such revision. The proposed revision incorporated a portion of the Bal Cross right of way, and therefore required approval of an ordinance to allow such access by amending Section 21-320 of the Village Code. The Council declined to approve that ordinance on second reading, and so it never reached the hearing on the redesigned northern entrance. Pursuant to Resolution 2017-1077, specifically Traffic Flow Condition #1, a 90 degree orientation to the northern entrance on Collins at Bal Cross Drive is once again submitted as part of the 2018 proposed amendment, as an alternative subject to review and approval from FDOT and/or other regulatory agencies. However, the lanes are moved 27 feet southward from the prior proposal, to avoid as much of the existing Bal Cross Drive as possible, resulting in a larger and more lushly landscaped buffer between the New Village Hall site (Fairfield Manor

parcel) and the BHS. The redesign also ensures that the entry lanes are within the twenty-foot sound wall, therefore mitigating any light pollution and vehicle noise that may arise. While the overlap with Bal Cross is reduced, approval of the revised entrance still requires approval of the change to Section 21-320 of the Village Code.

3. Development Agreement Amendments

Of course, as part of our discussion, we have negotiated amendments and modifications to the approved Development Agreement. Among these are an accelerated timeline for the delivery of the New Village Hall. Under the proposed amendment, construction of the New Village Hall would begin no later than 30 months after the beginning of construction on the 96th Street Garage which is part of the first phase of construction (assuming the Final Approval Date has been met), a much sooner delivery date for this significant public benefit. Other elements of the Public Benefits package are also accelerated. Lastly, the BHS have agreed to engage with Zyscovich Architects, Inc. (should the Council wish to use them) to complete the construction drawings for the Waterfront Park on our behalf with costs being reduced from the \$3.5 million contribution to the Village to be provided by BHS. This would greatly accelerate our ability to break ground on and ultimately deliver the Waterfront Park.

Consultant Review and Recommendations

The application for the 2018 proposed amendment included favorable recommendations from the project's Parking Consultant (Walker Parking) and Traffic Consultants (Fandrei Consulting, Inc.) The proposed Site Plan amendments was also reviewed favorably by the Village Planner (Michael Miller) and Traffic Consultant (The Corradino Group). In our review, we noted that the modifications provide for an improved project, with significant improvements to the site circulation, traffic safety and an overall enhanced pedestrian experience. (This review is specific to the Site Plan amendments -- review of the Parking Demand Analysis Update dated October 18, 2018 conducted by Walker Consultants is still under review.)

In addition to addressing (partially or fully) as many as 16 additional conditions of approval, the 2018 proposed amendment will result in an enhanced project, with a shortened construction timeframe, thereby reducing the impact to our community, while preserving the applicant's ability to build their remaining GLA at some time in the future, should conditions warrant.

Determination of Site Plan Amendment Status

The approving resolution stipulates that modifications to the site plan may require Council approval. Section 21-322(a)(2) of the Village Code specifies what types of modifications would trigger a Site Plan review. They are:

- a. A horizontal shift of the exterior-facing boundaries of the existing building footprint of any Structure which results in an increase in Floor Area Ratio or lot coverage;
- b. An increase in the height of any existing Structure;
- c. **Alterations to existing physical features affecting traffic circulation or access patterns between the site and any right-of-way;**
- d. A change in use of a Structure, or any part thereof, to a Conditional Use as listed in Section 21-316;
- e. **A reduction or relocation of more than ten percent of the parking spaces existing on a Development Site.**

I have reviewed the 2018 proposed amendment and have determined that it meets the criteria of a Site Plan Amendment, specifically as it relates to items c and e above.

The Code further requires me to categorize the Site Plan Amendment as major or minor; the amendment is presumed to be major, requiring Council approval, unless "the applicant demonstrates to the satisfaction of the Village Manager or designee that the proposed Development and/or Conditional Use **will not significantly alter existing impacts to Adjacent premises or significantly increase the burden on existing infrastructure or public services**, in which case it shall be reviewed as a minor site plan." Section 21-322(a)(4) requires me to consider the following in making this determination:

- a. The extent to which the Development would create or alleviate environmental problems such as air or water pollution or noise;
- b. The amount of pedestrian or vehicular traffic likely to be generated;
- c. The number of persons, including employees, likely to be present;
- d. The size of the Development;
- e. The likelihood that additional or subsidiary Development will be generated; and
- f. The extent to which the Development would create an additional demand for, or additional use of, energy, water, sewer capacity, road infrastructure, and other public services.

I reviewed the application and determined that it is a minor site plan amendment capable of administrative approval. However, it is my recommendation that the Village Council hold a hearing and decide whether to approve the proposed amendments because it revises the northern entrance to the Shops and proposes to realign the portion of Bal Cross located outside of the gated community, as well as other changes that will affect the overall scope and timing of the project and package of public benefits.

CONCLUSION

Therefore, the Site Plan Amendment application is presented to you for your consideration. Should the Council wish to approve the Site Plan Amendment, several actions must be taken at the November 20, 2018 Council meeting. They are:

1. Local Planning Agency review and recommendation and Council first reading of an Ordinance amending Section 21-320(a) to remove the limitation of access to BHS from Collins or 96th street only.
2. Local Planning Agency review and recommendation and Council first reading of an Ordinance amending various elements of the parking requirements for "B" Business properties set forth in Article V of Chapter 21, Zoning.
3. Council's first public hearing on an amendment to the Development Agreement between Bal Harbour Village and The Bal Harbour Shops.

The proposed Site Plan Amendment itself will be brought to a subsequent Village Council meeting for consideration of a Resolution of approval with recommended conditions, together with the second reading and approval of the two ordinances and development agreement resolution referenced above, as well as a report from the Architecture Review Board on the Site Plan Amendment as required by Section 21-322(d) of the Village Code.

Attachments:

1. Proposed Site Plan modification Transmittal Letter dated October 22, 2018
2. Applicant analysis of Review Criteria
3. Status of Conditions of Approval (Resolution 2017-1077)

Via Hand Delivery

October 22, 2018

Mr. Jorge Gonzalez
Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154

Re: Bal Harbour Shops



Dear Mr. Gonzalez:

This correspondence is transmitted to you on behalf of Bal Harbour Shops, LLLP (“BHS”) and is the result of the discussions that BHS has had with Village Staff regarding parking modifications to the approved plan and providing an alternative joint access to Bal Harbour Shops and the New Village Hall site, as well as addressing various conditions contained Resolution No. 2017-1077 (the “Resolution”).

During these discussions, BHS advised Village Staff that due to changing conditions in parking needs resulting from the increased use of ride sharing, BHS would like to eliminate the construction of underground parking and reduce the parking requirements within the Special Business Improvement Area. Enclosed please find expert reports from Walker Parking Consultants and Fandrei Consulting, Inc. that support this request and confirm that there are no changes or impacts because of the requested modification.

The revised site plan, proposed text amendments and proposed Amendment to the Development Agreement facilitate this request and provide for a reduction in parking requirements and for the Project to be developed in phases.

In addition, Village Staff, Village experts and BHS’s experts discussed the possibility of an alternative joint access driveway that would serve for ingress and egress for both Village Hall and BHS. This joint access allows for alignment of the new traffic signal which would benefit ingress and egress to the new Village Hall site, and provide for additional stacking and queuing lanes on Collins Avenue. The Village’s traffic engineer, BHS’s traffic engineer and FDOT have reviewed the proposed joint access and are in support of the modification. In the event that the Village Council chooses not to move forward with the proposed joint access, or if BHS can not receive all of the necessary approvals, BHS will develop its new Collins entrance as previously approved by the Village Council.

The elimination of underground parking and proposed joint access is supported by all expert consultants and will greatly reduce the overall construction of the Project and expedite the construction of the New Village Hall without creating any impacts.

Enclosed please find: (1) original signed and sealed architectural and landscape plans dated September 14, 2018; (2) Walker Consultants Parking Study dated October 18, 2018; (3) Fandrei Consulting, Inc. BHS Traffic Impact Analysis March 2018 (full update of the 2014 Study); (4) Fandrei Consulting, Inc. Technical Memo re: Traffic Impact Analyses of Minor Site Plan Modification; (5) Fandrei Consulting, Inc. Technical Memo re: Queuing at North Driveway and at 96th Street Driveway; (6) Fandrei Consulting, Inc. Memorandum re: Truck Movements in Loading Zone; (7) Off-Street Parking Text Amendment; (8) Business District Noise Text Amendment; and (9) an electronic version of all of the above.

As always, please contact me should you require any additional information or documents. Thank you for your anticipated attention to this matter.

Sincerely,



Amy E. Huber
For the firm

Enc.

cc: Dwight Danie, Village Clerk
Susan Trevarthen, Esq.
Joseph Corradino, P.E. (via Federal Express)
Michael Miller, AICP (via Federal Express)

Bal Harbour Shops October 2018 Site Plan Amendment

Sec. 21-322. - Site plan review.

(f) Village Council Determination of Major Site Plan Applications. The Village Council shall consider the major site plan application at a public hearing that is noticed in the manner set forth in Section 21-52. The Village Council may approve, approve with conditions, defer or deny the application. In rendering its decision, the Village Council shall consider the Village Manager or designee's recommendation. Approval of the proposed application and intended use shall require a finding that the major site plan and intended use(s):

(1) Are designed and scaled to be compatible with and avoid depreciation of Adjacent properties and to minimize adverse impacts to Adjacent Development and the surrounding neighborhood by virtue of the proposal's nature, location, design, Building mass, intensity of use, or mitigation measures; and

The design and scale of the proposed Site Plan Amendment is consistent with the May 2017 approved site plans and does not create any new adverse impacts to adjacent properties. The location, design and building mass has not been significantly altered, other than the removal of underground parking from the project. The intensity of use of the Project has been modified to reduce the amount of permanent parking spaces on the property and to allow for the project to be developed in phases.

(2) Will not create excessive noise, traffic, illumination or other adverse impacts; and

The design, scale and intensity of the proposed Site Plan Amendment is consistent with the May 2017 approved site plans and does not create any additional adverse impacts. The following reports have been submitted in connection with the application and demonstrate that no adverse impacts are created by the amendment: (1) original signed and sealed architectural and landscape plans dated September 14, 2018; (2) Walker Consultants Parking Study dated October 18, 2018; (3) Fandrei Consulting, Inc. BHS Traffic Impact Analysis March 2018 (full update of the 2014 Study); (4) Fandrei Consulting, Inc. Technical Memo re: Traffic Impact Analyses of Minor Site Plan Modification; (5) Fandrei Consulting, Inc. Technical Memo re: Queuing at North Driveway and at 96th Street Driveway; and (6) Fandrei Consulting, Inc. Memorandum re: Truck Movements in Loading Zone.

(3) Provide for safe, efficient, convenient and harmonious groupings of Structures, uses and facilities and for appropriate relationship of space inside and outside of Buildings to intended uses and to structural and architectural features within the site; and

The location and groupings of the buildings in the proposed Site Plan Amendment are consistent with the May 2017 approved site plans which provide for safe, efficient, convenient and harmonious groupings of structures, uses and facilities and for appropriate relationship of space inside and outside of buildings to intended uses and to structural and architectural features within the site. The Site Plan Amendment does not change the location or groupings of the buildings, only removes the underground parking. The architecture and design of the Project remains the same as approved.

(4) Uphold the basic intent and purpose of zoning and other land use regulations, observing the spirit of the regulations and assuring public safety and welfare, without tending to create a fire or other equally or more dangerous hazard or provoke the excessive overcrowding or concentration of people or population.

The proposed Site Plan Amendment, like the May 2017 approved site plan upholds the basic intent and purpose of the zoning and land use regulations. The proposed Site Plan Amendment specifically includes a dedicated pedestrian access through the 96th Street garage (completely segregated from vehicular traffic by allowing the pedestrian to walk directly into the ground level of the shopping center); an enhanced 96th Street garage entrance; an increased truck loading area; improved valet circulation; enhanced truck queuing and maneuverability; improved Collins Plaza; joint Collins entrance for BHS and the new Village Hall; and increased public easements and right-of-way improvement areas, all of which help to assure public safety and welfare and improve the Project.

Via Electronic Mail

November 9, 2018

Mr. Jorge Gonzalez
Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154

Re: Bal Harbour Shops October 2018 Site Plan Amendment

Dear Mr. Gonzalez:

This correspondence is transmitted to you on behalf of Bal Harbour Shops, LLLP (“BHS”) and is intended to identify the conditions in Resolution No. 2017-1077 (the “Resolution”) that BHS has already satisfied or will satisfy through the proposed Site Plan Amendment. This submittal includes modifications discussed by BHS and Village Staff as required by the Resolution.

This Site Plan Amendment is the result of the collaboration with Village Staff to improve and enhance the approved plan as required by the Resolution conditions. The revisions include: the removal of three levels of underground parking; a dedicated pedestrian access through the 96th Street garage (completely segregated from vehicular traffic by allowing the pedestrian to walk directly into the ground level of the shopping center); an enhanced 96th Street garage entrance; an increased truck loading area; improved valet circulation; enhanced truck queuing and maneuverability; improved Collins Plaza; joint Collins entrance for BHS and the new Village Hall; increased public easements and right-of-way improvement areas. There are many positive cumulative impacts that flow as a result of these revisions, including improvements to the overall on-site circulation, queuing, and pedestrian access and circulation. In addition, the construction immediately adjacent to operating roadways will be reduced as there will no longer be underground garages in these areas. Moreover, the elimination of the underground parking allows for an overall shortened construction period. This Amendment also provides for the construction of new Village Hall early on in the construction of the Project rather than after the completion of the Project, which allows for the transfer of new Village Hall and the Fairfield site several years earlier than the currently approved plan. As such, this amendment improves and enhances the approved plans and address many of the required Resolution conditions.

Bal Harbour Shops has satisfied the following Resolution conditions:

Landscape/Buffer Conditions

2. The design of the 20’ tall buffer wall along Park Drive shall be submitted to the Village Manager of designee for review and recommendation, which shall not be unreasonably withheld,

and the Village Council for approval, of its design, quality, appearance and compatibility with neighboring properties prior to the issuance of a building permit, and shall be entirely landscaped so that it is not visible from Park Drive to the maximum extent possible. The landscaping shall be maintained by the applicant.

Addressed. The Village Council reviewed and approved the design of the buffer wall and landscaping at its July 18, 2017 Council Meeting through the adoption of Resolution 2017-1090.

3. The construction of the 20' tall buffer wall along Park Drive shall be constructed as one of the initial elements of Phase 1 of the applicant.

Addressed. Bal Harbour Shops completed the construction of the wall was completed in January 2018 and installation of the landscape buffer was completed in April 2018.

The Bal Harbour Shops October 2018 Site Plan Amendment satisfies the following Resolution conditions:

Construction Conditions

1. Prior to the issuance of a building permit for each phase of construction, a Method of Transportation (MOT) shall be submitted to the Village Manager or designee for review and approval prior to FDOT review and the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site, including a detailed explanation of how deliveries will be conducted during the various phases of construction.

Partially addressed. The amendment reduces the duration of construction at both major roadways (Collins Avenue and 96th Street) within the Village of Bal Harbour. This will result in less impact to the roadways (fewer lane blockages, improved pedestrian and vehicular flow) and simplified MOT's for each phase of the project.

2. For the entire duration that the Fairfield Manor site is used as a staging or construction site, the property will be kept in orderly condition, free of litter, debris, or other nuisances. The property shall be entirely enclosed by a sturdy wood (or appropriate alternate material) fence and screened by a hedge or other vegetation so as to minimize the visibility of the site.

Partially Addressed. The duration that the Fairfield property will be utilized for construction staging is reduced by eliminating underground parking from the development plan. Moreover, the amendment also results in the design of New Village Hall almost immediately after Final Approvals are received, construction of New Village Hall to begin early on during construction of the Project rather than after its completion which results in the transfer of the Fairfield property to the Village several years earlier than with the approved plan.

Landscape/Buffer Conditions

6. The new parking structure façade along 96th Street shall be designed in such a manner to minimize the structure's exterior appearance as a parking garage and to minimize any light pollution or noise that may emanate from the structure or vehicles that will be parked in the structure.

Addressed. The amendment, including the elimination of the underground parking, provides for a streamlined vehicular entry for patrons and a larger truck loading area. Both changes will aid in improving the visibility of the façade.

Traffic Flow Conditions

1. The applicant shall work with the Village staff to explore the redesign of the main entrance from Collins Avenue to accomplish an angle of entry as close to 90 degrees as possible.

Addressed. The applicant worked with the Village to develop the modified Collins entrance and this amendment provides for the mutually designed Collins Avenue joint entrance which accomplishes close to a 90 degree angle entrance.

2. The applicant shall work with Village staff to ensure that the redesign of the medians along Collins Avenue do not negatively affect the egress and ingress from the proposed new Village Hall site.

Addressed. The applicant worked with the Village to develop the modified Collins entrance and this amendment provides for the mutually designed Collins Avenue joint entrance which greatly improves ingress and egress to the New Village Hall site and provides for signalized access.

3. The applicant shall redesign, in a manner to be approved by staff, the proposed new North Driveway ticket/pay booths moving them as far into the site near the curve as possible for the purpose of adding additional vehicular queuing, so long as it does not adversely affect vehicle circulation. Alternatively, the applicant may consider removing the pay booths entirely and using alternative methods for paid parking (pay by plate, flat rates, etc.).

Addressed. The applicant worked with the Village to develop the modified Collins entrance to address the location of the pay booths and have been located to improve vehicular queuing and circulation.

4. Because the plans indicate that the Collins Plaza parking area will be valet-only, the applicant shall remove the parking ticket dispensers from the secondary (valet only) entrance from Collins Avenue. The applicant shall also remove the parking booths from the secondary (valet only) exit to Collins Avenue.

Addressed.

6. The one-way westbound driveway from Barneys/Building Z to the north shall be redesigned to become a two-way drive.

Addressed. See amended plan.

7. The applicant shall work with the Village staff to explore improvements to the valet pick-up and drop-off design at the Barneys/Building Z entrance to minimize congestion and provide safer access.

Addressed. The applicant worked with the Village and modified this area. See amended plan.

8. The applicant shall work with the Village staff to explore the redesign of the valet pick-up on the main driveway next to Neiman Marcus and provide a dedicated pick-up area to improve safety.

Addressed. The applicant worked with the Village and modified this area. See amended plan.

Pedestrian/Public Realm Conditions

1. The applicant shall remove 10 parking spaces and trees in planters located adjacent to the pedestrian-only central walkway of the Collins Plaza in order to create a pedestrian promenade of a consistent width (at least 60 feet wide) connecting from sidewalk along Collins Avenue to the Porte Cochere entrance to the Shops.

Addressed. See amended plan.

3. Applicant and Village will work to provide a better pedestrian experience along Collins Avenue fronting the proposed expansion to Neiman Marcus. Topics to be explored may include but are not limited to: the sidewalk should be expanded, the valet-only street should be minimized to enhance pedestrian access, and the paving treatment should be modified to reinforce pedestrian access similar to the plaza areas.

Addressed. See amended plan.

Loading and Service Areas:

3. Delivery trucks shall not be allowed to idle unnecessarily in the loading areas.

Partially addressed. The amendment provides for a larger truck loading area and brings the loading area online much sooner in the project. These changes further enhance truck loading area.

4. The delivery area fronting 96th Street shall have a gate, designed in a manner consistent with the overall architecture of the façade and shall remain closed except during actual reasonable delivery periods.

Addressed. The larger loading area in the amendment provides for better integration into the 96th Street façade.

5. Delivery and trash trucks shall only be permitted to park in the designated loading areas.

The amendment provides for a larger truck loading area and brings the loading area online much sooner in the project. These changes further enhance the truck loading area.

7. Prior to the issuance of a building permit, the applicant shall provide Village staff, for review and approval, a drawing showing the proposed routes/locations for all delivery vehicles both during construction and during the operation of the expanded project

Delivery routes and locations are simplified in the modifications.

In summary, this Amendment provides for significant enhancements to the Project and the mutually agreed upon resolution of several conditions.

As always, please contact me with any questions.

Sincerely,



Amy E. Huber, Esq.
For the firm

cc: Dwight Danie, Village Clerk
Susan Trevarthen, Esq.

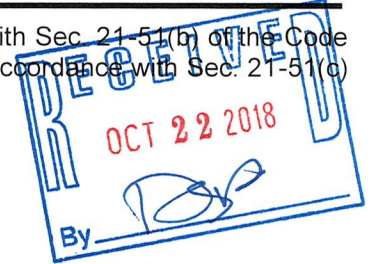
SP

BAL HARBOUR VILLAGE APPLICATION FOR SITE PLAN APPROVAL

Date: _____
Case No: _____
Receipt No.: _____

Fee: The application shall be accompanied by a public hearing filing fee in accordance with Sec. 21-51(b) of the Code of Ordinances. Additionally, cost recovery deposits shall be required as follows, in accordance with Sec. 21-51(c) of the Code of Ordinances.

- (1) Major: The initial nonrefundable cost recovery fee shall be \$3,500.00.
- (2) Minor: The initial nonrefundable cost recovery fee shall be \$1,000.00.



The Village shall maintain a record of all costs involved in the review including Village staff, consultants and out of pocket costs including advertising and public notice. Prior to scheduling a public hearing the applicant shall pay the Village for the actual costs of review over the initial deposit.

In addition to this application form, the Applicant shall supply the documentation required by, and show compliance with Section 21-322 of the Village's Code of Ordinances as well as the Village's Supplemental Site Plan Submission Requirement Checklist. Additional analysis, information or evaluation may be required by staff as needed to provide sufficient information as necessary to fully evaluate the request's compliance with the Code requirements.

Petitioner: Bal Harbour Shops, LLLP

Signature of Petitioner: _____

Petitioner Address: 9700 Collins Avenue City: Bal Harbour Village, FL

Phone: (305) 403-9200 Fax: (305) 403-0251 E-mail: MWL@whitmanfd.com

If Petitioner is not the Owner, Name of Owner: _____

Signature of Owner: _____

Owner Address: _____ City: _____

Phone: _____ Fax: _____ E-mail: _____

Present Zoning District: B Business Present Future Land Use Map (FLUM) Designation: Commercial Change No

Address of Property: 9700 Collins Avenue, Bal Harbour

Legal Description of Property (Plat Book/Page or Metes and Bounds): Please see attached survey
(May Attach Separate Legal Description)

OWNER / AGENT CERTIFICATE:

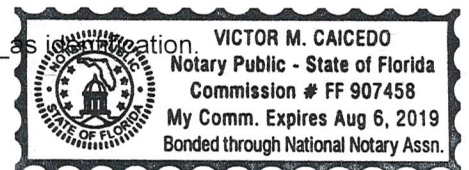
This is to certify that I am the owner/agent of the subject lands described above in the application for Site Plan Approval, and that all information supplied herein is true and correct to the best of my knowledge. By signing this application, owner/agent specifically agrees to allow access to described property at reasonable times by Village personnel, for the purpose of verification of information provided by owner/agent.

Signature of owner/agent: _____ Sworn to and subscribed before me this
_____ day of November 2017, by _____

- He/She is personally known to me or
- He/She has presented

Signature of Notary Public _____

Type or Print Name Victor Caicedo



FOR STAFF USE ONLY

Architectural Review Board Date: _____ () Approved () Denied () Approved with conditions

Village Council Date: _____ () Approved Resolution No. _____
() Denied () Approved with conditions

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-268 "ADDITIONAL STANDARDS FOR GRANDFATHERED APARTMENT-HOTEL PROJECTS" TO ADDRESS THE USE OF STRUCTURES IN THE REAR SETBACK

Issue:

Should the Village Council approve spas and fitness facilities and other guest serving uses as an accessory use?

Item Summary/Recommendation:

Fortune International Realty desires to use the existing building on the rear of 10250 Collins Avenue property, as a Spa and Fitness Center for the use of the three (3) Apartment Hotel sites within the Beach Haus Bal Harbour complex.

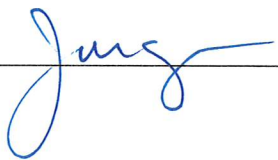
Section 21-267 of the RM-5 Multiple Family Residential District standards in the Bal Harbour Village Code of Ordinances currently allows one-story garages and Servants' Quarters to be located within the first 25 feet of the rear 30-foot setback, and Section 21-1 defines the accessory use of Servants' Quarters in relevant part as "accommodations for such number of servants and other employees as are required by the main occupancy, which accommodations may be detached and may or may not include separate cooking facilities."

Since spas, fitness centers, and other guest serving uses are proposed to be allowed as accessory uses only for an apartment-hotel, and these uses will enhance the apartment hotel project and will not be incompatible with surrounding uses, staff is proposing the following additional standard for the grandfathered apartment hotel use in the RM-5 Multiple Family Residential Zoning District, as modified to reflect the Council's input at first reading: (d) *Accessory uses in rear setback*. Structures erected in the rear 30 feet of the Lot, not nearer than five feet to the side or rear lines, may be used for one-story garages, Servants' Quarters, or spa and fitness facilities and facilities for the exclusive use of guests of grandfathered apartment hotel projects. Guest facilities may include business centers, fitness facilities, gyms, meeting rooms, spas or other similar uses approved by the Village Manager or designee.

Financial Information:

	Amount	Account	Account #
1	N/A	N/A	N/A

Sign Off:

Building Department		Village Manager
Graciela M. Escalante		Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-268 "ADDITIONAL STANDARDS FOR GRANDFATHERED APARTMENT-HOTEL PROJECTS" TO ADDRESS THE USE OF STRUCTURES IN THE REAR SETBACK; PROVIDING FOR DEFINITIONS, SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending that the Village Council approve the adoption of an ordinance addressing the use of structures in the rear setback of RM-5, Additional Standards For Grandfathered Apartment Hotel Projects to include allow spa and fitness facilities and other guest serving uses in the rear setback.

BACKGROUND

By way of background, in July 2017, Fortune International Realty purchased the three buildings owned by Bal Harbour Ouarzo (Ouarzo) located at 290 Bal Bay Drive (current hotel); 291 Bal Bay Drive (current vacant building under construction); and 10250 Collins Avenue (current occupied rental property). On November 17, 2017 the Village Council approved a Compliance Agreement between Fortune International Realty and the Village to resolve an unsafe structures case associated with 291 Bal Bay Drive.

Beach Haus Bal Harbour's properties are in the Grandfathered Apartment Hotel Use in the villages RM-5 Multi-Family Residential Zoning District. Currently, the Beach Haus Bal Harbour located at 291 Bal Bay Drive is under construction and in compliance with the aforementioned Compliance Agreement. The Developer desires to use the existing building on the rear of 10250 Collins Avenue property, as a Spa and Fitness Center for the for the use of the three (3) Apartment Hotel sites within the Beach Haus Bal Harbour complex.

Section 21-267 of the RM-5 Multiple Family Residential District standards in the Bal Harbour Village Code of Ordinances currently allows one-story garages and Servants' Quarters to be located within the first 25 feet of the rear 30-foot setback, and Section 21-1 defines the accessory use of Servants' Quarters in relevant part as "accommodations for such number of servants and other employees as are required by the main occupancy, which accommodations may be detached and may or may not include separate cooking facilities." Section 21-268 "Additional Standards for Grandfathered Apartment Hotel Projects" establishes development standards applicable only to grandfathered apartment hotel projects in the RM-5 district. Since spas, fitness centers, and other guest serving uses are proposed to be allowed as accessory uses only for an apartment-hotel, and these uses will enhance the apartment hotel project and will not be incompatible with surrounding uses, staff is proposing the following additional standard for the grandfathered apartment hotel use in the RM-5 Multiple Family Residential Zoning District, as modified to reflect the Council's input at first reading:

(d) Accessory uses in rear setback. Structures erected in the rear 30 feet of the Lot, not nearer than five feet to the side or rear lines, may be used for one-story garages, Servants' Quarters, or spa and fitness facilities and facilities for the exclusive use of guests of grandfathered apartment hotel projects. Guest facilities may include business centers, fitness facilities, gyms, meeting rooms, spas or other similar uses approved by the Village Manager or designee.

CONCLUSION

Village Staff is recommending that the proposed "Additional Standards for Grandfathered Apartment Hotel Projects" allowing spas, fitness facilities, and other guest-serving uses of accessory structures in such projects, be approved.

This ordinance was approved at first reading on October 16, 2018 with the condition that staff revise the ordinance to include other accessory uses typically allowed in apt/hotel zoning to serve hotel guests that would not adversely impact neighboring residential properties. This change has been included in this memo and in the ordinance language.

ORDINANCE NO. 2018-_____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," DIVISION 9 "RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT," SECTION 21-268 "ADDITIONAL STANDARDS FOR GRANDFATHERED APARTMENT-HOTEL PROJECTS" TO ADDRESS THE USE OF STRUCTURES IN THE REAR SETBACK; PROVIDING FOR DEFINITIONS, SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

WHEREAS, Section 21-267 of the RM-5 Multiple Family Residential District standards in the Bal Harbour Village Code of Ordinances currently allows one-story garages and Servants' Quarters to be located within the first 25 feet of the rear 30-foot setback, and Section 21-1 defines the accessory use of Servants' Quarters in relevant part as "accommodations for such number of servants and other employees as are required by the main occupancy, which accommodations may be detached and may or may not include separate cooking facilities. . . ."; and

WHEREAS, Section 21-268 "Additional Standards for Grandfathered Apartment Hotel Projects" establishes development standards applicable only to grandfathered apartment hotel projects in the RM-5 district; and

WHEREAS, the Village Council of Bal Harbour Village ("Village") desires to adopt an additional standard for the grandfathered apartment hotel use in the RM-5 Multiple Family Residential Zoning District; and

WHEREAS, a grandfathered apartment hotel project is redeveloping an existing RM-5 apartment house which includes Servants' Quarters located within the rear setback pursuant to Section 21-267, and desires to use the Servants' Quarters for accessory spa and fitness facilities; and

WHEREAS, the Village Council finds that such use will enhance the apartment hotel project, will not be incompatible with surrounding uses, and will generate less parking than Servants' Quarters; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on October 17, 2018, and recommended approval; and

WHEREAS, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village’s Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

Section 2. **Village Code Amended.** That Chapter 21 “Zoning,” Article III “District Regulations,” Division 9, “RM-5 Multiple Family Residential District,” Section 21-268 “Additional Standards for Grandfathered Apartment Hotel Projects” is hereby amended to read as follows:¹

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Changes between first and second reading are depicted in double underline and ~~double striketrough~~.

CHAPTER 21. ZONING

* * *

ARTICLE III. DISTRICT REGULATIONS

* * *

DIVISION 9. RM-5 MULTIPLE FAMILY RESIDENTIAL DISTRICT

* * *

Sec. 21-267. - Setbacks.

No Building or any part thereof, except a second and third story balcony overhang of four feet, may be erected in the RM-5 Multiple Family Residential District nearer to the front line, which is Bal Harbour Boulevard, than 50 feet, or as otherwise shown on the recorded plats of the Residential Section of Bal Harbour, and Resubdivision of Lot 21, Block 12 and Tract F of the Residential Section of Bal Harbour, or nearer to the side lines than 25 feet, or nearer to the rear lines than 50 feet, except that one-story garages and/or Servants' Quarters may be erected within the rear 30 feet of the Lot, but not nearer than five feet to the side or rear lines. All lots in the RM-5 Multiple Family Residential District except Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Bal Harbour Boulevard. Lots 1 to 3, inclusive, Block 12A, shall be regarded as fronting on Baker's Haulover Inlet.

Sec. 21-268. - Additional standards for grandfathered apartment-hotel projects.

(a) *Minimum landscaped open space.* There shall be a minimum of 20 percent landscaped open space per project.

(b) *Management.* At least one management representative shall be working at the project to serve the needs of hotel guests 24 hours a day, seven days a week.

(c) *Security.* Security shall be provided in accordance with a written security plan, as approved by the Village Manager or designee.

(d) *Accessory uses in rear setback.* Structures erected in the rear 30 feet of the Lot, not nearer than five feet to the side or rear lines, may be used for one-story garages, Servants' Quarters, and facilities for the exclusive use of guests of grandfathered apartment hotel projects. Guest facilities may include business centers, fitness facilities, gyms, meeting rooms, spas or other similar uses approved by the Village Manager or designee or spa and fitness facilities.

* * *

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 5. **Conflict.** That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. **Effective Date.** That this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED on first reading this __ day of October, 2018.

PASSED AND ADOPTED on second reading this __ day of November, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, BY AMENDING SECTION 21-1 "DEFINITIONS AND RULES OF CONSTRUCTION," SECTION 21-127 "SETBACKS" [IN THE R-2 DISTRICT] AND SECTION 21-354 "PROJECTIONS INTO SETBACK AREAS," ALL TO ADDRESS ENCROACHMENTS AND PROJECTIONS INTO SETBACKS OR YARDS;

Issue:

Should the Village Council approve an ordinance allowing relief to residents who desire to construct pools, porte cochere, balconies and other architectural features to encroach unto setbacks as specified in the proposed language.

Item Summary/Recommendation:

At the September 17, 2018 Village Council Meeting, the administration presented a discussion item regarding the inability to fit pools in corner lots as well as other architectural features including the desire to have porte cocheres encroach on the front setback lines of all lots. Current Code only allows projections into rear and side setbacks. As a result of the discussion, the Village Council gave Village Administration guidance on these zoning issues and instructed them to prepare an ordinance reflecting their directives. Village Council provided guidance on these issues, and the Village Administration brought a proposed Village Ordinance to the Council for review as the Local Planning Agency ("LPA"), and for first reading in October.

At the October 16, 2018 Local Planning Agency Meeting, the LPA directed Administration to bring this item before the Architectural Review Board (ARB) for their input and advice.

The Administration brought this ordinance before the November 1, 2018 ARB meeting. The Administration agreed with the ARB recommendation, which has been incorporated in this ordinance and is presented this evening for LPA review and first reading.

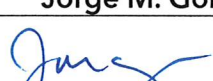
Advisory Board Recommendation:

The LPA will consider their recommendation at the November 20, 2018 meeting. The ARB, at its November 1, 2018, made recommendations which have been incorporated in this ordinance.

Financial Information:

	Amount	Account	Account #
1	N/A	N/A	N/A

Sign Off:

Building Department		Village Manager
Graciela M. Escalante		Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, BY AMENDING SECTION 21-1 "DEFINITIONS AND RULES OF CONSTRUCTION," SECTION 21-127 "SETBACKS" [IN THE R-2 DISTRICT] AND SECTION 21-354 "PROJECTIONS INTO SETBACK AREAS," ALL TO ADDRESS ENCROACHMENTS AND PROJECTIONS INTO SETBACKS OR YARDS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

RECOMMENDATION

The Administration recommends the adoption of the ordinance allowing relief to residents who desire to construct pools, balconies and other architectural features into the setbacks.

BACKGROUND

At the September 17, 2018 Council meeting, the Administration brought before the Village Council specific zoning issues that have arisen in the R-2 residential districts. These issues entail the zoning regulations which do not allow the location of pools within the right-of-way setbacks on corner lots, or the inability to encroach on the front setbacks to provide a porte cochere, architectural features such as eyebrows, or roof overhangs on any lot. Although balconies were not discussed at the September Council meeting, staff has included balconies since it is also an issue that has come up with owners who desire to maximize building square footage. Village Council provided guidance on these issues, and the Village Administration brought a proposed Village Ordinance to the Council for review as the Local Planning Agency ("LPA"), and for first reading in October.

At the October 16, 2018 Local Planning Agency Meeting, the LPA directed Administration to bring this item before the Architectural Review Board (ARB) for their input and advice. The Administration brought this ordinance before the November 1, 2018 ARB meeting. The Administration agreed with the ARB recommendation, which has been incorporated in this ordinance and is presented this evening for LPA review and first reading.

A summary of the issues and proposed resolution are outlined below:

Inability to Fit a Pool within the Lot Setbacks

Recently we have received applications for homes on diamond or wedge-shaped corner lots in the R-2 district. The existing zoning requirements on these oddly shaped parcels coupled with the owners' desires to maximize their buildable space results in homes being placed as deep into the property as possible. As a result, pools, which are usually found in the rear of lots, end up on the sides. Given their odd shape, these lots have a significant street front, which requires buildings be set back thirty (30) feet from the property line for nearly all of the R-2 properties. Staff believes that some consideration should be given to allow pools to have a reduced setback requirement, and originally proposed that the pool could encroach no nearer than 20 feet to the street.

In the Village Council meeting of September 17, 2018, staff presented this item for discussion. The Village Council accepted staff's recommendation, and further requested that all corner lots be granted this relief. The Council also suggested that screening of the pool could be provided by a hedge without a fence, recognizing that the Building Code would require a pool fence for safety in that scenario.

The Village received public comment at the September discussion and the October LPA and November ARB meetings, asking that the encroachment be expanded to 15 feet. To that end, staff is accepting the recommendation of the ARB, recommending that pools on corner lots in the R-2 district may be constructed no nearer than 15 feet to the platted lot lines adjacent to any vehicular right-of-way as shown on the recorded plat of the residential section of Bal Harbour.

Staff is proposing the following language be added to the Village's Zoning Ordinance, incorporating the recommended 15-foot encroachment and hedge concepts:

Sec. 21-127. - Setbacks.

Pools and pool decks. Notwithstanding the above, the following shall govern pools and pool decks.

- (1) No swimming pool may be constructed within ten feet of the rear and side Setback or Yard lines.
- (2) On corner lots no swimming pool may be constructed nearer than 20 15 feet to the platted Lot Lines adjacent to any vehicular right-of-way, as shown on the recorded plat of the Residential Section of Bal Harbour.
- (3) Pool decks shall not be included for purposes of determining the Setbacks.
- (4) Pools and decks shall be obscured by a decorative fence, hedge or other equivalent screening five feet in height supplemented by a landscaped screen.

Inability to have Architectural Features Project into the Front Setback

The ARB also reviewed the proposed language concerning architectural features and port cocheres, heard public comment, and recommended a different approach than was presented to the LPA in October. As shown below, instead of creating a separate subsection for porte cochere-style overhangs, the ARB recommended that the Code simply expand the existing ability to have an architectural projection encroach three feet into the side or rear setback so that it also applies to the front setback. That front

encroachment can be used for an eyebrow over a window, other architectural enhancement of the façade, or a portion of a cantilevered porte cochere.

Public comment at the ARB included the following: One person requested that the Village not modify the Code, but instead require anyone who wants these development standards to apply for a variance to obtain them from the Council. The ARB debated this notion, but decided that each of the recommended changes should be in the Code as proposed, and not be left to handling by individual variance. Another comment proposed a larger encroachment into the front setback, but the ARB decided that keeping a uniform 3 feet on all sides was the better approach.

The ARB's recommendations were unanimous (of the three Board members present), except that the resident member of the Board wanted to be recorded as opposing balconies encroaching to the rear, due to the impact on the privacy of neighbors.

Sec. 21-354. - Projections into Setback areas.

* * * * *

(e) ***Architectural features.*** No main walls of any Building shall encroach on the Setback or Yard areas, but architectural features such as canopies, cantilever slab projections (open balconies), cornices, eaves and similar features may project into the side and rear Setbacks and Yards subject to the following:

(1) In the Ocean Front District, balconies and other ornamental architectural features above the first story may be extended not more than four feet into the Setback or Yard areas, and there shall be not less than ten feet of clear headroom under the lowest such projection.

(2) In all other zoning districts, architectural features may project into the front, side and rear Setbacks and Yards not more than 36 inches, and there shall be not less than seven feet of clear headroom under any such projection.

* * * * *

(h) ***Balconies.*** In the R-1 and R-2 Zoning District, the flat roof of a residential Building may serve as the floor of a Balcony. Where there are multiple roofs, the highest roof may not serve as the floor of a Balcony. Such Balconies shall meet all of the following standards:

(1) Balconies located on the front or rear façade may extend three feet into the Setback or Yard.

(2) Balconies located on a side façade may not extend beyond the face of the exterior wall of the Building from which they project.

(3) Balconies must be accessed from the interior of the Building from which they project.

