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DEVELOPMENT AGREEMENT

between

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

and

BAL HARBOUR VILLAGE, a Florida municipal corporation

dated _____, 2016

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DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) dated _____, is between **BAL HARBOUR SHOPS, LLLP**, a Florida limited liability limited partnership (“**Developer**”) and **BAL HARBOUR VILLAGE**, a Florida municipal corporation (“**Village**”).

RECITALS:

Developer 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**”).

Developer 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**”). Developer wishes to incorporate the Church Site as part of the Shops.

The Existing Shops Property and the Church Site are collectively the “**Expanded Shops Property**.”

Developer 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 Developer 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 Developer 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 – Sketch Showing Locations of Buildings**
 - 2.4. **Exhibit D – Value of Developer Contributions**
 - 2.5. **Exhibit E – Extension of Village Police Department Lease in BHS**
 - 2.6. **Exhibit F – Project Phasing Plan**
 - 2.7. **Exhibit G – Traffic Improvements**
 - 2.8. **Exhibit H – Additional Traffic Improvements**
 - 2.9. **Exhibit I – Public Use Areas**
 - 2.10 **Exhibit J – Project Encroachments**
 - 2.11 **Exhibit K – Village’s Construction Requirements**
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. **CC.** A certificate of completion issued or to be issued by the Village for a building shell or other structure.
 - 3.5. **CO.** A certificate of occupancy issued or to be issued by the Village.
 - 3.6. **Development Approvals.** The Development Approvals referenced in Section 9 of this Agreement.
 - 3.7. **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, or similar cause beyond the reasonable control of a party.
 - 3.8. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other approval issued by a Governmental Authority, including any Development Approval.

- 3.9. **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.
- 3.10. **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.
- 3.11. **Public Records.** The Public Records of Miami-Dade County, Florida.
- 3.12. **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.
- 3.13. **Substantial Completion.** Completion (of construction or of any other task) sufficient to achieve the essential purpose of the task.
- 3.14. **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.
- 3.15. **Village Manager.** The Village Manager of Bal Harbour or his or her duly authorized designee.
4. **Significant Dates in Order of Occurrence.**
 - 4.1. **Effective Date.** The date this Agreement has been signed by Developer and Village.
 - 4.2. **Final Approval Date.** The date upon which all of the Development Approvals become final and non-appealable.
 - 4.3. **Final CC.** The date upon which the final CC is issued for the last building shell of the Project be completed.
 - 4.4. **Final CO.** The date upon which the final CO is issued for the last building to be completed of Buildings A, B and C shown on **Exhibit C**.
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 approximately 344,637 square feet, so that the Shops will include a total of up to approximately 856,059 square feet of gross buildable area, which may include an expanded Neiman Marcus, a relocated and expanded Saks Fifth Avenue, a new Barney's, additional in-line boutique retail space, additional restaurants, and additional parking. The Project includes the incorporation of the previous Church site into the Shops, and will result in a floor area ratio not to exceed 1.2. 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 parking ratio of not less than 3.15, and a minimum flex parking ratio of 3.6 for use during peak periods.
6. **Summary of Developer Contributions.** Developer agrees to make the following contributions (collectively, “**Contributions**”) to the Village in consideration for the potential impacts which the Project may have on the Village. The value of these Contributions is set forth in **Exhibit D**. Each of these Contributions is addressed in detail in other sections of this Agreement.
 - 6.1. **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, as shown on the Bal Harbour Shops Enhancement Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated April 28, 2016, as same may be amended during the Village approval process.
 - 6.2. **Extension of Police Department Lease in Bal Harbour Shops.** Within three (3) business days after the Final Approval Date, Developer and the Village each will execute and deliver to the other the Modification of Lease attached hereto as **Exhibit E** which provides for a five (5) year extension of the existing lease for the Village Police Department located within the Shops, on the terms provided therein.
7. **Expansion Phases.**
 - 7.1. **Phase Time Periods.** Developer intends to develop the Project in four phases (each, a “**Phase**”). The work to be performed in each of the Phases is more particularly described in the Project Phasing Plan prepared by Zyscovich Architects dated April 29, 2016, a copy of which is attached as **Exhibit F**. The Phases may overlap and run concurrently. The Village will not object if any of the Phases are shortened and construction is completed in less time than estimated. Except as set forth in Section 8.2, the proposed time periods for the Phases will be extended in the event of a Force Majeure or failure to receive a Development Approval (including a building permit).
 - 7.1.1. **Phase 1.** Phase 1 will commence approximately 90 days after the Final Approval Date and will last for approximately 18 months;
 - 7.1.2. **Phase 2.** Phase 2 will commence approximately Month 19 and will last for approximately 36 months (through Month 55);

