

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

## PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: July 25, 2023

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: **PB23-0600 1766 Bay Road. The Harbour Club – restaurant.**

An application has been filed requesting a conditional use permit for a restaurant with more than 100 seats, pursuant to Chapter 2, Article V, Section 2.5.2 and Chapter 7, Article V, Section 7.5.5 of the Miami Beach Resiliency Code.

### **RECOMMENDATION**

Approval with conditions

### **ZONING/SITE DATA**

#### **Legal Description:**

The East 1/2 of Lot 9 and all of Lots 10, in Block 16 Island View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page-115, of the Public Records of Miami Dade County, Florida.

#### **Zoning:**

CD-2, Commercial Medium Intensity Zoning District

#### **Future Land Use Designation:**

CD-2, Commercial Medium Intensity Zoning District

#### **Surrounding Uses:**

North	Office, retail and restaurant uses
East:	Industrial uses
South:	Industrial and office uses
West:	Park and marina uses

(See Zoning/Site map at the end of the report)

### **THE PROJECT**

The applicant, Our Haus Bay Road, LLC, submitted plans entitled “Existing Restaurant Remodel”, as prepared by Gonzalez Architects, dated May 30, 2023. The plans illustrate the layout of three separate areas of a proposed restaurant/bar venue in an existing restaurant/bar space. The three layouts reflect a total of 120 seats divided into three areas labeled “North Dining and South Dining” on the first floor, and the “Lounge Dining” on the second floor.

The occupancy load proposed is 114 persons on the first floor and 85 persons on the second floor; the total occupancy load is 199 persons depicted on the plans (Page A2-02). As a point of reference, the applicant also shows 30 seats in the operational plan for the sidewalk café area on public property, but those seats are not part of the application for this Conditional Use Permit (CUP).

The restaurant is not proposing entertainment, which is a prohibited use in the Sunset Harbour Neighborhood.

**COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:**

Conditional Uses may be approved in accordance with the procedures and standards set forth in the Miami Beach Resiliency Code Chapter 2, Article V, 2.5.2.2:

1. **The use shall be consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

**Consistent** – The request is consistent with the permissible uses in the Commercial Medium Intensity Category (CD-2) as designated on the Future Land Use Map within the Comprehensive Plan.

2. **The intended Use or construction shall not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

**Consistent** – The proposed use is not anticipated to degrade the Levels of Service (LOS) for the surrounding area below the thresholds that have been established.

3. **Structures and uses associated with the request shall be consistent with these land development regulations.**

**Consistent** – Restaurants with 100 seats or more and over a 125 occupant content as determined by the Fire Marshall are permitted in the Sunset Harbour Neighborhood, CD-2 zoning district as a Conditional Use Per Section 7.2.11.2 of the Resiliency Code.

4. **The public health, safety, morals and general welfare shall not be adversely affected.**

**Partially Consistent** – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. Staff is recommending measures so that any resulting adverse impact is mitigated.

5. **Adequate off-street parking facilities will be provided.**

**Consistent** – Parking credit is provided from the previous legally established use per section 5.2.16. There should still be no parking requirement for this use.

6. **Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.**

**Consistent** – Staff will recommend conditions to mitigate any adverse impacts on the surrounding neighbors.

7. **The concentration of similar types of uses shall not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

**Partially Consistent** – There are several restaurants with bars in the area. Adverse impacts are not anticipated.

8. **The structure and site comply with the sea level rise and resiliency review critical in Chapter 7, Article I, as applicable.**

**Consistent –**

9. **Appropriate consideration is given to the safety of and friendliness to pedestrian traffic; passageways through alleys is encouraged where feasible and driveways shall be minimized to the extent possible.**

**Consistent –**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 7.1.2.4 o of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

1. A recycling or salvage plan for partial or total demolition shall be provided.

**Satisfied.** The applicant shall provide a recycling or salvage plan as part of any building permit.

2. Windows that are proposed to be replaced shall be hurricane proof impact windows.

**Satisfied.** Windows are hurricane impact windows.

3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.

**Not applicable.** Changes are not proposed to the storefront.

4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.

**Not applicable.** Changes are not proposed.

5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.