(4) Balconies facing a lot line abutting another residential property may also be accessed from an exterior staircase, provided the staircase does not encroach in any Setback or Yard and complies with Section 21-354(b).

CONCLUSION

The Administration recommends the adoption of the ordinance as refined by the recommendations of the LPA and the ARB, allowing relief to residents who desire to

construct pools, balconies and other architectural features encroaching into setbacks as specified in the proposed language above, on first reading.

ORDINANCE NO. 2018-_____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 “ZONING” OF THE CODE OF ORDINANCES, BY AMENDING SECTION 21-1 “DEFINITIONS AND RULES OF CONSTRUCTION,” SECTION 21-127 “SETBACKS” [IN THE R-2 DISTRICT] AND SECTION 21-354 “PROJECTIONS INTO SETBACK AREAS,” ALL TO ADDRESS ENCROACHMENTS AND PROJECTIONS INTO SETBACKS OR YARDS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.

WHEREAS, Section 21-1 of the Bal Harbour Village Code of Ordinances (the “Code”), provides definitions applicable to Chapter 21, “Zoning”; and

WHEREAS, Section 21-127 of the Code addresses setback encroachments related to pools in the R-2 Zoning District; and

WHEREAS, Section 21-354 of the Code addresses allowable projections in the required setbacks throughout the Village, including the R-2 Zoning District; and

WHEREAS, the Village Council of Bal Harbour Village (“Village”) desires to address limited pool encroachments and the projection of architectural features and balconies into Setbacks and Yards in the R-2 Zoning District; and

WHEREAS, the Village Council finds that allowance of such encroachments and projections in the R-2 Zoning District will not be incompatible with surrounding uses and will create an architectural opportunity for creative design approaches; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on _____, 2018, and recommended _____; and

WHEREAS, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by

interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village’s Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

Section 2. **Village Code Amended.** That Chapter 21 “Zoning,” is hereby amended to read as follows:¹

CHAPTER 21. ZONING

ARTICLE I. - IN GENERAL

Sec. 21-1. - Definitions and rules of construction.

* * *

Apartment Unit means a Room or suite of Rooms occupied or suitable for occupancy as a residence for one Family, and in which complete living accommodations are provided. The existence of or the installation of a sink and/or cooking facilities within a Room or suite of Rooms shall be deemed sufficient to classify such Room or suite of Rooms as an apartment or dwelling unit.

Balcony means an unenclosed platform that projects from an opening in the wall of a Building and has a parapet or railing.

Building means a Structure, the use of which demands a permanent location on the land, built for the support, shelter and enclosure of Persons, chattels, or movable or stationary Property of any kind; or anything attached to something having a permanent location on the land.

* * *

ARTICLE III. DISTRICT REGULATIONS

* * *

Division 3. – R-2 SINGLE FAMILY RESIDENTIAL DISTRICT

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~.

* * *

Sec. 21-127. - Setbacks.

- (a) Front and rear. No Building or any part thereof may be erected in the R-2 Single Family Residential District beyond the front Setback lines of 30 feet as shown on the recorded plat of the Residential Section of Bal Harbour, or nearer than 15 feet to the rear Lot Lines. For every additional foot in Height of the Building above 18 feet, there shall be one additional foot of rear Setback for that portion of the building over 18 feet in height. Notwithstanding the above, the rear setback requirements provided by this Section shall not prohibit up to one-fourth of the length of the outside walls of any building, regardless of Height, along the rear property lines from being situated not less than 15 feet from the rear property line. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the District.
- (b) Side. The minimum side Setback shall be ten feet for single-story construction up to 18 feet of structure Height. For every additional foot in Height above 18 feet, there shall be one additional foot of side Setback for that portion of the building over 18 feet in height. The additional side setback requirement for buildings over 18 feet, provided by this Section, shall not prohibit up to one-third of the length of the side walls of such building from being situated in compliance with the minimum ten-foot side setback, but not fully conforming to the additional setback requirement. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.
- (c) Pools and pool decks. Notwithstanding the above, the following shall govern pools and pool decks.
 - (1) ~~No~~ swimming pool may be constructed within ten feet of the rear and side Setback or Yard lines.
 - (2) ~~On~~ corner lots no swimming pool may be constructed nearer than ~~20~~ 15 feet ~~or 30 feet~~ to the side platted Lot Lines adjacent to any vehicular right-of-way, as shown on the recorded plat of the Residential Section of Bal Harbour.
 - (3) Pool decks shall not be included for purposes of determining the Setbacks.
 - (4) Pools and decks shall be obscured by a decorative wall, fence, hedge or other equivalent screening five feet in height supplemented by a landscaped screen.

* * *

ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS

* * *

Sec. 21-354. - Projections into Setback areas.

- (a) *Chimneys.* Chimneys may project into side and rear Setbacks and Yards a distance not to exceed 24 inches, provided that a clear space of not less than 88 inches is left between such projection and the Lot Line adjacent. The horizontal dimension of the chimney at right angles to the projection shall not exceed six feet.
- (b) *Outside stairs, stair landings.* No outside stairs or stair landings over three feet six inches in height above the Grade of the centerline of the Street shall extend into side, rear, or front Setbacks and Yards. Stairs or stair landings not exceeding 42 inches in height may be railed, provided that such railing shall not exceed in height above Grade that specified for walls or hedges in that district, and further, that there shall be a clear, unobstructed passage of not less than 88 inches between such projection and the Lot Line adjacent. Platforms or terraces not exceeding 42 inches in height may extend across side and rear Setbacks and Yards, provided that there shall be ramps or steps at least 36 inches wide on opposite sides to provide unobstructed passage over such projections.
- (c) *Areaways, steps to basements.* Areaways, steps to basements and similar features will be permitted in side and rear Setbacks and Yards, provided that no part of such feature shall exceed, in height, 42 inches above Grade of the centerline of the Street, and that the projection shall not exceed 24 inches, and provided further that there shall be a clear, unobstructed passage of not less than 88 inches between such features and the Lot Line adjacent. Steps extending not more than four feet from the main Building and not more than 42 inches in height above Grade, leading to the basement or ground floor, may be constructed in the side Setback and Yard on the street side of a Corner Lot.
- (d) *Fire escapes.* Where permitted under the provisions of chapter 6, open-type metal fire escapes may project 48 inches into side and rear Setback and Yard areas, provided that the bottom run shall be counter-balanced and that when the bottom run is up, there shall be at least nine feet clear headroom below it. The bottom run shall be adjacent or parallel to the Building and shall be so arranged that, when down, there shall be at least 88 inches of clear, unobstructed passage between it and the Lot Line adjacent.
- (e) *Architectural features.* No main walls of any Building shall encroach on the Setback or Yard areas, but architectural features such as canopies, cantilever slab projections (open balconies), cornices, eaves and similar features may project into the side and rear Setbacks and Yards subject to the following:
- (1) In the Ocean Front District, balconies and other ornamental architectural features above the first story may be extended not more than four feet into the Setback or Yard areas, and there shall be not less than ten feet of clear headroom under the lowest such projection.
 - (2) In all other zoning districts, architectural features may project into the front, side and rear Setbacks and Yards not more than 36 inches, and there shall be not less than seven feet of clear headroom under any such projection.
- (f) *Terraces.* Open terraces projecting into front and side Setbacks or Yards shall not exceed, in height, three feet six inches above the Grade of the center of the Street, and the railing of such terrace shall in no case exceed the height specified for walls in that district. Where necessary

to provide access through the side yards, terraces shall be provided with steps or ramps and gates not less than 36 inches in width.

(g) Mechanical equipment. Mechanical equipment shall not be placed in required side Setbacks or Yards.

(h) Balconies. In the R-1 and R-2 Zoning District, the flat roof of a residential Building may serve as the floor of a Balcony. Where there are multiple roofs, the highest roof may not serve as the floor of a Balcony. Such Balconies shall meet all of the following standards:

(1) Balconies located on the front or rear façade may not extend more than three feet into the Setback or Yard.

(2) Balconies located on a side façade may not extend beyond the face of the exterior wall of the Building from which they project.

(3) Balconies must be accessed from the interior of the Building from which they project.

(4) Balconies facing a lot line abutting another residential property may also be accessed from an exterior staircase, provided the staircase does not encroach in any Setback or Yard and complies with Section 21-354(b).

* * *

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Conflict.** That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED on first reading this ___ day of November, 2018.

PASSED AND ADOPTED on second reading this ___ day of December, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 11 "B BUSINESS DISTRICT," SECTION 21-320 "TRAFFIC LEVEL; APPROVAL OF TRAFFIC ANALYSIS" OF THE CODE OF ORDINANCES TO REMOVE RESTRICTION ON ACCESS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Ordinance.

BACKGROUND

The traffic regulations for the B Business district currently limit vehicular access to the district to Collins Avenue and 96th Street. This restriction does not take into consideration any potential traffic impacts that may result.

The Code provides specific evaluation methodology and requires that level of service and traffic flow requirements be considered and evaluated prior to any site plan - and incorporated access point - approval by the Village. Also, proposed changes to access to B properties trigger the Village Code requirements in Section 21-322 for site plan review or site plan amendment, allowing the Village to opportunity to review and approve such changes.

ANALYSIS

This Ordinance removes the current limitation, allowing for a more accurate assessment of traffic capacity and impacts, and increased opportunities to improve overall traffic flows through approved site plans or site plan amendments for any future development.

At the December 13, 2017 Council Meeting, the Village Council voted unanimously to approve this ordinance at first reading. The proposed redesign of the Northern Entrance was not heard by the Village Council at its January 30, 2018 meeting because the Council declined to approve the Bal Cross ordinance by a vote of 4 to 1. BHS has requested that Village Staff bring this item before Council again as an alternate design in case FDOT

and/or any other Authority Having Jurisdiction (AHJ) does not approve this previously approved angled entrance on Bal Cross Drive. The proposed Alternate Design of the Northern Entrance entails straightening out the intersection of Bal Cross Drive and Collins Avenue, and use Bal Cross to access both the Shops and the Fairfield site.

Approval of this Ordinance is necessary if the Village Council wants to approve the proposed alternate to the northern entrance of the Shops.

At tonight's meeting, the Village Council is being asked to once again consider approval of amended Sec. 21-320. The Shops desires to keep its approved northern entrance, and if the Ordinance passes, obtain approval of an alternate northern entrance through a joint access drive with the Village Hall site across Bal Cross Drive. The design has been changed since it was previously presented, so that the majority of the access falls on Shops property. The Shops also offers the Village an access easement for all traffic accessing the Village Hall site across their property.

An important difference between the revised entrance proposed at the January 30, 2018, Village Council meeting and the alternate entrance being proposed tonight is that BHS moved the 90 degree entrance twenty seven (27) feet south, creating a larger landscaped buffer between the new Village Hall and the BHS. In addition, this southerly move, is aligned with the 20 foot perimeter wall on Park Drive that serves to visually block oncoming traffic screening traffic noise and light from the single family residences towards the west.

From a traffic engineering perspective, the Revised Entrance is preferred by BHS' traffic consultant because it results in a true, four-way signalized intersection aligned with the driveway to the Balmoral condo located on the east side of Collins, and increases the separation between the new traffic signal and the existing signal to the south along Collins. While FDOT will not approve any changes before they are designed, both the Shops' traffic consultant and the Village's traffic consultant The Corradino Group Inc., indicate that it is very likely that the Revised Entrance will be preferred by FDOT. (Update as needed)

From the perspective of the future Village facility to be provided by BHS on the Fairfield site, there are also advantages to the Alternate Entrance. By creating a shared entrance to the Shops and the Village facility and straightening Bal Cross to a more southerly alignment, the Alternate Entrance adds green space to the site of the future Village facility.

The Architectural Review Board (ARB) application for a minor site plan amendment was received on November 1, 2018 and the application will be reviewed by the ARB if the Village moves the Ordinances forward at this evening's meeting.

Therefore, this ordinance is presented for first reading and approval.

CONCLUSION

This Ordinance will allow for more accurate assessment of traffic impacts in the B Business district which will assist in future land use planning.

It will also allow the Village to consider approval of the Alternate Entrance to the Shops. Village Council is asked to consider approval of this Ordinance.

ORDINANCE NO. 2018- ____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 11 "B BUSINESS DISTRICT," SECTION 21-320 "TRAFFIC LEVEL; APPROVAL OF TRAFFIC ANALYSIS" OF THE CODE OF ORDINANCES TO REMOVE RESTRICTIONS ON ACCESS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE

WHEREAS, the Village Council of Bal Harbour Village ("Village Council") finds it periodically necessary to amend its zoning regulations in order to implement planning goals and objectives; and

WHEREAS, Chapter 21 "Zoning," Article III "District Regulations," Division 11 "B Business District," Section 21-320, "Traffic level; approval of traffic analysis," sets forth traffic regulations for the B Business District and restricts access to the District without consideration to the effect such restrictions may have on traffic impacts; and

WHEREAS, the Code provides specific evaluation methodology and requires that level of service and traffic flow requirements be considered and evaluated prior to approval of any site plan - and incorporated access point - by the Village; and

WHEREAS, any changes in the approved access point on a site plan in the B Business District requires Village approval of a site plan amendment pursuant to Section 21-322(a)(2)c. of the Code; and

WHEREAS, removing vehicular access limitations from the B Business district requirements will allow for a more accurate assessment of traffic capacity and impacts, and increased opportunities to improve overall traffic flows through approved site plans or site plan amendments for any future development; and

WHEREAS, the Village Council hereby finds and determines that this Ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That each of the above recitals is hereby adopted and confirmed.

Section 2. Section 21-320 of the Village Code Amended. That Article III "District Regulations," Division 11 "B Business District," Section 21-320 "Traffic level; approval of traffic analysis" of Chapter 21 "Zoning" of the Code of Bal Harbour Village, Florida is hereby amended to read as follows:

DIVISION 11. B BUSINESS DISTRICT

* * *

Sec. 21-320. - Traffic level; approval of traffic analysis.

(a) All applications for review of a major site plan in the B Business District shall be accompanied by a traffic survey and analysis prepared by a qualified traffic engineer showing that any additional vehicular movements generated by reason of the construction, expansion or alteration can be accommodated by the adjacent Streets at the peak traffic hour on the Streets without causing the Level of Service on the Streets to deteriorate to a Level of Service D or worse. ~~Vehicular access to and from the Business District shall be limited to Collins Avenue and to 96th Street.~~

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~.

(b) No major site plan approval shall be issued unless or until a traffic survey and analysis meeting the requirements of subsection (a) of this section has been filed with the Building Official and considered by the Village Council as part of the public hearing. . . .

* * *

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflict. That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this ____ day of _____, 2017.

PASSED AND ADOPTED on second reading this ____ day of _____, 2018.

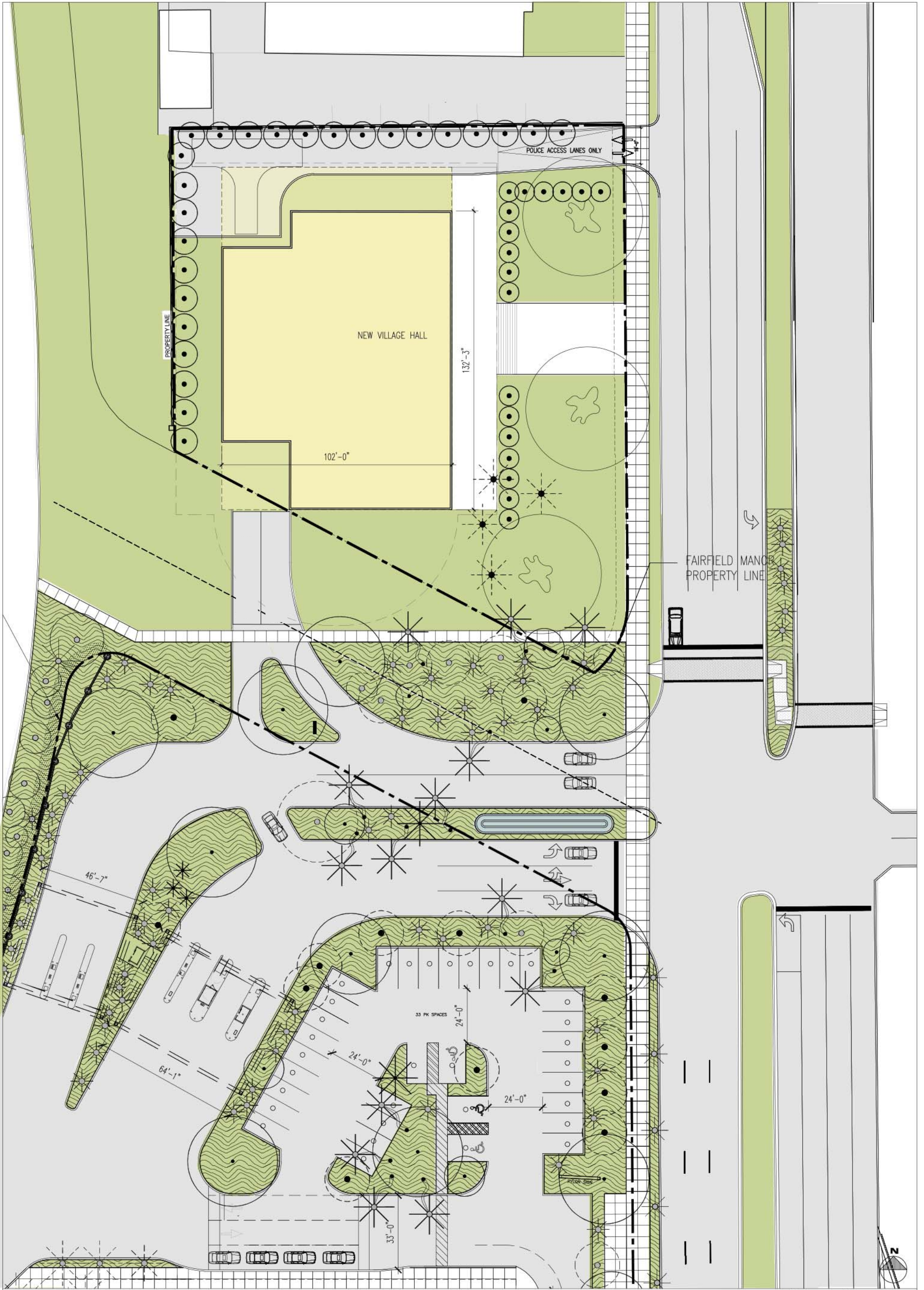
Mayor Gabriel Groisman

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.



1120-Bal Harbour Shops

1:40

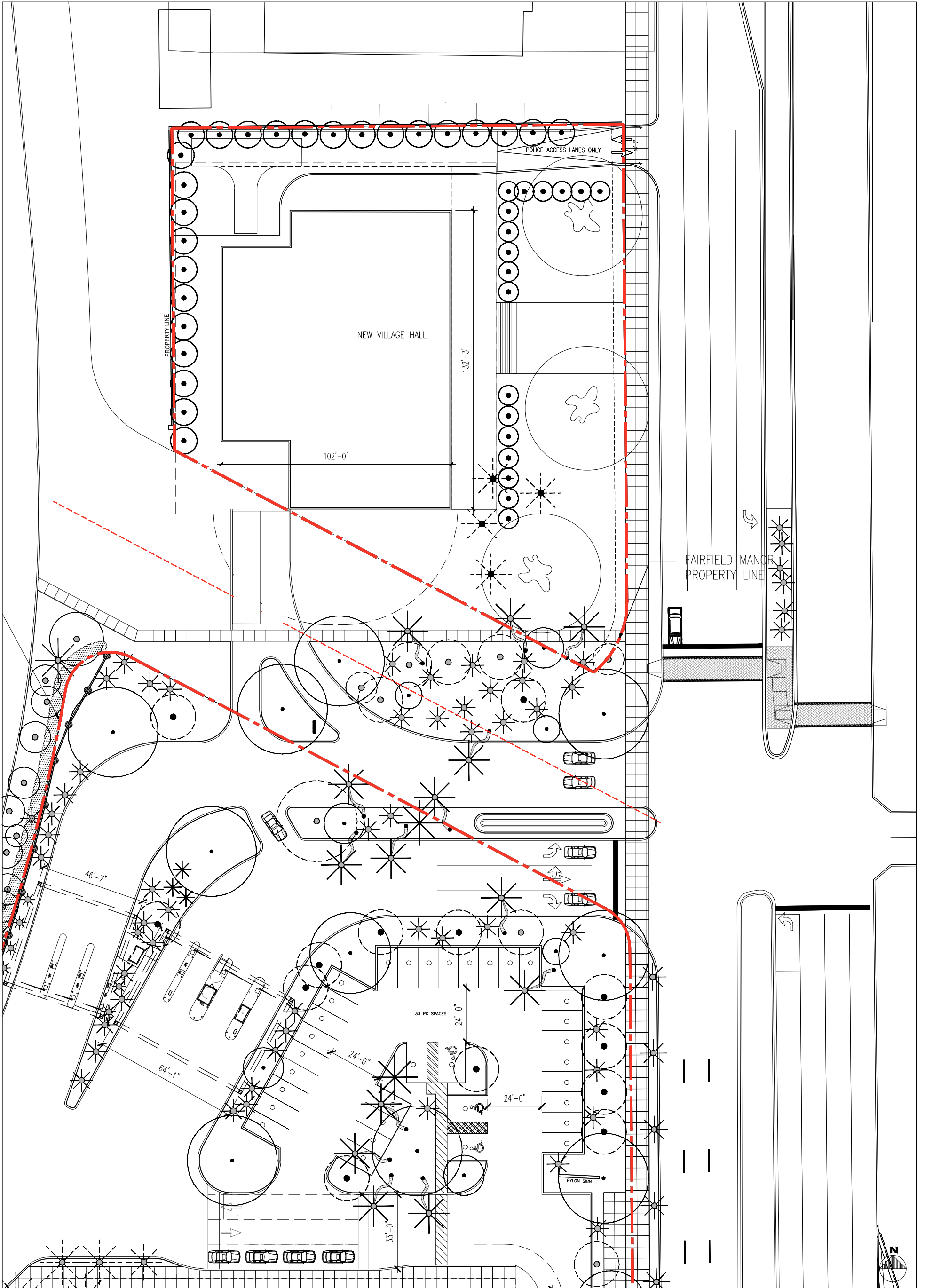
**September 13,
2018**

No copies, transmissions, reproductions, or electronic revisions of any portions of these drawings in whole or in part be made without the express written permission of Zyscovich Architects. All designs indicated in these drawings are property of Zyscovich Architects. All copyrights reserved © 2018.

**ZYSCOVICH
ARCHITECTS**

100 N Biscayne Blvd . 27th Fl
Miami . FL 33132.2304
t 305.372.5222 f 305.577.4521

e info@zyscovich.com
w www.zyscovich.com



1120-Bal Harbour Shops

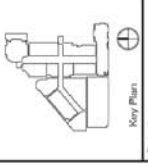
1:40 November 14, 2018

No copies, transmissions, reproductions, or electronic revisions of any portions of these drawings in whole or in part be made without the express written permission of Zyscovich Architects. All designs indicated in these drawings are property of Zyscovich Architects. All copyrights reserved © 2018.

ZYSCOVICH
ARCHITECTS

100 N Biscayne Blvd . 27th Fl
Miami . FL 33132.2304
t 305.372.5222 f 305.577.4521

e info@zyscovich.com
w www.zyscovich.com



BERNARD ZYSCOVICH
Reg. No. FA-74-10

ZYSCOVICH ARCHITECTS
100 Baywood Blvd, 2nd Fl. | 305.877.8338 | www.zyscovich.com
Miami, FL 33132-1884

Bal Harbour Shops
9700 Collins Avenue
Bal Harbour, FL 33154
Project No. 17B2B-15E

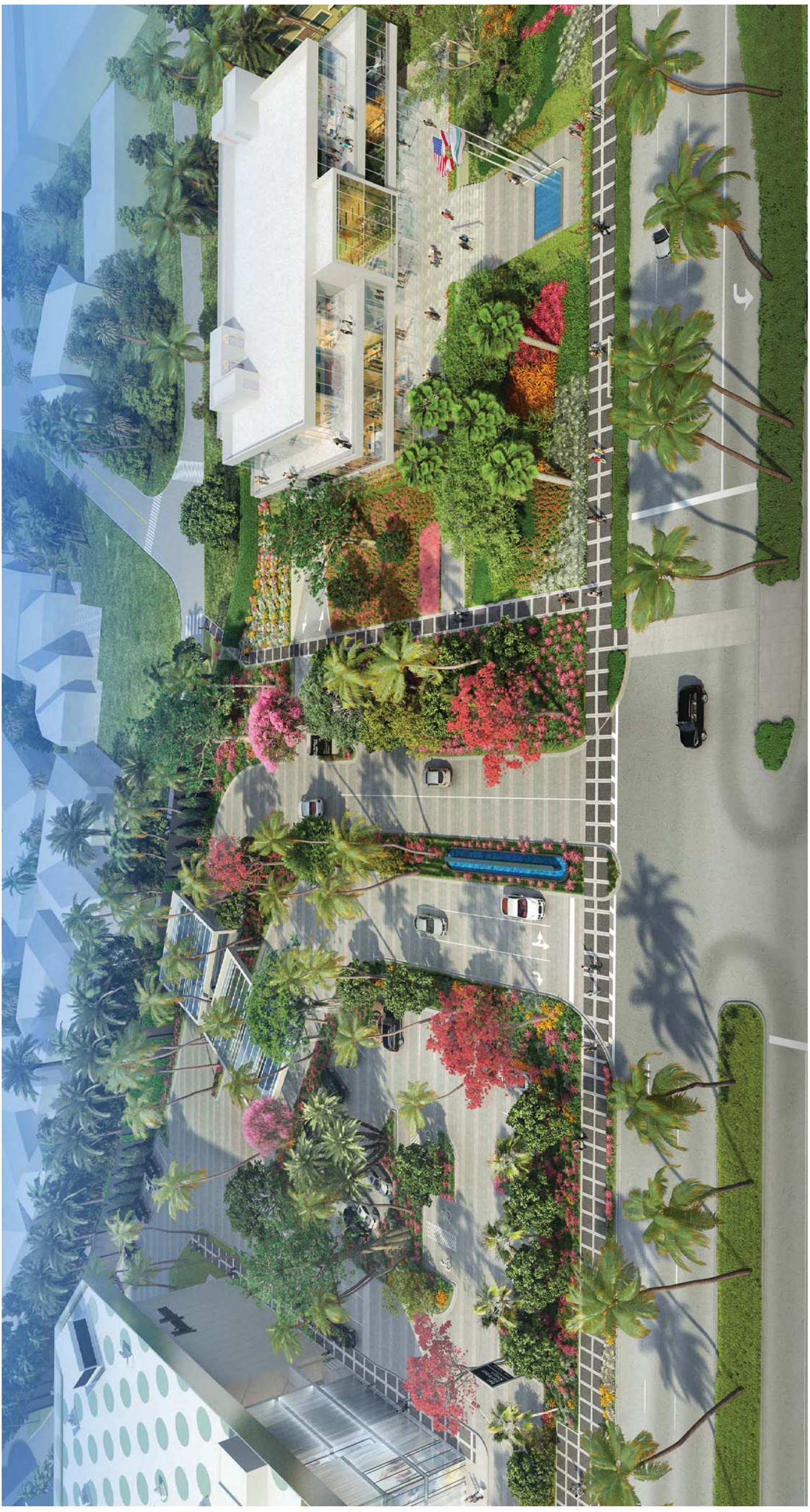
DELTA ARCHITECTURAL CONSULTANTS
2005 S.W. 44th St. | Miami, FL 33155 | 305.554.4175

RAYMOND JUNGLES INC.
2500 N.W. 14th St. | Coconut Grove, FL 33133 | 305.854.8777

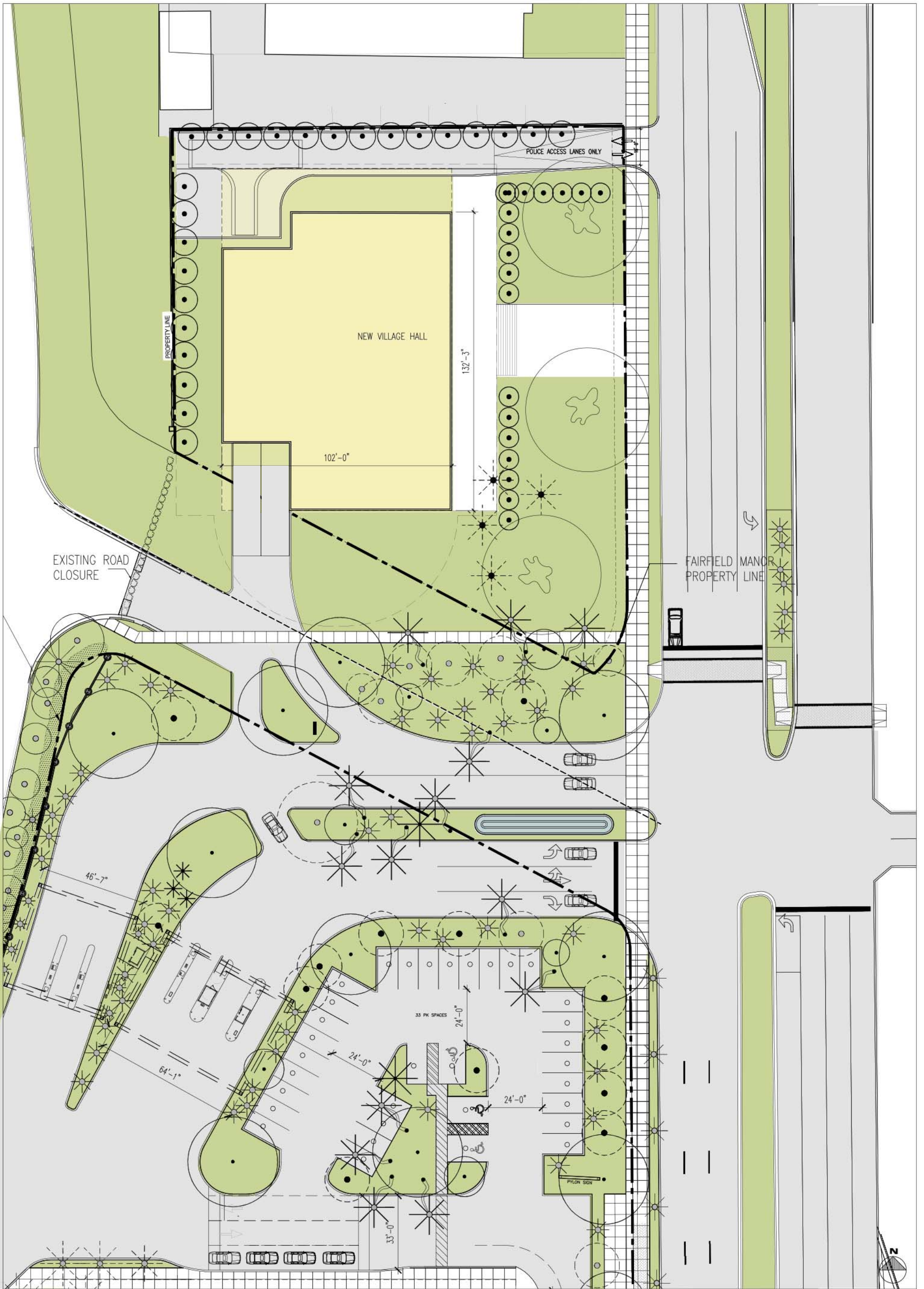
SLS FIRE PROTECTION ENGINEERS
1101 N.W. 11th St. | Suite 1000 | Miami, FL 33136 | 305.576.1111

DOUGLAS WOOD ASSOCIATES, INC.
1000 N.W. 11th St. | Suite 1000 | Miami, FL 33136 | 305.576.1111

ENRIQUE J SUAREZ, PE
1101 N.W. 11th St. | Suite 1000 | Miami, FL 33136 | 305.576.1111



PROPOSED-ALT



1120-Bal Harbour Shops

1:40

**September 13,
2018**

No copies, transmissions, reproductions, or electronic revisions of any portions of these drawings in whole or in part be made without the express written permission of Zyscovich Architects. All designs indicated in these drawings are property of Zyscovich Architects. All copyrights reserved © 2018.

**ZYSCOVICH
ARCHITECTS**

100 N Biscayne Blvd. 27th Fl
Miami, FL 33132 2304
t 305.372.5222 f 305.577.4521

e info@zyscovich.com
w www.zyscovich.com

ORDINANCE NO. 2018-____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; , AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," ARTICLE V "OFF-STREET PARKING FACILITIES;" PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE

WHEREAS, Article V of Chapter 21 of the Village Code addresses off-street parking facilities in the Village; and

WHEREAS, the Village Council of Bal Harbour Village ("Village") desires to modify the required number of parking spaces and other off-site parking regulations applicable to the Special Business Improvement Area, and to the screening requirements for "B" Business District properties; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on _____, 2018, and recommended _____; and

WHEREAS, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Village Code Amended. That Chapter 21 "Zoning," Article V "Off-

Street Parking Facilities," is hereby amended to read as follows: ¹

Chapter 21 - ZONING

ARTICLE V. - OFF-STREET PARKING FACILITIES

* * * * *

Sec. 21-385. - Design and maintenance.

* * * * *

(q) *Special Business Improvement Area.* These provisions shall supersede any other provisions in this section which may be in conflict.

(1) Number of spaces.

a. Permanent Parking Ratio. 2.1 permanent parking spaces for each 1,000 square feet of 90 percent of gross floor area.

b. Flex Parking Ratio. Recognizing the seasonal nature of population, tourism, business activity and parking demand in the Village of Bal Harbour, parking plans whereby spaces designed and normally used for self-parking may be converted to valet parking layout and operations to increase the parking ratio to 2.9 parking spaces for each 1,000 square feet of 90 percent of the gross floor area and higher. The capacity of the parking facility in the valet parking layout shall be used in determining the adequacy of the parking supply. The valet layout need not be striped or have bumper guards or wheel stops. In the event the property owner intends to utilize flex parking for more than six continuous months, the property owner shall provide written notice to the Village Manager of the scope of its intended use.

c. Reductions in Permanent and Flex Parking Ratios. The permanent parking ratio may be reduced below 2.1 but no lower than 1.8 permanent parking spaces, and the flex parking ratio may be reduced below 2.9 but no lower than 2.3 flex parking spaces, upon presentation of a professionally acceptable parking report by a parking expert demonstrating that over the immediate prior twenty-four consecutive months, parking utilization in the facility remained below the permanent and flex parking ratios 85 percent of the time. The analysis of the permanent parking ratio shall exclude peak season (peak season is defined as November 1 to April 1, excluding the week of Thanksgiving, December 16 to January 2, and the week of Art Basel).

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~.

~~(12)~~ *Off-site location.* Within the Special Business Improvement Area, during periods of construction which temporarily reduce the availability of on-site parking, required parking may be provided on a Lot other than the Lot on which the Structure or use served is located, provided that:

- a. The number of required parking spaces located off-site shall not exceed 25 percent of the required parking.
- b. The off-site parking shall be located within a reasonable walking distance (1,320 feet) of the land use served, or if outside a reasonable walking distance:
 1. A dedicated shuttle service appropriate to the needs of the parkers at the off-site facility shall be provided, or
 2. Valet parking service shall be provided on-site.

An agreement assuring that the spaces will be available to the land use must be executed if the spaces are owned or controlled by a party other than the property owner of the land use served. Such agreement shall be terminable only upon approval of the Village Manager, which shall be granted upon a showing that sufficient on-site or alternate off-site parking is available to meet the parking requirements of the primary use, and shall be approved as to form and content by the Village Attorney and Village Manager.

~~(2) Flex Parking Spaces:~~

~~Recognizing the seasonal nature of population, tourism, business activity and parking demand in the Village of Bal Harbour, parking plans whereby spaces designed and normally used for self parking may be converted to valet parking layout and operations to increase the parking ratio to 3.62.9 parking spaces for each 1,000 square feet of 90 percent of the gross floor area and higher. The capacity of the parking facility in the valet parking layout shall be used in determining the adequacy of the parking supply. The valet layout need not be striped or have bumper guards or wheel stops. In the event the property owner intends to utilize flex parking for more than six continuous months, the property owner shall provide written notice to the Village Manager of the scope of its intended use.~~

- (3) *Ramps.* A maximum grade of six percent shall be permitted for sloped portions of sloping floor garages where ramps provide direct access to stalls. Interfloor ramps and ramps to and from the established Grade of any Street shall not exceed 14 percent, and no parking shall be permitted directly off these ramps. For any ramp over ten percent, a transition ramp at least ten feet long and at least half the slope of the main ramp shall be provided.
- (4) *Marking.* Individual stalls shall be marked with permanent lines, four to six inches wide. Plaza areas which are used for parking part-time need not be so marked and are not required to have bumper guards or wheel stops.
- (5) *Bumper guards and wheel stops.* Every surface parking facility shall have bumper guards located adjacent to any Building or Structure, wall, fence, hedge, walkway,

landscaped area, property line or parking stall, to protect Persons, Property, and other vehicles. Bumper guards and wheel stops may be removable and are not required in Plaza areas.

- (6) *Minimum dimensions.* Parking layouts shall conform to the minimum requirements of this section.

Definitions (see also Figure 1):

* * * * *

- (7) *Valet Parking Layouts:* When parking spaces are employed in a permanent valet parking operation, or in a Flex Parking operation as defined in this article, they shall be not less than eight feet three inches wide and the stall length shall be not less than 17 feet six inches. The aisle widths for valet parking must provide reasonable maneuvering space for the valet operation, but need not conform to the requirements for self-parking contained in Table 1.

At least 80 percent of obstructed stalls must be arranged so that no more than one vehicle needs to be moved in order to retrieve another vehicle. In no case shall more than two vehicles need to be moved in order to retrieve another vehicle.

- (8) Mechanical Parking: Mechanical parking, including mechanical lifts and stackers, shall be permitted and shall count towards permanent or flex parking ratios. Mechanical parking may not be placed in surface parking lots located along Collins Avenue or 96th Street. Mechanical parking structures shall not be interpreted to be structures as defined by this Chapter, and shall be subject to the screening requirements of Section 21-386.

Sec. 21-386. - Screening.

- (a) *Required on certain Lots.* On any Lot in the Ocean Front (OF) District and the Business (B) District where surface parking facilities are provided, all parking facilities, including any rooftop parking facilities, shall be effectively screened from any adjoining Lot and from any adjoining Street.
- (b) *Location.* Screening provided in compliance with this section shall be located on the perimeter of the parking facility, within the required Setback areas.
- (c) *Type.* Required screening shall consist of a fence, wall, trellis, pergola, or other similar screening device or appropriate Landscaping and hedges, and shall be continuous, broken only for driveways and walkways. Screening devices shall not be interpreted to be structures as defined by this Chapter.
- (d) *Screening plan required.* A plot plan, drawn to scale, which accurately shows the type, location and amount of screening, shall be submitted to the Building Department for approval.
- (e) *Minimum height.*

a. ~~In the Ocean Front (OF) District and the Business (B) District, required parking facility screening shall be from three and one-half feet to six feet in height; provided, however, that in no case shall screening required by this section exceed three and one-half feet in height within fifteen feet of the nearest point of intersection of any access driveway, Street, or alley, measured at the Property line.~~

b. In the Business (B) District, required parking facility screening shall be from three and one-half feet to twelve feet in height; provided, however, that in no case shall screening required by this section exceed three and one-half feet in height within fifteen feet of the nearest point of intersection of any access driveway, Street, or alley, measured at the Property line.

(f) *Exceptions to height requirements.*

(1) *Parking facility above Grade.*

a. Where the surface of the parking facility is raised more than four feet above the center of the adjoining Street, the required screening shall not be less than three feet in height nor more than six feet in height, measured from the finished Grade of the parking facility.

b. In the Business (B) District, where the surface of the parking facility is raised more than four feet above the center of the adjoining Street, the required screening shall not be less than three feet in height nor more than twelve feet in height, measured from the finished Grade of the parking facility.