- 7.1.3. **Phase 3.** Phase 3 will commence approximately Month 56 and will last for approximately 16 months (through Month 72);
 - 7.1.4. **Phase 4.** Phase 4 will commence approximately Month 73 and will last for approximately 23 months (through Month 96).
 - 7.2. **Changes in Phasing.** If the completion of Phase 1, or the commencement of Phase 2, or the completion of Phase 4 are delayed by more than 45 days, Developer will provide to the Village Manager a written explanation of the delay, and a revised phasing proposal showing all changes to the phasing of the Project and the work to be performed in the respective Phases, if applicable. The Village Manager will review the updated phasing proposal, and will have the right, in his discretion, to seek approval from the Village Council of an amendment to this Agreement addressing any issues resulting from the delay. The Village and Developer agree that no other change in the Project phasing will trigger the need for Council review or an amendment to this Agreement.
8. **Development Approvals.** The development of the Project will require the following reviews and approvals (collectively, “**Development Approvals**”). The date upon which Development Approvals become final and non-appealable will be referred to as the “**Final Approval Date**.”
 - 8.1. **ARB Review.** Advisory review by the Village’s Architectural Review Board of Developer’s major site plan application for the Project in accordance with Section 21-322(d) of the Village Code.
 - 8.2. **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.
 - 8.3. **LPA Recommendation.** Recommendation by the Local Planning Agency (“**LPA**”) on the comprehensive plan amendments and the text amendments.
 - 8.4. **Major Site Plan Approval.** Approval of the major site plan and the related Development Agreement for the Shops Expansion.
 - 8.5. **Text Amendments.** Approval by the Village Council of text amendments to the Village Code to allow for the development of the Project.
9. **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 Phases 2-4 of the Project. The Village agrees to schedule the EAR-based amendments for a hearing within thirty (30) days following the adoption of the Development Approvals.
10. **Traffic Improvements.** Developer must fully fund and implement all of the traffic improvements described in the traffic study prepared by Fandrei Consulting, Inc., last updated April 20, 2016 (collectively, “**Traffic Improvements**”) 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 Phase designated for each Traffic Improvement. The construction of the Traffic Improvements is subject to the approval of other Governmental Authorities, and Developer 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.

10.1. **First Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a CC or CO (whichever is later) for the Developer’s modifications to the existing parking garage on the Existing Shops Property:

- 10.1.1. **AIA Crosswalk.** Construction and installation of an interim two-stage pedestrian crosswalk in the 9700 Block of State Road A1A (“**A1A**”), in the location where a crosswalk currently exists.
- 10.1.2. **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.

10.2. **Second Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of the last CO to be issued for Buildings G, H and Z as shown on **Exhibit G**.

- 10.2.1. **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.

10.3. **Third Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a CO for Building Y as shown on **Exhibit G**.

- 10.3.1. **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.
- 10.3.2. **Premium Valet Parking Entry.** Conversion of the existing driveway on Collins Avenue and Harding Avenue into an “Entry Only” driveway for premium valet parking.