**Not applicable.** Changes are not proposed.

6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.

**Not applicable.** Changes are not proposed.

7. Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.

**Not applicable.** Changes are not proposed.

8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.

**Not applicable.** Changes are not proposed.

9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.

**Not applicable.** Changes are not proposed.

10. Where feasible and appropriate, water retention systems shall be provided.

**Not applicable.** Changes are not proposed.

11. Cool pavement materials or porous pavement materials shall be utilized.

**Not applicable.** Changes are not proposed.

12. The design of each project shall minimize the potential for heat island effects on-site.

**Satisfied.** The applicant indicates that light colors will be utilized to minimize the heat island effects on-site.

## **STAFF ANALYSIS**

### **Project Description and Operations**

The proposed restaurant is not adding areas or increasing the number of tables or occupant load. The request herein is for the same occupant load and seat count that has been previously approved for this property under PB18-0238, but which expired due to business inactivity. This is why the applicant is requesting a new CUP for the proposed venue.

The proposed occupancy load of 199 persons is the current maximum occupancy permitted for restaurants serving alcohol in the Sunset Harbour neighborhood. As per the plans, letter of intent, and operational plan, the following is a breakdown of the areas of the venue, the occupant content, and the proposed hours:

#### Information per plans submitted (A2-01 and A2-02):

- Interior Seats: 75 on ground floor  
45 on second floor
- Sidewalk Café: 30 seats (Not part of this application)
- Total Seats: 120
- Total Occupancy Load: 199

#### Proposed Hours:

- Interior area: Monday-Sunday: 11:00 AM to 2:00 AM
- Exterior area: Monday-Sunday: 11:00 AM to 12:00 AM

### **Parking**

A parking credit is provided from the previous legally established use and there is no additional parking requirement for the proposed restaurant. Per the operational plan, the applicant is proposing to provide valet parking services for its patrons. This operation shall be reviewed per Chapter 18, Article VIII division 2 of the City Code. Staff is proposing a condition that requires the car storage to be located within parking district #5, which encompasses the Sunset Harbour neighborhood.

The applicant is proposing to include a text-to-order system that allows patrons to place food orders via text message. Furthermore, many patrons may walk, bicycle, arrive by taxi, or ride sharing car service. Sunset Harbour is a walkable neighborhood and the applicant expects that local patrons will walk to the establishment. Additionally, the Sunset Harbour Garage is less than a block away.

### **Loading and Garbage**

The building in which the restaurant will be located has a surface parking lot located on the west side of the lot. The surface parking lot provides an area for the air-conditioned enclosed garbage room as shown on page A0-04 of the plans. Per the operational plan, trash will be wheeled to the existing on-street loading space designated by the Parking Department directly across the street on the north side of 18th Street. Collections will occur daily between 7:00 AM and 9:00 AM.