(2) *Parking facility below Grade.* Where the surface of the parking facility is below the ground level of the adjoining Property, the required screening shall be not less than four and one-half feet in height above the ground level of the adjoining Property.

(g) *Visibility.* All screening shall be at least 80 percent opaque when viewed horizontally.

* * * * *

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflict. That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED on first reading this __ day of _____, 2018.

PASSED AND ADOPTED on second reading this __ day of _____, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 21 "ZONING," ARTICLE V "OFF-STREET PARKING FACILITIES;" PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending that the Village Council approve the adoption of an ordinance addressing the modification of required number of parking spaces and other off-street parking regulations applicable to the Special Business Improvement Area, and to the screening requirements for "B" Business District properties while we continue to analyze the proposal.

BACKGROUND

Article V of Chapter 21 of the Village Code addresses off-street parking facilities in the Village. The Bal Harbour Shops (BHS) has requested that the Village modify the required number of parking spaces and other off-street parking regulations applicable to the Special Business Improvement Area, and to the screening requirements for "B" Business District properties to accommodate the changes to the project reflected in the application for a site plan amendment, which will be coming forward for your review and action at the December Council meeting.

The proposed revisions to Section 21-385 of the Village Code preserve the current regulatory approach with permanent and flex parking ratios and allow the permanent parking ratio to be reduced below 2.1, but no lower than 1.8 permanent parking spaces, and the flex parking ratio to be reduced from 2.9, but no lower than 2.3 flex parking spaces, upon presentation of a professionally acceptable parking report by a parking expert demonstrating that over the immediate prior twenty-four consecutive months, parking utilization in the facility remained below the permanent and flex parking ratios 85 percent of the time. The analysis of the adequacy of the permanent parking ratio will exclude parking demand during peak season, as it is expected that during this time, the flex parking ratio will be in effect. This section is also revised to allow the use of mechanical parking as part of either the flex or permanent parking ratios, as long as they are not placed along Collins Avenue or 96th Street.

The proposed revisions to Section 21-386 of the Village Code clarify that the screening requirements apply to rooftop parking facilities, and provide for additional types of

screening devices to be used. Standards related to the additional types of parking and screening devices are also proposed.

CONCLUSION

Village Staff is continuing to review additional information from the Shops, its consultants, and the Village consultants regarding the parking analysis and the adequacy of the proposed parking ratios. We recommend that the proposed Ordinance addressing the modification of required number of parking spaces and other off-street parking regulations applicable to the Special Business Improvement Area, and to the screening requirements for "B" Business District properties, be approved on first reading. At the December meeting, the Council can decide whether to approve this ordinance on second reading with all of the pending information, as well as the full presentation on the revised site plan for approval.



October 18, 2018 (updated)

Mr. Nik Massey
Vice President, Development
Whitman Family Development
420 Lincoln Road
Suite 320
Miami Beach, FL 33139



Re: Parking Demand Analysis Update
Bal Harbour Shops
Walker Project 15-1869.00

Dear Nik,

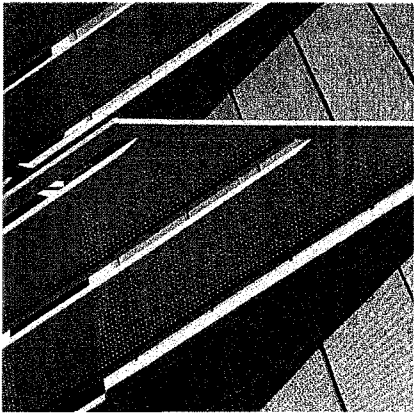
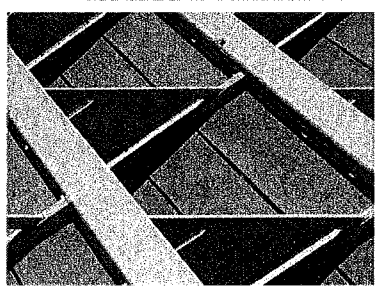
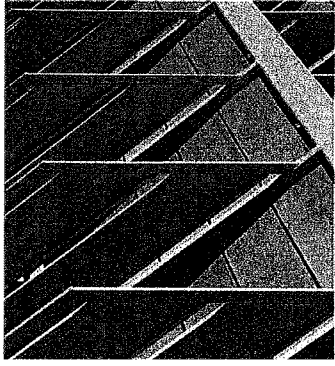
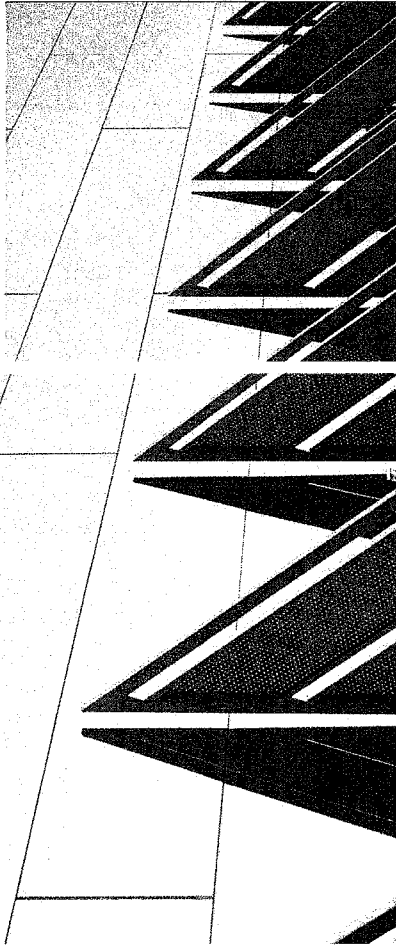
For the reasons discussed herein, we are entirely confident that providing a parking ratio of 3.1 flex spaces /1000 GFA90 is appropriate today for peak season (Thanksgiving through February), with a ratio of 2.1 permanent parking spaces adequate for the remainder of the year. Attached please find our updated analysis, which finds a clear decrease in the parking demand in the last two years. Over the longer term, we expect the parking demand to continue to decline, due to the growing use of ride-hailing services like Uber and Lyft, and eventually, autonomous vehicles. By the time the construction is completed, we expect peak season parking demand will at least be 5 to 10% below a ratio of 3.1, or 2.95 to 2.8 flex spaces per 1000 GFA90, with a ratio of 1.8 permanent parking spaces adequate for the remainder of the year. The peak season flex ratio could be further reduced to 1.5 to 2.0 flex spaces at ultimate penetration of autonomous vehicles and shared mobility, with a ratio of 1.5 permanent parking spaces adequate for the remainder of the year.

Therefore, we strongly support the planned incremental conversion of parking areas to retail as declines in parking demand occur. It is our understanding that the latest plans have been revised to relocate planned underground parking to above-ground parking, an idea we enthusiastically support considering the limited adaptability of underground parking. More specifically, we understand that the plan has reduced planned retail GLA on the third level of the expansion and, where retail was intended, providing additional parking instead **on an interim basis**. When parking demand has further declined, the interim parking built on the third level of the will be converted to retail. Moreover, we further continue to support the use of a flex plan to manage supply in peak periods rather than building a lot of spaces that are only needed for peak season and may no longer be needed in 10 or 20 years thereafter. We call this the "just enough today, no regrets future" parking supply.

Therefore, we recommend that approval of the interim phase of the project require 2.9 flex spaces /1000 GFA90 for peak season, with a 2.1 ratio of permanent parking spaces being more than adequate for the remainder of the year. We further support that the approvals allow flexibility to reduce the parking ratio over time, on submission of documentation to the City of the reduction in demand as further discussed in the Appendix B to this report.

Sincerely,
WALKER CONSULTANTS

Mary S. Smith, PE
Senior Vice President

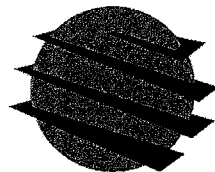


BUILDING ENVELOPE
CONSULTING
FORENSIC RESTORATION
PARKING DESIGN
PLANNING

**BAL HARBOUR SHOPS
PARKING SUPPLY/DEMAND UPDATE
BAL HARBOUR, FLORIDA**

PREPARED FOR:
WHITMAN FAMILY DEVELOPMENT

October 2, 2018



WALKER
CONSULTANTS



TABLE OF CONTENTS

PURPOSE	1
PARKING SUPPLY	1
Existing Parking Supply	1
Future Parking Supply	2
PARKING DEMAND	3
TNC Impact on Parking Today	3
Existing Parking Demand	4
Design Hour	4
Future Parking Demand	5
RECOMMENDED PARKING PLAN	6
APPENDIX A - THE FUTURE OF PARKING WITH AUTONOMOUS VEHICLES	A-1
APPENDIX B - MEMO: PARKING DEMAND ANALYSIS	B-1
TABLES AND FIGURES	
Table 1: Existing Parking Supply	1
Table 2: Historical Parking Data in Season	4
Figure 1: Mechanical Stackers	2
Figure 2: Changing Traveler Choices for Travel Modes	3
Appendix Figure 1: Vehicle Sales, Vehicles on the Road and Parking Demand with Autonomous Vehicles	A-2



PURPOSE

The purpose of this report is to update our analysis of the existing parking demand at Bal Harbour Shops due to demonstrable reduction in demand resulting from increasing use of “ride-hailing” services such as Uber and Lyft. We use the term Transportation Network Companies (TNC) to refer to the companies offering these services; this is the term adopted by airports. We will then project future parking demand after the proposed enhancements to the shopping center are complete and set forth a plan to assure the required parking is always provided. This report also reflects a modification to the approved plan in which all of the underground parking is removed. The interim retail expansion will initially include three retail levels in the existing shopping center but only two retail levels in the expanded center, with two levels of parking on the third level of the expansion (where retail had been approved) and on the roof. In the longer term, when parking demand is expected to have further declined, one level of parking will be removed, and the retail will be expanded horizontally into the resulting space.

PARKING SUPPLY

Parking supply is the number of parking spaces available to serve the customers, employees, and visitors at Bal Harbour Shops.

EXISTING PARKING SUPPLY

The existing parking supply at Bal Harbour Shops is summarized in Table 1. Parking is provided both in surface parking lots and in a single parking garage, for a total of 1,679 on-site spaces.

Table 1: Existing Parking Supply

Facility	Number of Spaces	Included Tandem Spaces
Surface Lots	418	0
96 th Street Garage and Roof Parking	1,261	0
TOTAL	1,679	0

Source: Bal Harbour Shops

To determine parking adequacy, the parking supply is compared to the size of the shopping center. In this case, the size of the center is calculated as 90% of its gross square footage, referred to herein as GFA90. The existing gross square footage (GFA) of the center is 511,422 square feet and its GFA90 is therefore 460,280 square feet. The existing on-site parking **supply** ratio is

3.65 spaces per 1,000 GFA90.

To supplement on-site parking, Bal Harbour Shops provides off-site parking for some employees during peak periods, in order to assure adequate on-site parking for customers. For example, in 2015-2016 seasonal parking was provided at Haulover Park, with shuttle service provided to and from the Shops on November 27th and 28th, the Friday and Saturday after Thanksgiving. From December 26th through January 1st, employee parking was provided in the Bay Harbor Islands Garage. Approximately 291 spaces are available off-site. This increases the supply on peak days to a ratio of 4.28 spaces per 1,000 GFA90.

FUTURE PARKING SUPPLY

In the proposed Bal Harbour Shops Enhancement Plan, parking will be provided in the following facilities:

- The “96th Street Garage” comprising a grade level, five above grade levels, and rooftop parking over the mall and department stores.
- Surface parking.

The current development approvals require 3.1 spaces per 1000 GFA90 with a flex plan to increase to 3.6 spaces per 1000 GFA90 using valet. Moreover, based on the decline in parking demands and anticipated further decline in parking demand in the long term, Bal Harbour Shops proposes to modify parking to include the use of a combination of valet single and tandem stalls, aisle valet and mechanical stackers. At the opening of the proposed expansion of the interim phase a ratio of 2.1 permanent spaces are to be provided, with the flex plan taking the ratio of up to 2.9 spaces for peak periods.

Aisle valet means that the attendants will direct arriving persons to parallel park vehicles on one side of the drive aisle, once the stalls are full. The parker will give the car keys to the valet. When a parker returns whose car is “parked in”, the attendant will move the blocking car, the parker will remove the blocked car, and the attendant will park the other car in the newly vacated parking stall.

Mechanical stackers allow two vehicles to be parked in roughly the area of one parking space. The stackers will be operated only by valets, although the lower units can be used on most days without an attendant. These stackers are proposed at least partially because parking demand is expected to continue to decline in the future, as further discussed later in the report. If and when no longer needed, the stackers can be removed.

In the proposed plan, opportunities for valet parking will be greatly increased. Currently, valet parking is only available in the plaza area east of the mall. In the proposed plan, in addition to the enhancements intended for “Collins Plaza,” valet parking will also be offered at Neiman Marcus and on the Pink level of the 96th Street Garage. Additional valet and TNC pick-up/dropoff locations are also being considered.

At Buildout, i.e., after the conversion of interim parking areas to retail, the GFA of the center will increase to approximately 800,209 square feet; thus 90% of that GFA (GFA90) is 720,188 square feet. Bal Harbour Shops is committed to providing parking for the GFA90 at a ratio of 1.8 with a flex plan to achieve 2.3 on peak days, for as long as the parking demand justifies that ratio. Walker believes that the required parking ratio will be lower than 2.1 before the initial construction of the enhancement plan is completed, and could conceivably decline much lower in the longer term. The proposed development plan will provide a reduction to a ratio of 2.3 flex spaces and 1.8 permanent spaces upon documented reductions in parking demand, as discussed in Appendix B to this report.

Figure 1: Mechanical Stackers



PARKING DEMAND

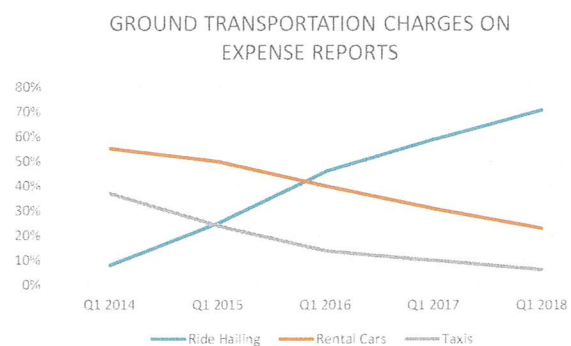
Parking demand is the number of parking spaces required to accommodate people present at the shopping center at any given time, including patrons, visitors, and employees. Before evaluating the recent changes in parking demand at Bal Harbour Shops, it is important to understand the impact on parking in the US of TNCs.

TNC IMPACT ON PARKING TODAY

The impact of ride-hailing on parking demand currently is known to be highly variable by the type of land use. Parking operators are reporting significant impacts as follows:

- Hotels: Parking demand during the week, when demand is predominantly by business travelers, is reduced 30 to 70% from the demand a few years ago, depending on the location of the hotel. There is also impact on weekend demand for overnight guests; however, when there are ballroom and other events on the weekend the impact is much lower due to local attendance at events.
- Restaurants and Bars: There is a significant reduction in parking, at least partially due to people wishing to avoid drinking and driving. Valet operators report up to an 80% reduction in parking required specifically for restaurants and bars.
- Event Facilities: We have measured the impact of TNCs on parking demand at several event facilities, and also maintain contacts with a number of others. One football stadium reported that TNC usage doubled from a 3% reduction in parking in 2016 to a 6% reduction in 2017. The biggest concern with event facilities is staging an adequate number of vehicles for pick up after the event.
- Airports are reporting a significant increase in congestion at the “curb”, where pick up and drop-offs occur.
 - Airports are seeing a reduction in parking transactions of 5 to 20%. Airport parking is specifically used by local residents, either for travel or as “meters and greeters.” We have been monitoring data from one specific airport, not in Florida but with a significant tourist component of travel, and are finding that the usage of TNCs is much higher by visitors to the community, both business travelers and tourists. But for both residents and visitors, 75% chose to use TNCs for convenience and only 25% chose for cost reasons.
 - Consistent with the finding that visitors to a city use TNCs more than local travelers, the impact at airports has been even greater on taxis and rental cars than on parking. A particularly illuminating set of data for the latter is that periodically provided by Certify, a company that provides on-line expense reporting and management for many Fortune 500 companies. They have been publishing data on the ground transportation choices of Business Travelers since 2014. See Figure 2.

Figure 2: Changing Traveler Choices for Travel Modes



Source: Certify Inc. <https://www.certify.com/Certify-SpendSmart->

While the Certify data is for business travelers, we found similar patterns in choices for leisure travelers in the intercept study discussed above. The choice of travel mode by travelers to the area can have a significant impact on parking at Bal Harbour Shops because 80% of the customers come from farther than 20 miles, and there is a large component of tourists. Rental car usage, which would be reflected in parking by tourists at BHS, is down 58% in the Certify data.



You will note that while the impact on taxis seems to have slowed (bending the curve somewhat), there is no slowing yet of the impact on rental cars. Further, more people are using ride-hailing for personal trips from homes. A study by UC Davis in 2017 found that the number one reason that people use ride-hailing (37% of survey respondents) is avoidance of parking issues. This compares to 33% of respondents who said they wanted to avoid driving after drinking. As many residents will be aware of peak days when BHS parking may be in short supply, (as it is at most shopping centers across the US on Black Friday and certain other days in December), ride-hailing becomes a convenient alternative to circling the lots searching for parking.

EXISTING PARKING DEMAND

As is the case in all of Florida, business activity, population and tourism are very seasonal. The peak season for shopping centers is normally from Thanksgiving through the end of December. However, in Florida the “season” begins shortly after Christmas and continues through the end of April, which considerably extends the peak activity at Bal Harbour Shops, and includes several major holiday periods. Mall management regularly records the parking occupancy on-site (and off-site for employees when provided) during the peak season, typically from Thanksgiving through the end of February. Counts are taken at 3:00 p.m., the time that experience has shown has the highest parking demand.

A summary of the data from 2008 to 2018 is seen in table 2. For the overall trend, the key indicator is the average parking demand in this period, which showed recovery from the 2007-9 recession through 2015, but has declined again in 2016-17 and 2017-18, by more than 10%. It is currently at the levels of demand during the recession, which is not consistent with the recent state of the US economy. It should also be noted that for the days when BHS provided off-site parking, there was not any data on the actual utilization of the off-site parking. We included 291 spaces as “demand” to be conservative, but the occupancy was likely lower.

The parking demand appeared to peak at a ratio of 4.28 spaces /1000 GFA90, but more recently has been peaking at 3.6 to 3.7 spaces/1000 GFA90, a 14% decline since 2015. More importantly, the number of days when parking demand exceeded the 3.6 ratio recently believed to be the design day (as discussed in the next section) have declined significantly from 6 or 7 to 0 or 1 days per year. And the change in the number of days with peak hour demand over 3.1 has been profound, dropping from over 50 per year to 17 and 15 days per year.

Table 2: Historical Parking Data in Season

Summary	Jan/Feb 2007-08	Dec-Feb 2008-09	Thx- Feb 2009-10	Dec-Feb 2010-11	Thx-Feb 2011-12	Thx-Feb 2012-13	Thx-Feb 2013-14	Thx-Feb 2014-15	Thx-Feb 2015-16	Thx-Feb 2016-17	Thx-Feb 2017-18	Change from peak
Average	2.90	2.82	2.84	2.94	3.04	3.18	3.19	3.08	3.15	2.84	2.83	-11%
Std Dev	0.30	0.32	0.38	0.33	0.31	0.32	0.32	0.39	0.30	0.31	0.31	
Maximum	3.65	3.81	4.28	4.24	3.98	4.09	4.28	4.28	3.70	3.58	3.70	-14%
Minimum	2.13	2.04	2.19	2.23	2.19	2.38	2.42	1.96	2.26	1.95	2.09	
Average of top ten days	3.34	3.40	3.63	3.54	3.63	3.71	3.74	3.68	3.63	3.37	3.44	-8%
Days over 3.6 ratio	3	1	3	3	4	6	7	6	6	0	1	
Days over 3.1 ratio	9	12	20	21	42	59	58	50	58	17	15	
Design Day*	NA	3.19	3.10	3.09	3.10	3.40	3.32	3.11	3.51	3.04	3.14	-11%

* Third Saturday Before Christmas

DESIGN HOUR

Planners, designers and governmental officials must determine the appropriate parking supply for a new or altered/expanded land use, based on an appropriate design day or design hour. The design hour cannot be the average hour, because parking would be in short supply half the time. Likewise, it should not be the highest or



maximum hour of the year, as parking would be oversupplied all of the other hours of the year (and resources – land, money and energy -- wasted in building and maintaining it).

Most professionals in the parking and traffic planning arena agree that parking ratios for most land uses should reflect the 85th percentile of peak hour observations across a large sample of many days, similar to the standards for roadway and intersection design. For shopping centers, however, the bar is set higher. Retailers conduct a large portion of their business in the days leading up to Christmas, and having adequate parking during this period is critical to their success. Therefore, the recommendation published by the Urban Land Institute (ULI) and the International Council of Shopping Centers (ICSC) in *Parking Requirements for Shopping Centers* is that that the 20th highest hour of the year be used as the design hour. Data collected from hundreds of shopping centers across the country in the preparation of that document suggest that the 20th highest hour occurs as the second or third highest hour on the second Saturday before Christmas, and represents parking demand on the 97th percentile day and the 99th percentile hour. Because data at Bal Harbour is not collected hourly, but at the peak hour each day, we don't have that specific hour recorded in the BHS data. However, because of the significantly higher activity in the "season" than in the average shopping center in the US, we found that the 97th percentile day occurred on both December 21, 2015, the Monday before Christmas, and on December 5th, the third Saturday before Christmas in 2015. On each of these days, 1,617 parking spaces were occupied for a parking ratio of 3.51. In that year, eleven days experienced higher parking demand, while 354 experienced lower parking demand over the course of the year. Thus, December 5th and 21st were the 97th percentile days at Bal Harbour Shops (354/365 = 97%). We then use the peak hour 3 pm on the 97th percentile day as the design day parking demand for BHS.

In Table 2, the design day parking demand peaked at 3.51 spaces per 1000 sq ft GFA90; however, it has clearly declined to a ratio of 3.14 by the most recent season

FUTURE PARKING DEMAND

Projecting future parking demand based on current experience is not perfect. On the one hand, traffic projections suggest that the number of automobile trips generated by the expanded center will not be proportional to the increase in GFA. On the other hand, industry experience suggests that the length of each visit will be longer due to more shops being available to visit, thus offsetting – and perhaps outweighing -- the effect of fewer trips. The parking operations plan adopted should be nimble enough to respond to higher than projected parking demand; hence the flex plan. It is also noted that BHS has a base ratio below the industry average, due to the "luxury" orientation of the center which is consistent with our experience. Those are traditional variables in projecting future demand. Now we are in the uncertain times of declining demand due to a new paradigm of ride-sharing and in the longer term autonomous vehicles.

As previously noted, we believe that maximum impact on rental cars as well as possible usage by local residents has not been reached. It is quite conceivable that 2018-19 season will show further decline, particularly as BHS takes steps to make pickup and dropoff for TNCs more organized and convenient. Moreover, we expect parking demand to decline as TNCs go driverless with autonomous vehicles. The cost of TNCs will be reduced significantly from today. While we don't agree with those who project that 90% of parking demand will disappear by 2030 as frequently reported in the media, we do believe that parking demand nationally will decline 40% by 2040 or 2050. For further discussion see the Appendix.

The difficulties in projecting demand for this project include both the tourist-heavy economy, but also the luxury orientation of BHS. "Snow birds" who reside in Florida during the season may have only one vehicle per household;



supplementing with TNC rides may be very attractive. Aging but affluent baby boomers are expected to increasingly rely on TNCs to allow them to stay at home, longer. We believe that there will be a fairly robust AV TNC service in Miami and Miami Beach by 2025. Conversely, many prognosticators agree that the lowest usage of TNCs will occur for 1) rural residents where giving up a car and using TNCs and other modes of travel is not practical, and 2) the wealthy who are likely to be able to more easily afford personal autonomous vehicles. While any projection is speculative at this point in time, we expect parking demand at the completion of construction of the interim phase (parking in space that will eventually be converted to retail) will be at least be 5 to 10% below a design day ratio (i.e., in the peak season) of 3.1, or 2.95 to 2.8 spaces per 1000 GFA90. The ratio may be reduced to 1.5 to 2.0 permanent parking spaces when ultimate penetration of Autonomous Vehicles and ride-sharing is achieved.

It is generally accepted that the parking demand outside the Christmas shopping season is about no more than 2/3 of the design day demand on weekends. *Parking Requirements for Shopping Centers* notes that with the 20th highest hour for the design parking ratio, over half of the available spaces will be vacant on the average day of the year. Using the 2/3 adjustment, the current off-peak ratio for a weekend afternoon would be 2.1 spaces per 1000 GFA90 today, with a ratio below 2.0 at the completion of the construction of the interim phase. Ultimately the off-season ratio could be 0.5 to 1.333.

Further, when AVs are available to private owners (which McKinsey expects by 2027 or so but others say it may be a decade or more later), they can drop passengers at the door and then go park themselves. Because the car doors won't need to open at the parking stall the vehicles can park closer together. We expect that 4 cars will eventually be able to park in 3 stalls. That means that parking capacity will increase as parking demand goes down. Therefore, we expect that the need for valet staffing and/or off-site parking for employees will reduce gradually, but steadily over time. And further, planning today for future conversion of parking areas to retail is entirely appropriate.

RECOMMENDED PARKING PLAN

We strongly support the plan to convert some parking areas to retail over time, with a flex plan including valet, stackers etc. for peak days, rather than building a lot of spaces that may no longer be needed in 10 or 20 years. By the time the construction is completed, we expect peak season parking demand will at least be 5 to 10% below today's ratio of 3.1, or 2.95 to 2.8 flex spaces per 1000 GFA90, with a ratio of 1.8 permanent parking spaces adequate for the remainder of the year. The peak season flex ratio could be further reduced to 1.5 to 2.0 flex spaces at ultimate penetration of autonomous vehicles and shared mobility, with a ratio of 1.5 permanent parking spaces adequate for the remainder of the year.

The minimum number of flex parking spaces to be provided upon completion of the interim phase is a ratio of 2.9 flex spaces with 2.1 spaces for the remainder of the year, which should be more than adequate. The plan to provide 1.8 permanent spaces with a flex plan of 2.3 to accommodate the peak season in the future is conservative, in our opinion, and balances the cost of providing flex parking with the likelihood of future parking demand declines. As demand further declines, the use of stackers and valet can be reduced. We call this the "just enough today, no regrets future" parking supply.

Bal Harbour Shops has a long history of active management of their parking system, so a dynamic parking plan for the shopping center can be recommended with confidence.



The recommended parking plan for the enhanced Bal Harbour Shops is therefore as follows:

1. Provide parking per the interim plan for a minimum, permanent parking ratio of 2.1 per 1000 sf of GFA90, with a flex plan to achieve a ratio of 2.9 in peak season. Provide parking at the final phase for a permanent parking ratio of 1.8 per 1000 sf of GFA90, with a flex plan to achieve ratio of 2.3 in peak season.
2. As peak season progresses, incrementally implement the flex plan use of valet and stackers in response to actual and anticipated increases in parking demand.
3. In addition to #2 above, continue to provide off-site parking for center employees on peak days to assure adequate on-site customer parking, and as a hedge against unexpectedly higher peak parking demand, unless and until sufficient operating experience suggests it is not necessary.
4. With the future conversion of parking areas to retail, continue to document parking demand and monitor ratios to maintain an acceptable parking ratio with flexibility to change as parking demand changes.



APPENDIX A: THE FUTURE OF PARKING WITH AUTONOMOUS VEHICLES

Many are projecting a significant shift to ride-hailing once autonomous vehicles eliminate the need for a driver. The investment by companies to develop driverless ride-hailing is staggering, and includes many more potential players than simply Uber and Lyft. Even traditional auto manufacturers such as GM are entering the fray. GM plans to put a service into commercial operation in selected cities in 2019; Ford expects to launch its service by 2021. Waymo is expecting to launch its commercial operation later this year with 20,000 Land Rover and 62,000 Chrysler Pacifica vehicles. It will begin in the densest areas of each city and radiate outward as the city is “mapped” for the specific service. In the near term the services will be what is classified by the Federal Government as Level 4 autonomy; that means that the vehicle can operate driverless but only within specific areas that have been mapped and in certain conditions. By mapped we mean that the car’s programming knows that an intersection ahead has a traffic signal, and it knows exactly where to look for it, to “read” the signal. It is also expected that in the early years the service may be driverless in good weather, but that if the conditions of rain or snow that still are challenges to the technology occur, the cars may have drivers. We would expect a fairly widespread driverless service to be available in Miami and the Greater Miami Beaches by 2025.

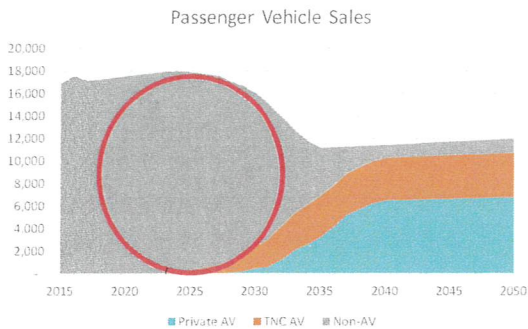
A number of media reports have stated that parking demand will decline as much as 90% as a result of widespread adoption of shared TNC rides, which we call shared autonomous vehicles or SAV. By the latter we mean a trip where others get in and out of the vehicle along the way to your destination, similar to the classic van- or car-pooling programs. We have studied as many academic and research papers as we could locate and believe that that projection is taken out of context. The studies typically look only at the trips that stay within a defined area, not an entire Metropolitan Statistical Area, and further assume that everyone who could will take a shared ride. Further it is a reduction in cars or vehicle miles traveled (VMT), not necessarily parking demand, at least in the studies we found. We simply don’t believe that a 90% reduction in cars is feasible, demographically. 19% of the US population lives in rural areas of less than 50,000 people, and another 10% live in small towns and cities with 2,500 to 50,000 people (per the US Census Bureau.) Thus there simply won’t be the critical mass of rides to support a TNC service at the scale required for 29% of the US population today. In fact, at least another 50% live in suburbs and other mid-size cities where most parking is free and transit systems are weak. Only 20% of the US population lives in areas that residents themselves define as “Urban” according to a recently released study by the University of California at Berkeley. After review of the studies we believe that there will be an array of choices as follows:

- SAV for commuting and/or all rides:
- Private TNC rides rather than shared ones for at least some trips for car-free life
- One owned AV with TNC for remaining trips
 - AV for long commute (parked at work) and TNC for errands/short trips
 - Reverse: AV for short commute and TNC to transit for long commute
- One owned AV for all trips, returning home between
- Commute by AVs and gain productivity time
 - Park on the perimeter not at workplace
- Move farther out but use personal AV to make longer commute acceptable

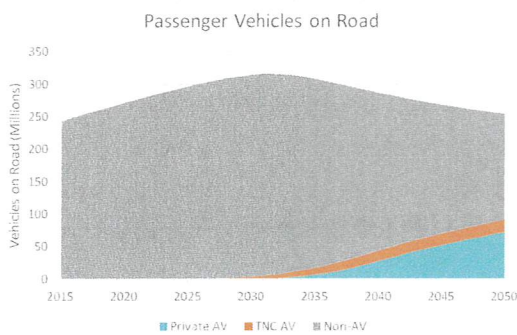
Many transportation officials/academics worry about this.

Further it is almost impossible for the full disruption (which means that millions of people will have given up car ownership to use TNCs and other modes of travel for all trips) to be achieved by 2030 as many predict. There are 260 million cars on the road, and many more millions that will be sold before autonomous vehicles even reach 15% of vehicle sales in the US. Using high and low disruption of auto sales projected by McKinsey, population growth per the US Census Bureau and scrappage rates reported by industry experts, we created the following curves of vehicle sales, vehicles on the road and parking demand. The red circle highlights the non-autonomous cars that will be sold by 2030.

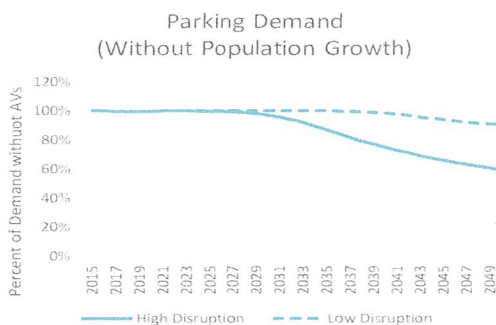
Appendix Figure 1: Vehicle Sales, Vehicles on the Road and Parking Demand with Autonomous Vehicles



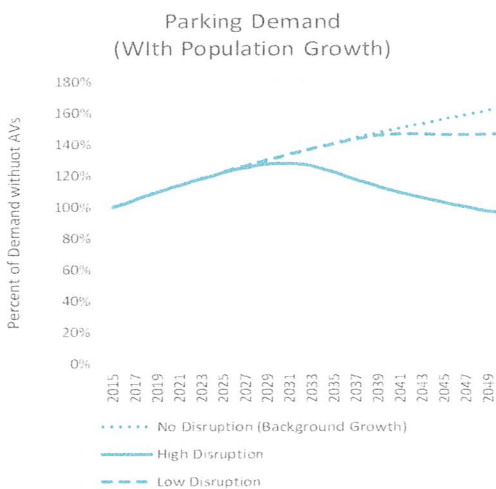
- Sales per McKinsey high disruption scenario
- Population growth per US Census Bureau
- Red Circle: Non-Autonomous cars sold between now and 2030



260 million cars on the road, 2017
+ Millions more cars sold
- 4.5% scrappage rate (that is 4.5% of cars on the road are removed from service each year)
= Lots of non-AVs on the road, for many years!



This graph would apply to the average property in the US, with a fixed amount of land use, such as an office building, shopping center or other individual property.



This graph would apply to destinations that grow with population, such as airports, downtowns, universities etc.



APPENDIX B

It has been established that the peak season parking ratio for Bal Harbour Shops (BHS) has declined from about 3.5 spaces/ksf GFA90 to about 3.1 spaces/ksf in a two-year period, a reduction of about 11%. This is apparently due to increasing use of TNC (ride-hailing companies such as Uber and Lyft). Over the longer term, we expect the parking demand to continue to decline, due to the growing use of ride-hailing services like Uber and Lyft, and eventually, autonomous vehicles. By the time the construction is completed, we expect peak season parking demand will at least be 5 to 10% below a ratio of 3.1, or 2.95 to 2.8 spaces per 1000 GFA90. The ratio could be reduced to 1.5 to 2.0 spaces if/when autonomous vehicles and ride-sharing reach maximum penetration. The expansion is being designed to allow incremental conversion of parking areas to retail as further declines in parking demand occur. The following procedure is proposed to document the parking ratio in each peak season and monitor changes in demand.

1. BHS will continue to record the parking occupancy on a daily basis from Thanksgiving through the end of February in each year. The City has requested that these counts be taken year round, in order to inform the number of permanent spaces required. Counts are taken at 3:00 p.m., the time that experience has shown has the highest parking demand. Where appropriate, BHS will count vacant spaces rather than occupied ones and deduct the vacant spaces from the total spaces available to calculate the spaces occupied. BHS will also record the spaces available for off-site employee parking, if any are in operation each day. (BHS will not count the actual occupancy of the off-site spaces.)
2. BHS will periodically retain a qualified parking consultant to evaluate the data and determine the following indices for the year(s) analyzed. The occupied spaces on each day will be divided by the then current leasable space in the center. In this case, the size of the center is calculated as 90% of its gross square footage, referred to herein as GFA90. The existing gross square footage (GFA) of the center is 511,422 square feet and its GFA90 is therefore 460,280 square feet. After converting the occupied spaces to parking ratios, the following indices will be determined by the parking consultant and added to the table as follows.

Summary	Jan/Feb 2007-08	Dec-Feb 2008-09	Thx- Feb 2009-10	Dec-Feb 2010-11	Thx-Feb 2011-12	Thx-Feb 2012-13	Thx-Feb 2013-14	Thx-Feb 2014-15	Thx-Feb 2015-16	Thx-Feb 2016-17	Thx-Feb 2017-18	Change from peak
Average	2.90	2.82	2.84	2.94	3.04	3.18	3.19	3.08	3.15	2.84	2.83	-11%
Std Dev	0.30	0.32	0.38	0.33	0.31	0.32	0.32	0.39	0.30	0.31	0.31	
Maximum	3.65	3.81	4.28	4.24	3.98	4.09	4.28	4.28	3.70	3.58	3.70	-14%
Minimum	2.13	2.04	2.19	2.23	2.19	2.38	2.42	1.96	2.26	1.95	2.09	
Average of top ten days	3.34	3.40	3.63	3.54	3.63	3.71	3.74	3.68	3.63	3.37	3.44	-8%
Days over 3.6 ratio	3	1	3	3	4	6	7	6	6	0	1	
Days over 3.1 ratio	9	12	20	21	42	59	58	50	58	17	15	
Design Day*	NA	3.19	3.10	3.09	3.10	3.40	3.32	3.11	3.51	3.04	3.14	-11%

* Third Saturday Before Christmas

3. The parking consultant will then evaluate the data and render an opinion on the acceptable parking ratio based on that season. If/when BHS proposes to convert parking areas to leasable space, the parking consultant shall recalculate the parking ratio data for two recent years with the revised GFA90 sq ft, and render an opinion as to whether the conversion of space is reasonable.

11/7/2018

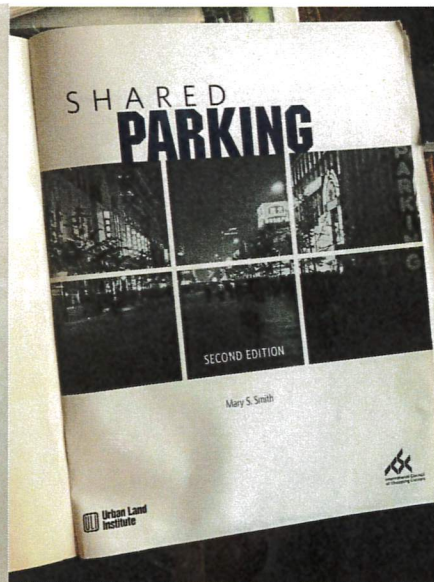
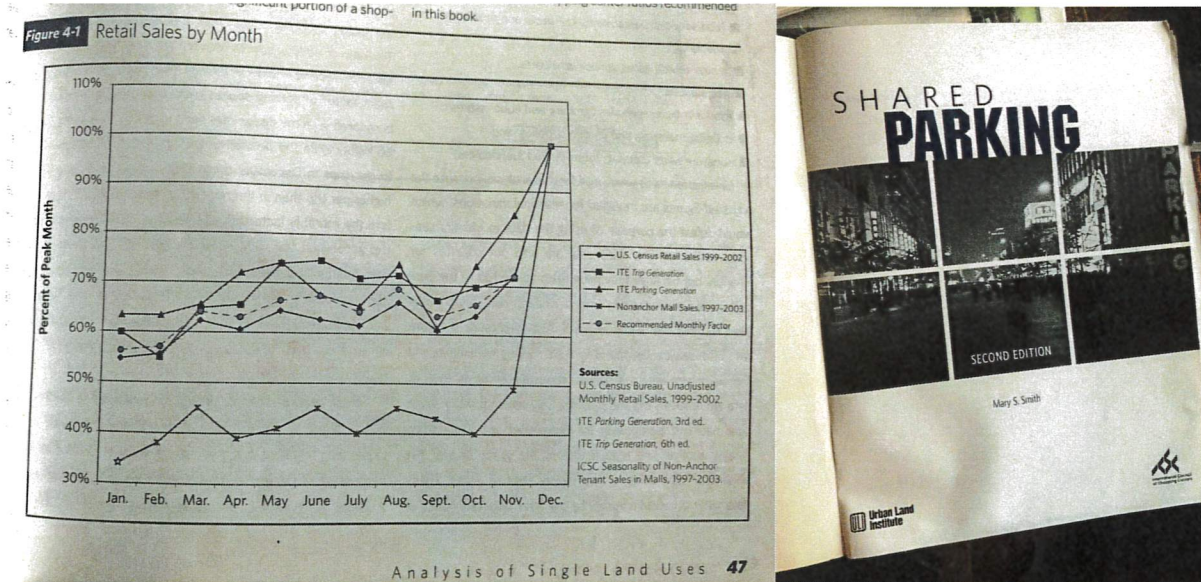
 4904 Eisenhower Blvd, Ste 150
 Tampa, FL 33634

813.888.5800

walkerconsultants.com

 DATE: November 8, 2018
 TO: Joe Corradino
 COPY TO: Amy Huber, Nik Massey, Brian Preston
 FROM: Mary Smith
 PROJECT NAME: Bal Harbour Shops Parking Analysis
 PROJECT NUMBER: 15-1869.00

It was nice talking to you yesterday. As requested below is the information I used to confirm that the 2.1 spaces/ksf GFA 90 is a good number for parking demand from April to Thanksgiving. I am author of *Shared Parking*¹ (Second Edition), which is the definitive methodology for determining parking demand of mixed use projects.