- 10.3.3. **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.
- 10.3.4. **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.
- 10.3.5. **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.
- 10.4. **During All Phases.** Ongoing monitoring of traffic changes during the development of the Project, and development and implementation of interim signal retiming plans throughout all of the Phases to address the changes in traffic flow that will occur during the development of the Project.
- 10.5. **Additional Traffic Improvements after Project Completion.** The parties acknowledge that the Developer 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. Developer voluntarily agrees to fund and implement the following additional traffic improvements (“**Additional Traffic Improvements**”) prior to issuance of the CO for Building Y as shown on **Exhibit H**. In the event that other Governmental Authorities will not approve the Additional Traffic Improvements, the Developer will be released from any further responsibility related to the Additional Traffic Improvements.
 - 10.5.1. **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.
 - 10.5.2. **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.
 - 10.5.3. **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.
- 11. **Infrastructure Improvements.** Developer will be responsible for the cost of installing, connecting, or relocating and reconnecting, any water, sewer and stormwater

improvements required in order to facilitate the development of, and meet any capacity requirements for the Project.

12. **Public Spaces.**

12.1. **Collins Plaza.**

12.1.1. **Use by Developer.** Upon receipt of the Final CO, Developer agrees to use the existing surface parking area of the Existing Shops Property located on Collins Avenue (“**Collins Plaza**”) on a periodic basis as determined by Developer for appropriate commercial uses such as retail, food, and beverage sales, which uses are compatible with the operation of the Shops. Developer will have the right to terminate its use of Collins Plaza after consultation with the Village if Developer reasonably believes its use of Collins Plaza to be unsuccessful.

12.1.2. **Use by Village.** Upon receipt of the Final CO, the Village will have the right to use Collins Plaza 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; however, Village will have the right to use the pedestrian areas of Collins Plaza at all times. If Developer reasonably determines that Village’s use of Collins Plaza is detrimental to the operation of the Shops, Developer shall notify Village in writing, and Village shall have a period of 60 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 Developer’s reasonable opinion, is not detrimental to the Shops, Developer will have the right to terminate Village’s use of Collins Plaza upon 60 days written notice to Village.

13. **Public Improvements.**

13.1. **Residential Gate.** Developer 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**”). Developer will not be required to spend more than \$30,000.00 for the Gate Work. No land owned by Developer will be used for the redesign of the entrance. The Village will be responsible for obtaining all approvals required for Gate Work. Developer 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 Developer will be released from its obligations regarding the Gate Work.

13.2. **Sidewalks.**

13.2.1. **Collins Avenue.** Developer must 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.

13.2.2. **96th Street.** Developer may partially close pedestrian access to the sidewalk on 96th Street during construction as long as Developer provides a safe and reasonable alternative acceptable to the Village Manager and the Florida Department of Transportation.

13.3. **Easements and Licenses.**

13.3.1. **Sidewalk Easement.** As part of the Shops Expansion, Developer will be widening certain sidewalks on the Expanded Shops Property along 96th Street and Collins Avenue as shown in **Exhibit I** (“**Public Use Areas**”). Developer agrees to grant an easement to the Village in a form reasonably acceptable to the Village allowing for use of the sidewalks on the Expanded Shops Property by the public. Developer agrees to keep all public and privately owned sidewalks on or abutting the Expanded Shops Property in a safe condition, and will be responsible for the maintenance and repair of all sidewalks that are located upon or encroach upon the Expanded Shops Property.

13.3.2. **License for Encroachments.** If any parking spaces, fountain areas, paved driveways, or other Project improvements shown on **Exhibit J** (“**Project Encroachments**”) encroach onto 96 Street or Collins Avenue, Village will grant Developer an irrevocable, non-exclusive license for the encroachments. The license agreement for the encroachments will include an obligation by Developer to maintain, repair, replace and insure all such encroachments, with the Village to be named as an additional insured on Developer’s commercial general liability insurance policy.

14. **Public Safety.**

14.1. **Safety During Construction.** Developer recognizes that during the period of construction of the Project, activities at the Expanded 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, Developer will pay for an off-duty Bal Harbour police officer to be posted at each construction site entrance and exit during the hours that construction is taking place. The Village Chief of Police may, in his reasonable discretion, require additional police coverage for the Project at Developer’s expense.

14.2. **Safety During Shops Operation.** Developer will be required to pay to the Village annually an amount equal to the cost of 3,500 hours of off-duty police service, with the first payment due within five days after the Final Approval Date. Developer and the Village Chief of Police will mutually agree upon an appropriate schedule for the off-duty police officer to be present on the Expanded Shops Property. If Developer requests off-duty police officers for Shops events during the year, the service requested will be counted as part of the 3,500 hours paid for by Developer. This provision will not apply to off-duty police services requested by Tenants of the Shops.

14.3. **Construction Staging and Parking.** Prior to the issuance of a building permit for the first principal structure of the Project, Developer 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 Developer 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. Developer agrees that the staging of construction and the parking of all construction vehicles and equipment, including cranes and dumpsters, will occur entirely within the Expanded Shops Property.

14.4. **LPR Cameras.** Developer agrees to donate to the Village two license plate recognition cameras (“**LPR Cameras**”) at a cost not to exceed \$25,000.00, and to grant to the Village an easement for the installation, maintenance, repair and replacement of the LPR Cameras on light poles or other acceptable features on the Expanded 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. The Village agrees to indemnify Developer against any action brought against Developer as a result of the LPR Cameras, subject to the limitations of liability set forth in Section 768.28 of the Florida Statutes.

15. **Building Department Fees and Services.**

15.1. **Payments in Lieu of Building Permit Fees.** In lieu of paying the Village’s standard fees for building permits for the Project, Developer agrees to pay Village a contribution in lieu of permit fees in the amount of \$2.5 million (“**Voluntary Contribution**”) 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 a principal structure of the Project
Second Payment of \$500,000	Due prior to issuance of the first building permit for a principal structure of the Project
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 CC for entire Project

- 15.1.1. **Items not included in Voluntary Contribution.** The calculation of the Voluntary Contribution payments under this provision does not include any of the following: (i) the value of any permits for work done by tenants of the Shops (“**Tenants**”), which must be applied for and paid for by Tenants; or (ii) the amount of any charges collected by the Village on behalf of other Governmental Authorities, which charges must be remitted to Village by Developer.
- 15.1.2. **True-up of Voluntary Contribution.** Thirty days prior to the issuance of the Final CC, Developer will provide Village with an updated calculation of the actual Project construction cost. The required adjustment of the Voluntary Contribution based on the Developer’s actual construction costs will be paid by Developer or refunded by Village, whichever is applicable.
- 15.2 **Expedited Plan Review and Inspections.** In consideration for Developer’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. Developer 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 Expanded Shops Property to determine whether the Expanded Shops Property complies with applicable Governmental Requirements.
- 15.3 **Use of Private Provider.** Developer will at all times have the right to hire a private provider under Section 553.791 of the Florida Statutes.
- 15.4 **Village’s Construction Requirements.** The Village’s Construction Requirements set forth in **Exhibit K** will apply to all construction performed by Developer under this Agreement.
16. **Payment and Performance Bond.** Prior to issuance of a building permit for the Project, Developer, at its sole cost and expense, shall obtain and deliver to the Village a payment and performance bond (“**Payment and Performance Bond**”) conditioned upon the Developer’s completion of the Project as required by this Agreement. The Payment and Performance Bond shall be written in favor of the Village; shall be reasonably acceptable to the Village in form and content; and shall be written by a reputable surety licensed to write bonds in the State of Florida. Developer will ensure that the Payment and Performance Bond is recorded in the Public Records, and deliver a certified copy of the Payment and Performance Bond to the Village prior to the commencement issuance of the first building permit for the Project.

17. **Taxes.**

17.1. **Minimum Ad Valorem Taxes.** Developer guarantees that the municipal portion of annual ad valorem taxes paid by the Developer and its Tenants during the construction of the Project will be a minimum of \$350,000.00. Developer agrees to pay to the Village on December 1 of each year a sum equal to \$350,000.00 less the municipal portion of the ad valorem tax bills for the Project due on March 31 of each year (including Tenants' tax bills). Developer's obligation under this paragraph will terminate upon Final CO.