This figure explains the derivation of the monthly factors for retail, showing four sources of data at that time, and the monthly adjustment factor recommended in the publication. The lowest curve is the data from shopping centers that ICSC collects and provided to us for 1997-2003. The top line with square markers is the monthly variation in trips from ITE *Trip Generation*. The line with triangles is the monthly variation found in data in ITE *Parking Generation*. The diamond line is the from US Census Bureau retail sales. The dotted line is the recommended factors for shopping centers. The text notes that the sales per customer is higher during the holidays, so we did not rely solely on monthly sales data for the projection. Similarly trips will be higher than parking demand at a peak hour. And finally, the text noted that the data from ITE was not extensive and also relatively old, at that time.

Based on this, I multiplied the 3.1 design day ratio by 0.67 in 2016-17 to determine an off-season parking demand of 2.06 spaces per ksf GFA90. I was, and am, very comfortable with the 2.1 ratio for off-season parking.

¹ Mary S. Smith *Shared Parking* Second Edition, 2005. Washington DC: The Urban Land Institute and the International Council of Shopping Centers.

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" TO AMEND THE DEFINITIONS AND STANDARDS APPLICABLE TO NOISE;

Issue:

Should the Village Council approve proposed amendments to the Ordinance on first reading on amending the nuisance and noise portions of Chapter 11 of the Village Code?

Item Summary/Recommendation:

On June 20, 2017 at the Regular Village Council meeting, the Village Council approved an amendment to the code of ordinances by adopting regulations for construction noise in the Business District. This initial ordinance placed the onus strictly on the property owner for any and all violations related to construction noise.


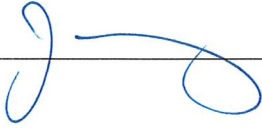
As part of an ongoing review of this ordinance, the Village has received a request to include changes to this ordinance which would more closely align the related penalties associated with a violation to the responsible party. The ordinance would also provide a mechanism for holding the property owner accountable. These recommended changes do not seek to alter in any manner the permitted work hours or decibel levels.

Approval of this item is recommended.

Financial Information:

	Amount	Account	Account #
1	N/A		

Sign Off:

Chief of Police	Captain	Village Manager
Raleigh Flowers, Jr.	Mauricio Escarra	Jorge M. Gonzalez
		

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA;
AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER
11 "NUISANCES," ARTICLE II "NOISE," SECTION 11-32
"CONSTRUCTION NOISE IN THE "B" BUSINESS DISTRICT;"
PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE,
CONFLICTS, AND FOR AN EFFECTIVE DATE**

ADMINISTRATIVE RECOMMENDATION

Approval of this Ordinance is recommended.

BACKGROUND

On June 20, 2017 at the Regular Village Council meeting, the Village Council approved an amendment to the Code of Ordinances by adopting regulations for construction noise in the Business District. This initial ordinance placed the onus strictly on the property owner for any and all violations related to construction noise.

As part of an ongoing review of this ordinance, the Village has received a request to include changes to this ordinance, which would more closely align the related penalties associated with a violation to the responsible party. The ordinance would also provide a mechanism for holding the property owner accountable. These recommended changes do not seek to alter in any manner the permitted work hours or decibel levels.

Since the adoption of this ordinance, there have been no violations associated with construction noise within the Business District. However, the ordinance as it is written, could present a burden on the Property Owner, as there are a multitude of different tenants within the district which could be conducting work at any given time. The Property Owner is not always the applicant for this type of work and will not always have direct oversight over those projects. The proposed changes do not preclude the Property Owner from being responsible if they are also the party conducting the work.

ANALYSIS

The Ordinance, Section 11-32, as adopted, makes the following distinctions to address the construction noise in the "B" Business District. The proposed changes to these provisions are highlight below:

- Created a "B" Business District to allow for comprehensive regulation of construction noise.
 - The proposed amendment seeks to create a distinction from the property owner by defining the Permit Applicant.
 - The Permit Applicant is defined as the person who hired or will serve as the contractor or company to perform the construction activities.
 - The proposed amendment also defines Violator. The Violator is the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of the noise ordinance.
- Provided for mitigation to address community complaints through coordination of meetings between the owner and the affected residents. The Village Manager may also impose reasonable conditions or request further noise mitigation. The owner may appeal the Village Manager's imposed conditions or noise mitigation requests to the Village Council.
 - The proposed amendment seeks to add the Permit Applicant and/or Violator to the meeting process as well.
- Established a procedure for applicant to request permission from the Village Manager to exceed the permitted decibel levels after demonstrating a need.
 - The proposed amendment recommends changed the term applicant to Permit Applicant.

ENFORCEMENT PROCEDURES

The ordinance, as adopted, deems violations as irreparable in nature, delineates enhanced enforcement penalties within the Business District, and incorporates procedures and standards to address any violation. There are no proposals to change the frequency of nor the cost of the existing fines. The proposed amendment seeks to include the Permit Applicant and Violator into the enforcement procedures as follows:

- Verbal Warning for initial violation requiring immediate correction;
 - This amendment calls for the initial verbal warning to be issued to the Violator.
- First Citation of \$500 for any violation not immediately corrected after the Verbal Warning, and initiating a 60-day accountability period;

- The proposed amendment calls for the first citation to be issued to both the Violator and Permit Applicant as opposed to the Property Owner. The amendment also calls for notification of the Violation to the Property Owner.
- Second Citation of \$1,000 for any violation not immediately corrected or occurring within the 60-day accountability period;
 - The proposed amendment calls for the second citation to be issued to both the Violator and Permit Applicant as opposed to the Property Owner. The amendment also calls for notification of the Violation to the Property Owner.
- Third Citation of \$2,500 for any violation not immediately corrected or occurring within the 60-day accountability period;
 - The proposed amendment calls for the third citation to be issued to both the Violator and Permit Applicant as opposed to the Property Owner. The amendment also calls for notification of the Violation to the Property Owner.
- Continuing or recurring violations, the Village Manager shall revoke ability to make construction noise during the nighttime hours for seven consecutive days in addition to and additional fine of \$5,000;
 - The proposed amendment calls for the revocation of nighttime construction activities to be levied against both the Violator and Permit Applicant as opposed to the Property Owner. As well as the imposition of the \$5,000 penalty against both the Violator and Property Owner.
- Additionally, the Village Manager may restrict nighttime construction noise for periods in excess of seven days if there have been more than three violations within a six-month period of time;
 - The amendment also provides for the ability for the Village Manager to impose a penalty of \$5000 against the Property Owner if the Property Owner is not the Permit Applicant.
 - If no further violations occur during a six month consecutive period, then the enforcement procedures will reset for all the parties
- Provides for criminal penalties, including arrest of the offending person, with a maximum penalty of imprisonment in the county jail for a maximum of 60 days.
 - The proposed amendment defines the person who is subject to arrest as the Violator.

CONCLUSION

The proposed amendments do not seek to change the permitted working hours nor the allowable decibel levels. However, the changes do seek to address more clearly who should be held responsible for violations of this ordinance. Therefore, it is recommended that the proposed amendments to this ordinance be approved.

ORDINANCE NO. 2018-_____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE," SECTION 11-32 "CONSTRUCTION NOISE IN THE "B" BUSINESS DISTRICT;" PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND FOR AN EFFECTIVE DATE

WHEREAS, Section 11-32 of the Bal Harbour Village ("Village") Code address construction noise in the "B" Business District; and

WHEREAS, based on the experience of the Village and property owners and tenants most affected by Section 11-32, the Village has received a request for changes to Section 11-32 so that violations of the noise regulations and the related penalties are more aligned with the responsible party, while still holding the property owner responsible as well; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on _____, 2018, and recommended _____; and

WHEREAS, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the above stated recitals are hereby adopted and confirmed.

Section 2. Village Code Amended. That Chapter 11 “Nuisances,” Article II “Noise,”

Section 11-32 “Construction Noise in the “B” Business District” is hereby amended to read as follows:

1

Chapter 11 – NUISANCES

ARTICLE II. – NOISE

* * * * *

Sec. 11-32. – Construction Noise in the “B” Business District.

(a) *Definitions.* For the purposes of this section, the following terms will have the following prescribed meaning unless the context indicates otherwise:

(1) Permit Applicant means the person who hired or will serve as the contractor or company to perform the construction activities.

~~(12)~~ *Noise Receptor Site* means a Lot which is the recipient of Construction Noise emanating from outside of the Lot's property line or, in the event that the Lot is part of an approved site plan, outside of the boundary of the site plan, regardless of whether that Lot is located in the Village.

~~(23)~~ *Permitted Decibel Level* means the maximum decibel level permitted for Construction Noise.

(4) Violator means the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of this Section.

(b) *Regulations.* Construction Noise in the "B" Business District shall conform to the following regulations:

(1) *Prohibited Hours of Construction:* Construction Noise is prohibited from 4:00 p.m. Saturday through 8:30 a.m. Monday, and all day on New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, Rosh Hashanah, and Christmas Day. Construction activities that occur completely within the exterior walls of a Building may occur within the prohibited hours of construction so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.

(2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strike through~~.

- a. *Night*: 55 decibels from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and
 - b. *Day*: 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday, and from 10:00 a.m. to 4:00 p.m. Saturday.
- (3) *Measurement of Permitted Decibel Level*: The Permitted Decibel Level of Construction Noise shall be measured outdoors using a calibrated Sound Level Meter at the property line of the Noise Receptor Site of a complaining party outside of the Lot or site plan from which the noise is emanating. If there is no complaining party, the measurement shall be taken at a location that is no less than 65 feet from the property line of the Lot from which the noise is emanating. If such Lot is part of an approved site plan, the measurement shall be taken no less than 65 feet from the boundary of the site plan. The measurement period shall be no less than five minutes in duration and shall be in accordance with current ANSI standards.
- (4) *Mitigation Practices*: The Noise mitigation practices required by section 11-29(c) shall also be followed to mitigate Construction Noise in the "B" Business District.
- (c) *Mitigation Conditions to Address Complaints*. If complaints are received from residents who live adjacent to or near a construction site, the Village Manager or his designee may attempt to resolve such complaints by coordinating and attending meetings between the owner, owner's representative, general contractor or project manager~~Permit Applicant and/or Violator~~, and the affected citizens or their representatives. As part of the resolution of such complaints and regardless of whether any citation has been issued or violation has occurred, the Village Manager may impose reasonable conditions on construction activities that will mitigate the Construction Noise.
- (d) *Deviations*. ~~An applicant~~ A Permit Applicant may seek the prior written consent of the Village Manager to make Construction Noise for a limited time during the prohibited hours or in excess of the Permitted Decibel Levels. Such consent, which may not be unreasonably withheld, may be granted by the Village Manager if ~~an applicant~~ a Permit Applicant submits documentation establishing that the activity producing the Construction Noise, by its very nature, cannot meet the Permitted Decibel Level or be mitigated to meet the Permitted Decibel Level, or the activity cannot practically be performed during the permitted hours, or for other just cause as deemed reasonable by the Village Manager. The Village Manager may impose appropriate conditions to mitigate the impact of the deviation on the Village.
- (e) *Enforcement*. This section shall be enforced by the Village Manager in accordance with the following procedures and standards. The Village finds that Construction Noise violations are irreparable or irreversible in nature as a matter of law, and the penalties for such violations are established as follows in accordance with F.S. § 162.09(2).
- (1) *Verbal warning*. If the Village Manager finds a violation of this section, he or she shall issue a verbal warning to the ~~v~~Violator requiring immediate correction of the violation.
 - (2) *Civil penalties*.
 - a. *First citation*. If the violation is not corrected immediately after issuance of the verbal warning, the Village Manager shall issue a citation requiring immediate correction of the violation, ~~and~~ shall impose fines in the amount of \$500.00 against ~~the owner of the~~

property both the Violator and Permit Applicant, and shall notify the Property Owner of the violation.

- b. *Second citation.* If the violation is not corrected immediately after issuance of the first citation, or the violation recurs within a 60-day period, the Village Manager shall issue a second citation requiring immediate correction of the violation, ~~and shall impose fines in the amount of \$1,000.00 against the owner of the property~~ both the Violator and Permit Applicant, and shall notify the Property Owner of the violation.
- c. *Third citation.* If the violation is not corrected immediately after issuance of the second citation, or the violation recurs within a 60-day period, the Village Manger shall issue a third citation requiring immediate correction of the violation, ~~and shall impose fines in the amount of \$2,500.00 against the owner of the property~~ both the Violator and Permit Applicant, and shall notify the Property Owner of the violation.
- d. *Continuing or recurring violations.* In the event that the violation continues after or recurs within 60 days of issuance of the third citation, the Village Manager shall revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for seven consecutive days, and may impose an additional penalty of \$5,000.00 against both the owner of the property Violator and Permit Applicant. The Village Manager may revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for periods of time in excess of seven consecutive days, in the event that the ~~Owner~~ Violator or Permit Applicant has more than three violations in a six-month period of time and the ~~Owner~~ Violator or Permit Applicant has failed to address and resolve the violations. In such event, the Village Manager may also impose a penalty of \$5,000.00 against the Property Owner if the Property Owner is not the Permit Applicant.
- e. *Future violations.* If no other violation occurs for six consecutive months after a violation is complied, the enforcement procedures of this subsection shall reset as to all parties and any future violations will again result first in a verbal warning, followed by the escalating progression of citations and penalties as set forth in subsections a— e.

(3) *Criminal penalties.* In addition to or in lieu of the civil penalties set forth above, ~~any person violating with respect to any of the provisions of this section, the Violator~~ may be arrested and punished by imprisonment in the county jail for a period not to exceed 60 days.

(f) *Appeals.*

(1) *Appeals of Mitigation Conditions:* The property owner (or other party responsible for the violation pursuant to subsection 11-29(d)) may appeal to the Village Council the Village Manager's mitigation conditions imposed pursuant to subsection (c). An appeal shall be submitted on forms provided by the Village within ten calendar days after the decision of the Village Manager, and shall set forth the basis on which the mitigation conditions are alleged to be unreasonable. The Village Council shall hold a hearing on an appeal within 30 calendar days of the filing of such appeal, unless an extension of time is consented to by the

~~applicant~~appellant. Mitigation conditions imposed by the Village Manager shall remain effective during the time that the Village Council is considering the appeal, and the Village Council shall uphold the mitigation conditions if they are reasonable. The decision of the Village Council as to the appeal of a decision of the Village Manager shall be final.

(2) *Appeals of Citations or Violations.* The property owner (or other party responsible for the violation pursuant to subsection 11-29(d)) may appeal such determination to the Village Special Master in accordance with the procedures set forth in chapter 2, article V "Code Enforcement" of this Code. The Special Master shall only review whether the citation or violation was properly issued with notice, and is not authorized to adjust the penalties set forth in this section or override any revocations issued by the Village Manager.

* * * * *

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Conflict.** That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. **Effective Date.** That this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED on first reading this __ day of _____, 2018.

PASSED AND ADOPTED on second reading this __ day of _____, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE AMENDING THE VILLAGE CODE TO EXPAND MEDICARE SUPPLEMENT INSURANCE COVERAGE ELIGIBILITY TO ALL COUNCILMEMBERS WHO LEAVE THE COUNCIL AFTER COMPLETING TWO (2) FULL TERMS; ESTABLISHING ELIGIBILITY FOR THE EXPANSION OF SUCH COVERAGE; AUTHORIZING THE VILLAGE TO TAKE ALL ACTIONS NECESSARY TO PROVIDE POST-SERVICE MEDICARE SUPPLEMENT INSURANCE TO COUNCILMEMBERS;

Issue:

Should the Ordinance be amended to reflect a change that in the event a Councilmember is not Medicare-eligible at the time of leaving office, the purchase of a Medicare supplement insurance policy will occur upon the Councilmember requesting such purchase after reaching age eligibility? Though the approval of this Ordinance addresses the expansion of the supplemental coverage, the memo also introduces two related items that warrant Council direction. First, will the expanded Medicare supplement apply to Councilmembers who served at the time the matter was broached in October 2018, or will it only apply to those Councilmembers in office at the time the item is approved? Second, is the Council interested in offering continuation health insurance to Councilmembers who leave office? If so, who pays the associated financial costs? Depending on the Council's direction regarding these two related items, the Ordinance can be modified before second and final reading.

Item Summary/Recommendation:

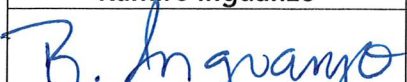

The proposed amendment to the Ordinance is: *The Village Manager is hereby authorized to purchase Medicare supplement insurance policies for any Councilmember presently serving on the Village Council or who is hereafter elected to the Village Council, so as to provide Medicare supplement insurance coverage for any Councilmember who leaves the Council after having completed two consecutive terms of office on the Council. ~~and is eligible for Medicare at the time of leaving the Council.~~ In the event the Councilmember is not Medicare-eligible at the time of leaving the Council, the purchase of a Medicare supplement insurance policy will occur upon the Councilmember requesting such purchase after reaching Medicare eligibility. Notwithstanding the above, the Village's cost of purchasing such coverage shall be limited so that such cost shall not be greater than the Village's then prevailing cost for providing group health insurance coverage to individual Councilmembers.*

THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE

Financial Information:

	Amount	Account	Account #
1			

Sign Off:

Assistant Village Manager	Chief Financial Officer	Village Manager
Ramjro Inguanzo	Amber Riviere	Jorge M. Gonzalez
		

AGENDA ITEM _____

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: November 20, 2018

SUBJECT: AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 2 "ADMINISTRATION" OF THE CODE OF ORDINANCES, BY AMENDING ARTICLE II, "VILLAGE COUNCIL," SECTION 2-27 "MEDICARE SUPPLEMENT INSURANCE POLICY," TO EXPAND MEDICARE SUPPLEMENT INSURANCE COVERAGE ELIGIBILITY TO ALL VILLAGE COUNCILMEMBERS WHO LEAVE THE COUNCIL AFTER COMPLETING TWO (2) FULL TERMS; ESTABLISHING ELIGIBILITY FOR THE EXPANSION OF MEDICARE SUPPLEMENT INSURANCE COVERAGE; AUTHORIZING VILLAGE OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO PROVIDE POST-SERVICE MEDICARE SUPPLEMENT INSURANCE COVERAGE TO VILLAGE COUNCILMEMBERS; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR SEVERABILITY, INCLUSION IN CODE, CONFLICTS, AND AN EFFECTIVE DATE.

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Ordinance.

BACKGROUND

At the October 16, 2018 Council meeting, a discussion item regarding health insurance options for elected officials was on the Council agenda and subsequently discussed by the Village Council. Currently, the Bal Harbour Village code provides for the following benefit; the eligibility criteria are bolded for reference:

Sec. 2-27. - Medicare Supplement Insurance Policy

*The Village Manager is hereby authorized to purchase Medicare supplement insurance policies for any Councilmember **presently serving on the Village Council or who is hereafter elected** to the Village Council, so as to provide Medicare supplement insurance coverage for any Councilmember **who leaves the Council after having completed two consecutive terms of office on the Council and is eligible for Medicare at the time of leaving the Council**. Notwithstanding the above, the Village's cost of purchasing such coverage shall be limited so that such cost shall not be greater than the Village's then prevailing cost for providing group health insurance coverage to individual Councilmembers.*

This Ordinance first passed in 2002 and was subsequently amended in 2005.

ANALYSIS

As the current legislative term ends on November 19, 2018, the issue of health insurance coverage for former elected officials was raised regarding those individuals who do not meet the age requirement for the Medicare supplement insurance policy at the time of leaving office as provided by the Village Code. At the October 16, 2018 Council meeting discussion regarding this item, direction was provided to explore options for post-retirement insurance options for former elected officials who do not meet the age requirement currently required by the Code, allowing them to become eligible once they reach Medicare eligible age in the years after they leave office.

The proposed amendment to the Ordinance is as follows:

Sec. 2-27. - Medicare Supplement Insurance Policy

The Village Manager is hereby authorized to purchase Medicare supplement insurance policies for any Councilmember presently serving on the Village Council or who is hereafter elected to the Village Council, so as to provide Medicare supplement insurance coverage for any Councilmember who leaves the Council after having completed two consecutive terms of office on the Council. ~~and is eligible for Medicare at the time of leaving the Council.~~ In the event the Councilmember is not Medicare-eligible at the time of leaving the Council, the purchase of a Medicare supplement insurance policy will occur upon the Councilmember requesting such purchase after reaching Medicare eligibility. Notwithstanding the above, the Village's cost of purchasing such coverage shall be limited so that such cost shall not be greater than the Village's then prevailing cost for providing group health insurance coverage to individual Councilmembers.

LEGAL ANALYSIS

Regarding the applicability of the amendment, the Village Attorney's office has indicated that this benefit can only apply prospectively. It clearly will not apply to any Council Member whose term of office ended prior to 2018.

While there is no caselaw directly on point authorizing it, there is a possible argument that the Village could provide this benefit to all councilmembers in office at the time the Village Council initially discussed the possibility of expanding eligibility for Medicare supplement insurance in October 2018.

OVERVIEW OF MEDICARE AND MEDICARE SUPPLEMENT INSURANCE PLANS

Medicare coverage is made up of several parts, including:

Medicare	Coverage / Benefits	Cost
Part A	Hospital Insurance and covers cost associated with confinement in a hospital or skilled nursing facility	No cost to Eligible Individual
Part B	Medical Insurance and covers physician services, outpatient care, tests and supplies	Eligible Individual pays a premium depending on income
Part D	Self-administered prescription drug program through private prescription drug insurance premiums	Eligible Individuals may only obtain this benefit through private insurance companies - cost varies

Medicare Supplement Insurance (Medigap) refers to various private health insurance plans sold to supplement Medicare coverage in the United States. Medigap insurance provides coverage for many of the co-pays and some of the co-insurance related to Medicare-covered hospital, skilled nursing facility, home health care, ambulance, durable medical equipment, and doctor charges. Medigap's name is derived from the notion that it exists to cover the difference or "gap" between the expenses reimbursed to providers by Medicare Parts A and B for the preceding named services and the total amount allowed to be charged for those services by the United States Centers for Medicare and Medicaid Services (CMS). Medicare eligibility starts for most Americans when they turn 65 years old. Those who have been on Social Security eligibility for 24 months can also qualify for Medicare Part A and Part B. Eligible Individuals must be enrolled in part A and B of Medicare before they can enroll in a Medigap plan.

Currently, there are about 10 types of Medicare Supplement Insurance Plans that are available for purchase by an individual. Of these 10 types, the plan referred to as Plan F is considered to be the type that provides the greatest amount of coverage for individuals. The cost of a Medicare Supplement Insurance plan varies on the type of plan selected and on several other factors, including age at time of enrollment and certain health conditions/habits. On average in November 2018, a current Plan F can cost approximately \$3,500 annually for someone who is 65 at the time of enrollment, but that amount increases the older the first time enrollee is and can cost approximately \$5,500 annually based on age and certain health conditions/habits.

OTHER HEALTH INSURANCE OPTIONS

For all Elected Officials who leave office before meeting the current Medicare age-eligible benefit provided by the Village Code, if they have been enrolled in the Village's health insurance plans, the Federal Consolidated Omnibus Budget Reconciliation Act (COBRA) provides them the ability to continue health insurance coverage. Under most circumstances, individuals eligible for COBRA pay the full premium costs associated with the continuation of this coverage. COBRA allows for coverage for up to 18 months in most cases with some extensions depending on certain circumstances.

An additional question to consider is what, if any, other post-service health insurance benefit or access should be provided to a former elected official who leaves office prior to being Medicare eligible.

The Florida Statutes authorizes municipalities which provide health insurance for their officers and employees and their dependents pursuant to a group insurance plan to also allow former personnel who retire the option of continuing to participate in the municipality's group health insurance plans. Different municipalities provide a range of health insurance options and benefits to their former elected officials. For example, the following four local municipalities each allow their former elected officials access to coverage in their insurance plans, but each handles the cost of providing such access differently:

- Town of Golden Beach - former elected officials are allowed to participate in the Town's group health insurance plans with the full premium cost paid for by the former elected official.
- City of Miami Beach - former elected officials who served a minimum of 5 years in office and who reach the city's retirement age are eligible to participate in the City's group health insurance plans with the City paying fifty percent (50%) of the cost.
- City of Dania Beach - former elected officials are eligible to participate in the City's group health insurance plans with the City paying sixty-six percent (66%) of the cost.
- City of Hialeah - former elected officials who served a minimum of 8 years in office are eligible to participate in the City's group health insurance plans with the City covering one-hundred percent (100%) of the full cost for single coverage for the individual and the retired official paying the premium for eligible dependents.

Should the Village Council determine that post-service health insurance access should be provided to former elected officials who are not eligible for the Medicare benefit, beyond what COBRA allows, guidance is requested on the level of the Village's financial support for that possible benefit.

CONCLUSION

The approval of this Ordinance is recommended so that in the event a Councilmember is not Medicare-eligible at the time of leaving the Village Council, the purchase of a Medicare supplement insurance policy will be allowed upon the Councilmember requesting such purchase after reaching Medicare-age eligibility in the years after leaving office. Though the approval of this Ordinance addresses the expansion of Medicare supplemental coverage, this memorandum also introduces two related items that warrant Council direction. First, will the expanded Medicare supplement benefit apply to Councilmembers who served at the time the matter was broached in October 2018, or will it only apply to those Councilmembers in office at the time the item is approved. Second, is the Council interested in offering continuation health insurance to Councilmembers who leave office. If so, who will bear the associated financial costs. Depending on the Council's direction relative to these two (2) related items, the Ordinance can be modified accordingly before final reading.

ORDINANCE NO. 2018- ____

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 2 "ADMINISTRATION" OF THE CODE OF ORDINANCES, BY AMENDING ARTICLE II, "VILLAGE COUNCIL," SECTION 2-27 "MEDICARE SUPPLEMENT INSURANCE POLICY," TO EXPAND MEDICARE SUPPLEMENT INSURANCE COVERAGE ELIGIBILITY TO ALL VILLAGE COUNCILMEMBERS WHO LEAVE THE COUNCIL AFTER COMPLETING TWO (2) FULL TERMS; ESTABLISHING ELIGIBILITY FOR THE EXPANSION OF MEDICARE SUPPLEMENT INSURANCE COVERAGE; AUTHORIZING VILLAGE OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO PROVIDE POST-SERVICE MEDICARE SUPPLEMENT INSURANCE COVERAGE TO VILLAGE COUNCILMEMBERS; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the Village provides health insurance coverage to its employees who retire and decide to continue participation in the Village's group health insurance plan; and

WHEREAS, the Village provides health insurance coverage to its Councilmembers who are Medicare-eligible upon leaving office after completing two (2) full terms, by the purchase of a Medicare supplement insurance policy; and

WHEREAS, the Village Council hereby finds and determines that this Ordinance is in its best interests by creating parity through the provision of Medicare supplemental insurance to all Village councilmembers who leave the Council after serving at least two (2) consecutive terms, irrespective of their Medicare eligibility status at the time they leave office.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

Section 2. Section 2-27 of the Village Code Amended. That Article II "Village Council," Section 2-27 "Medicare supplement insurance policy" of Chapter 2 "Administration" of the Code of Bal Harbour Village, Florida is hereby amended to read as follows:¹

Sec. 2-27. - Medicare supplement insurance policy.

The Village Manager is hereby authorized to purchase Medicare supplement insurance policies for any Councilmember presently serving on the Village Council or who is hereafter elected to the Village Council, so as to provide Medicare supplement insurance coverage for any Councilmember who leaves the Council after having completed two consecutive terms of office on the Council. ~~and is eligible for Medicare at the time of leaving the Council.~~ In the event the Councilmember is not Medicare-eligible at the time of leaving the Council, the purchase of a Medicare supplement insurance policy will occur upon the Councilmember requesting such purchase after reaching Medicare eligibility. Notwithstanding the above, the Village's cost of purchasing such coverage shall be limited so that such cost shall not be greater than the Village's then prevailing cost for providing group health insurance coverage to individual Councilmembers.

Section 3. Authorization of Village Officials; Implementation. That the Village Mayor and Village Manager are authorized to take all action necessary to implement this Ordinance and provide Medicare supplemental insurance coverage to Councilmembers leaving office under these terms and conditions, and to forward all necessary documents as may be required to implement coverage and execute any required agreements or documents.

Section 5. Authorization for Fund Expenditure. That the Village Mayor and Village Manager are authorized to expend budgeted funds to implement the terms and conditions of this Ordinance.

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~.

Section 6. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. Conflict. That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 9. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this ___ day of _____, 2018.

PASSED AND ADOPTED on second reading this ___ day of _____, 2018.

Mayor Gabriel Groisman



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: November 20, 2018

SUBJECT: **Summary of First Amendment to Development Agreement for Bal Harbour Shops Expansion**

BACKGROUND

On May 16, 2017, the Village Council approved a Development Agreement to allow for the proposed expansion of Bal Harbour Shops. Resolution No. 2017-1076 approved the Development Agreement and the exhibits attached to it. The current version of the Development Agreement provides significant and valuable public benefits to the Village, but many of those benefits will not occur for many years.

ANALYSIS

On October 22, 2018 (after discussions with staff), BHS transmitted a formal request for approval of a revised site plan, proposed text amendments and proposed amendments to the development agreement. The 2018 proposed amendment would not materially affect or change the aesthetics of the project, the facades of the approved buildings, or how the project will generally look at ground level to residents or patrons.

The Minor Site Plan Amendment requested by BHS requires certain amendments to the Development Agreement. Those amendments have afforded the Village an opportunity to seek additional improvements the public benefits package included in the Development Agreement that are beneficial to the Village. The following is a summary of the more significant and beneficial changes to the Development Agreement which are incorporated into the First Amendment to Development Agreement ("First Amendment") for your consideration.

1. **New Village Hall and Parking Garage.** One of the most significant benefits to the Village in the Development Agreement is the construction and delivery of a new Village Hall and parking garage on the Fairfield Property. Under the existing Development Agreement, the timeline for the design and construction of New Village Hall does not begin until 24 months after issuance of a final building permit for the Shops. This resulted in the New Village Hall delivery date to be between 8 and 10 years away. The First Amendment now established the following timeline for New Village Hall:

- Six months after the Final Approval Date, BHS to deliver design plans and renderings for New Village Hall and garage;
- 18 months after approval of the design by Village, BHS to submit construction plans.
- **No later than 30 months after BHS starts construction on the Shops' 96th Street garage, BHS to start construction of New Village Hall and garage;**
- 30 months after the start date, BHS to complete construction of New Village Hall.
- New Village Hall and garage to be transferred to Village 10 business days after TCO.

2. **Waterfront Park.** Under the current Development Agreement, the Village will receive the \$3.5 million Waterfront Park Contribution 90 days after the Final Approval Date. After receipt, the Village will use the funds to pay for construction of the Waterfront Park. The First Amendment makes the following changes:

- Within 30 days after the First Amendment is adopted, the Village will notify BHS whether it wants Zyscovich or an architect selected by Village to prepare the construction plans for the Waterfront Park ("Park Construction Plans").
- If the Village notifies BHS that the Village wants Zyscovich to prepare the Park Construction Plans, BHS will immediately direct Zyscovich to prepare the Park Construction Plans. BHS will deliver the Park Construction Plans to the Village upon completion of the plans, along with an assignment of all rights of BHS and Zyscovich in the Park Construction Plans.
- 90 days after Final Approval Date, BHS to transfer to Village the sum of \$3.5 million less the cost of the Park Construction Plans.

3. **Conveyance of SunTrust Property.** Under the current Development Agreement, the SunTrust Property is not transferred to the Village until the Village completes permit-ready construction drawings for the Waterfront Park, under the proposed amendment, the following clarification is included, which stipulates a specific date (not directly related to the permit plans) by which the conveyance will occur:

- If the Final Approval Date occurs by January 15, 2020, BHS' subsidiary will transfer the SunTrust Property to the Village and assign the SunTrust Lease to the Village within 120 days thereafter.

- If the Final Approval Date has not occurred by January 15, 2020, then effective as of that date, BHS' subsidiary will assign the SunTrust rents to the Village. The assignment will remain in effect until the later of (i) January 15, 2023, or (ii) BHS' final and irrevocable election to not proceed with the Project, meaning that at a minimum, the Village will collect three years of SunTrust Rents.

4. **Other Miscellaneous Modifications.** Various other amendments are made to clarify timing, intent and implementation of elements of the Development Agreement. They range from clarifying timing and how the Modification of the Police Lease will be handled to further Payments in Lieu of Building Permit Fees and Services for the later timed phases of construction. A complete "red-lined" version of the Development Agreement is included as reference for your review is attached.

CONCLUSION

The application for the 2018 proposed amendment included favorable recommendations from the project's Parking Consultant (Walker Parking) and Traffic Consultants (Fandrei Consulting, Inc.) The proposed Site Plan amendments was reviewed favorably by the Village Planner (Michael Miller) and Traffic Consultant (The Corradino Group). In our review, we noted that the modifications provide for an improved project, with significant improvements to the site circulation, traffic safety and an overall enhanced pedestrian experience. (This review is specific to the Site Plan amendments -- review of the Parking Demand Analysis Update dated October 18, 2018 conducted by Walker Consultants is still under review.)

In addition to addressing (partially or fully) as many as 16 additional conditions of approval, the 2018 proposed amendment will result in an enhanced project, with a shortened construction timeframe, thereby reducing the impact to our community, while preserving the applicant's ability to build their remaining GLA at some time in the future, should conditions warrant. Because the changes to the Development Agreement will provide significant and valuable public benefits to the Village within a much shorter period of time than previously agreed upon, I recommend approval of the Resolution adopting the First Amendment to the Development Agreement.

Attachments:

1. First Amendment to BHS Development Agreement
2. Redlined Amended Development Agreement

RESOLUTION NO. 2018-_____

A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN BAL HARBOUR SHOPS, LLLP AND BAL HARBOUR VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FIRST AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THE FIRST AMENDMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 16, 2017, the Village Council adopted Resolution No. 2017-1077 approving a major site plan for the expansion of Bal Harbour Shops (the "2017 Site Plan"); and

WHEREAS, on May 16, 2017, the Village Council adopted Resolution No. 2017-1076 approving a Development Agreement between Bal Harbour Shops, LLLP (the "Applicant") and the Village (the "2017 Agreement") for the purpose of mitigating any potential impacts from the proposed expansion of Bal Harbour Shops described in the 2017 Site Plan; and

WHEREAS, the Applicant is now seeking to amend the 2017 Site Plan and has submitted an application for a site plan amendment (the "2018 Site Plan Amendment"); and

WHEREAS, the Applicant and the Village wish to amend the 2017 Agreement in order to address the impact of certain changes made to the expansion of Bal Harbour Shops by the 2018 Site Plan Amendment; and

WHEREAS, the Village has considered a First Amendment to the 2017 Agreement with the Applicant (the "First Amendment") at two public hearings, in compliance with Section 163.3225 of the Florida Local Government Development Agreement Act; and

WHEREAS, the First Amendment is consistent with Village's Comprehensive Plan and land development regulations; and

WHEREAS, the Village has determined that it is in the public interest to address the issues covered by the First Amendment in a comprehensive manner at public hearings, in compliance with all applicable laws, ordinances, plans, rules and regulations of the Village, and to allow the Applicant to proceed with the development of the Project as amended by the 2018 Site Plan in accordance with the terms of the 2017 Agreement as amended by the First Amendment; and

WHEREAS, the Village Council finds that it is in the best interest and welfare of the residents of the Village to approve the First Amendment between the Village and the Applicant.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of First Amendment to Development Agreement. The First Amendment to the Development Agreement between Bal Harbour Shops, LLLP

and Bal Harbour Village, Florida, attached as Exhibit "A," including all exhibits attached to the Agreement, is hereby approved, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Execution of First Amendment to Development Agreement.

The Village Manager is authorized to execute the First Amendment on behalf of the Village.

Section 4. Execution of Other Documents. The Village Manager is authorized to execute on behalf of the Village (i) all ancillary agreements required by the First Amendment, including but not limited to a revised Sidewalk and Encroachment Agreement; a revised Agreement Regarding Parking Surcharge and Police Fee; a revised Escrow Agreement for the escrow of deeds; and an Escrow Agreement for the Rent Assignment ; (ii) any documents necessary to implement the terms and conditions of the First Amendment; and (iii) any documents required to effectuate the property transfers contemplated by the First Amendment.

Section 5. Authorization of Village Officials. The Village Manager and Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 6. Effective Date of Resolution. This Resolution shall become effective immediately upon adoption hereof, and the Agreement shall become effective pursuant to its terms.

PASSED AND ADOPTED this ___ day of _____, 2018.

ATTEST:

Gabriel Groisman, Mayor

Dwight S. Danie, Village Clerk

Approved as to Form and Sufficiency For Use and
Reliance of Bal Harbour Village
Only

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

This instrument prepared by:
Gail D. Serota, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Folio Numbers:
12-2226-006-0020
12-2226-006-0060
12-2226-006-0061
12-2226-006-0070
12-2226-002-2343
12-2226-002-1440
12-2226-032-0010

FIRST AMENDMENT TO BAL HARBOUR SHOPS DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("**First Amendment**") dated _____ is between **BAL HARBOUR SHOPS, LLLP**, a Florida limited liability limited partnership ("**Owner**") and **BAL HARBOUR VILLAGE**, a Florida municipal corporation ("**Village**").

RECITALS

On May 16, 2017, the Village Council adopted Resolution No. 2017-1076, approving a Development Agreement between the Owner and the Village the ("**2017 Agreement**"), and Resolution No. 2017-1077, approving a major site plan for the expansion of Bal Harbour Shops (the "**2017 Site Plan**"). The purpose of the Original Development Agreement was to mitigate any potential impacts from the proposed expansion of Bal Harbour Shops described in the 2017 Site Plan.

The Owner is now seeking to amend the 2017 Site Plan, and has submitted an application for a site plan amendment (the "**2018 Site Plan Amendment**").

Owner and Village wish to amend the 2017 Agreement in order to address the impact of certain changes to the proposed expansion of Bal Harbour Shops (the "**Project**") contemplated by the 2018 Site Plan Amendment.

This First Amendment makes changes to the 2017 Agreement which address the future development of the Project. It does not delete any provisions from the 2017 Agreement which reflect events that have already occurred.

The sections of the First Amendment have been numbered to correspond to the section numbering in the 2017 Agreement. In amended sections and subsections, deletions are shown by ~~strikethroughs~~, and additions are in **bold and underlined**.

This First Amendment is intended as an amendment to a development agreement pursuant to Section 163.3237 of the Florida Local Government Development Agreement Act, Florida Statutes Sections 163.3220-163.3243.

In consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Owner hereby mutually covenant and agree as follows:

AGREEMENT:

1. **Recitals.** The recitals set forth above are true and correct and are hereby made a part of this Agreement.
2. **Exhibits.** The following exhibits either replace exhibits to the 2017 Agreement or are added to the 2017 Agreement.
 - 2.5. **Revised Exhibit E – Revised Sketch Showing Locations of Buildings** (replaces Exhibit L to the 2017 Agreement).
 - 2.12. **Revised Exhibit L – Revised Public Use Areas** (replaces **Exhibit L** to the 2017 Agreement).
 - 2.13. **Revised Exhibit M – Revised Project Encroachments** (replaces **Exhibit M** to the 2017 Agreement).
 - 2.15. Exhibit O – Bal Harbour Village Resolution No. 2018-_____.**
 - 2.16. Exhibit P - Site Plan Amendment approved by Bal Harbour Village Resolution No. 2018-_____.**
3. **Revisions to Defined Terms.** Terms used in this First Amendment which are defined in the 2017 Agreement will have the meanings set forth in the 2017 Agreement, except for the following terms, which are revised as follows:
 - 3.1. **Final CO.** The date upon which the CO is issued for the last building permit outstanding for the ~~Project~~ **first two floors of Buildings F, G, H, and Z as shown on Revised Exhibit E.**
 - 3.2. **Final TCO.** The date upon which the TCO is issued for **the first two floors of the last of Buildings F,G, H and Z to be constructed**

Additional Defined Terms. The following defined terms are used in this First Amendment.

3.23 2017 Agreement. The Development Agreement between the Owner and the Village dated July 27, 2017, approved by Resolution R2017-1076, and recorded on July 28, 2018, in Official Records Book 30632, at Page 3661, of the Public Records.

3.24. First Amendment. The First Amendment to the Original Development Agreement.

3.25. First Amendment Effective Date. The date the First Amendment has been signed by Owner and Village.

3.26. Agreement. Collectively, the 2017 Agreement and the First Amendment.

3.27. 2018 Site Plan Amendment. Collectively, amendments to the 2017 Site Plan approved by the Village by Resolution No. 2017-1077.

3.28. 2018 Text Amendments. Collectively, the amendments to (i) Article V Off-Street Parking Facilities of Chapter 21 Zoning, and (ii) Section 21-320(a) of Division 11 "B" Business District of Chapter 21 Zoning, in the Village Code of Ordinances.

3.29 New Village Hall. The Village municipal center to be constructed by Owner in accordance with the Agreement.

3.30. NVH Garage. The parking garage for New Village Hall to be constructed by Owner in accordance with the Agreement.

3.31 Rendition Date. The date upon which all of the following have occurred: (i) the Village Council has adopted the 2018 Site Plan Amendment, the 2018 Text Amendments, and the First Amendment; (ii) the ordinances adopting the 2018 Text Amendments and the resolutions adopting the 2018 Site Plan Amendment and the First Amendment have been duly signed and attested; (iii) the First Amendment and any exhibits to the First Amendment requiring signature have been duly signed by the respective parties; and (iv) the Village Clerk has filed the aforementioned ordinances and resolutions in the public records of the Village.

3.32. 96th Street Garage. The new parking garage to be constructed by Owner on the 96th Street side of the Project.

4. **Owner's Representations.** No changes.

5. **Description of the Project.** Section 5.3 of the 2017 Agreement is amended to read as follows, and Section 5.4 is added.

5.3. **Parking Improvements.** The Project will achieve a **final parking ratio of not less than 1.8 permanent spaces per 1,000 square feet of 90% of the GFA, and a flex parking ratio of not less than 2.3 spaces per 1,000 square feet of 90% of the GFA.**

5.4. Phased Development. The development of the Project may occur in phases.

6. **Summary of Owner Contributions.** The following subsections of Section 6 – Summary of Owner Contributions, are amended to read as follows:

6.2 **New Village Hall Parking Garage.** Construction and delivery to the Village of an underground parking structure to be located under the Fairfield Property ("NVH Garage").

- 6.4. **Infrastructure and Beautification Improvements.** Construction and installation of infrastructure and beautification improvements on public property and on portions of the Shops property adjacent to public property at a cost of approximately \$9.375 million, as shown on the Bal Harbour Shops Enhancement Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated January 9, 2017, ~~as same may be amended during the Village approval process.~~ **and amended by _____.**
- 6.7 **Modification of Police Department Lease in Bal Harbour Shops.** Within three Business Days after the **Rendition** Date, Owner and the Village will execute and deliver a Second Modification of Police Department Lease in the form attached as Exhibit G. The Second Modification provides for an extension of the existing lease of space in the Shops to the Village Police Department at no cost to Village for rent, CAM, or any other charges, until 90 days after conveyance of the New Village Hall to the Village. **The existing lease, as amended to date, will remain in effect until the earlier of the Rendition Date or March 31, 2028.**
7. **Development Approvals.** The following subsections are added to Section 7 of the 2017 Agreement.
- 7.6 2017 Minor Modifications to Site Plan. Letter**
- 7.7 ARB Review of 2018 Site Plan Application. Advisory review by the Village’s Architectural Review Board of Owner’s minor site plan application for the Project in accordance with Section 21-322(d) of the Village Code**
- 7.8 Site Plan Approval. Approval of the Minor Site Plan Amendment and the related First Amendment to the Original Agreement.**
- 7.9 2018 Text Amendments. Approval of the 2018 Text Amendments in connection with the 2018 Site Plan Approval.**
8. **Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.** No change
9. **New Village Hall.** Sections 9 and 10 of the 2017 Agreement, regarding New Village Hall and the NVH Garage , are replaced in their entirety as follows. (**Note:** because of the extensive changes, strikethroughs and underlining have been omitted for readability).
9. **New Village Hall.** Owner agrees to cause (i) the design and construction of New Village Hall and NVH Garage on the Fairfield Property, and (ii) the conveyance of the Fairfield Property, New Village Hall, and the NVH Garage to the Village as expeditiously as possible in accordance with the following terms and conditions:

9.1. **New Village Hall Timeline.**

9.1.1. **Preliminary Design.** The Village will have six months from the Final Approval Date (the “NVH Design Period”) to deliver to the Owner design plans and renderings for New Village Hall and the NVH Garage (the design plans and renderings for New Village Hall and the NVH Garage are collectively the “NVH Design Plans”). The Village may work with Zyscovich Architects, which is the Owner’s architect, or with an architect selected by Village, to develop the NVH Design Plans during the NVH Design Period. Whether the Village works with Zyscovich or another architect, the cost of the NVH Design Plans will be paid for by Owner. Within three months after the end of the NVH Design Period, the Village will hold up to five public meetings to review and discuss the NVH Design Plans, and the Village Council will review and approve the NVH Design Plans in its proprietary capacity. The Village’s failure to complete either (i) the NVH Design Plans during the NVH Design Period, or (ii) Village Council review and approval of the NVH Design Plans, within three months after the NVH Design Period, will not be a default under this Agreement. Instead, any of the remaining deadlines for the construction and completion of New Village Hall will be extended for the same period of time as any extension of the NVH Design Period and/or the review and approval period for Village Council approval of the NVH Design Plans.

9.1.2. **Construction Plans.** Once the NVH Design Plans have been approved by the Village Council in its proprietary capacity, and through the Village’s regulatory process, Owner will have a period of 18 months to prepare the construction plans and specifications for the approved design (collectively, the “NVH Construction Plans”) and submit them to the Village Manager for preliminary review and approval. The Village Manager will provide comments to the NVH Construction Plans within 10 Business Days after receipt of the NVH Construction Plans. Owner will revise the NVH Construction Plans to address the Village Manager’s comments. Thereafter, Owner will comply with the Village’s standard regulatory process for approval of the NVH Construction Plans.

9.1.3. **Design and Construction Standards.** Owner will design and construct New Village Hall as a sustainable building meeting the standards of the Florida Green Building Council or similar standards. New Village Hall must be rated to withstand a Category

5 hurricane, and must be designed, planned and constructed as Class A office space.

- 9.1.4. **Use of Fairfield Property for Staging.** Owner may use the Fairfield Property for the staging of Project construction prior to the commencement of construction of New Village Hall.
- 9.1.5. **Commencement of Construction.** Owner will commence construction of New Village Hall and the NVH Garage (i) after Village approval of the NVH Construction Plans and issuance of a building permit for New Village Hall; and (ii) within 120 days after issuance by the Village of a certificate of completion for the demolition of the Owner's existing parking garage, but no later than 30 months after commencement of construction by Owner of the 96th Street Garage. The date that construction of New Village Hall or the NVH Garage commences will be the "NVH Commencement Date."
- 9.1.6. **Duration of Construction.** Owner will complete construction of New Village Hall and the NVH Garage no later than 30 months after the NVH Commencement Date, subject to extension due to Village change orders as described in Section 9.6.2. If, however, the design of New Village Hall or the NVH Garage causes the estimated construction time to be longer than 30 months, as determined by the average timeframe of construction bids received by Owner, then the parties will reasonably determine whether to extend the construction time period, or modify the design of New Village Hall and/ or the NVH Garage, or both. Owner acknowledges that the timely commencement and completion of New Village Hall and the NVH Garage is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.
- 9.1.7. **Failure to Timely Complete New Village Hall.** If Owner has not obtained a TCO for New Village Hall within 30 months after the NVH Commencement Date, the Village may, at its option, make a claim under the payment and performance bond for the construction of New Village Hall, provided that the Village first sends Owner written notice that Village intends to make a claim under the payment and performance bond if the TCO has not been obtained within 90 days Owner's receipt of the notice. In addition, if the TCO for New Village Hall is not issued within 30 months of the NVH Commencement Date, Owner shall assign to Village the liquidated damages set forth in the construction contract for New Village Hall, as required in Section 9.3.

9.2. **Cost of New Village Hall.** Owner will be responsible for all costs and expenses for the design and construction of New Village Hall, up to the “Owner’s NVH Cost” defined below.

9.2.1. **Owner’s New Village Hall Cost.** Owner and Village agreed in February 2016 that the cost of New Village Hall would be \$9.6 million. The \$9.6 million cost was based on a construction cost of \$281.00 per square foot, and a building square footage of 34,164. Because the timing for the construction of New Village Hall has changed, Owner and Village agree that the cost of New Village Hall will be the 2016 estimated cost of \$9.6 million, as increased (but not decreased) by the percentage change in RS Means Building Construction Cost Data for Commercial Office New Construction in Miami as shown on the RS Means website between the first quarter of 2016 and the most current quarter information available at the time Owner submits the NVH Construction Plans to the Village for issuance of a building permit (“RS Means Percentage Increase”). The estimated \$9.6 million cost of New Village Hall, as increased by the RS Means Percentage Increase, is the “Owner’s NVH Cost.” The 2016 per square foot cost and square footage of New Village Hall contained in this paragraph are included only to show how the \$9.6 million 2016 cost was calculated and are not to be used in determining either the cost per square foot cost or square footage of New Village Hall at the time the increase to the \$9.6 million 2016 cost of New Village Hall is calculated. If RS Means no longer provides the information necessary to calculate the increased cost of New Village Hall at the time the NVH Construction Plans are submitted to the Village for permitting, Village and Owner shall jointly agree upon an alternative index.

9.2.2. **Items Included in Owner’s NVH Cost.** The Owner’s NVH Cost will include the following hard and soft costs only: architect and engineering fees incurred after the Final Approval Date; mobilization costs; construction costs; furniture, fixtures and equipment costs; landscaping and site improvement costs; and the cost of the Village Representative (defined below). Owner will keep the Village informed of any changes in the cost of New Village Hall.

9.2.3. **Items Not Included in Owner’s New Village Hall Cost.** The Owner’s NVH Cost will not include any application fees, permitting fees, legal fees, accounting fees, financing fees, overhead or any other fees or charges. The Owner’s NVH Cost will not include the costs

of constructing the sidewalks abutting New Village Hall. However, the Owner will be responsible for paying the cost of such sidewalks as part of the Revised Public Use Areas shown on Exhibit L. The Village will be responsible for the application and permitting fees for New Village Hall.

9.2.4. **Finalization of New Village Hall Cost.** If at the time Owner is ready to sign a construction contract with a general contractor (“NVH Contractor”) for New Village Hall and the NVH Garage (“NVH Construction Contract”), the actual cost of New Village Hall is higher than the Owner’s NVH Cost, Owner will cause the NVH Contractor to propose value engineering alternatives to lower the cost of New Village Hall to the Owner’s NVH Cost. If the Village Manager does not wish to accept the value engineering alternatives proposed by the NVH Contractor, the Village Manager will have a period of 60 days after receipt of the value engineering alternatives to schedule a Village Council meeting for adoption of a resolution whereby the Village either agrees to pay the excess cost of New Village Hall or authorizes changes to the New Village Hall construction plans to reduce the cost of New Village Hall to Owner’s NVH Cost.

9.2.5. **NVH Cost and Construction Information.** During the period of construction of New Village Hall, Owner will keep the Village Manager informed of all construction and cost-related issues. Owner will promptly provide Village with copies of all requisitions, change orders, and any other documentation affecting the cost of New Village Hall.

9.2.6. **Reduction in New Village Hall Cost.** If the construction of New Village Hall costs less than Owner’s NVH Cost, Owner will pay the excess funds (i.e., the difference between the Owner’s NVH Cost and the actual construction cost of New Village Hall) to the Village at the time of the transfer of New Village Hall to the Village. Village may use the excess funds for any purpose desired by the Village.

9.3. **Construction Contract for New Village Hall and the NVH Garage.** Prior to issuance of a building permit for the construction of New Village Hall and/or the NVH Garage, Owner will submit to the Village Manager for the Village Manager’s review and approval a copy of the NVH Construction Contract. The Village Manager will not unreasonably withhold or delay his approval of the NVH Construction Contract as long as it provides for the construction of New Village Hall as a Class A office building; provides appropriate assignable construction warranties; provides for the

assignment of delay damages to the Village; and establishes construction standards, guidelines, and procedures appropriate for the construction of a public building abutting a major public right-of-way. The Village Manager will review and either approve or request changes to the NVH Construction Contract within 10 Business Days after receipt. Owner shall cooperate with the Village Manager in order to address any reasonable changes to the NVH Construction Contract requested by the Village Manager.

9.4. **Construction of Improvements.** Owner will ensure that the construction of New Village Hall and the NVH Garage is performed in a good and workmanlike manner, in accordance with all Governmental Requirements and the NVH Construction Contract.

9.5. **Village Representative.** The Village will designate a representative for the construction of New Village Hall and the NVH Garage (“Village Representative”), who may, during normal business hours, visit, inspect, and appraise the construction of New Village Hall, the NVH Garage, and any materials, contracts, records, plans, specifications and shop drawings relating to New Village Hall or the NVH Garage, whether kept at Owner’s offices or at the construction site or elsewhere. Owner agrees to notify the Village Representative of meetings among Owner, Owner’s representative, the general contractor, any subcontractors, or any subset of this group, and the Village Representative will be entitled to attend such meetings. Owner agrees to cooperate with the Village Representative, and to make available to the Village Representative, upon request by the Village, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

9.6. **Change Orders.**

9.6.1. **Village-initiated Change Orders.** Village will have the right to request changes to the design or construction of New Village Hall and the NVH Garage by submitting a change order to Owner. All change orders must be in writing. Owner will submit Village’s change order to the NVH Contractor to obtain a cost for the change order and the amount of additional construction time, if any, required as a result of the change order. Owner will notify Village of the cost and additional time required to implement the change order. If Village elects to proceed with the change order, (i) Village will be responsible for the additional cost resulting from the change order to the extent that it increases the cost of New Village Hall to more than the Owner’s NVH Cost, and (ii) the deadline for the completion of New Village Hall and the NVH Garage will be

extended by the additional time required to implement the change order.

9.6.2. **Owner-initiated Change Orders.** The Village Manager's written approval will be required for any change order other than those requested or initiated by the Village. Village Manager's approval of Owner's change orders will not be unreasonably withheld or delayed, but such change orders shall not increase the cost of New Village Hall to the Village or extend the time for completion of New Village Hall or the NVH Garage.

9.7. **Resolution of New Village Hall and NVH Garage Design and Construction Disputes.**

9.7.1. **Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to the design and/or construction of New Village Hall and/or the NVH Garage, the parties will use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, Owner and Village agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

9.7.2. **Mediation.** If the parties are unable to negotiate a resolution of their dispute within a period of five Business Days, then, upon notice by either party to the other, the parties agree to try in good faith to settle the dispute through an expedited mediation process administered by a mediator agreed upon by both parties before resorting to litigation. If a party fails to respond to a written request for mediation within three Business Days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute.

9.7.3. **Litigation.** If the mediation does not result in settlement of the dispute within five Business Days after the initial mediation conference, or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to the design and/or construction of New Village Hall, or this contract shall be settled through court proceedings.

9.7.4. **Time is of the Essence.** Village and Owner agree that time is of the essence for all decisions regarding the design and construction of New Village Hall and the NVH Garage. The parties agree to avoid

costly and unnecessary delays related to any dispute, and agree that any dispute resolution process regarding New Village Hall will be conducted on an expedited basis.

10. **New Village Hall Garage.** In Section 10 of the 2017 Agreement, regarding the NVH Garage, subsection 10.4 regarding Excess Parking Spaces in NVH Garage is deleted in its entirety, and subsection 10.5 is renumbered as 10.4 and revised as follows:

10.4. Temporary Parking. During the period of time between the issuance of a building permit for the construction of the Waterfront Park by the Village and the conveyance of the NVH Garage to the Village, Owner agrees to provide 40 parking spaces **free of charge** in the Shops parking garage then in operation for use by Village employees **who currently park on the Waterfront Park site.**

11. **Conveyance of Fairfield Property, New Village Hall, and NVH Garage.** In Section 11 of the 2017 Agreement, regarding the Conveyance of Fairfield Property, New Village Hall and NVH Garage, subsections 11.2, and 11.3, and 11.5 are amended as follows, and subsection 11.6 is added:

11.2 **Title Commitment.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property, Owner will provide Village with a title commitment ("**Title Commitment**") for an owner's title insurance policy ("**Title Policy**") to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village's title to the Fairfield Property, New Village Hall, and the NVH Garage in an amount equal to the sum of (i) \$10 million for the Fairfield Property, **and (ii)** the final cost of New Village Hall and the NVH Garage.

11.3. **Due Diligence.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property, Owner will provide Village with all of the due diligence materials for the Fairfield Property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment ("**ESA**") certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for the Fairfield Property **shows** evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.

11.5 Easement for Egress from the Fairfield Property. At the time of conveyance of the Fairfield Property to the Village, Owner will **execute and record an** easement agreement **granting to the Village and to the public a perpetual non-exclusive right of egress from the Fairfield Property over and across the Owner's property south of the centerline of Bal Cross Drive.**

11.6 Post-Closing Access Agreement for Staging. Prior to the conveyance of the Fairfield Property to the Village, the Village and Owner will enter into an agreement which will include the following terms:

11.6.1 A grant to Owner of a temporary right of access to certain portions of the Fairfield Property for staging (parking, storage, etc.) until completion of the Project, provided that such access by Owner does not interfere with or impede in any way the use or operation of New Village Hall or the NVH Garage, or present any risk of injury or damage to persons or property;

11.6.2 Confirmation of Owner's obligation to remove all construction materials and debris from the Fairfield Property, and to complete all landscaping of the Fairfield Property in accordance with the site plan for New Village Hall within a specified period of time;

11.6.3 Owner's agreement to maintain liability insurance in amounts satisfactory to Village to insure against any all claims arising out of Owner's use of the Fairfield Property after it has been conveyed to the Village, and naming Village as an additional insured; and

11.6.4 Indemnification by Owner of the Village, its council members, officers, employees, agents, and contractors (only when acting in their respective official capacities) (collectively, the "Village Indemnified Parties"), from and against all liabilities, actions, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, Attorneys' Fees (including those resulting from the enforcement of the foregoing indemnification), arising from, or which may be imposed upon, incurred by or asserted against one or more Village Indemnified Parties by a third party, by reason of any work or activity performed by Owner or any authorized employee, agent or representative of Owner performing work or rendering services on behalf of Owner on or about the Fairfield Property after it has been conveyed to the Village.

12. **Conveyance of SunTrust Property.** Section 12 of the 2017 Agreement regarding the conveyance of the SunTrust Property is amended in its entirety to read as follows:

12. **Conveyance of SunTrust Property.**

12.1. **Timing of Conveyance.** If all of the **Development Approvals have become final and non-appealable by January 15, 2020**, the Owner will cause the Owner Subsidiary to convey to the Village good and marketable title to the SunTrust Property by special warranty deed, free and clear of

all encumbrances other than those set forth on **Exhibit K**. Village agrees that upon the termination or expiration of the **existing lease of the SunTrust Property (the “SunTrust Lease”)**, the SunTrust Property will be used for municipal purposes only.

12.2. Assignment of SunTrust Property Rents. If all of the Development Approvals have not become final and non-appealable by January 15, 2020, Owner will cause the Owner Subsidiary to assign to the Village the rents due under the SunTrust Lease, with such assignment to become effective as of January 15, 2020, and remain in effect until the conveyance of the SunTrust Property to the Village. If, however, (i) the Development Approvals have not become final and non-appealable by January 15, 2023; (ii) Owner provides written notice to the Village that it is not going to develop the Project at any time in the future; (iii) Owner withdraws any building permit applications submitted for the Project, (iv) Owner files an irrevocable waiver of the 2017 and 2018 site plan approvals, as amended, and (v) the Development Agreement is terminated by the parties as to any future obligations to be performed, then the assignment to the Village of the rents due under the SunTrust Lease will terminate, and no conveyance of the SunTrust Property will occur. The assignment of rents due under the SunTrust Lease will be in a form reasonably acceptable to the Village Attorney, and will be accompanied by an estoppel certificate signed by the tenant of the SunTrust Property stating the amount of rents due under the SunTrust Lease, the rent payment dates, and whether there are any uncured events of default on the part of either the tenant or the landlord under the SunTrust Lease.

12.3 Title Commitment. If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020, Owner will provide Village with a title commitment (“Title Commitment”) for an owner’s title insurance policy (“Title Policy”) to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village’s title to the SunTrust Property in the amount of \$12,750,000.00.

- 12.4.** **Due Diligence.** **If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020,** Owner will provide Village with all of the due diligence materials for the SunTrust Property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment (“ESA”) certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for the SunTrust Property shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.
- 12.5** **Maintenance of SunTrust Property.** **Prior to any conveyance of the SunTrust Property,** Owner will enforce the provisions of the SunTrust Lease regarding the maintenance of all improvements on the SunTrust Property in the condition existing on the Effective Date.
- 12.6.** **SunTrust Lease.** Owner will not allow or agree to any modifications of the lease encumbering the SunTrust Property (“SunTrust Lease”) between the Effective Date **and the outside date for any** conveyance of the SunTrust Property to Village unless such modifications are approved in writing by the Village Manager.
- 12.7.** **Closing Deliveries.** **The closing on the conveyance of the SunTrust Property will occur within 90 days after the delivery to the Village of the Title Commitment and the due diligence materials.** At the closing on the conveyance of the SunTrust Property, Owner will cause the Owner Subsidiary to do the following:
- 12.7.1.** Assign to the Village the SunTrust Lease and all rents due under the SunTrust Lease;
 - 12.7.2.** Deliver to Village an estoppel certificate in a form reasonably acceptable to the Village, signed by the tenant under the SunTrust Lease.
 - 12.7.3** Transfer all security deposits under the SunTrust Lease to the Village;
 - 12.7.4** To the extent that there are any service contracts or maintenance agreements in effect for the SunTrust Property to which the Owner Subsidiary is a party, Owner will cause the Owner Subsidiary to assign to the Village such service contracts and maintenance agreements acceptable to Village (with

Owner Subsidiary to terminate or cancel any such contracts or agreements not assigned to the Village);

12.7.5 Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of the SunTrust Property;

12.7.6 Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment; and

12.7.7 Pay all closing costs in connection with the conveyance of the SunTrust Property (other than the Village's Attorneys' Fees), including the cost of the Title Policy.

13. **Waterfront Park Contribution and Site Plan.** Subsections 13.3 and 13.4 are added to Section 13 of the 2017 Agreement, and subsection 13.4 is renumbered as 13.5.

13.3 Waterfront Park Construction Plans. Within 30 days after the First Amendment Effective Date, the Village will notify the Owner whether the Village wishes to have the construction plans for the Waterfront Park (the "Park Construction Plans") prepared by Zyscovich Architects ("Zyscovich") or by an architect selected by Village. If the Village elects to have Zyscovich prepare the Park Construction Plans, Owner will immediately contract with Zyscovich Architects to prepare the Park Construction Plans, and will cause Zyscovich to complete the Park Construction Plans. Owner will deduct the cost of the Park Construction Plans from the Waterfront Park Contribution.

13.4 Assignment of Park Construction Plans. Owner shall immediately deliver the completed Park Construction Plans to the Village, along with an assignment from Owner and Zyscovich of all of their respective rights, title and interest in the Park Construction Plans. The assignment will include a provision granting to the Village the right to use the Park Construction Plans in whatever manner the Village wishes.

13.5 **Construction of Waterfront Park.** Village will be responsible for paying for and performing the construction of Waterfront Park.

14. **Parking Surcharge.** Sections 14.1 and 14.2 are amended as follows:

14.1. **Payment of Parking Surcharge to Village.** The Parking Surcharge will be implemented within 30 days after the issuance of the TCO for the 96th Street Garage. The Village will use the Parking Surcharge funds for parking and multimodal mobility initiatives or any other municipal purposes, at the Village's discretion. The Village will at all times have the right to review the Owner's parking

reports to verify the amount of the Parking Surcharge being remitted to the Village. The Parking Surcharge records provided by the Owner will be reviewed by an independent auditor and will be handled in a manner similar to the handling of Resort Tax payments by the Village. The Parking Surcharge will survive the expiration or earlier termination of this Agreement as long as any portion of the Shops Property continues to be used for commercial uses. **If the Owner ceases to charge customers and public users for parking, the Owner will no longer be required to collect the Parking Surcharge or remit Parking Surcharge payments to the Village. If, however, the Owner resumes charging for parking after ceasing to charge for parking, the obligation to collect and pay the Parking Surcharge will be reinstated.** Prior to the final approval of **the First Amendment** at a second public hearing, Owner and Village will amend the terms of **the Agreement Regarding Parking Surcharge and Police Fee previously agreed upon by the Owner and the Village to incorporate the changes in this First Amendment. The Agreement Regarding Parking Surcharge and Police Fee will be executed by the parties and recorded by the Owner** within ten days after the Final Approval Date.

- 14.2. **Owner Retention of Portion of Parking Surcharge.** Owner may retain up to 50% of each quarterly payment of the Parking Surcharge due Village to offset the Owner's cost of constructing the **underground portion of the NVH Garage up to a maximum amount of \$6 million**, after which 100% of the Parking Surcharge will be paid to the Village.
15. **Traffic Improvements.** Subsections 15.1 through 15.5 of the 2017 Agreement are amended in as follows:
 - 15.1. **Realignment of Collins Avenue.** As one of the initial elements of **the first phase** of the Project, Owner (with assistance from the Village) will work with FDOT to seek approval to reconfigure the southbound lanes on Collins Avenue from Founder's Circle through the 96th Street intersection in order to ensure a continuous and uninterrupted flow of traffic. Upon approval by FDOT, Owner will undertake the reconfiguration at Owner's expense and in accordance with FDOT requirements.
 - 15.2. **Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a TCO for the **96th Street Garage**:
 - 15.2.1. **AIA Crosswalk.** Construction and installation of an **enhanced** two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("**A1A**"), in the location where a crosswalk currently exists.
 - 15.2.2. **Collins / Harding Signal Removal.** Removal of the existing mid-block pedestrian signal on Collins Avenue and Harding Avenue north of 96th Street after completion of the two-stage pedestrian crosswalk on A1A.

- 15.2.3. **Loading Area and Service Driveway.** Construction of a new loading area and service driveway for the Shops on 96th Street at Byron Avenue to handle truck traffic.
- ~~15.3.~~ 15.2.4. **Signalized Driveway at North End of Shops.** Construction of a new signalized driveway at the north end of the Shops to handle the traffic that currently uses the driveways on Collins Avenue and Harding Avenue, in order to eliminate backups from the driveways that interfere with traffic flow on Collins Avenue.
- 15.2.5. **Premium Valet Parking Entry.** Conversion of the existing driveway on Collins Avenue and Harding Avenue into an “Entry Only” driveway for premium valet parking.
- 15.2.6. **Premium Valet Parking Exit.** Conversion of the secondary driveway adjacent to the pedestrian crossing signal immediately north of 96th Street to an “Exit Only” driveway for premium valet parking.
- ~~15.3.4.~~ 15.2.7. **Retiming of Traffic Signals.** After completion of the new driveway at the north end of the Shops and the new service driveway on 96th Street, development of new traffic signal coordination plans to optimize signal operations, taking into account the improved signal spacing and other changes to the street network.

15.3. Monitoring and Signal Retiming. Throughout the development of the Project, **Owner will monitor traffic changes** and **develop and implement** interim signal retiming plans to address the changes in traffic flow that **may** occur. .

15.4. Additional Traffic Improvements after Project Completion. The parties acknowledge that the Owner is not required to provide any additional traffic mitigation for the Project other than as set forth in the foregoing subsections regarding the Traffic Improvements. Owner agrees to fund and implement the following additional traffic improvements (“**Additional Traffic Improvements**”) prior to issuance of the Final TCO. In the event that other Governmental Authorities will not approve the Additional Traffic Improvements, the Owner will be released from any further responsibility related to the Additional Traffic Improvements.

15.4.1. Harding Avenue / 96th Street Intersection. Installation of sensor loops and pedestrian pushbuttons to the signals controlling the eastbound and westbound traffic. This improvement will allow signal operation to respond more effectively to variations in eastbound traffic. Signal time not needed by the east/west traffic on 96th Street can be transferred to Harding Avenue to reduce southbound delays and stops.

15.4.2. **Collins Avenue / 96th Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the eastbound movement, and if possible, provide a connection to the eastbound loops at Harding Avenue. This improvement will allow the intersection to work in concert with the signal at the Harding Avenue / 96th Street intersection, and to transfer unused green signal time from 96th Street to northbound Collins Avenue.

15.4.3. **96th Street at 500 Block.** Addition of a two-stage pedestrian crossing to provide a safer crossing of 96th Street by pedestrians and to reduce delays to traffic on 96th Street.

16. **Infrastructure Improvements.** Section 16 of the 2017 Agreement is amended to read as follows:

16. **Infrastructure Improvements.** Owner will be responsible for the cost of installing, connecting, or relocating and reconnecting, any **and all public and private utilities** required to facilitate the development of, and meet any capacity requirements for, the Project, New Village Hall, and the NVH Garage. **Public and private utilities include but are not limited to: water distribution, wastewater removal (sewer), stormwater drainage, electricity, gas, and telecommunications (telephone, cable, internet, etc.).**

17. **Collins Plaza Public Space.** Subsection 17.2 and the first sentence of subsection 17.3 are amended to read as follows:

17.1 **Use by Owner.** Upon **issuance** of the Final TCO, Owner agrees to use Collins Plaza on a periodic basis as determined by Owner for appropriate commercial uses such as retail, food, and beverage sales, **or for non-commercial uses such as temporary artwork installations, farmers markets, or special events**, which uses are compatible with the operation of the Shops. Owner will have the right to terminate its use of Collins Plaza after consultation with the Village if Owner reasonably believes its use of Collins Plaza to be unsuccessful.

17.2. **Use of Collins Plaza by Village.** Upon **issuance** of the Final TCO, the Village will have the right to use all of Collins Plaza (including the parking spaces) up to six times per calendar year for special events, at no cost to Village, on dates and at times mutually agreed upon by the parties.

18. **Residential Gate.** The following sentence is added to the end of subsection 18.2:

If the Village elects to perform the Gate Work as part of the development of the Waterfront Park, the Owner will reimburse the Village for the Village's cost of the Gate Work up to \$30,000.00.

19. **Public Use Areas.** The first sentence of subsection 19.3. is amended to read as follows:
- 19.3. **Easement, Encroachment, and Maintenance Agreement.** Prior to final approval of **the First Amendment** at a second public hearing, Owner and Village will **review and revise, if necessary,** the terms of **the previously negotiated** agreement ("**Easement, Encroachment, and Maintenance Agreement**") to be recorded within ten days after the Final Approval Date.
20. **Public Safety.** Subsection 20.2 and the first sentence of subsection 20.4 are amended to read as follows:
- 20.2. **Off-Duty Police Services.** From the date of issuance of the first permit for any portion of the Project until issuance of the Final CO, Owner will be required to pay to the Village an annual "**Off-Duty Police Fee**" in an amount equal to the cost of 4,500 hours of off-duty police service at the rate then being charged by the Village for off-duty police service. **The Off-Duty Police Fee will not be more than 10% higher than the rate then being charged by the City of Miami Beach.** Owner will pay the Off-Duty Police Fee in advance in quarterly installments, with the first installment due on the first day of the calendar quarter (January, April, July, or October) following the date of issuance of the first permit for any portion of the Project. After completion of the Project, the Off-Duty Police Fee will be reduced to the cost of 3,500 hours of off-duty police service. If the Shops' operating hours change in the future, the number of hours used to calculate the Off-Duty Police Fee will be adjusted accordingly. Owner and the Village Manager will mutually agree upon an appropriate schedule for the off-duty police officers to be present on the Shops Property. If Owner requests off-duty police officers for Shops events or construction during a year, the services requested will be counted as part of the 4,500 hours (3,500 hours after issuance of the Final CO) paid for by Owner. The Off-Duty Police Fee will not apply to either (i) the police services required under Section 20.1, or (ii) off-duty police services requested by tenants of the Shops. The Owner's obligation to pay the Off-Duty Police Fee will survive the expiration or termination of this Agreement. Prior to the final approval of **the First Amendment** at a second public hearing, Owner and Village will **amend** the terms of **the Agreement Regarding Parking Surcharge and Police Fee previously agreed upon by the Owner and the Village to incorporate the changes regarding the Off-Duty Police Fee set forth in the First Amendment. The Agreement Regarding Parking Surcharge and Police Fee will be executed and recorded by Owner** within 10 days after the Final Approval Date **and will impose** on the Shops Property the obligation to pay the Off-Duty Police Fee in perpetuity as long as any portion of the Shops Property is used for commercial purposes.

20.4 **LPR Cameras.** Within three Business Days after the Rendition Date, Owner will (i) donate to the Village two license plate recognition cameras (“LPR Cameras”) at a cost not to exceed \$25,000.00, and (ii) grant to the Village a perpetual easement for the installation, maintenance, repair and replacement of the LPR Cameras.

21. **Building Department Fees and Services.** Section 21 is amended in its entirety as follows:

21. **Building Department Fees and Services.**

21.1. **Payments in Lieu of Building Permit Fees.** In lieu of paying the Village’s standard fees for building permits for the Project, Owner agrees to pay Village the following voluntary contributions (each, a “Voluntary Contribution”).

21.1.1. Payments in Lieu of Permit Fees for First Phase of Project. For all portions of the Project other than the third levels of Buildings D, E, F, G and H, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees in the amount of \$2.5 million* in five equal installments, according to the following schedule:

First Payment of \$500,000*	Due at time of submittal of the first permit application for construction.
Second Payment of \$500,000*	Due prior to issuance of the first building permit for construction
Third Payment of \$500,000*	Due on one-year anniversary of Second Payment.
Fourth Payment of \$500,000*	Due on two-year anniversary of Second Payment
Fifth Payment of \$500,000*	Due prior to issuance of Final TCO for the second level of the last of Buildings F, G , H and Z.
*NOTE: All amounts set forth in this table are estimates subject to adjustment as set forth in Section 21.1.4 and 21.1.6.	

21.1.2. Payments in Lieu of Permit Fees for Third Levels of Buildings D and E. In lieu of paying the Village’s standard fees for building permits, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees for the third levels of Buildings D and E in the amount of \$150,000.00, with \$75,000.00 to be paid upon submittal of the permit application, and \$75,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for

the third levels of Buildings D and E will be subject to the “true-up” adjustment set forth in Section 21.1.6.

21.1.3. Payments in Lieu of Permit Fees for Third Levels of Buildings F, G and H. In lieu of paying the Village’s standard fees for building permits, Owner agrees to pay Village a voluntary contribution in lieu of permit fees for the third levels of Buildings F, G and H in the amount of \$250,000.00, with \$125,000.00 to be paid upon submittal of the permit application, and \$125,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for the third levels of Buildings F, G and H will be subject to the “true-up” adjustment set forth in Section 21.1.6.

21.1.4. Voluntary ~~Contribution~~ Contributions Based on Estimated Construction Costs. The Voluntary Contributions and payments set forth in Sections 21.1.1, 21.1.2 and 21.1.3 are estimates only. Prior to the issuance of the respective building permits for construction of (i) the first two levels of Buildings F, G, H and Z; (ii) the third levels of Buildings D and E; and (iii) the third levels of Buildings F, G and H, Owner will provide the Village with a copy of the construction contract applicable to each respective phase of construction or other documentation acceptable to Village showing the anticipated cost of the respective phase of the Project. The amounts of the second through fifth payments for the first two levels of Buildings F, G, H and Z will be adjusted based on that cost so that the total of the five payments equals two percent of the anticipated Project hard costs up to the first \$1.0 million, and one percent of the anticipated Project hard costs after the first \$1.0 million.

21.1.5. Items not included in Voluntary Contribution. The calculation of the respective Voluntary Contributions do not include any of the following: (i) the value of any permits required for New Village Hall; (ii) the value of any permits for work done by tenants of the Shops, which must be applied for and paid for by tenants; or (iii) the amount of any charges collected by the Village on behalf of other Governmental Authorities, which charges must be remitted to Village by Owner.

21.1.6. True-up of Voluntary Contributions. Thirty days prior to the issuance of each of the following: (i) the Final TCO for the last of the first two levels of Buildings F, G, H and Z; (ii) the TCO for the third levels of Buildings D and E, and (iii) the TCO for the third levels of Buildings F, G and H, Owner will provide Village with an updated calculation of the actual Project construction cost. Any required adjustment of the Voluntary Contributions based on the Owner’s actual construction

costs will be paid by Owner or refunded by Village, whichever is applicable.

22. **Security for Owner's Obligations.** Subsection 22.1 is amended as follows, a new subsection 22.2 is inserted after subsection 22.1, and the remaining subsections in Section 22 are renumbered.

22.1. **Escrow of Deeds and Assignment of Lease.** Prior to the execution of this Agreement by the Village, Owner shall deliver to the Village Attorney **original executed** special warranty deeds conveying the Fairfield Property and the SunTrust Property to the Village (collectively, the "Deeds"), **along with an original executed assignment of the SunTrust Lease (the "Lease Assignment")**. The Deeds **and Lease Assignment** must be reasonably satisfactory in form and substance to the Village Attorney. The Deeds and Lease Assignment will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement to be entered into by Owner, each Owner Subsidiary, Village, and Village Attorney prior to the execution of this Agreement by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of this Agreement by the Village.

22.2. **Escrow of Assignment of Rents.** **Prior to the execution of the First Amendment by the Village, Owner shall deliver to the Village Attorney an original executed assignment of the SunTrust rents to the Village (the "Rent Assignment"). The Rent Assignment must be reasonably satisfactory in form and substance to the Village Attorney. The Rent Assignment will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement for the Rent Assignment to be entered into by Owner; Bal Harbour Shops Tract A, LLC; the Village, and Village Attorney prior to the execution of the First Amendment by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of the First Amendment by the Village.**

23. **Taxes.** No changes.

24. **Transfer Fee.** Subsections 24.2.1, 24.2.2, and 24.2.4 are amended as follows:

24.2.1. **Prior to Building Permits for 50% of the GFA.** If a Transfer occurs prior to the issuance of building permits for 50% of the Expansion GFA, **excluding the third levels of Buildings D, E, F, G, H and Z**, 100% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.

24.2.2 **Prior to Building Permits for All of the GFA.** If a Transfer occurs prior to the issuance of building permits for 100% of the Expansion GFA, **excluding the third levels of Buildings D, E, F, G, H and Z**, 90% of the

Transfer Fee will be due and payable to Village on the closing date of the Transfer.