17.2. **Minimum Resort Taxes.** Developer 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 \$750,000.00. Developer agrees to pay to the Village by October 31 of each year a sum equal to \$750,000.00 less the total actual Resort Tax payments from the Project for the preceding fiscal year ending September 30. Developer's obligation under this paragraph will terminate upon Final CO.

18. **"Look Back" Reporting and Mitigation.**

18.1. **Look Back Reports Required.** One year after the issuance of the final CC for the shell construction of the Project, Developer will pay for and provide to the Village reports regarding traffic, parking, acoustical matters, loading docks, and public safety at the Project (collectively, "**Look Back Reports**").

18.2. **Look Back Mitigation Required.** If any of the Look Back Reports objectively demonstrate that Developer has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Developer will provide mitigation ("**Look Back Mitigation**") in accordance with the recommendations of Developer's consultants for the Project, and as approved by Village. Developer will provide Village with a proposal for the Look Back Mitigation within 30 days after issuance of the Look Back Reports. Upon Village's review and acceptance of the proposal, Village and Developer will enter into an agreement setting forth the terms and conditions for the performance of the Look Back Mitigation by Developer. One year following the completion of the Look Back Mitigation, Developer will provide one or more reports to the Village demonstrating that the Look Back Mitigation has resolved any of the items identified by the Look Back Reports.

18.3. **Second Look Back Reports.** Three years after the issuance of the final CC for the Project, Developer 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**").

18.4. **Second Look Back Mitigation Required.** If any of the Second Look Back Reports objectively demonstrate that Developer has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Developer will provide additional mitigation ("**Second Look**

Back Mitigation”) in accordance with the recommendations of Developer’s consultants for the Project, and as approved by Village. Developer 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 Developer will enter into an amendment to this Agreement setting forth the terms and conditions for the performance of the Second Look Back Mitigation by Developer. One year following the completion of the Second Look Back Mitigation, Developer 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.

19. **Indemnification.**

19.1. **Developer’s Obligation to Indemnify.** Developer shall defend, indemnify and save harmless Village, its council members (acting in their official capacities), officers, employees, agents and contractors, 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 Village by a third party, by reason of:

19.1.1. **Approvals.** Any approvals granted by Village in connection with the Project;

19.1.2. **Work on Village Property.** Any work or activity performed by Developer or any authorized employee, agent or representative of Developer performing work or rendering services on behalf of Developer on or about any property owned or controlled by the Village;

19.1.3. **Negligence.** Any act, omission or negligence of Developer or any or any authorized employee, agent or representative of Developer;

19.1.4. **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 Expanded Shops Property, which is the result of the act, omission or negligence of Developer or any authorized employee, agent or representative of Developer;

19.1.5. **Failure to Perform.** Any failure on the part of Developer or any or any authorized employee, agent or representative of Developer to observe or perform any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement to be observed or performed by Developer or by any authorized employee, agent or representative of Developer, including compliance with any Governmental Requirements applicable to the Project.

19.2. **Legal Action.** If any action or proceeding is brought against Village, its council members, officers, employees, agents or contractors by reason of any claim arising out of a matter set forth in this Section 29, then upon written notice from Village, Developer shall, at Developer’s sole cost and expense, resist or defend such action

or proceeding with counsel and litigation strategy designated or approved by Village.

- 19.3. **Limitation.** The indemnification set forth in this Section 29 will not apply to any damages resulting from the negligence or willful misconduct of Village or its council members, officers, employees, agents and contractors.
- 19.4. **Survival.** The provisions of this Section 29 will survive the termination of this Agreement.
20. **Insurance.** Prior to commencing any work on any property owned by the Village, Developer 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.
- 20.1. **Evidence of Insurance.** Developer 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
- 20.2. **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 Developer, and a minimum of 10 days notification for non-payment of premium. Developer 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.
21. **Default and Remedies.** If either Developer 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.
22. **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.

22.1. **Notice to Developer.** Notice to Developer 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

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

22.2. **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
Telephone: 305.866.4633
Email: jgonzalez@balharbourfl.gov

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Attention: Richard J. Weiss
Telephone: 305.854.0800
Facsimile: 305.854.2323
Email: rweiss@wsh-law.com

23. **Multiple Ownership of Expanded Shops Property.** This Agreement is a covenant running with the land. In the event that any portion of the Expanded Shops Property is conveyed to a third party, so that there are multiple owners of the Expanded Shops Property, each of the additional or subsequent owners, mortgagees, and other successors in interest in and to any portion of the Expanded Shops Property will be bound by the terms and provisions of this Agreement.

24. **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.
25. **Enforcement of Agreement.** The Village and the Developer, 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.
26. **Authorization to Withhold Permits and Inspections.** If Developer 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 Developer written notice of the obligations past due. Ten days after providing the written notice to Developer, the Village, in addition to any other remedies available, is hereby authorized (i) to withhold any further permits requested by Developer for the Project, (ii) to refuse to make inspections or grant any approvals requested by Developer for the Project, and (iii) to withhold issuance of the Final CC, until such time as the Developer 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.
27. **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.

27.1. **Permitted Development Uses, Building Intensities and Heights.**

- 27.1.1. 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.
- 27.1.2. 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.
- 27.1.3. 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.

27.2. **Reservation of Development Rights.**

- 27.2.1. 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.

27.2.2. Nothing herein shall prohibit an increase 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 Developer 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.

27.2.3. 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 Developer 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.

28. **Miscellaneous Provisions.**

28.1. **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 Expanded Shops Property and the Village, after public hearing. The Village Manager can approve any change that increases the demand for parking spaces or decreases the supply of parking spaces by one percent or less. Other amendments must be approved by the Village Council.

28.2. **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.

28.3. **Authority.** Developer 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 Developer are duly authorized to do so.

28.4. **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.

28.5. **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.

28.6. **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.

- 28.7. **Governing Law.** This Agreement shall be construed in accordance with, and governed by the laws of, the State of Florida.
- 28.8. **Recording.** Developer shall record this Agreement in the Public Records at Developer's expense within ten days after the Referendum Approval Date. Developer must provide a copy of the recorded Agreement to Village within two weeks after recording.
- 28.9. **Severability.** Invalidity 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.
- 28.10. **Successors and Assigns.** The provisions of the Agreement are binding upon the Developer 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.
29. **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) THE AGREEMENT, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THE AGREEMENT; (b) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THE AGREEMENT; OR (c) THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT.

IN WITNESS WHEREOF, Village and Developer 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: _____

DEVELOPER:

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

By: _____

Date: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on _____, 2016, by _____, as the _____ 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

Exhibit A

Legal Description of Existing Shops Property

All of the BUSINESS SECTION OF BAL HARBOUR, according to the plat thereof, as recorded in Plat Book 60, at Page 39, of the Public Records of Miami-Dade County, Florida, except for Area Nos. 3 and 4 thereof.

Exhibit B

Legal Description Church Site

THE COMMUNITY CHURCH PARCEL

ORIGINAL COMMUNITY CHURCH TRACT

THAT PORTION OF TRACT "D" AS SHOWN ON THE PLAT OF THE "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK 44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, OF WHICH THE FOLLOWING IS THE METES AND BOUNDS DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 2 AS SHOWN ON A PLAT ENTITLED "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK 44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, RUN SOUTHEASTERLY ACROSS PARK DRIVE, ALONG THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED SOUTHERLY, A DISTANCE OF 63.64 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY OF TRACT "D" AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 370 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