24.2.5 **Prior to Fifth Anniversary of the Final TCO.** If a Transfer occurs prior to the fifth anniversary of the Final TCO , 50% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.

25. **“Look Back” Reporting and Mitigation.** Subsection 25.1 is amended as follows, and subsections 25.5 and 25.6 are added.

25.1. **First Look Back Reports.** Twelve months after tenant TCOs have been issued for 75% of the GFA of **the first two levels of** Buildings F, G, H and Z, Owner will pay for and provide to the Village reports prepared by consultants approved by the Village Manager regarding traffic, parking, acoustical matters, loading docks, and public safety at the Project (collectively, **“First Look Back Reports”**).

25.5 Third Look Back Report. In the event that the third levels of Buildings F, G and H are converted from parking area to retail space, then 12 months after tenant TCOs are issued for 75% of the GFA for the third levels of Buildings F, G and H, Owner will pay for and provide a parking report and an ingress/egress analysis, including an intersection queuing analysis for any vehicular entrance to the Project (collectively, the **“Third Look Back Reports”**).

25.6 Third Look Back Mitigation Required. If any of the Third Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to parking, ingress or egress, or queuing at intersections caused solely by the Project, Owner will provide additional mitigation (**“Third Look Back Mitigation”**) in accordance with the recommendations of Owner’s consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the Third Look Back Mitigation within 30 days after issuance of the Third Look Back Reports. Upon Village’s review and acceptance of the proposal, Village and Owner will enter into an amendment to the Agreement setting forth the terms and conditions for the performance of the Third Look Back Mitigation by Owner. One year following the completion of the Third Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the Third Look Back Mitigation has resolved any of the items identified by the Third Look Back Reports.

26. **Indemnifications.** No changes.

27. **Insurance.** No changes.

28. **Default, Opportunity to Cure, and Remedies.** No changes.

29. **Notices.** The address for Katz Barron in subsection 29.1 is changed as follows:

Katz Barron
~~2699 South Bayshore Drive, Seventh Floor~~
~~Miami, Florida 33133~~
901 Ponce de Leon Boulevard, Tenth Floor
Coral Gables, Florida 33134
Attention: Howard L. Friedberg and Michael D. Katz
Telephone: 305 856 2444
Facsimile: 305 285 9227
Email: hlf@katzbarron.com and mdk@katzbarron.com

30. **Multiple Ownership of Shops Property.** No changes.
31. **Term of Agreement.** No changes.
32. **Enforcement of Agreement.** No changes.
33. **Authorization to Withhold Permits and Inspections.** No changes.
34. **Development Rights.** No changes.
35. **Miscellaneous Provisions.** Subsection 35.6 is amended as follows:
 - 35.6 **Conditions of Resolutions and Site Plans.** The conditions set forth in Village Resolution No. 2017-1077; a copy of which is attached as **Exhibit H**, the Major Site Plan attached as **Exhibit I**; **Village Resolution No. 2018-** attached as **Exhibit O**; and the **2018 Site Plan attached as Exhibit P** are hereby incorporated into and made a part of this Agreement.
36. **Waiver of Jury Trial.** No changes.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Owner and Village have executed this Agreement on the dates set forth below their respective signatures

Witnesses:

Signature _____

Print name: _____

Signature: _____

Print name: _____

OWNER:

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

By: _____
Matthew Whitman Lazenby, General Partner

Date: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on _____, 2018, by Matthew Whitman Lazenby, as the General Partner of Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, who is [] personally known to me or [] has produced a valid driver's license as identification.

NOTARY SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

[VILLAGE SIGNATURES ON FOLLOWING PAGE]

Witnesses:

Signature: _____

Print name: _____

Signature: _____

Print name: _____

VILLAGE:

BAL HARBOUR VILLAGE

By: _____

Jorge M. Gonzalez, Village Manager

Date: _____

ATTEST:

Dwight Danie, Village Clerk

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

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on _____, 2018, by Jorge M. Gonzalez, as Village Manager of Bal Harbour Village, a Florida municipal corporation, on behalf of the Village. He is personally known to me.

NOTARY SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

This instrument prepared by:
Gail D. Serota, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Folio Numbers:
12-2226-006-0020
12-2226-006-0060
12-2226-006-0061
12-2226-006-0070
12-2226-002-2343
12-2226-002-1440
12-2226-032-0010

AMENDED DEVELOPMENT AGREEMENT

between

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

and

BAL HARBOUR VILLAGE, a Florida municipal corporation

dated July____, 2017

TABLE OF CONTENTS

Note: The Table of Contents will not be revised for this document or for the First Amedment.

1.	Recitals.....	2
2.	Exhibits	2
2.1.	Exhibit A – Legal Description of Existing Shops Property.....	2
2.2.	Exhibit B – Legal Description of Church Site	2
2.3.	Exhibit C – Legal Description of Fairfield Property	2
2.4.	Exhibit D – Legal Description of SunTrust Property	2
2.5.	Exhibit E – Sketch Showing Locations of Buildings	2
2.6.	Exhibit F – Value of Owner Contributions.....	2
2.7.	Exhibit G – Second Modification of Police Department Lease.....	2
2.8.	Exhibit H – Bal Harbour Village Resolution No. 2017-1077.....	2
2.9.	Exhibit I – Major Site Plan approved by Bal Harbour Village Resolution No. 2017-1077.....	2
2.10.	Exhibit J – Fairfield Property Title Exceptions.....	2
2.11.	Exhibit K – SunTrust Property Title Exceptions.....	2
2.12.	Exhibit L – Public Use Areas.....	2
2.13.	Exhibit M – Project Encroachments.....	2
2.14.	Exhibit N – Grant of Park Drive Utility Easement	2
3.	Defined Terms.....	3
3.1.	Attorneys’ Fees.....	3
3.2.	Building Department	3
3.3.	Business Day.....	3
3.4.	CO.....	3
3.5.	Development Approvals.....	3
3.6.	Effective Date	3
3.7.	Expansion GFA.....	3
3.8.	FDOT. The Florida Department of Transportation.....	3
3.9.	Final Approval Date	3
3.10.	Final CO	3
3.11.	Final TCO	3

3.12.	Force Majeure	3
3.13.	Governmental Approval	3
3.14.	Governmental Authority	4
3.15.	Governmental Requirement.....	4
3.17.	Public Records	4
3.18.	Reasonable	4
3.19.	Substantial Completion.	4
3.20.	Substantial Compliance	4
3.21.	TCO	4
3.22.	Village Manager	4
4.	Owner’s Representation	5
5.	Description of the Project	5
5.1.	Shops Expansion.....	5
5.2.	Traffic Improvements	5
5.3.	Parking Improvements	5
6.	Summary of Owner Contributions	6
6.1.	New Village Hall	6
6.2.	New Village Hall Parking Garage	6
6.3.	Conveyance of SunTrust Property	6
6.4.	Infrastructure and Beautification Improvements.....	6
6.5.	Waterfront Park.	6
6.6.	Art in Public Places Contribution.	6
6.7.	Modification of Police Department Lease in Bal Harbour Shops.....	6
7.	Development Approvals	6
7.1.	ARB Review	7
7.2.	Comprehensive Plan Amendment for Church Site	7
7.3.	LPA Recommendation	7
7.4.	Major Site Plan Approval.....	7
7.5.	Text Amendments	7
8.	Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.....	7

9.	New Village Hall	7
9.1.	New Village Hall Timeline.....	7
9.1.1.	Preliminary Design	7
9.1.2.	Construction Plans	8
9.1.3.	Design and Construction Standards.....	9
9.1.4.	Preliminary Prep Work.	9
9.1.5.	Use of Fairfield Property for Staging.....	9
9.1.6.	Commencement of Construction	9
9.1.7.	Duration of Construction.....	9
9.1.8.	Failure to Timely Complete New Village Hall	9
9.2.	Cost of New Village Hall	10
9.2.1.	Owner’s New Village Hall Cost.	10
9.2.2.	Items Included in Owner’s NVH Cost.....	10
9.2.3.	Items Not Included in Owner’s New Village Hall Cost.....	11
9.2.4.	Finalization of New Village Hall Cost	11
9.2.5.	NVH Cost and Construction Information.....	11
9.2.6.	Reduction in New Village Hall Cost.	11
9.3.	Construction Contract for New Village Hall.....	11
9.4.	Construction of Improvements	12
9.5.	Village Representative	12
9.6.	Change Orders.....	12
9.6.1.	Village-initiated Change Orders	12
9.6.2.	Owner-initiated Change Orders	13
9.7.	Resolution of New Village Hall Design and Construction Disputes.....	13
9.7.1.	Negotiation	13
9.7.2.	Mediation.....	13
9.7.3.	Litigation	13
9.7.4.	Time is of the Essence	13
10.	New Village Hall Garage.....	14
10.1.	Timing of New Village Hall Garage. Owner will construct	14

10.2.	NVH Garage Cost	14
10.3.	Cost Savings on NVH Garage	14
10.4.	Excess Parking Spaces in NVH Garage	14
10.5.	Temporary Parking	14
11.	Conveyance of Fairfield Property, New Village Hall, and NVH Garage	14
11.1.	Timing of Conveyance	14
11.2.	Title Commitment	15
11.3.	Due Diligence	15
11.4.	Closing Deliveries	15
11.5.	Cross Easements for Ingress, Egress and Access	15
12.	Conveyance of SunTrust Property.....	16
12.1.	Timing of Conveyance	16
12.2.	Title Commitment	17
12.3.	Due Diligence	17
12.4.	Maintenance of SunTrust Property	18
12.5.	SunTrust Lease	18
12.6.	Closing Deliveries	18
13.	Waterfront Park Contribution and Site Plan.....	18
13.1.	Contribution	18
13.2.	Site Plan.....	19
13.3.	Construction of Waterfront Park.....	18
14.	Parking Surcharge.....	19
14.1.	Payment of Parking Surcharge to Village	20
14.2.	Owner Retention of Portion of Parking Surcharge.....	20
15.	Traffic Improvements.....	20
15.1.	Realignment of Collins Avenue.....	21
15.2.	First Set of Traffic Improvements	21
15.2.1.	AIA Crosswalk.....	21
15.2.2.	Collins / Harding Signal Removal.....	21
15.2.3.	Loading Area and Service Driveway	21

15.3.	Second Set of Traffic Improvements	21
15.3.1.	Signalized Driveway at North End of Shops.....	21
15.3.2.	Premium Valet Parking Entry	22
15.3.3.	Premium Valet Parking Exit.....	22
15.3.4.	AIA Crosswalk.....	22
15.3.5.	Retiming of Traffic Signals.....	22
15.4.	During All Phases.....	22
15.5.	Additional Traffic Improvements after Project Completion	22
15.5.1.	Harding Avenue / 96 th Street Intersection	22
15.5.2.	Collins Avenue / 96 th Street Intersection.....	23
15.5.3.	96 th Street at 500 Block	23
16.	Infrastructure Improvements.	23
17.	Collins Plaza Public Space	23
17.1.	Design of Collins Plaza.....	23
17.2.	Use by Owner.....	23
17.3.	Use of Collins Plaza by Village	23
18.	Public Improvements.....	24
18.1.	Art in Public Places	24
18.2.	Residential Gate	24
19.	Public Use Areas	24
19.1.	Sidewalks.....	24
19.2.	Encroachments.....	24
19.3.	Easement, Encroachment, and Maintenance Agreement	25
19.4.	Pedestrian Access during Construction.	25
19.4.1.	Collins Avenue.....	25
19.4.2.	96 th Street.....	25
19.5.	Park Drive.....	25
20.	Public Safety.	26
20.1.	Safety During Construction	26
20.2.	Off-Duty Police Services	26

20.3.	Construction Staging and Parking.....	27
20.4.	LPR Cameras.....	27
20.5.	Noise Meters.....	27
21.	Building Department Fees and Services.....	27
21.1.	Payments in Lieu of Building Permit Fees.....	27
21.1.1.	Voluntary Contribution Based on Estimated Construction Cost.....	28
21.1.2.	Items not included in Voluntary Contribution.....	29
21.1.3.	True-up of Voluntary Contribution.....	29
21.2.	Expedited Plan Review and Inspections.....	30
21.3.	Use of Private Provider.....	30
22.	Security for Owner’s Obligations.....	30
23.	Taxes.....	31
23.1.	Minimum Ad Valorem Taxes.....	31
23.2.	Minimum Resort Taxes.....	31
24.	Transfer Fee.....	31
24.1.	Definition of Transfer.....	32
24.1.1.	Sale of Fee Simple Interest.....	32
24.1.2.	Sale of Controlling Interest.....	32
24.2.	Calculation of Transfer Fee.....	32
24.2.1.	Prior to Building Permits for 50% of the GFA.....	32
24.2.2.	Prior to Building Permits for All of the GFA.....	32
24.2.3.	Prior to Final TCO.....	32
24.2.4.	Prior to Fifth Anniversary of the Final TCO.....	32
24.2.5.	More than Five Years After Final TCO.....	33
24.3.	Events Not Constituting a Transfer.....	33
24.3.1.	Transfers of Entity Interests.....	33
24.3.2.	Mortgages.....	33
24.3.3.	Deed in Lieu.....	33
24.3.4.	Transfers by Secured Party.....	33
24.3.5.	Family Transfers.....	33

	24.3.6. Transfers for Estate Planning	33
	24.3.7. Transfers to Affiliates	33
	24.3.8. Eminent Domain.....	33
25.	“Look Back” Reporting and Mitigation.	33
	25.1. First Look Back Reports	33
	25.2. First Look Back Mitigation	34
	25.3. Second Look Back Reports.....	34
	25.4. Second Look Back Mitigation Required	34
26.	Indemnification.....	35
	26.1. Owner’s Obligation to Indemnify.	35
	26.1.1. Approvals	35
	26.1.2. Work on Village Property	35
	26.1.3. Negligence.....	35
	26.1.4. Damage to Third Parties.....	35
	26.1.5. Failure to Perform	35
	26.1.6. Material Breach.....	36
	26.2. Legal Action	36
	26.3. Limitation	36
	26.4. Survival.....	36
27.	Insurance	36
	27.1. Evidence of Insurance.....	36
	27.2. Cancellations and Renewals	36
28.	Default, Opportunity to Cure, and Remedies.....	36
	28.1. Defaults Generally.....	36
	28.2. Defaults by Owner.....	37
	28.3. Defaults by Village.....	37
29.	Notices	37
	29.1. Notice to Owner	37
	29.2. Notice to Village	38
30.	Multiple Ownership of Shops Property.....	39

31.	Term of Agreement.....	39
32.	Enforcement of Agreement	39
33.	Authorization to Withhold Permits and Inspections.....	39
34.	Development Rights.....	39
	34.1. Permitted Development Uses, Building Intensities and Heights	40
	34.2. Reservation of Development Rights	40
35.	Miscellaneous Provisions.....	40
	35.1. Adjustment of Deadlines.....	40
	35.2. Amendments	41
	35.3. Attorneys’ Fees.....	41
	35.4. Authority	41
	35.5. Compliance with Governmental Requirements.....	41
	35.6. Conditions of Resolution No. 2017-1077; Site Plan.	41
	35.7. Construction of Agreement.	41
	35.8. Counterparts	41
	35.9. Entire Agreement	41
	35.10. Force Majeure	42
	35.11. Governing Law.....	42
	35.12. Recording	42
	35.13. Sections and Subsections	42
	35.14. Severability.....	42
	35.15. Successors and Assigns.....	42
36.	Waiver of Jury Trial	42

AMENDED DEVELOPMENT AGREEMENT

NOTE: This document is solely for purposes of reviewing the proposed changes in the context of the entire Agreement. The changes will be incorporated in a separate document to be entitled "First Amendment to Development Agreement."

This Development Agreement ("**Agreement**") dated _____, is between **BAL HARBOUR SHOPS, LLLP**, a Florida limited liability limited partnership ("**Owner**") and **BAL HARBOUR VILLAGE**, a Florida municipal corporation ("**Village**").

RECITALS:

Owner is the owner of the real property located in Bal Harbour Village, Miami-Dade County, Florida, and more particularly described in **Exhibit A** to this Agreement ("**Existing Shops Property**"). The Existing Shops Property is improved with a high-end shopping center known as Bal Harbour Shops ("**Shops**").

Owner is also the owner of the real property located in Bal Harbour Village, Miami-Dade County, Florida, which was formerly the site of the Church by the Sea, and which is more particularly described in **Exhibit B** to this Agreement ("**Church Site**"). Owner wishes to incorporate the Church Site as part of the Shops.

BHS-FM, LLC, a Florida limited liability company owned and controlled by Owner, is the owner of the real property located in Bal Harbour Village, Miami Dade County, Florida, and more particularly described in **Exhibit C** to this Agreement ("**Fairfield Property**"). The Fairfield Property is a vacant, unimproved parcel.

Bal Harbour Shops Tract A, LLC, a Florida limited liability company owned and controlled by Owner, is the owner of the real property located in Bal Harbour Village, Miami Dade County, Florida, and more particularly described in **Exhibit D** to this Agreement ("**SunTrust Property**"). The SunTrust Property is improved with an office building.

BHS-FM, LLC and Bal Harbour Shops Tract A, LLC are each an "**Owner Subsidiary**."

The Existing Shops Property and the Church Site, are collectively the "**Shops Property**."

Owner has submitted a major site plan application to the Village for approval to expand the Shops in accordance with Section 21 of the Village's Code of Ordinances ("**Village Code**"). The proposed expansion of the Shops, including modifications to the existing Shops facilities, is referred to as the "**Project**."

Pursuant to Section 21-322 of the Village Code, Village requires Owner to enter into this Agreement in order to mitigate any potential impacts that the proposed Project may have on the Village.

This Agreement is a Development Agreement pursuant to the “Florida Local Government Development Agreement Act,” Florida Statutes Sections 163.3220-163.3243.

In consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Owner hereby mutually covenant and agree as follows:

AGREEMENT:

1. **Recitals.** The recitals set forth above are true and correct and are hereby made a part of this Agreement.
2. **Exhibits.** The following exhibits (each, an “Exhibit”) are attached to and made a part of this Agreement:
 - 2.1. **Exhibit A – Legal Description of Existing Shops Property**
 - 2.2. **Exhibit B – Legal Description of Church Site**
 - 2.3. **Exhibit C – Legal Description of Fairfield Property**
 - 2.4. **Exhibit D – Legal Description of SunTrust Property**
 - 2.5. **Revised Exhibit E – Sketch Showing Locations of Buildings**
 - 2.6. **Exhibit F – Value of Owner Contributions**
 - 2.7. **Exhibit G – Second Modification of Police Department Lease**
 - 2.8. **Exhibit H – Bal Harbour Village Resolution No. 2017-1077**
 - 2.9. **Exhibit I – Major Site Plan approved by Bal Harbour Village Resolution No. 2017-1077**
 - 2.10. **Exhibit J – Fairfield Property Title Exceptions**
 - 2.11. **Exhibit K – SunTrust Property Title Exceptions**
 - 2.12. **Exhibit L – Public Use Areas**
 - 2.13. **Exhibit M – Project Encroachments**
 - 2.14. **Exhibit N – Grant of Park Drive Utility Easement**
 - 2.15. **Revised Exhibit E – Revised Sketch Showing Locations of Buildings, replaces Exhibit L to the 2017 Agreement.**
 - 2.16. **Revised Exhibit L – Revised Public Use Areas, replaces Exhibit L to the 2017 Agreement.**
 - 2.17. **Revised Exhibit M – Revised Project Encroachments, replaces Exhibit M to the 2017 Agreement.**

2.18. Exhibit O – Bal Harbour Village Resolution No. 2018-_____.2018 Site Plan Amendment approved by Bal Harbour Village Resolution No. 2018-_____.

2.19. Exhibit P - 2018 Site Plan Amendment approved by Bal Harbour Village Resolution No. 2018-_____.

3. **Defined Terms.** Terms used in this Agreement are defined in the section or subsection where the term first appears. The following defined terms are used throughout this Agreement.

3.1. **Attorneys' Fees.** All reasonable attorneys' fees, expenses, and costs incurred by a party in connection with any matter arising under this Agreement, including, without limitation, paralegal fees, in-house attorneys' fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings.

3.2. **Building Department.** The Bal Harbour Village Building Department.

3.3. **Business Day.** Any day that Bal Harbour Village Hall is open for business.

3.4. **CO.** A certificate of occupancy issued or to be issued by the Village.

3.5. **Development Approvals.** The Development Approvals referenced in Section 7 of this Agreement.

3.6. **Effective Date.** The date this Agreement has been signed by Owner and Village.

3.7. **Expansion GFA.** The GFA being added to the Shops.

3.8. **FDOT.** The Florida Department of Transportation.

3.9. **Final Approval Date.** The date upon which all of the Development Approvals become final and non-appealable.

3.10. **Final CO.** The date upon which the CO is issued for the last building permit outstanding for the Project first two floors of buildings F, G, H, and Z as shown on Exhibit E.

3.11. **Final TCO.** The date upon which the TCO is issued for the first two floors of the last of buildings F,G, H and Z as to be constructed (these buildings are shown on Exhibit E-).

3.12. **Force Majeure.** Any strike, lockout, act of God, inability to obtain labor or materials due to governmental restrictions, riot, war, act of terrorism, hurricane, flood, declaration of a state of emergency under Florida Statute Section 252.363 affecting the geographic area of Bal Harbour, or similar cause beyond the reasonable control of a party.

3.13. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other approval issued by a Governmental Authority, including any Development Approval.

- 3.14. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 3.15. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
- 3.16. **Gross Floor Area (GFA).** Gross Floor Area, as defined in the Bal Harbour Zoning Code.
- 3.17. **Public Records.** The Public Records of Miami-Dade County, Florida.
- 3.18. **Reasonable.** With respect to conduct under this agreement, the efforts that a reasonable person in the position of the applicable party would use to engage in that conduct effectively.
- 3.19. **Substantial Completion.** Completion (of construction or of any other task) sufficient to achieve the essential purpose of the task.
- 3.20. **Substantial Compliance.** Compliance with the substantial or essential requirements of something (such as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not fully met.
- 3.21. **TCO.** A temporary certificate of occupancy issued or to be issued by the Village.
- 3.22. **Village Manager.** The Village Manager of Bal Harbour or his or her duly authorized designee.
- 3.23. **2017 Agreement.** The Development Agreement between the Owner and the Village dated July 27, 2017, approved by Resolution R2017-1076, and recorded on July 28, 2018, in Official Records Book 30632, at Page 3661, of the Public Records.
- 3.24. **First Amendment.** The First Amendment to the Original Development Agreement.
- 3.25. **First Amendment Effective Date.** The date the First Amendment has been signed by Owner and Village
- 3.26. **Agreement.** The Original Agreement as amended by the First Amendment.
- 3.27. **Site Plan Amendment.** Collectively, amendments to the Major Site Plan approved by the Village in Resolution 2017-1077.
- 3.28. **2018 Text Amendments.** Collectively, the amendments to (i) Article V Off-Street Parking Facilities of Chapter 21 Zoning, and (ii) Section 21-320(a) of Division 11 “B” Business District of Chapter 21 Zoning, in the Village Code of Ordinances.

- 3.29. **New Village Hall.** The Village municipal center to be constructed by Owner in accordance with the Agreement.
- 3.30. **NVH Garage.** The parking garage for New Village Hall to be constructed by Owner in accordance with the Agreement.
- 3.31. **Rendition Date.** The date upon which all of the following have occurred: (i) the Village Council has adopted the Minor Site Plan Amendment, the 2018 Text Amendments, and the First Amendment; (ii) the ordinances adopting the Text Amendments and the resolutions adopting the Minor Site Plan Amendment and the First Amendment have been duly signed and attested; (iii) the First Amendment and any exhibits to the First Amendment requiring signature have been duly signed by the respective parties; and (iv) the Village Clerk has filed the aforementioned ordinances and resolutions in the public records of the Village.
- 3.32. **96th Street Garage.** The new parking garage to be constructed by Owner on the 96th Street side of the Project.
4. **Owner's Representation.** Owner hereby represents that it is the sole owner and holder of fee simple title to all parcels of land that are the subject of the major site plan application submitted by Owner to the Village for approval to expand the Shops in accordance with Section 21 of the Village's Code of Ordinances. There is no other property owner or other party (including mortgagees, lienors, or tenants) whose joinder or consent to the site plan application or to this Agreement is legally required.
5. **Description of the Project.** The Project includes the following components:
- 5.1. **Shops Expansion.** Expansion and enhancement of the Shops with the addition of up to 350,000 square feet of GFA, so that the Shops will include a total of up to 860,000 square feet of GFA. The expansion may include an expanded Neiman Marcus, a new Barney's, additional in-line boutique retail space, additional restaurants, and additional parking. The Project includes the incorporation of the Church Site into the Shops, and will result in a floor area ratio not to exceed 1.22. Building heights will be in accordance with the zoning of the Bal Harbour B Business District.
- 5.2. **Traffic Improvements.** New access points to the Shops from Collins Avenue and improved circulation on Collins Avenue and 96th Street; traffic and roadway improvements to both Collins Avenue and 96th Street; and improvements to the public rights-of-way around the Shops, including the sidewalks, landscaping and other associated improvements.
- 5.3. **Parking Improvements.** The Project will ~~include a minimum of 2,400 permanent parking spaces above and below grade in order to~~ achieve a **final** parking ratio of not less than ~~3-1.8 permanent spaces per 1,000 square feet of 90% of the GFA,~~ and a flex parking ratio of not less than 2.3 spaces per 1,000 square feet of 90% of the GFA, ~~and no less than 385 additional flex parking spaces.~~

5.4. **Phased Development.** The development of the Project may occur in phases.

6. **Summary of Owner Contributions.** Owner agrees to make the following contributions (collectively, “**Contributions**”) to the Village. The value of these Contributions is set forth in **Exhibit F**. Each of these Contributions is addressed in detail in other sections of this Agreement.
- 6.1. **New Village Hall.** Construction and delivery to the Village of a new municipal center (“**New Village Hall**”) on the Fairfield Property.
- 6.2. **New Village Hall Parking Garage.** Construction and delivery to the Village of an underground parking structure to be located under ~~portions of one or more of the following: (i) the Fairfield Property, (ii) the Shops Property, and (iii) Bal Cross Drive~~ (“**NVH Garage**”).
- 6.3. **Conveyance of SunTrust Property.** Conveyance to the Village of the SunTrust Property, including assignment to the Village of all leases of the SunTrust Parcel.
- 6.4. **Infrastructure and Beautification Improvements.** Construction and installation of infrastructure and beautification improvements on public property and on portions of the Shops property adjacent to public property at a cost of approximately \$9.375 million, as shown on the Bal Harbour Shops Enhancement Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated January 9, 2017, updated, as same may be amended during the Village approval process.
- 6.5. **Waterfront Park.** Contribution to the Village of (i) the sum of \$3.5 million to be used by the Village for construction of a waterfront park on property owned by the Village (“**Waterfront Park**”), and (ii) preparation and delivery to the Village of a site plan for the Waterfront Park.
- 6.6. **Art in Public Places Contribution.** A contribution of \$1 million to the Village to be used for the installation of art in public places.
- 6.7. **Modification of Police Department Lease in Bal Harbour Shops.** Within three Business Days after the ~~Final Approval~~Rendition Date, Owner and the Village will execute and deliver a Second Modification of Police Department Lease in the form attached as **Exhibit G**. The Second Modification provides for an extension of the existing lease of space in the Shops to the Village Police Department at no cost to Village for rent, CAM, or any other charges, until 90 days after conveyance of the New Village Hall to the Village. The existing lease, as amended to date, will remain in effect until the earlier of the Rendition Date or March 31, 2028.
7. **Development Approvals.** The development of the Project will require the following reviews and approvals (collectively, “**Development Approvals**”). The date upon which the last of the Development Approvals become final and non-appealable will be referred to as the “**Final Approval Date**.”

- 7.1. **ARB Review.** Advisory review by the Village’s Architectural Review Board of Owner’s major site plan application for the Project in accordance with Section 21-322(d) of the Village Code.
- 7.2. **Comprehensive Plan Amendment for Church Site.** A small scale map amendment to the Village’s comprehensive plan in connection with the change in use of the Church Site.
- 7.3. **LPA Recommendation.** Recommendation by the Local Planning Agency (“LPA”) on the comprehensive plan amendments and the text amendments.
- 7.4. **Major Site Plan Approval.** Approval of the major site plan and the related Development Agreement for the Shops Expansion.
- 7.5. **Text Amendments.** Approval by the Village Council of the text amendments to the Village Code to allow for the development of the Project.
- 7.6. **2017 Minor Modifications to Site Plan.** Letter
- 7.7. **ARB Review of 2018 Site Plan Application.** Advisory review by the Village’s Architectural Review Board of Owner’s minor site plan application for the Project in accordance with Section 21-322(d) of the Village Code
- 7.8. **2018 Site Plan Approval.** Approval of the Minor Site Plan Amendment and the related First Amendment to the Original Agreement.
- 7.9. **2018 Text Amendments.** Approval of the 2018 Text Amendments in connection with the 2018 Site Plan Approval.
- 8. **Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.** The parties acknowledge that the Village will be required to adopt amendments to its Comprehensive Plan based on its Evaluation and Appraisal Report (“EAR”), and file those EAR-based amendments with the Florida Department of Economic Opportunity prior to issuance of any building permits for the Project. The Village agrees to schedule the EAR-based amendments for a hearing within a reasonable period of time following the adoption of the Development Approvals. The parties are not aware of any impediments to the adoption of the amendments to the Village’s Comprehensive Plan within a reasonable period of time. The parties do not consider site preparation and construction of a boundary wall on the Existing Shops Property consistent with the Village Code and existing Comprehensive Plan to be affected by this paragraph.
- 9. **New Village Hall.** Owner agrees to cause (i) the design and construction of New Village Hall and NVH Garage on the Fairfield Property, and (ii) the conveyance of the Fairfield Property ~~and the~~ New Village Hall, and the NVH Garage to the Village as expeditiously as possible in accordance with the following terms and conditions:
 - 9.1. **New Village Hall Timeline.**
 - 9.1.1. **Preliminary Design.** ~~Upon issuance of a building permit for the final building of the Project to be permitted, Owner will send notice to~~ The

~~Village that Village has 24~~ will have six months from the Final Approval Date (the “**NVH Design Period**”) to deliver ~~construction to the Owner design plans and renderings for New Village Hall and the NVH Garage (the design plans and renderings for New Village Hall and the NVH Garage are collectively the “**NVH Design Plans**”).~~ The Village ~~will~~ may work with ~~either~~ Zyscovich Architects, which is the Owner’s architect, or with an architect selected by Village ~~and to be paid for by Owner~~, to develop ~~design and construction plans within the 24-month period. After issuance of the building permit for the final building of the Project, Owner will provide to~~ the NVH Design Plans during the NVH Design Period. Whether the Village ~~one~~ works with Zyscovich or ~~more~~ sets another architect, the cost of ~~renderings~~ the NVH Design Plans will be paid for the proposed design and appearance by Owner. Within three months after the end of the NVH Design Period, the ~~New Village Hall.~~ The Village will hold up to five public meetings to review and discuss the ~~proposed design~~ NVH Design Plans, and ~~appearance of New Village Hall.~~ The Village Council will review and approve the ~~preliminary design of New Village Hall~~ NVH Design Plans in its proprietary capacity ~~prior to the processing of the design plans in accordance with the.~~ The Village’s standard regulatory process. ~~failure to complete either (i) the NVH Design Plans during the NVH Design Period, or (ii) Village Council review and approval of the NVH Design Plans, within three months after the NVH Design Period, will not be a default under this Agreement. Instead, any of the remaining deadlines for the construction and completion of New Village Hall will be extended for the same period of time as any extension of the NVH Design Period and/or the review and approval period for Village Council approval of the NVH Design Plans.~~

- 9.1.2. **Construction Plans.** Once the ~~design of New Village Hall has~~ NVH Design Plans have been approved by the Village Council in its proprietary capacity, and through the Village’s regulatory process, Owner will have a period of 18 months to prepare the construction plans and specifications for the approved design (collectively, the “**NVH Construction Plans**”) and submit them to the Village Manager for preliminary review and approval. The Village Manager will provide comments to the NVH Construction Plans within 10 Business Days after receipt of the ~~New Village Hall plans.~~ NVH Construction Plans. Owner will revise the ~~plans and specifications~~ NVH Construction Plans to address the Village Manager’s comments. Thereafter, Owner will comply with the Village’s standard regulatory process for approval of the ~~construction plans and specifications~~ NVH Construction Plans.

- 9.1.3. **Design and Construction Standards.** Owner will design and construct New Village Hall as a sustainable building meeting the standards of the Florida Green Building Council or similar standards. New Village Hall must be rated to withstand a Category 5 hurricane, and must be designed, planned and constructed as Class A office space.
- ~~9.1.4. **Preliminary Prep Work.** Owner will make a reasonable effort to prepare the underground portions of the New Village Hall site and the NVH Garage site for construction at the same time that the Owner prepares the underground portion of the Shop's proposed north parking garage shown on Exhibit E.~~
- ~~9.1.5.~~9.1.4. **Use of Fairfield Property for Staging.** Owner may use the Fairfield Property for the staging of Project construction prior to the commencement of construction of New Village Hall.
- ~~9.1.6.~~9.1.5. **Commencement of Construction.** ~~If the Village timely approves the design of New Village Hall and issues the building permit for New Village Hall, the~~ Owner will commence construction of New Village Hall ~~upon the~~ and the NVH Garage (i) after Village approval of the NVH Construction Plans and issuance of ~~tenant TCOs for 85% of the square footage available for lease in buildings F, G, H and Z (as shown on Exhibit E), but no later than eight years~~ a building permit for New Village Hall; and (ii) within 120 days after issuance by the Village of a certificate of the first building permit for any portion completion for the demolition of the Project Owner's existing parking garage, but no later than 30 months after commencement of construction by Owner of the 96th Street Garage. The date that construction of New Village Hall or the NVH Garage commences will be the "**NVH Commencement Date.**"
- ~~9.1.7.~~9.1.6. **Duration of Construction.** Owner will complete construction of New Village Hall and the NVH Garage no later than 30 months after the NVH Commencement Date, subject to extension due to Village change orders as described in Section 9.6.2. If, however, the design of New Village Hall or the NVH Garage causes the estimated construction time to be longer than 30 months, as determined by the average timeframe of construction bids received by Owner, then the parties will reasonably determine whether to extend the construction time period, or modify the design of New Village Hall and/ or the NVH Garage, or both. Owner acknowledges that the timely commencement and completion of New Village Hall and the NVH Garage is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.
- ~~9.1.8.~~9.1.7. **Failure to Timely Complete New Village Hall.** If Owner has not obtained a TCO for New Village Hall within 30 months after the NVH

Commencement Date, the Village may, at its option, make a claim under the payment and performance bond for the construction of New Village Hall, provided that the Village first sends Owner written notice that Village intends to make a claim under the payment and performance bond if the TCO has not been obtained within 90 days Owner's receipt of the notice. In addition, if the TCO for New Village Hall is not issued within 30 months of the NVH Commencement Date, Owner shall assign to Village the liquidated damages set forth in the construction contract for New Village Hall, as required in Section 9.3.

9.2. **Cost of New Village Hall.** Owner will be responsible for all costs and expenses for the design and construction of New Village Hall, up to the "**Owner's NVH Cost**" defined below.

9.2.1. **Owner's New Village Hall Cost.** Owner and Village agreed in February 2016 that the cost of New Village Hall would be \$9.6 million. The \$9.6 million cost was based on a construction cost of \$281.00 per square foot, and a building square footage of 34,164. Because the timing for the construction of New Village Hall has changed, Owner and Village agree that the cost of New Village Hall will be the 2016 estimated cost of \$9.6 million, as increased (but not decreased) by the percentage change in RS Means Building Construction Cost Data for Commercial Office New Construction in Miami as shown on the RS Means website between the first quarter of 2016 and the most current quarter information available at the time Owner submits the ~~construction plans for New NVH Construction Plans to the Village Hall~~ for issuance of a building permit ("**RS Means Percentage Increase**"). The estimated \$9.6 million cost of New Village Hall, as increased by the RS Means Percentage Increase, is the "**Owner's NVH Cost.**" The 2016 per square foot cost and square footage of New Village Hall contained in this paragraph are included only to show how the \$9.6 million 2016 cost was calculated and are not to be used in determining either the cost per square foot cost or square footage of New Village Hall at the time the increase to the \$9.6 million ~~dollar~~ 2016 cost of New Village Hall is calculated. If RS Means no longer provides the information necessary to calculate the increased cost of New Village Hall at the time the ~~building permit for the final building of the Project is issued~~ NVH Construction Plans are submitted to the Village for permitting, Village and Owner shall jointly agree upon an alternative index.

9.2.2. **Items Included in Owner's NVH Cost.** The Owner's NVH Cost will include the following hard and soft costs only: architect and engineering fees incurred after the Final Approval Date; mobilization costs; construction costs; furniture, fixtures and equipment costs; landscaping and site improvement costs; and the cost of the Village Representative (defined

below). Owner will keep the Village informed of any changes in the cost of New Village Hall.

9.2.3. **Items Not Included in Owner's New Village Hall Cost.** The Owner's NVH Cost will not include any application fees, permitting fees, legal fees, accounting fees, financing fees, overhead or any other fees or charges. The Owner's NVH Cost will not include the costs of constructing the sidewalks abutting New Village Hall. However, the Owner will be responsible for paying the cost of such sidewalks as part of the Revised Public Use Areas shown on Exhibit L. The Village will be responsible for the application and permitting fees for New Village Hall.

9.2.4. **Finalization of New Village Hall Cost.** If at the time Owner is ready to sign a construction contract with a general contractor ("**NVH Contractor**") for New Village Hall and the NVH Garage ("**NVH Construction Contract**"), the actual cost of New Village Hall is higher than the Owner's NVH Cost, Owner will cause the NVH Contractor to propose value engineering alternatives to lower the cost of New Village Hall to the Owner's NVH Cost. If the Village Manager does not wish to accept the value engineering alternatives proposed by the NVH Contractor, the Village Manager will have a period of 60 days after receipt of the value engineering alternatives to schedule a Village Council meeting for adoption of a resolution whereby the Village either agrees to pay the excess cost of New Village Hall or authorizes changes to the New Village Hall construction plans to reduce the cost of New Village Hall to Owner's NVH Cost.

9.2.5. **NVH Cost and Construction Information.** During the period of construction of New Village Hall, Owner will keep the Village Manager informed of all construction and cost-related issues. Owner will promptly provide Village with copies of all requisitions, change orders, and any other documentation affecting the cost of New Village Hall.

9.2.6. **Reduction in New Village Hall Cost.** If the construction of New Village Hall costs less than Owner's NVH Cost, Owner will pay the excess funds (i.e., the difference between the Owner's NVH Cost and the actual construction cost of New Village Hall) to the Village at the time of the transfer of New Village Hall to the Village. Village may use the excess funds for any purpose desired by the Village.

9.3. **Construction Contract for New Village Hall and the NVH Garage.** Prior to issuance of a building permit for the construction of New Village Hall and/or the NVH Garage, Owner will submit to the Village Manager for the Village Manager's review and approval a copy of the NVH Construction Contract. The Village Manager will not unreasonably withhold or delay his approval of the NVH

Construction Contract as long as it provides for the construction of New Village Hall as a Class A office building; provides appropriate assignable construction warranties; provides for the assignment of delay damages to the Village; and establishes construction standards, guidelines, and procedures appropriate for the construction of a public building abutting a major public right-of-way. The Village Manager will review and either approve or request changes to the NVH Construction Contract within 10 Business Days after receipt. Owner shall cooperate with the Village Manager in order to address any reasonable changes to the NVH Construction Contract requested by the Village Manager.