FROM SAID POINT OF BEGINNING RUN SOUTHWESTERLY ALONG A LINE NORMAL TO THE SAID WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 130 FEET TO A POINT; THENCE RUN SOUTHEASTERLY ALONG A LINE PARALLEL TO THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 150.25 FEET TO A POINT ON A LINE WHICH IS PARALLEL TO AND 20 FEET DISTANT NORTHERLY FROM THE NORTHERLY LINE OF 96TH STREET AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE RUN EASTERLY ALONG A LINE PARALLEL TO AND 20 FEET NORTHERLY OF THE NORTH LINE OF SAID 96TH STREET, A DISTANCE OF 109.99 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE DEFLECTING TO THE LEFT; THENCE RUN ALONG THE ARC OF SAID CIRCULAR CURVE DEFLECTING TO THE LEFT AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 110°35'25", A RADIUS OF 20 FEET AND A TANGENT DISTANCE OF 28.88 FEET, A DISTANCE OF 38.60 FEET TO A POINT; THENCE RUN NORTHWESTERLY ALONG A LINE TANGENT TO THE ABOVE MENTIONED CIRCULAR CURVE ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 170.22 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED.

AND

ADDITIONAL COMMUNITY CHURCH TRACT

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 2, AS SHOWN ON A PLAT ENTITLED "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK

44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, RUN SOUTHEASTERLY ACROSS PARK DRIVE, ALONG THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED SOUTHERLY, A DISTANCE OF 63.64 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY OF TRACT "D" AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 370 FEET TO A POINT; THENCE RUN SOUTHWESTERLY ALONG A LINE DEFLECTING 90° TO THE RIGHT, NORMAL TO THE SAID WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 130 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED, SAID POINT BEING THE NORTHWESTERLY CORNER OF THE ORIGINAL COMMUNITY CHURCH PROPERTY; THENCE CONTINUE SOUTHWESTERLY ALONG THE LAST MENTIONED COURSE EXTENDED 26 FEET TO A POINT; THENCE RUN SOUTHEASTERLY ALONG A LINE DEFLECTING 90° TO THE LEFT, PARALLEL TO AND 26 FEET DISTANT SOUTHWESTERLY FROM THE ORIGINAL COMMUNITY CHURCH PROPERTY, A DISTANCE OF 140.485 FEET TO A POINT ON A LINE WHICH IS PARALLEL TO AND 20 FEET DISTANT NORTHERLY FROM THE NORTHERLY LINE OF 96TH STREET AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE RUN EASTERLY ALONG A LINE DEFLECTING 69°24'35" TO THE LEFT, SAID LINE BEING PARALLEL TO AND 20 FEET NORTHERLY FROM THE NORTH LINE OF SAID 96TH STREET, A DISTANCE OF 27.774 FEET TO A POINT, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THE ORIGINAL COMMUNITY CHURCH PROPERTY; THENCE RUN NORTHWESTERLY ALONG A LINE DEFLECTING 110°35'25" TO THE LEFT, SAID LINE BEING THE SOUTHWESTERLY LINE OF THE ORIGINAL COMMUNITY CHURCH PROPERTY, A DISTANCE OF 150.25 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED

Exhibit C

Sketch Showing Building Locations

Exhibit D

Value of Developer Contributions

Benefit	Value
Pedestrian Area Beautification	9,375,000
Traffic Improvements	100,000
Residential Gate Improvements	30,000
LPR Cameras	25,000
Building Department Contribution	2,500,000
PV of Police Department Free Rent	1,707,642
PV of Off Duty Police Hours	3,888,889
PV of Increased Ad Valorem Tax	8,731,178
PV of Increased Resort Tax	13,618,782
PV of Increased Business Tax	9,318,729
TOTAL	\$49,295,220

Exhibit E

Extension of Village Police Department Lease in BHS

Exhibit F
Project Phasing Plan

Exhibit G

Traffic Improvements

Exhibit H

Additional Traffic Improvements

Exhibit I

Public Use Areas

Exhibit J

Project Encroachments

Exhibit K

Village's Construction Requirements

[To be completed prior to Second Reading]

1. Permitted Hours of Construction
2. Permitted Work Days
3. Traffic Management
4. Cranes