- 9.4. **Construction of Improvements.** Owner will ensure that the construction of New Village Hall and the NVH Garage is performed in a good and workmanlike manner, in accordance with all Governmental Requirements and the NVH Construction Contract.
- 9.5. **Village Representative.** The Village will designate a representative for the construction of New Village Hall and the NVH Garage (“**Village Representative**”), who may, during normal business hours, visit, inspect, and appraise the construction of New Village Hall, the NVH Garage, and any materials, contracts, records, plans, specifications and shop drawings relating to New Village Hall or the NVH Garage, whether kept at Owner’s offices or at the construction site or elsewhere. Owner agrees to notify the Village Representative of meetings among Owner, Owner’s representative, the general contractor, any subcontractors, or any subset of this group, and the Village Representative will be entitled to attend such meetings. Owner agrees to cooperate with the Village Representative, and to make available to the Village Representative, upon request by the Village, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.
- 9.6. **Change Orders.**
- 9.6.1. **Village-initiated Change Orders.** Village will have the right to request changes to the design or construction of New Village Hall and the NVH Garage by submitting a change order to Owner. All change orders must be in writing. Owner will submit Village’s change order to the NVH Contractor to obtain a cost for the change order and the amount of additional construction time, if any, required as a result of the change order. Owner will notify Village of the cost and additional time required to implement the change order. If Village elects to proceed with the change order, (i) Village will be responsible for the additional cost resulting from the change order to the extent that it increases the cost of New Village Hall to more than the Owner’s NVH Cost, and (ii) the deadline for the completion of New Village Hall may and the NVH Garage will be extended by the

additional time required to implement the change order, ~~if agreed to by the parties.~~

9.6.2. **Owner-initiated Change Orders.** The Village Manager's written approval will be required for any change order other than those requested or initiated by the Village. Village Manager's approval of Owner's change orders will not be unreasonably withheld or delayed, but such change orders shall not increase the cost of New Village Hall to the Village or extend the time for completion of New Village Hall or the NVH Garage.

9.7. **Resolution of New Village Hall and NVH Garage Design and Construction Disputes.**

9.7.1. **Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to the design and/or construction of New Village Hall and/or the NVH Garage, the parties will use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, Owner and Village agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

9.7.2. **Mediation.** If the parties are unable to negotiate a resolution of their dispute within a period of five Business Days, then, upon notice by either party to the other, the parties agree to try in good faith to settle the dispute through an expedited mediation process administered by a mediator agreed upon by both parties before resorting to litigation. If a party fails to respond to a written request for mediation within three Business Days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute.

9.7.3. **Litigation.** If the mediation does not result in settlement of the dispute within five Business Days after the initial mediation conference, or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to the design and/or construction of New Village Hall, or this contract shall be settled through court proceedings.

9.7.4. **Time is of the Essence.** Village and Owner agree that time is of the essence for all decisions regarding the design and construction of New Village Hall and the NVH Garage. The parties agree to avoid costly and unnecessary delays related to any dispute, and agree that any dispute resolution process regarding New Village Hall will be conducted on an expedited basis.

10. **New Village Hall Garage.**

10.1. **Timing of New Village Hall Garage.** Owner will construct the NVH Garage at the same time as it constructs New Village Hall. Owner acknowledges that the timely commencement and completion of the NVH Garage at the same as New Village Hall is constructed and completed is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.

10.2. **NVH Garage Cost.** Owner will be responsible for all of the costs and expenses for the design and construction of the NVH Garage. The NVH Garage will consist of approximately 40,000 square feet of underground parking, containing a minimum of 85 spaces. Owner anticipates that the cost of the NVH Garage will be \$6 million; however, Owner will be responsible for all costs of constructing the NVH Garage other than those resulting from change orders requested by the Village.

10.3. **Cost Savings on NVH Garage.** If Owner is able to complete construction of the NVH Garage with 85 spaces for less than \$6 million, Owner will be entitled to the benefit of any cost savings in the construction of the NVH Garage.

~~10.4. **Excess Parking Spaces in NVH Garage.** In the event that the NVH Garage and the Shops North Garage are connected to each other and more than 85 parking spaces are constructed in NVH Garage, Owner may utilize the excess spaces and count them as part of the Shops' required parking spaces.~~

~~10.5-10.4.~~ **Temporary Parking.** During the period of time between the issuance of a building permit for the construction of the Waterfront Park by the Village and the conveyance of the NVH Garage to the Village, Owner agrees to provide 40 parking spaces free of charge in the Shops parking garage then in operation for use by Village employees free of charge who currently park on the Waterfront Park site.

11. **Conveyance of Fairfield Property, New Village Hall, and NVH Garage.**

11.1. **Timing of Conveyance.** Owner will cause the Owner Subsidiary to convey the Fairfield Property and New Village Hall to the Village within 10 Business Days after issuance of the TCO for New Village Hall. If a TCO has been issued for the NVH Garage prior to or at the same time the TCO is issued for New Village Hall, Owner will convey the NVH Garage to the Village at the same time as the Fairfield Property and New Village Hall are conveyed. If the NVH Garage does not have a TCO at the time the TCO is issued for New Village Hall, Owner will convey the NVH Garage within 10 Business Day after the TCO has been issued for NVH Garage, subject to all other provisions of Section 11. The Owner Subsidiary will convey good and marketable title to the Fairfield Property, New Village Hall, and the NVH Garage to the Village by special warranty deed, free and clear of any encumbrances other than those set forth in **Exhibit J**. Village agrees that the Fairfield Property will be used for municipal purposes only.

- 11.2. **Title Commitment.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property ~~and any other property upon which NVH Garage has been constructed~~, Owner will provide Village with a title commitment (“**Title Commitment**”) for an owner’s title insurance policy (“**Title Policy**”) to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village’s title to the Fairfield Property, New Village Hall, and the NVH Garage in an amount equal to the sum of (i) \$10 million for the Fairfield Property, ~~(ii) the value of any additional land upon which the NVH Garage is located, as reasonably determined by Owner, and~~ (ii) and (i) the final cost of New Village Hall and the NVH Garage.
- 11.3. **Due Diligence.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property ~~and any other property upon which NVH Garage has been constructed~~, Owner will provide Village with all of the due diligence materials for the Fairfield Property ~~and any additional NVH Garage property~~ that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment (“**ESA**”) certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for ~~either~~ the Fairfield Property ~~or for any additional NVH Garage Property, or both, shows~~ shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.
- 11.4. **Closing Deliveries.** At the closing on the conveyance, Owner or Owner Subsidiary will do the following:
- 11.4.1. Assign to the Village all construction warranties;
 - 11.4.2. Deliver to the Village complete sets of the as-built plans and specifications for New Village Hall and the NVH Garage in both paper and electronic formats;
 - 11.4.3. Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of New Village Hall and NVH Garage; and
 - 11.4.4. Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment.
 - 11.4.5. Pay all closing costs (except for Village’s Attorneys’ Fees) in connection with the conveyance of the Fairfield Property, New Village Hall, and the NVH Garage, including the cost of the Title Policy.
- 11.5. **Cross-Easements Easement** for **Ingress, Egress and Access.** In the event that the NVH Garage and the Shops North Garage are connected to each other, **at from the Fairfield Property.** At the time of ~~the~~ conveyance of the Fairfield Property to the

Village, Owner ~~and Village~~ will ~~enter into a cross~~execute and record an easement agreement ~~between~~granting to the Village and to the public a perpetual non-exclusive right of egress from the Fairfield Property over and across the ~~NVH Garage~~Owner's property south of the centerline of Bal Cross Drive.

~~11.5.~~**11.6. Post-Closing Access Agreement for Staging.** Prior to the conveyance of the Fairfield Property to the Village, the Village ~~and the Shops North Garage.~~ Owner will enter into an agreement which will include the following terms:

~~11.6.1.~~ A grant to Owner of a temporary right of access to certain portions of the Fairfield Property for staging (parking, storage, etc.) until completion of the Project, provided that such access by Owner does not interfere with or impede in any way the use or operation of New Village Hall or the NVH Garage, or present any risk of injury or damage to persons or property;

~~11.6.2.~~ Confirmation of Owner's obligation to remove all construction materials and debris from the Fairfield Property, and to complete all landscaping of the Fairfield Property in accordance with the site plan for New Village Hall within a specified period of time;

~~11.6.3.~~ Owner's agreement to maintain liability insurance in amounts satisfactory to Village to insure against any all claims arising out of Owner's use of the Fairfield Property after it has been conveyed to the Village, and naming Village as an additional insured; and

~~11.6.4.~~ Indemnification by Owner of the Village, its council members, officers, employees, agents, and contractors (only when acting in their respective official capacities) (collectively, the "**Village Indemnified Parties**"), from and against all liabilities, actions, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, Attorneys' Fees (including those resulting from the enforcement of the foregoing indemnification), arising from, or which may be imposed upon, incurred by or asserted against one or more Village Indemnified Parties by a third party, by reason of any work or activity performed by Owner or any authorized employee, agent or representative of Owner performing work or rendering services on behalf of Owner on or about the Fairfield Property after it has been conveyed to the Village.

12. Conveyance of SunTrust Property.

12.1. **Timing of Conveyance.** ~~Upon completion~~If all of ~~permit ready construction drawings for the Waterfront Park~~Development Approvals have become final and ~~non-appealable by January 15, 2020,~~ the Owner will cause the Owner Subsidiary to convey to the Village good and marketable title to the SunTrust Property by special warranty deed, free and clear of all encumbrances other than those set forth on **Exhibit K**. Village agrees that upon the termination or expiration of the

existing lease of the SunTrust Property (the “SunTrust Lease;”), the SunTrust Property will be used for municipal purposes only.

~~12.2.~~ **Title Commitment.** ~~Not less than 90 days prior to the conveyance to the Village of the SunTrust Property,~~**Assignment of SunTrust Property Rents.** If all of the Development Approvals have not become final and non-appealable by January 15, 2020, Owner will cause the Owner Subsidiary to assign to the Village the rents due under the SunTrust Lease, with such assignment to become effective as of January 15, 2020, and remain in effect until the conveyance of the SunTrust Property to the Village. If, however, (i) the Development Approvals have not become final and non-appealable by January 15, 2023; (ii) Owner provides written notice to the Village that it is not going to develop the Project at any time in the future; (iii) Owner withdraws any building permit applications submitted for the Project, (iv) Owner files an irrevocable waiver of the 2017 and 2018 site plan approvals, as amended, and (v) the Development Agreement is terminated by the parties as to any future obligations to be performed, then the assignment to the Village of the rents due under the SunTrust Lease will terminate, and no conveyance of the SunTrust Property will occur. The assignment of rents due under the SunTrust Lease will be in a form reasonably acceptable to the Village Attorney, and will be accompanied by an estoppel certificate signed by the tenant of the SunTrust Property stating the amount of rents due under the SunTrust Lease, the rent payment dates, and whether there are any uncured events of default on the part of either the tenant or the landlord under the SunTrust Lease.

~~12.2.~~**12.3. Title Commitment.** If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020, Owner will provide Village with a title commitment (“Title Commitment”) for an owner’s title insurance policy (“Title Policy”) to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village’s title to the SunTrust Property in the amount of \$12,750,000.00.

~~12.3.~~**12.4. Due Diligence.** ~~Not less than 90 days prior to the conveyance to the Village of the SunTrust Property~~If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020, Owner will provide Village with all of the due diligence materials for the SunTrust Property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment (“ESA”) certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for the SunTrust Property shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.

~~12.4.~~12.5. **Maintenance of SunTrust Property.** Prior to any conveyance of the SunTrust Property, Owner will enforce the provisions ~~for~~of the SunTrust Lease regarding the maintenance of all improvements on the SunTrust Property in the condition existing on the Effective Date.

~~12.5.~~12.6. **SunTrust Lease.** Owner will not allow or agree to any modifications of the lease encumbering the SunTrust Property (“**SunTrust Lease**”) between the Effective Date and the outside date for any conveyance of the SunTrust Property to Village unless such modifications are approved in writing by the Village Manager.

~~12.6.~~12.7. **Closing Deliveries.** The closing on the conveyance of the SunTrust Property will occur within 90 days after the delivery to the Village of the Title Commitment and the due diligence materials. At the closing on the conveyance of the SunTrust Property, Owner will cause the Owner Subsidiary to do the following:

~~12.6.1.~~12.7.1. Assign to the Village ~~all leases~~the SunTrust Lease and all rents due under the SunTrust Lease, ~~with rents to be prorated between Owner Subsidiary and Village as of the closing date;~~

~~12.6.2.~~12.7.2. Deliver to Village an estoppel certificate in a form reasonably acceptable to the Village, signed by the tenant under the SunTrust Lease.

~~12.6.3.~~12.7.3. Transfer all security deposits ~~to~~under the SunTrust Lease to the Village;

~~12.6.4.~~12.7.4. To the extent that there are any service contracts or maintenance agreements in effect for the SunTrust Property to which the Owner Subsidiary is a party, Owner will cause the Owner Subsidiary to assign to the Village such service contracts and maintenance agreements acceptable to Village (with Owner Subsidiary to terminate or cancel any such contracts or agreements not assigned to the Village);

~~12.6.5.~~12.7.5. Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of the SunTrust Property;

~~12.6.6.~~12.7.6. Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment; and

~~12.6.7.~~12.7.7. Pay all closing costs in connection with the conveyance of the SunTrust Property (other than the Village’s Attorneys’ Fees), including the cost of the Title Policy.

13. **Waterfront Park Contribution and Site Plan.**

13.1. **Contribution.** Within 90 days after the Final Approval Date, Owner will pay to Village the sum of \$3.5 million by wire transfer to the Village’s account

("Waterfront Park Contribution") to be used by the Village to construct the Waterfront Park.

13.2. **Site Plan.** Upon request by the Village, Owner, at Owner's expense, shall cause Zyscovich Architects or an architect designated by Village and to be paid for by Owner ("**Architect**") to develop a site plan for the Waterfront Park. The site plan will include elevations, landscaping, colors, and materials. The Architect shall attend the following public meetings pertaining to the design of a site plan for the Waterfront Park:

13.2.1. An initial workshop where three design options for Waterfront Park are presented, feedback is received from the public, and a preferred design is identified;

13.2.2. A second workshop where the architect presents a site plan for the preferred design, and feedback is received from the community and the Village Council;

13.2.3. A final workshop for public review and comment on the site plan;

13.2.4. An Architectural Review Board meeting where the site plan will be reviewed; and

13.2.5. A Village Council meeting where the final version of site plan is presented to the Council for approval.

13.3. **Waterfront Park Construction Plans.** Within 30 days after the First Amendment Effective Date, the Village will notify the Owner whether the Village wishes to have the construction plans for the Waterfront Park (the "**Park Construction Plans**") prepared by Zyscovich Architects ("**Zyscovich**") or by an architect selected by Village. If the Village elects to have Zyscovich prepare the Park Construction Plans, Owner will immediately contract with Zyscovich Architects to prepare the Park Construction Plans, and will cause Zyscovich to complete the Park Construction Plans. Owner will deduct the cost of the Park Construction Plans from the Waterfront Park Contribution.

13.4. **Assignment of Park Construction Plans.** Owner shall immediately deliver the completed Park Construction Plans to the Village, along with an assignment from Owner and Zyscovich of all of their respective rights, title and interest in the Park Construction Plans. The assignment will include a provision granting to the Village the right to use the Park Construction Plans in whatever manner the Village wishes.

~~13.3.~~13.5. **Construction of Waterfront Park.** Village will be responsible for paying for and performing the construction of Waterfront Park.

14. **Parking Surcharge.** Owner will impose a \$1.00 parking surcharge ("**Parking Surcharge**") on each parking transaction at the Shops; (i.e., each parking ticket issued to a visitor entering the Shops parking garage). The Parking Surcharge will only be applicable to **BHS**

customers and public users of the garage. It is expressly understood that the Parking Surcharge will not be applicable to Owner and its family members, employees of Owner, tenants of the Shops, employees of tenants of the Shops, or tickets validated or otherwise waived by either the Owner's executive offices or the Church. The Parking Surcharge amount is a fixed rate and cannot be unilaterally modified by the Village.

- 14.1. Payment of Parking Surcharge to Village.** The Parking Surcharge will be implemented within 30 days after the issuance of the TCO for the ~~new parking garage structure fronting~~ 96th Street Garage. The Village will use the Parking Surcharge funds for parking and multimodal mobility initiatives or any other municipal purposes, at the Village's discretion. The Village will at all times have the right to review the Owner's parking reports to verify the amount of the Parking Surcharge being remitted to the Village. The Parking Surcharge records provided by the Owner will be reviewed by an independent auditor and will be handled in a manner similar to the handling of Resort Tax payments by the Village. The Parking Surcharge will survive the expiration or earlier termination of this Agreement as long as any portion of the Shops Property continues to be used for commercial uses. If the Owner ceases to charge customers and public users for parking, the Owner will no longer be required to collect the Parking Surcharge or remit Parking Surcharge payments to the Village. If, however, the Owner resumes charging for parking after ceasing to charge for parking, the obligation to collect and pay the Parking Surcharge will be reinstated. Prior to the final approval of ~~this Agreement~~ the First Amendment at a second public hearing, Owner and Village will ~~negotiate~~amend the terms of ~~an instrument to the Agreement Regarding Parking Surcharge and Police Fee previously agreed upon by the Owner and the Village to incorporate the changes in this First Amendment. The Agreement Regarding Parking Surcharge and Police Fee will~~ be executed by the parties and recorded by the Owner within ten days after the Final Approval Date ~~imposing the Parking Surcharge on the Shops Property.~~
- 14.2. Owner Retention of Portion of Parking Surcharge.** Owner may retain up to 50% of each quarterly payment of the Parking Surcharge due Village to offset the Owner's cost of constructing the ~~parking provided for New Village Hall (whether on the Fairfield Property or in the NVH Garage) up to the actual cost of the parking spaces provided, but not to exceed~~ underground portion of the NVH Garage up to a maximum amount of \$6 million, after which 100% of the Parking Surcharge will be paid to the Village.
- 15. Traffic Improvements.** Owner must fully fund and implement all of the traffic improvements described in the traffic study prepared by Fandrei Consulting, Inc., last updated January 2017 (collectively, "**Traffic Improvements**"), including but not limited to the Traffic Improvements listed in Sections 15.1 through 15.4 below, in order to improve ingress and egress to and from the Shops, and to provide improved traffic flow for through-traffic on Collins Avenue, Harding Avenue, and 96th Street. The Traffic

Improvements will be constructed during the time designated for each Traffic Improvement identified below. The construction of the Traffic Improvements is subject to the approval of other Governmental Authorities, and Owner will be responsible for the cost of any additional studies and improvements that may be required by other Governmental Authorities. The Village agrees to provide any reasonable consents or documentation required by other Governmental Authorities to implement the Traffic Improvements, but no changes may be made to the Traffic Improvements without the prior approval of the Village Manager, which approval will not be unreasonably withheld or delayed. If the Village Manager finds that any requested changes to the Traffic Improvements negatively modify the Level of Service approved by Fandrei Consulting, Inc. and the Corradino Group (“**Approved LOS**”), Village Council approval of the changes will be required. If the Village Manager finds that the requested changes do not negatively modify the Approved LOS, the changes will be handled administratively.

15.1. **Realignment of Collins Avenue.** As one of the initial elements of ~~Phase One~~the first phase of the Project, Owner (with assistance from the Village) will work with FDOT to seek approval to reconfigure the southbound lanes on Collins Avenue from Founder’s Circle through the 96th Street intersection in order to ensure a continuous and uninterrupted flow of traffic. Upon approval by FDOT, Owner will undertake the reconfiguration at Owner’s expense and in accordance with FDOT requirements.

15.2. ~~First Set of~~**Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a TCO for the ~~new parking garage on the Existing Shops Property~~96th Street Garage:

15.2.1. **AIA Crosswalk.** Construction and installation of an ~~interim~~enhanced two-stage pedestrian crosswalk in the 9700 Block of State Road A1A (“**A1A**”), in the location where a crosswalk currently exists.

15.2.2. **Collins / Harding Signal Removal.** Removal of the existing mid-block pedestrian signal on Collins Avenue and Harding Avenue north of 96th Street after completion of the two-stage pedestrian crosswalk on A1A.

15.2.3. **Loading Area and Service Driveway.** Construction of a new loading area and service driveway for the Shops on 96th Street at Byron Avenue to handle truck traffic.

~~15.3. Second Set of Traffic Improvements.~~ ~~The following Traffic Improvements will be completed prior to the issuance of the Final TCO.~~

~~15.3.1.~~15.2.4. **Signalized Driveway at North End of Shops.** Construction of a new signalized driveway at the north end of the Shops to handle the traffic that currently uses the driveways on Collins Avenue and Harding

Avenue, in order to eliminate backups from the driveways that interfere with traffic flow on Collins Avenue.

~~15.3.2.~~**15.2.5. Premium Valet Parking Entry.** Conversion of the existing driveway on Collins Avenue and Harding Avenue into an “Entry Only” driveway for premium valet parking.

~~15.3.3.~~**15.2.6. Premium Valet Parking Exit.** Conversion of the secondary driveway adjacent to the pedestrian crossing signal immediately north of 96th Street to an “Exit Only” driveway for premium valet parking.

~~15.3.4.~~ ~~**AIA Crosswalk.** Construction and installation of an enhanced two-stage pedestrian crosswalk in the 9700 Block of State Road A1A (“A1A”), in the location where a crosswalk currently exists.~~

~~15.3.5.~~**15.2.7. Retiming of Traffic Signals.** After completion of the new driveway at the north end of the Shops and the new service driveway on 96th Street, development of new traffic signal coordination plans to optimize signal operations, taking into account the improved signal spacing and other changes to the street network.

~~15.4.~~**15.3. During All Phases.** ~~Ongoing monitoring of traffic changes during~~**Monitoring and Signal Retiming.** ~~Throughout~~ the development of the Project, ~~and development~~**Owner will monitor traffic changes** and ~~implementation of~~**develop and implement** interim signal retiming plans ~~throughout all of the Phases~~ to address the changes in traffic flow that ~~will~~**may** occur ~~during the development of the Project.~~

~~15.5.~~**15.4. Additional Traffic Improvements after Project Completion.** The parties acknowledge that the Owner is not required to provide any additional traffic mitigation for the Project other than as set forth in the foregoing subsections regarding the Traffic Improvements. Owner agrees to fund and implement the following additional traffic improvements (“**Additional Traffic Improvements**”) prior to issuance of the Final TCO. In the event that other Governmental Authorities will not approve the Additional Traffic Improvements, the Owner will be released from any further responsibility related to the Additional Traffic Improvements.

~~15.5.1.~~**15.4.1. Harding Avenue / 96th Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the signals controlling the eastbound and westbound traffic. This improvement will allow signal operation to respond more effectively to variations in eastbound traffic. Signal time not needed by the east/west traffic on 96th Street can be transferred to Harding Avenue to reduce southbound delays and stops.

~~15.5.2.~~15.4.2. **Collins Avenue / 96th Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the eastbound movement, and if possible, provide a connection to the eastbound loops at Harding Avenue. This improvement will allow the intersection to work in concert with the signal at the Harding Avenue / 96th Street intersection, and to transfer unused green signal time from 96th Street to northbound Collins Avenue.

~~15.5.3.~~15.4.3. **96th Street at 500 Block.** Addition of a two-stage pedestrian crossing to provide a safer crossing of 96th Street by pedestrians and to reduce delays to traffic on 96th Street.

16. **Infrastructure Improvements.** Owner will be responsible for the cost of installing, connecting, or relocating and reconnecting, any ~~water, sewer and stormwater improvements~~ and all public and private utilities required ~~in order~~ to facilitate the development of, and meet any capacity requirements for, the Project, New Village Hall, and the NVH Garage. Public and private utilities include but are not limited to: water distribution, wastewater removal (sewer), stormwater drainage, electricity, gas, and telecommunications (telephone, cable, internet, etc.).

17. **Collins Plaza Public Space.**

17.1. **Design of Collins Plaza.** Owner is redesigning the existing surface parking area of the Existing Shops Property located on Collins Avenue (“**Collins Plaza**”) with a pedestrian walkway and valet parking facilities. In order to prevent cars from inadvertently entering the pedestrian area of Collins Plaza, Owner shall install a landscape buffer to set off the pedestrian walkway from the valet areas and travel lanes. The landscape buffer may include planting areas, fountains or other physical barriers approved by the Village.

17.2. **Use by Owner.** Upon ~~receipt~~ issuance of the Final TCO, Owner agrees to use Collins Plaza on a periodic basis as determined by Owner for appropriate commercial uses such as retail, food, and beverage sales, or for non-commercial uses such as temporary artwork installations, farmers markets, or special events, which uses are compatible with the operation of the Shops. Owner will have the right to terminate its use of Collins Plaza after consultation with the Village if Owner reasonably believes its use of Collins Plaza to be unsuccessful.

17.3. **Use of Collins Plaza by Village.** Upon ~~receipt~~ issuance of the Final TCO, the Village will have the right to use all of Collins Plaza (including the parking spaces) up to six times per calendar year for special events, at no cost to Village, on dates and at times mutually agreed upon by the parties. Village agrees that the Village’s special events will not take place during peak periods of demand for parking. If Owner reasonably determines that Village’s use of Collins Plaza is detrimental to the operation of the Shops, Owner shall notify Village in writing, and Village shall have

a period of five days after receipt of the written notice to modify its use of Collins Plaza. If Village fails to modify its use of Collins Plaza to a use which, in Owner's reasonable opinion, is not detrimental to the Shops, Owner will have the right to terminate Village's use of Collins Plaza upon five days' written notice to Village.

18. Public Improvements.

18.1. **Art in Public Places.** Owner agrees to contribute the sum of \$1 million ("**Art Contribution**") to the Village to be used solely for the temporary or permanent installation of works of art on public property. Within 30 days after the issuance of the first building permit for any portion of the Project, Owner will deliver to Village a check in the amount of \$500,000.00, constituting one-half of the Art Contribution. If after the Final Approval Date, Owner installs new artwork in the Project which is visible to or easily accessible by the public, Owner will receive a credit against the Art Contribution in an amount of up to \$500,000.00 based on the value of the artwork installed by Owner. The Village encourages Owner to install artwork that is integrated into the design of the Project. Upon issuance of the Final CO, Owner will pay any outstanding balance of the Art Contribution to the Village.

18.2. **Residential Gate.** Owner agrees to pay for (i) the redesign of the residential gate entry on Bal Bay Drive near the Village Hall Property into a two-way entrance, and (ii) the replacement of the existing gate with a new residential gate (collectively, "**Gate Work**"). Owner will not be required to spend more than \$30,000.00 for the Gate Work. No land owned by Owner will be used for the redesign of the entrance. The Village will be responsible for obtaining all approvals required for Gate Work. Owner agrees to complete the Gate Work within six months after the Village obtains the necessary approvals for the Gate Work. If the Village has not obtained the necessary approvals by the date of the Final CO, the Owner will be released from its obligations regarding the Gate Work. If the Village elects to perform the Gate Work as part of the development of the Waterfront Park, the Owner will reimburse the Village for the Village's cost of the Gate Work up to \$30,000.00.

19. Public Use Areas.

19.1. **Sidewalks.** As part of the Shops Expansion, Owner will be widening and improving certain sidewalks on the Shops Property along 96th Street and Collins Avenue, as well as portions of the publicly dedicated rights-of way along 96th Street and Collins Avenue. The portions of the Shops Property and the public property to be widened and improved are shown on **Exhibit L** ("**Public Use Areas**").

19.2. **Encroachments.** As part of the Shops Expansion, Owner will be constructing parking spaces, fountain areas, paved driveways, and other Project improvements shown on **Exhibit M** ("**Project Encroachments**"), some of which may encroach on the public rights of way.

- 19.3. **Easement, Encroachment, and Maintenance Agreement.** Prior to final approval of ~~this Agreement~~the First Amendment at a second public hearing, Owner and Village will ~~negotiate~~review and revise, if necessary, the terms of ~~an~~the previously negotiated agreement (“**Easement, Encroachment, and Maintenance Agreement**”) to be recorded within ten days after the Final Approval Date. The Easement, Encroachment and Maintenance Agreement will be a covenant running with the land which will (i) survive the termination or expiration of this Agreement; (ii) be reasonably satisfactory to Village in form and content; and (iii) include the following:
- 19.3.1. **Grant of Easement.** Grant by Owner to Village of a perpetual, non-exclusive easement allowing the public to use the Public Use Areas that are located upon the Shops Property;
- 19.3.2. **License for Encroachments.** Grant by Village to Owner of an irrevocable, non-exclusive license permitting the encroachment onto 96 Street or Collins Avenue of the Project Encroachments;
- 19.3.3. **Maintenance Obligation.** A covenant by Owner to maintain the Public Use Areas and Project Encroachments in perpetuity at Owner’s expense (in clean and safe condition, and in keeping with the maintenance standards of the Shops) and to repair, and replace, as needed, all Public Use Areas and Project Encroachments; and
- 19.3.4. **Landscaping along Park Drive Wall.** A covenant by the Owner to install landscaping along the Park Drive side of the wall to be constructed on the Shops Property and to maintain the landscaping in perpetuity.
- 19.4. **Pedestrian Access during Construction.**
- 19.4.1. **Collins Avenue.** Owner shall maintain safe pedestrian access along Collins Avenue throughout the construction of the Project. Intermittent closures of pedestrian access on Collins Avenue will be permitted, subject to the Village Manager’s reasonable approval.
- 19.4.2. **96th Street.** Owner may partially close pedestrian access to the sidewalk on 96th Street during construction as long as Owner provides a safe and reasonable alternative acceptable to the Village Manager and the Florida Department of Transportation.
- 19.5. **Park Drive.** Owner hereby agrees to grant to Village a utility easement in the form attached as **Exhibit N** over, across, upon, and under Owner’s underlying fee simple interest in the portion of Park Drive abutting the Shops Property up to the centerline of Park Drive. Owner will execute and deliver the utility easement to the Village within ~~10 days~~three Business Days after the ~~Final Approval~~Rendition Date. Within 90 days after the Final Approval Date, ~~BHS~~Owner shall execute a

waiver of any claim of ownership it may have to Park Drive in a form reasonably satisfactory to Village.

20. **Public Safety.**

20.1. **Safety During Construction.** Owner recognizes that during the period of construction of the Project, activities at the Shops Property will generate a need for additional public safety services and personnel to protect the health, safety and welfare of Village residents. Throughout the construction of the Project, Owner will pay for off-duty Bal Harbour police officers to be posted at each construction site entrance and exit during the hours that construction is taking place. The Village Manager may, in his reasonable discretion, require additional police coverage for the Project at Owner's expense.

20.2. **Off-Duty Police Services.** From the date of issuance of the first permit for any portion of the Project until issuance of the Final CO, Owner will be required to pay to the Village an annual "**Off-Duty Police Fee**" in an amount equal to the cost of 4,500 hours of off-duty police service at the rate then being charged by the Village for off-duty police service. The Off-Duty Police Fee will not be more than 10% higher than the rate then being charged by the City of Miami Beach. Owner will pay the Off-Duty Police Fee in advance in quarterly installments, with the first installment due on the first day of the calendar quarter (January, April, July, or October) following the date of issuance of the first permit for any portion of the Project. After completion of the Project, the Off-Duty Police Fee will be reduced to the cost of 3,500 hours of off-duty police service. If the Shops' operating hours change in the future, the number of hours used to calculate the Off-Duty Police Fee will be adjusted accordingly. Owner and the Village Manager will mutually agree upon an appropriate schedule for the off-duty police officers to be present on the Shops Property. If Owner requests off-duty police officers for Shops events or construction during a year, the services requested will be counted as part of the 4,500 hours (3,500 hours after issuance of the Final CO) paid for by Owner. The Off-Duty Police Fee will not apply to either (i) the police services required under Section 20.1, or (ii) off-duty police services requested by tenants of the Shops. The Owner's obligation to pay the Off-Duty Police Fee will survive the expiration or termination of this Agreement. Prior to the final approval of ~~this Agreement~~ the First Amendment at a second public hearing, Owner and Village will ~~negotiate and finalize~~ amend the terms of ~~an instrument~~ the Agreement Regarding Parking Surcharge and Police Fee previously agreed upon by the Owner and the Village to incorporate the changes regarding the Off-Duty Police Fee set forth in the First Amendment. The Agreement Regarding Parking Surcharge and Police Fee will be executed and recorded by Owner within 10 days after the Final Approval Date ~~imposing~~ and will impose on the Shops Property the obligation to pay the Off-Duty Police Fee in perpetuity as long as any portion of the Shops Property is used for commercial purposes.

- 20.3. **Construction Staging and Parking.** Prior to the issuance of a building permit for the first principal structure of the Project, Owner will submit a construction staging plan and a plan for maintenance of traffic to the Village Manager for approval. The proposed maintenance of traffic plan will require the Owner to take all reasonable actions necessary to minimize disruption of traffic along Collins Avenue and 96th Street during construction, and will require coordination with the Village in advance of any construction activities likely to impact traffic along those thoroughfares. Owner agrees that the staging of construction and the parking of all construction vehicles and equipment, including cranes and dumpsters, will occur entirely within the Shops Property and the Fairfield Property. Construction traffic between the Shops Property and the Fairfield Property will traverse Bal Cross Drive, if possible, and not enter the Collins Avenue right-of-way. All construction traffic must be managed to ensure pedestrian safety at all times. Owner shall maintain Bal Cross Drive in as clean and safe a condition as reasonably possible until the Fairfield Property is conveyed to the Village.
- 20.4. **LPR Cameras.** ~~Owner agrees to~~ Within three Business Days after the Rendition Date, Owner will (i) donate to the Village two license plate recognition cameras (“LPR Cameras”) at a cost not to exceed \$25,000.00, and ~~to~~(ii) grant to the Village a perpetual easement for the installation, maintenance, repair and replacement of the LPR Cameras. The easement will allow the LPR Cameras to be installed in locations acceptable to Village and Owner, including on buildings which will not be impacted by the installation, on light poles, and upon other facilities located on the Shops Property. Village agrees that the LPR Camera will be used only to monitor traffic on Collins Avenue and 96th Street, and will not record the license plates of Shops patrons on the Shops Property. The Village agrees to indemnify Owner against any action brought against Owner as a result of the LPR Cameras, subject to the limitations of liability set forth in Section 768.28 of the Florida Statutes.
- 20.5. **Noise Meters.** Prior to issuance of the first permit for any portion of the Project, Owner shall provide to Village, at Owner’s expense, two noise meters, one to be installed at a fixed location and the other a portable meter. The noise meters shall be a brand and model reasonably satisfactory to the Owner and the Village Manager. Owner shall install the Village’s fixed noise meter at Owner’s expense in a location on Park Drive to be designated by Village. Village will be responsible for calibrating the noise meters, but Owner will be responsible for maintaining, repairing and replacing the noise meters at Owner’s expense until the conveyance of the Fairfield Property to the Village.

21. **Building Department Fees and Services.**

- 21.1. **Payments in Lieu of Building Permit Fees.** In lieu of paying the Village’s standard fees for building permits for the Project, Owner agrees to pay Village ~~a contribution in lieu of permit fees in the amount of \$2.5 million*~~ (“the following

voluntary contributions (each, a “Voluntary Contribution”) in five equal installments, according to the following schedule:”).

21.1.1. Payments in Lieu of Permit Fees for First Phase of Project. For all portions of the Project other than the third levels of Buildings D, E, F, G and H, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees in the amount of \$2.5 million* in five equal installments, according to the following schedule:

First Payment of \$500,000*	Due at time of submittal of the first permit application for construction.
Second Payment of \$500,000*	Due prior to issuance of the first building permit for construction
Third Payment of \$500,000*	Due on one-year anniversary of Second Payment.
Fourth Payment of \$500,000*	Due on two-year anniversary of Second Payment
Fifth Payment of \$500,000*	Due prior to issuance of Final TCO for <u>entire Project</u> <u>the second level of the last of Buildings F, G, H and Z.</u>
*NOTE: All amounts set forth in <u>Section 21.1 and in this table</u> are estimates subject to adjustment as set forth in Section 21.1.4 and <u>21.1.6.</u>	

21.1.2. Payments in Lieu of Permit Fees for Third Levels of Buildings D and E. In lieu of paying the Village’s standard fees for building permits, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees for the third levels of Buildings D and E in the amount of \$150,000.00, with \$75,000.00 to be paid upon submittal of the permit application, and \$75,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for the third levels of Buildings D and E will be subject to the “true-up” adjustment set forth in Section 21.1.6.

21.1.3. Payments in Lieu of Permit Fees for Third Levels of Buildings F, G and H. In lieu of paying the Village’s standard fees for building permits, Owner agrees to pay Village a voluntary contribution in lieu of permit

fees for the third levels of Buildings F, G and H in the amount of \$250,000.00, with \$125,000.00 to be paid upon submittal of the permit application, and \$125,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for the third levels of Buildings F, G and H will be subject to the “true-up” adjustment set forth in Section 21.1.6.

~~21.1.1.~~**21.1.4. Voluntary Contributions Based on Estimated Construction Cost**~~Costs.~~ The Voluntary ~~Contribution~~Contributions and payments set forth in ~~Section~~Sections 21.1.1, 21.1.2 and 21.1.3 are estimates only. Prior to the issuance of the ~~first~~respective building ~~permit~~permits for construction of (i) the first two levels of Buildings F, G, H and Z; (ii) the third levels of Buildings D and E; and (iii) the third levels of Buildings F, G and H, Owner will provide the Village with a copy of the construction contract ~~for the Project~~applicable to each respective phase of construction or other documentation acceptable to Village showing the anticipated cost of the respective phase of the Project. The amounts of the second through fifth payments for the first two levels of Buildings F, G, H and Z will be adjusted based on that cost so that the total of the five payments equals two percent of the anticipated Project hard costs up to the first \$1.0 million, and one percent of the anticipated Project hard costs after the first \$1.0 million.

~~21.1.2.~~**21.1.5. Items not included in Voluntary Contribution.** The calculation of the respective Voluntary ~~Contribution payments under this provision~~Contributions do not include any of the following: (i) the value of any permits required for New Village Hall; (ii) the value of any permits for work done by tenants of the Shops, which must be applied for and paid for by tenants; or (iii) the amount of any charges collected by the Village on behalf of other Governmental Authorities, which charges must be remitted to Village by Owner.

~~21.1.3.~~**21.1.6. True-up of Voluntary ~~Contribution~~Contributions.** Thirty days prior to the issuance of each of the following: (i) the Final TCO; for the last of the first two levels of Buildings F, G, H and Z; (ii) the TCO for the third levels of Buildings D and E, and (iii) the TCO for the third levels of Buildings F, G and H, Owner will provide Village with an updated calculation of the actual Project construction cost ~~(including the cost of the NVH Garage).~~ Any required adjustment of the Voluntary ~~Contribution~~Contributions based on the Owner’s actual construction costs will be paid by Owner or refunded by Village, whichever is applicable.

- 21.2. **Expedited Plan Review and Inspections.** In consideration for Owner's payment of the Voluntary Contribution, Village agrees that from and after the first submittal of an application for a building permit for the Project, Village will initiate plan review and schedule on-site inspection services as quickly as possible. The Village agrees to use best efforts to maintain adequate staff in the Building Department to promptly provide Building Department services. Village's agreement to review plans and perform inspections does not obligate the Village to approve any plans or inspections. Owner understands and agrees that throughout the term of this Agreement, any official inspector for the Village, or a duly authorized agent of the Village, will have the right and privilege at any time during normal business hours to enter upon and investigate the use of the Shops Property to determine whether the Shops Property complies with applicable Governmental Requirements.
- 21.3. **Use of Private Provider.** Owner will at all times have the right to hire a private provider under Section 553.791 of the Florida Statutes.
22. **Security for Owner's Obligations.** In order to guarantee the performance of the Owner's obligations under this Agreement, Owner hereby agrees to (i) place in escrow with Weiss Serota Helfman Cole & Bierman, P.L. ("**Village Attorney**") the special warranty deeds for the conveyance of the Fairfield Property and the SunTrust Property and an assignment of the SunTrust Lease; and (ii) deliver to the Village the payment and performance bonds described in this Section 22.
- 22.1. **Escrow of Deeds, and Assignment of Lease.** Prior to the execution of this Agreement by the Village, Owner shall deliver to the Village Attorney original executed special warranty deeds conveying the Fairfield Property and the SunTrust Property to the Village (collectively, the "**Deeds**"), along with an original executed assignment of the SunTrust Lease (the "**Lease Assignment**"). The Deeds and Lease Assignment must be reasonably satisfactory in form and substance to the Village Attorney. The Deeds and Lease Assignment will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement to be entered into by Owner, each Owner Subsidiary, Village, and Village Attorney prior to the execution of this Agreement by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of this Agreement by the Village.
- 22.2. **Escrow of Assignment of Rents.** Prior to the execution of the First Amendment by the Village, Owner shall deliver to the Village Attorney an original executed assignment of the SunTrust rents to the Village (the "**Rent Assignment**"). The Rent Assignment must be reasonably satisfactory in form and substance to the Village Attorney. The Rent Assignment will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement for the Rent Assignment to be entered into by Owner; Bal Harbour Shops Tract A, LLC; the Village, and Village Attorney prior to the execution of the First Amendment by the Village. The terms

and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of the First Amendment by the Village.

~~22.2.~~**22.3.** **Payment and Performance Bonds.** Owner, at its sole cost and expense, shall obtain and deliver to the Village two separate payment and performance bonds (each, a “**Bond**”). Each Bond must be reasonably acceptable to the Village in form and content; must be rated A+ or better, and must be written by a reputable surety licensed to write bonds in the State of Florida.

~~22.2.1~~**22.3.1.** **Bond Securing Completion of Project.** If the Owner is required by its lender to obtain a Bond in connection with its financing of the Project, then, if the lender permits, Owner will use reasonable efforts to make the Village a third obligee under the Bond, subordinate in all respects to the Owner’s Lender.

~~22.2.2~~**22.3.2.** **Bond for Construction of New Village Hall And NVH Garage.** Prior to the issuance of a building permit for New Village Hall, Owner will cause the NVH Contractor to obtain a Bond to secure the completion of construction of New Village Hall and the NVH Garage, with the Village named as the second obligee.

23. **Taxes.**

23.1. **Minimum Ad Valorem Taxes.** Owner guarantees that the municipal portion of annual ad valorem taxes paid by the Owner and tenants of the Shops during the construction of the Project will be no less than the amount that results from the resolution of the pending challenge regarding the amount due in the 2016 tax year (currently estimated at \$384,000.00) (the “**2016 Municipal Tax Payment**”). Owner agrees to pay to the Village on December 1 of each year a sum equal to the 2016 Municipal Tax Payment less the municipal portion of the ad valorem tax bills for the Project due on March 31 of the same year (including tenants’ tax bills). Owner’s obligation under this paragraph will terminate upon Final CO.

23.2. **Minimum Resort Taxes.** Owner guarantees that during the construction of the Project, the aggregate annual amount of Bal Harbour Resort Tax payments generated by the tenants of the Shops will be a minimum of \$880,000.00. Owner agrees to pay to the Village by October 31 of each year a sum equal to \$880,000.00 less the total actual Resort Tax payments from the Project for the preceding fiscal year ending September 30. Owner’s obligation under this paragraph will terminate upon Final CO.

24. **Transfer Fee.** Subject to the provisions below, Owner will pay Village a one-time fee (“**Transfer Fee**”) equal to 1% of the gross sale price of the Bal Harbour Shops upon a “**Transfer**” (as defined below) of all or substantially all of the Shops Property that closes after the Final Approval Date. The Transfer Fee will be calculated as follows:

- 24.1. **Definition of Transfer.** Each of the following events will be considered a “Transfer” for purposes of this Agreement.
- 24.1.1. **Sale of Fee Simple Interest.** A sale or lease in excess of 50 years of Owner’s fee simple interest in 50% or more of the Shops Property.
- 24.1.2. **Sale of Controlling Interest of Owner.** A sale of the Controlling Interest in Owner. For purposes of this Agreement, the “**Controlling Interest**” in Owner is the ownership of (i) more than 50% of the voting rights of the general partners or (ii) more than 50% of the general partnership interests in the Owner entity. On the Effective Date, the general partners of Owner are Stanley F. Whitman, as Trustee of the SFW Revocable Trust, Randall A. Whitman, and Matthew Whitman Lazenby. Owner shall notify Village of any change in the Controlling Interest of Owner which would trigger the Transfer Fee within 10 days after the change occurs, until the expiration or termination of Owner’s obligation to pay the Transfer Fee.
- 24.2. **Calculation of Transfer Fee.** If the closing of the Transfer occurs after the Final Approval Date, the Transfer Fee will be assessed only upon the first to occur of the following Transfers:
- 24.2.1. **Prior to Building Permits for 50% of the GFA.** If a Transfer occurs prior to the issuance of building permits for 50% of the Expansion GFA, excluding the third levels of Buildings D, E, F, G, H and Z, 100% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.2. **Prior to Building Permits for All of the GFA.** If a Transfer occurs prior to the issuance of building permits for 100% of the Expansion GFA, excluding the third levels of Buildings D, E, F, G, H and Z, 90% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.3. **Prior to Final TCO.** If a Transfer occurs prior to the Final TCO, 75% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.4. **Prior to Fifth Anniversary of the Final TCO.** If a Transfer occurs prior to the fifth anniversary of the Final TCO for the Project, 50% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.

- 24.2.5. **More than Five Years After Final TCO.** No Transfer Fee will be due in connection with any Transfer that takes place more than five years after issuance of the Final TCO.
- 24.3. **Events Not Constituting a Transfer.** The following events will not be considered a Transfer under this Agreement, and no Transfer Fee will assessed upon these events:
 - 24.3.1. **Transfers of Entity Interests.** One or more Transfers to unrelated third parties which in the aggregate total less than 50% of the interests in Bal Harbour Shops, LLLP;
 - 24.3.2. **Mortgages.** The grant of a mortgage or security interest to a third party (“Secured Party”) encumbering all or a portion of the Shops Property, the Project, or the Owner entity;
 - 24.3.3. **Deed in Lieu.** A transfer of all or a portion of the Shops Property, the Project, or the Owner entity to a Secured Party, bankruptcy trustee, or receiver, by deed in lieu of foreclosure; or a transfer to a purchaser at a foreclosure or similar sale;
 - 24.3.4. **Transfers by Secured Party.** A transfer by a Secured Party to any third party;
 - 24.3.5. **Family Transfers.** Transfers to any of the descendants or relatives (including by marriage or adoption) of Stanley F. Whitman, Dudley Whitman, or William Whitman;
 - 24.3.6. **Transfers for Estate Planning.** Transfers made for estate or estate tax planning purposes;
 - 24.3.7. **Transfers to Affiliates.** Transfers to any parent, subsidiary or other entity affiliated with Bal Harbour Shops, LLLP or any of its present or permitted future owners; or
 - 24.3.8. **Eminent Domain.** Any conveyance to a Governmental Authority pursuant to a taking in eminent domain or in settlement of such taking.
- 24.4. **Notice of Transfer.** Owner shall provide Village with written notice of a contemplated Transfer at least 10 days prior to the closing date of the Transfer.
- 25. **“Look Back” Reporting and Mitigation.**
 - 25.1. **First Look Back Reports.** Twelve months after tenant TCOs have been issued for 75% of the GFA of the first two levels of Buildings F, G, H and Z, Owner will pay for and provide to the Village reports prepared by consultants approved by the Village

Manager regarding traffic, parking, acoustical matters, loading docks, and public safety at the Project (collectively, “**First Look Back Reports**”).

- 25.2. **First Look Back Mitigation.** If any of the First Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Owner will provide mitigation (“**First Look Back Mitigation**”) in accordance with the recommendations of Owner’s consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the First Look Back Mitigation within 30 days after issuance of the First Look Back Reports. Upon Village’s review and acceptance of the proposal, Village and Owner will enter into an agreement setting forth the terms and conditions for the performance of the First Look Back Mitigation by Owner. One year following the completion of the First Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the First Look Back Mitigation has resolved any of the items identified by the First Look Back Reports.
- 25.3. **Second Look Back Reports.** Three years after the date of the First Lookback Reports, Owner will provide a second set of reports to the Village regarding traffic, parking, acoustical matters, loading dock issues, and public safety (collectively, “**Second Look Back Reports**”).
- 25.4. **Second Look Back Mitigation Required.** If any of the Second Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Owner will provide additional mitigation (“**Second Look Back Mitigation**”) in accordance with the recommendations of Owner’s consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the Second Look Back Mitigation within 30 days after issuance of the Second Look Back Reports. Upon Village’s review and acceptance of the proposal, Village and Owner will enter into an amendment to this Agreement setting forth the terms and conditions for the performance of the Second Look Back Mitigation by Owner. One year following the completion of the Second Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the Second Look Back Mitigation has resolved any of the items identified by the Second Look Back Reports.
- 25.5. **Third Look Back Report.** In the event that the third levels of Buildings F, G and H are converted from parking area to retail space, then 12 months after tenant TCOs are issued for 75% of the GFA for the third levels of Buildings F, G and H, Owner will pay for and provide a parking report and an ingress/egress analysis, including an intersection queuing analysis for any vehicular entrance to the Project (collectively, the “**Third Look Back Reports**”).
- 25.6. **Third Look Back Mitigation Required.** If any of the Third Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to

parking, ingress or egress, or queuing at intersections caused solely by the Project, Owner will provide additional mitigation (“Third Look Back Mitigation”) in accordance with the recommendations of Owner’s consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the Third Look Back Mitigation within 30 days after issuance of the Third Look Back Reports. Upon Village’s review and acceptance of the proposal, Village and Owner will enter into an amendment to the Agreement setting forth the terms and conditions for the performance of the Third Look Back Mitigation by Owner. One year following the completion of the Third Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the Third Look Back Mitigation has resolved any of the items identified by the Third Look Back Reports.

26. **Indemnification.**

26.1. **Owner’s Obligation to Indemnify.** Owner shall defend, indemnify and save harmless the Village, its council members, officers, employees, agents, and contractors (only when acting in their respective official capacities) (collectively, the “**Village Indemnified Parties**”), from and against all liabilities, actions, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, Attorneys’ Fees (including those resulting from the enforcement of the foregoing indemnification), arising from, or which may be imposed upon, incurred by or asserted against one or more Village Indemnified Parties by a third party, by reason of any one or more of the following:

26.1.1. **Approvals.** Any approvals granted by Village in connection with the Project, and any challenges to such approvals;

26.1.2. **Work on Village Property.** Any work or activity performed by Owner or any authorized employee, agent or representative of Owner performing work or rendering services on behalf of Owner on or about any property owned or controlled by the Village;

26.1.3. **Negligence.** Any act, omission or negligence of Owner or any or any authorized employee, agent or representative of Owner;

26.1.4. **Damage to Third Parties.** Any accident, injury or damage whatsoever caused to any person or to the property of any person occurring in, on or about the Shops Property, which is the result of the act, omission or negligence of Owner or any authorized employee, agent or representative of Owner;

26.1.5. **Failure to Perform.** Any failure on the part of Owner or any or any authorized employee, agent or representative of Owner to observe or perform any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement to be observed or performed

by Owner or by any authorized employee, agent or representative of Owner, including compliance with any Governmental Requirements applicable to the Project;

- 26.1.6. **Material Breach.** Any material breach of this Agreement by the Owner or any or any authorized employee, agent or representative of Owner.
- 26.2. **Legal Action.** If any action or proceeding is brought against a Village Indemnified Party by reason of any claim arising out of a matter set forth in this Section 26, then upon written notice from Village, Owner shall, at Owner's sole cost and expense, resist or defend such action or proceeding with counsel and litigation strategy designated or approved by Village.
- 26.3. **Limitation.** The indemnification set forth in Section 26 will not apply to any damages resulting solely from the negligence or willful misconduct of a Village Indemnified Party.
- 26.4. **Survival.** The provisions of Section 26 and the subsections thereunder will survive the termination of this Agreement.
- 27. **Insurance.** Prior to commencing any work on any property owned by the Village, Owner will obtain a policy of Commercial General Liability Insurance naming the Village as an Additional Insured, written on a carrier licensed to do business in Florida with an AM Best rating of A- or better. Coverage must include, at a minimum: (i) Premises Operations, (ii) Products and Completed Operations, (iii) Blanket Contractual Liability, (iv) Personal Injury Liability, and (v) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 Per Occurrence General Aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
 - 27.1. **Evidence of Insurance.** Owner must provide satisfactory evidence of the required insurance to Village. Satisfactory evidence of insurance is either: (i) a certificate of insurance; or (ii) a certified copy of the actual insurance policy.
 - 27.2. **Cancellations and Renewals.** If obtainable, all insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 45 days notification to the Owner and the Village, and a minimum of 10 days notification for non-payment of premium. Owner will provide Village a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice for non-payment of premium.
- 28. **Default, Opportunity to Cure, and Remedies.**
 - 28.1. **Defaults Generally.** Subject to notice and opportunity to cure as set forth in Sections 28.1 and 28.2, if either Owner or Village fails to fulfill any obligation or covenant set forth in this Agreement, the other party will be entitled to exercise

any or all remedies available under this Agreement, or at law or in equity. Owner and Village expressly acknowledge and agree that the right of specific performance will be available to both parties to enforce obligations under this Agreement, along with all other legal and equitable rights and remedies.

- 28.2. Defaults by Owner.** If Owner fails to fulfill any obligation or covenant set forth this Agreement, Village shall provide written notice to the Owner specifying the Owner's failure, and Owner will have (i) a period of 30 days after receipt of the notice to cure or correct a non-monetary failure; and (ii) a period of ten days to cure a monetary default. If the Owner's failure to fulfill any non-monetary obligation or covenant is capable of cure but cannot reasonably be cured within the 30-day period, then Owner will have an additional reasonable period of time as determined by Village within which to cure the failure, but only if (i) Owner commences to cure the failure within the initial 30-day period and thereafter continues to diligently perform all actions necessary to cure the default; and (ii) Owner continues to comply with all other obligations and covenants of this Agreement.
- 28.3. Defaults by Village.** If Village fails to fulfill any obligation or covenant set forth in this Agreement, Owner shall provide written notice to the Village specifying the Village's failure, and Village will have a period of 30 days after receipt of the notice to cure or correct the failure. If the Village's failure to fulfill any obligation or covenant is capable of cure but cannot reasonably be cured within the 30-day period, then Village will have an additional reasonable period of time within which to cure the failure, but only if (i) Village commences to cure the failure within the initial 30-day period and thereafter continues to diligently perform all actions necessary to cure the default; and (ii) Village continues to comply with all other obligations and covenants of this Agreement.
- 29. Notices.** All notices, demands, requests and other communications required under the Agreement must be given in writing and may be delivered by (i) hand delivery, with a receipt issued by the party making such delivery; (ii) certified mail, return receipt requested, or (iii) a nationally recognized overnight delivery service which provides delivery confirmation. Notice will be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Agreement may be sent by facsimile or electronic mail provided that the facsimile or electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.
- 29.1. Notice to Owner.** Notice to Owner under this Agreement must be sent to:
- Bal Harbour Shops, LLLP
9700 Collins Avenue

Bal Harbour, Florida 33154
Attention: Matthew Whitman Lazenby
Telephone: 305 403 9200
Email: mwl@whitmanfamilydevelopment.com

and

Whitman Family Development
420 Lincoln Road, Suite 320
Miami Beach, Florida 33139
Attention: Matthew Whitman Lazenby
Telephone: 305 403 9200
Email: mwl@whitmanfamilydevelopment.com

With a copy to:

Shubin and Bass
46 SW 1st Street
3rd Floor
Miami, FL 33130
Attention: John Shubin and Amy Huber
Telephone: 305 381 6060
Facsimile: 305 381 9457
Email: jshubin@shubinbass.com; ahuber@shubinbass.com

and

Katz Barron
~~2699 South Bayshore Drive, Seventh~~ 901 Ponce de Leon Boulevard, Tenth Floor
~~Miami~~ Coral Gables, Florida ~~33133~~ 33134
Attention: Howard L. Friedberg and Michael D. Katz
Telephone: 305 856 2444
Facsimile: 305 285 9227
Email: hlf@katzbarron.com and mdk@katzbarron.com

29.2. **Notice to Village.** Notice to the Village under the Agreement must be sent to:

Bal Harbour Village
655 96th Street
Bal Harbour, FL 33154
Attn: Village Manager and Village Clerk
Telephone: 305 866 4644
Email: jgonzalez@balharbourfl.gov and ddanie@balharbourfl.gov

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Attention: Susan L. Trevarthen
Telephone: 954 763 4242
Facsimile: 954 764 7770
Email: strevarthen@wsh-law.com

30. **Multiple Ownership of Shops Property.** This Agreement is a covenant running with the land. In the event that any portion of the Shops Property is conveyed to a third party, so that there are multiple owners of the Shops Property, each of the additional or subsequent owners, mortgagees, and other successors in interest in and to any portion of the Shops Property will be bound by the terms and provisions of this Agreement.
31. **Term of Agreement.** The provisions of this Agreement will become effective upon the Effective Date. This Agreement will remain in effect for a period of 30 years after the Agreement is recorded in the Public Records.
32. **Enforcement of Agreement.** The Village and the Owner, and their respective successors or assigns, will have the right to enforce the provisions of this Agreement. Enforcement may be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages or both. The Village may also enforce the provisions of this Agreement through civil enforcement proceedings pursuant to Article V of the Village Code.
33. **Authorization to Withhold Permits and Inspections.** If Owner fails to make any of the Contributions required by this Agreement, or fails to fulfill any other of its obligations under this Agreement, the Village will send Owner written notice of the obligations past due. Ten days after providing the written notice to Owner, the Village, in addition to any other remedies available, is hereby authorized (i) to withhold any further permits requested by Owner for the Project, (ii) to refuse to make inspections or grant any approvals requested by Owner for the Project, and (iii) to withhold issuance of the Final CC, until such time as the Owner makes all of the required Contributions and fulfills all of its obligations under this Agreement. The provisions of this Section will not be construed to permit any refusal or delay by the Village to process permits, inspections or approvals requested by tenants of the Shops.
34. **Development Rights.** For purposes of this Section, “**Existing Zoning**” means the zoning in effect on the Effective Date of this Agreement, which specifically includes the text amendments approved in connection with the approval of the Project, but which excludes the Village’s sign regulations.

34.1. Permitted Development Uses, Building Intensities and Heights.

- 34.1.1. As of the Effective Date, and pursuant to the Development Approvals, the intensity proposed for the Project is consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan.
- 34.1.2. As of the Effective Date and pursuant to the Development Approvals the uses proposed for the Project are consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan Comprehensive Plan.
- 34.1.3. As of the Effective Date and pursuant to the Development Approvals, the heights proposed for the Project are consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan.

34.2. Reservation of Development Rights.

- 34.2.1. For the term of this Agreement, the Village agrees that it shall permit the development of the Project in accordance with the Existing Zoning, the Village's adopted Comprehensive Plan, the Development Approvals and this Agreement.
- 34.2.2. Nothing contained in this Agreement prohibits an increase or decrease in the density or intensity of development permitted in the Project, or reallocation of density or intensity within the Project, in a manner consistent with (i) the Existing Zoning and/or the Village's adopted Comprehensive Plan, (ii) any change in regulations subsequently requested or initiated by Owner and approved by the Village in accordance with applicable Governmental Requirements or (iii) any change in regulations subsequently enacted by the Village that is applicable by its terms to the Shops.
- 34.2.3. The expiration or termination of this Agreement shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by Owner or its successors or assigns to continue development of the Property in conformity with all prior and subsequent development permits or development orders granted by the Village.

35. Miscellaneous Provisions.

- 35.1. **Adjustment of Deadlines.** Any deadlines for performance by either Owner or Village set forth in this Agreement may be adjusted by mutual agreement of the

parties. Changes to deadlines must be confirmed in a writing signed by both parties, and the Village Manager is authorized to sign on behalf of the Village. The Village Manager, in his sole discretion, may bring proposed changes to deadlines to the Village Council for approval. If the Village Manager or the Village Council is willing to adjust any deadline set forth in this Agreement, either the Village Manager or the Village Council shall determine the procedure for adopting the deadline adjustment, and either the Village Manager or the Village Council may require a formal amendment to this Agreement adopting the changed deadlines, which amendment will require two public hearings in accordance with Section 163. 3225, Florida Statutes.

- 35.2. **Amendments.** The provisions of this Agreement may be amended or modified from time to time by a recorded instrument executed by the then owners of the Shops Property and the Village.
- 35.3. **Attorneys' Fees.** In the event that either party to the Agreement institutes legal proceedings in connection with the Agreement, the prevailing party will be entitled to recover its Attorneys' Fees.
- 35.4. **Authority.** Owner represents that it has full right, power and authority to enter into the Agreement and to perform its obligations and agreements hereunder, and that the person or persons executing the Agreement on behalf of Owner are duly authorized to do so.
- 35.5. **Compliance with Governmental Requirements.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.
- 35.6. **Conditions of ~~Resolution No. 2017-1077;~~ Resolutions and Site PlanPlans.** The conditions set forth in Village Resolution No. 2017-1077;^z a copy of which is attached as Exhibit H, ~~and~~ the Major Site Plan attached as Exhibit I; Village Resolution No. 2018-_____ attached as Exhibit O; and the 2018 Site Plan attached as Exhibit P are hereby incorporated into and made a part of this Agreement.
- 35.7. **Construction of Agreement.** The provisions of this Agreement will not be construed more strictly against one party or the other. In construing this Agreement, the singular will include the plural, the plural will include the singular, and reference to any gender will include every other gender.
- 35.8. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
- 35.9. **Entire Agreement.** This Agreement and the Exhibits constitute the sole agreement of the parties with respect to its subject matter. Any prior written or

oral agreements, promises, negotiations, representations or communications not expressly set forth in the Agreement are of no force or effect.

- 35.10. **Force Majeure.** If any performance by either party under this Agreement is delayed by a Force Majeure, the deadline for the performance (and any other deadlines dependent on such performance) will be extended for the period of time that performance is delayed by the Force Majeure.
- 35.11. **Governing Law.** This Agreement shall be construed in accordance with, and governed by the laws of, the State of Florida.
- 35.12. **Recording.** Owner, acting on behalf of the Village, shall record this Agreement in the Public Records at Owner's expense within 14 days after the Effective Date. Owner shall provide a copy of the recorded Agreement to Village within 10 days after recording.
- 35.13. **Sections and Subsections.** Cross-references to a specific section of this Agreement will include all subsections of the Section.
- 35.14. **Severability.** Invalidation of any covenant contained in this Agreement by judgment of a court will in no way affect any other provisions of this Agreement, all of which will remain in full force and effect.
- 35.15. **Successors and Assigns.** The provisions of the Agreement are binding upon the Owner and its successors and assigns, and inure to the benefit of Village. Nothing contained in this Agreement is intended to be a dedication, conveyance or grant to the public in general or to any person or entity unless expressly stated.
36. **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to (a) this Agreement, including any exhibits, or schedules attached to this Agreement; (b) any other document or instrument now or hereafter executed and delivered in connection with this Agreement; or (c) the transactions contemplated by this Agreement. This waiver shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, Village and Owner have executed this Agreement on the dates set forth below their respective signatures.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

Witnesses:

Signature _____

Print name: _____

Signature: _____

Print name: _____

OWNER:

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

By: _____
Matthew Whitman Lazenby, General Partner

Date: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on July ____, 2017, by Matthew Whitman Lazenby, as the General Partner of Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, who is [] personally known to me or [] has produced a valid driver's license as identification.

NOTARY SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

Witnesses:

Signature: _____

Print name: _____

Signature: _____

Print name: _____

VILLAGE:

BAL HARBOUR VILLAGE

By: _____

Jorge M. Gonzalez, Village Manager

Date: _____

ATTEST:

Dwight Danie, Village Clerk

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

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on July ____, 2017, by Jorge M. Gonzalez, as Village Manager of Bal Harbour Village, a Florida municipal corporation, on behalf of the Village. He is personally known to me.

NOTARY SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Jorge M. Gonzalez, Village Manager

FROM: Gabriel Groisman, Mayor

DATE: November 20, 2018

SUBJECT: Discussion on issues of mold and fire safety at The Plaza

Please place an item on the November 20, 2018 Village Council Meeting Agenda for a discussion regarding the Village's website.

Thank you.

BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Jorge M. Gonzalez, Village Manager

FROM: David Albaum, Councilman

DATE: November 20, 2018

SUBJECT: Discussion Regarding the placement of the mobile mats on Bal Harbour Beach

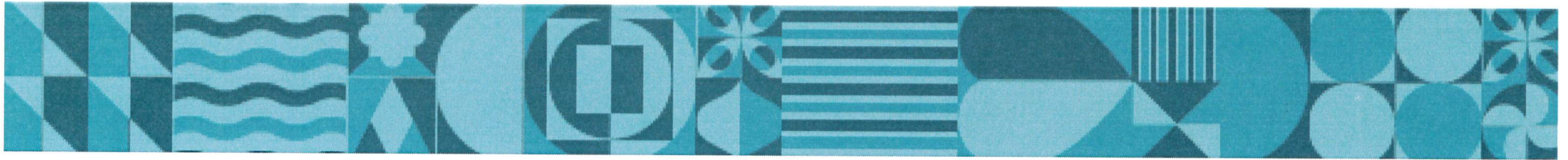
Please place an item on the November 20, 2018 Village Council Meeting Agenda for a discussion regarding mobile mats on the beach.

Thank you.

Bal Harbour Beach

Mobi Mat General:

- Installation must be placed at access points across the dune which terminate at eastern edge of the dune so the beach dressing/cleaning operations are not impeded.
- Mats must be removed prior to Hurricane Warning notifications;
- Mats are sold in 100 foot increments at \$3,750 per 100 foot.
- Installation is not included;
- Distance from 96 street to the Jetty = 4,482 feet;
- Mobi-Mat Installation, installation on 96 street = 100 foot length, from the edge of the Hardpack towards the beach;
- Mobi Mat installation from at 96 street, edge of Jogging Path 100 foot long towards east edge of dune;
- Distance from existing 96 street Mobi Mat installation to the existing Oceania Mobi Mat Installation=2,821 feet;
- Distance of Oceania Mat location to the Jetty=1,650 feet;
- Distance from 96 street to proposed Seaview installation=1,500 feet;
- Distance from proposed Seaview location to existing Oceania location =1,351 feet;
- Distance from Oceania to proposed Carlton Terrace Location =833 feet;
- Distance from proposed Carlton Terrace location to the Jetty=807 feet.

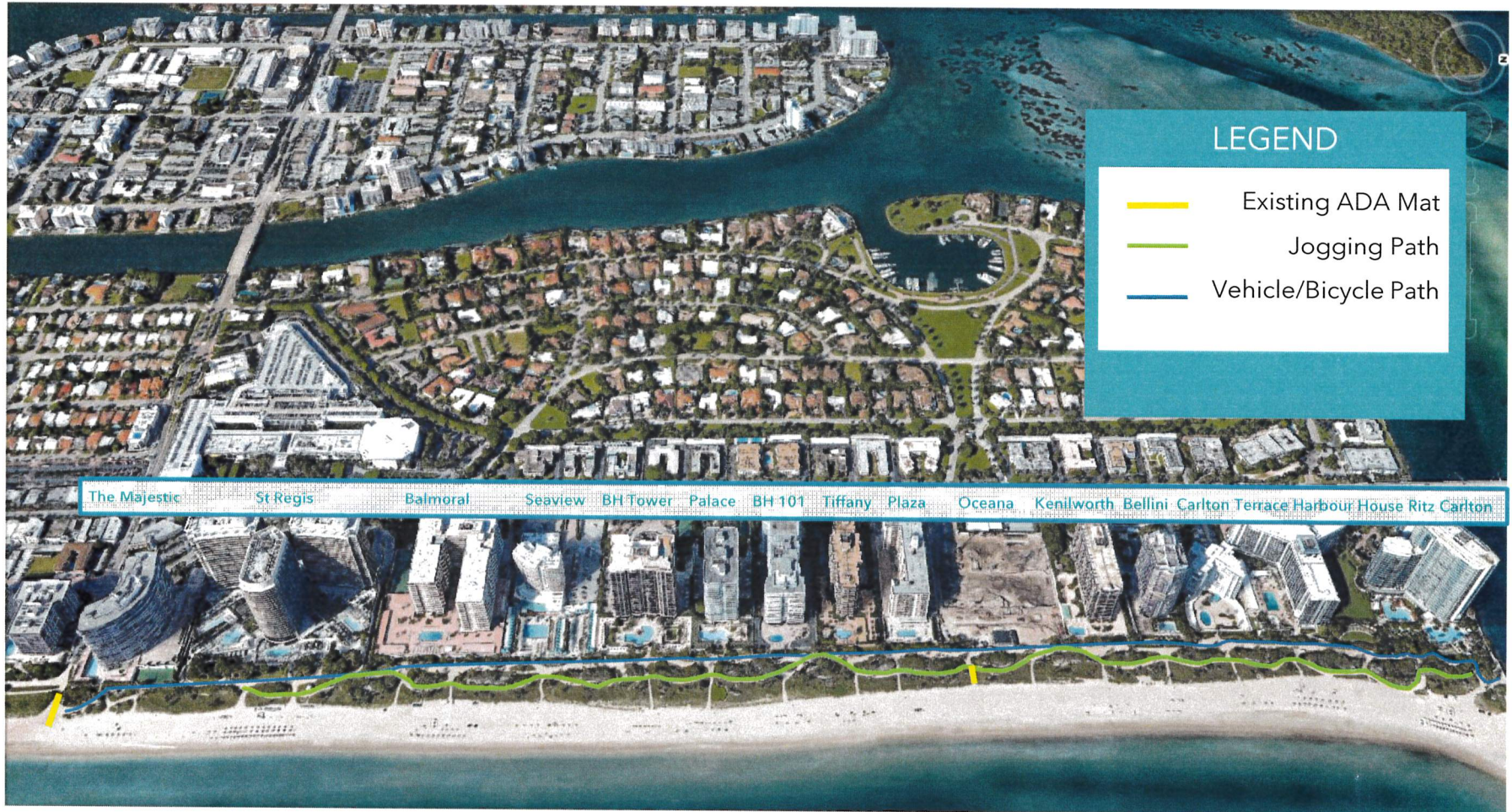


BAL HARBOUR VILLAGE VILLAGE COUNCIL MEETING NOVEMBER 20, 2018

Discussion ADA Access Surfacing,
"Mobi Mats" at Bal Harbour Beach

BAL
HARBOUR
- VILLAGE -

ADA BEACH ACCESS MATS



ADA BEACH ACCESS MATS

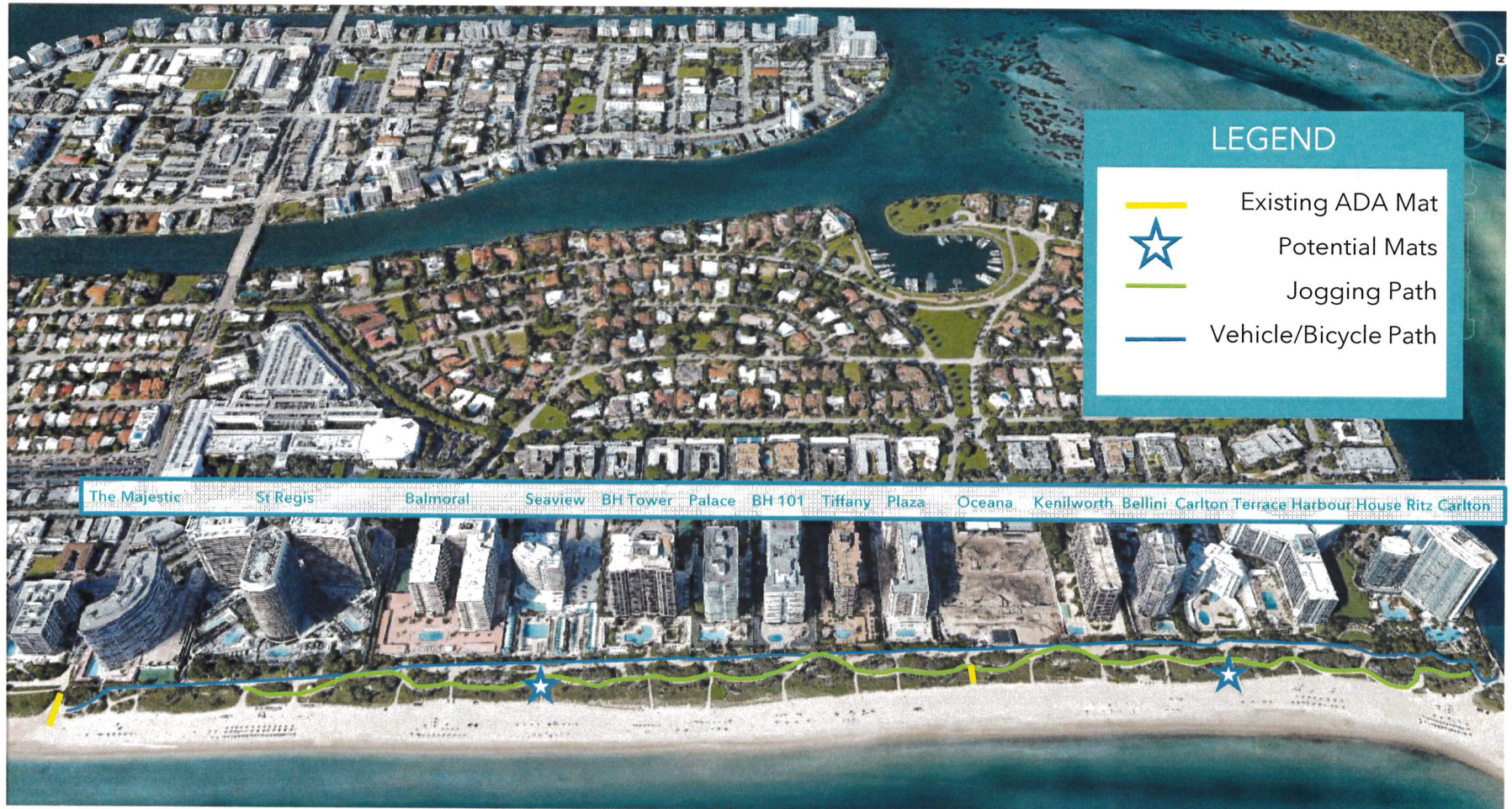
96 Street Access



Oceana Access



ADA BEACH ACCESS MATS




BAL HARBOUR

- V I L L A G E -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: November 20, 2018

SUBJECT: **Discussion Regarding Upcoming Meeting Dates**

BACKGROUND

Section 22 of the Village Charter requires that the Village Council meet at least once each month, with the exception of August. For several years, the Village Council has opted to meet on the third Tuesday of each month at 7:00 p.m.

Should it be your pleasure to continue with this practice, there does not appear to be a conflict with this pattern in 2019, with exceptions in the months of January and October. In January, the third Tuesday (15th) is a regular business day. However, with the Council Retreat scheduled for the same week, this would mean Council would have three evenings occupied with Village business. Alternatively, other available dates include January 22 or 29. The October meeting is being proposed for the fifth Tuesday (29th) due to conflicts with several mid-month holidays. Additionally, since September requires two meetings for the adoption of the fiscal year budget, the date of September 10 is highlighted as a candidate for the first budget hearing, which can be determined later in the calendar year.

CONCLUSION

I therefore propose the following meeting schedule for 2019 for general discussion and consensus:

January 15, 2019	May 21, 2019	September 17, 2019
February 19, 2019	June 18, 2019	October 29, 2019
March 19, 2019	July 16, 2019	November 19, 2019
April 16, 2019	(August Recess)	December 17, 2019

Attachments:

1. 2019 Calendar of Potential Meeting Dates

JANUARY

M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

M	T	W	T	F	S	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

JANUARY

- 1 - New Year's Day
- 21 - Dr. Martin Luther King's Birthday
- 20-21 - Tu Bishvat

FEBRUARY

- 18 - Presidents Day

MARCH

M	T	W	T	F	S	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

M	T	W	T	F	S	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MARCH

- 6 - Ash Wednesday
- 20-21 - Purim

APRIL

- 14 - Palm Sunday
- 18 - Holy Thursday
- 19 - Good Friday /
Passover / Spring Break Begins
- 21 - Easter
- 27 - Passover / Spring Break Ends

MAY

M	T	W	T	F	S	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

M	T	W	T	F	S	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY

- 27 - Memorial Day
- 30 - Ascension of the Lord

JUNE

- 8-10 - Shavuot

JULY

M	T	W	T	F	S	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

M	T	W	T	F	S	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JULY

- 4 - Independence Day

AUGUST

- 15 - Assumption of the Virgin Mary
- 10-11 - Tisha B'Av

SEPTEMBER

M	T	W	T	F	S	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

OCTOBER

M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SEPTEMBER

- 2 - Labor Day
- 29 - Rosh Hashanah Begins

OCTOBER

- 1 - Rosh Hashanah Ends
- 8-9 - Yom Kippur
- 13-20 - Sukkot
- 21 - Shmini Atzeret
- 22 - Simchat Torah

NOVEMBER

M	T	W	T	F	S	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER





M	T	W	T	F	S	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

NOVEMBER

- 1 - All Saints Day
- 5 - Election Day
- 11 - Veterans Day (observed)
- 28-29 - Thanksgiving

DECEMBER

- 8 - Feast of the Immaculate Conception
- 22-30 - Hanukkah
- 24 - Christmas Eve
- 25 - Christmas Day
- 31 - New Year's Eve

-  Proposed Dates
-  Council Retreat Dates
-  Tentative First Budget Dates
-  Holidays

BAL HARBOUR

- V I L L A G E -

MEMORANDUM

TO: Honorable Mayor and Council

FROM: Dwight S. Danie, Village Clerk

DATE: November 11, 2018

RE: Lobbyist Registration Report



Name of Lobbyist	Principal Represented	Date Registered
Maria A. Gralia – Stearns, Weaver, Miller	Hudson Bay Company/Saks Fifth Ave	01/16/18
Darrell Payne - Stearns, Weaver, Miller	Hudson Bay Company/Saks Fifth Ave	01/16/18
Carolyn M. Travis	Whitman Family Development	01/25/18
Randall A. Whitman	Bal Harbour Shops, LLLP	01/25/18
Matthew W. Lazenby	Bal Harbour Shops, LLLP	01/25/18
John K. Shubin, Shubin & Bass	Bal Harbour Shops, LLLP	01/25/18
Amy E. Huber, Shubin & Bass	Bal Harbour Shops, LLLP	01/25/18
Bernard Zyscovich Zyscovich Architects	Bal Harbour Shops, LLLP	01/25/18
Ivor N. Massey aka Nik Massey	Bal Harbour Shops, LLLP	01/25/18
Michael D. Katz Katz Barron Squitero Faust	Bal Harbour Shops, LLLP	01/25/18
Howard L. Friedberg Katz Barron Squitero Faust	Bal Harbour Shops, LLLP	01/25/18
Benjamin Elias, Whitman Family Development	Bal Harbour Shops, LLLP	01/25/18
Raymond Jungles, Raymond Jungles Architects	Bal Harbour Shops, LLLP	01/25/18
Roberto Bezold, Zyscovich Architects	Bal Harbour Shops, LLLP	01/25/18
Jeffrey Bercow	Bal Harbour Civic Association	01/26/18
Thomas Robertson	Bal Harbour Civic Association	01/26/18
Tony Imbesi	Flamingo Way Enterprises	01/30/18
Joseph Imbesi	Flamingo Way Enterprises	01/30/18
Morgan McDonough	Saks Fifth Avenue	02/20/18
Mark B. Fisher	Bal Harbour Civic Association	05/23/18

BAL HARBOUR

- V I L L A G E -

Name of Lobbyist	Principal Represented	Date Registered
Yankie Andrusier	Bal Harbour Civic Association	05/23/18
Dina Cellini	Bal Harbour Civic Association	05/23/18
Thomas H. Robertson	Bal Harbour Civic Association	09/12/18
Michael J. Marrero	Juan Roca	09/18/18