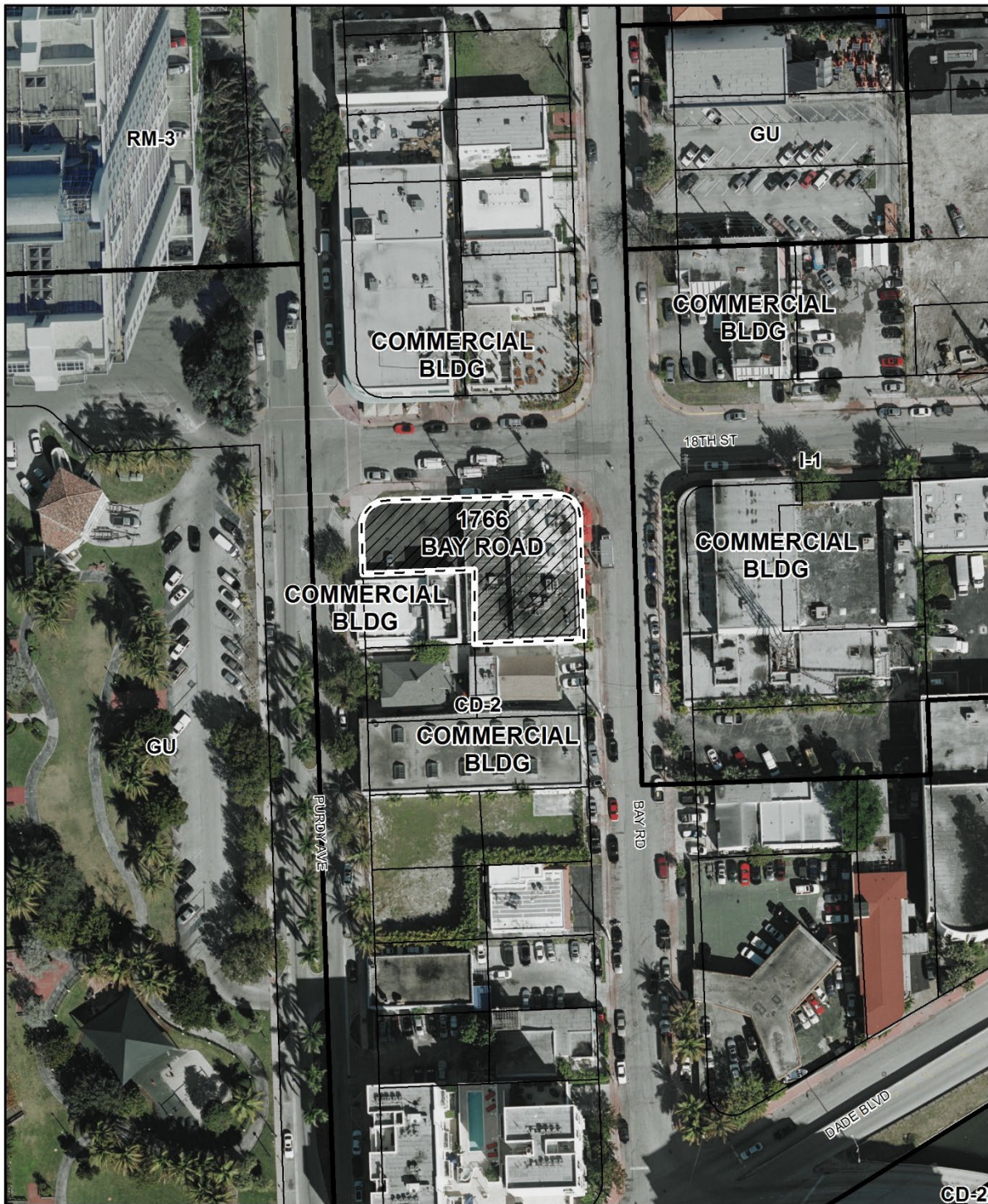
Deliveries will occur during weekday hours between 9:00 AM and 3:00 PM, avoiding peak morning traffic hours.

### **Sound**

The applicant is proposing ambient background music, played at a level that does not interfere with normal conversation. Since entertainment is prohibited in Sunset Harbour, a Sound study was not required.

### **STAFF RECOMMENDATIONS**

In view of the foregoing analysis, staff recommends that the subject application to be approved, subject to the conditions enumerated in the attached draft order.



**PLANNING BOARD  
CITY OF MIAMI BEACH, FLORIDA**

**PROPERTY:** 1766 Bay Road

**FILE NO.** PB 23-0600

**IN RE:** The Harbour Club – restaurant. An application has been filed requesting a conditional use permit for a restaurant with more than 100 seats, pursuant to Chapter 2, Article V, Section 2.5.2 and Chapter 7, Article V, Section 7.5.5 of the Miami Beach Resiliency Code.

**LEGAL DESCRIPTION:** The East 1/2 of Lot 9 and all of Lots 10, in Block 16 Island View Subdivision, according to the Plat thereof, as recorded in Plat Book 6, Page-115, of the Public Records of Miami Dade County, Florida.

**MEETING DATE:** July 23, 2023

**CONDITIONAL USE PERMIT**

The applicant, Our Haus Bay Road, LLC, filed an application with the Planning Director pursuant to Chapter 2, Article V, Section 2.5.2 and Chapter 7, Article V, Section 7.5.5 of the Miami Beach Resiliency Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the CD-2 - Commercial, medium Intensity Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations, that the Conditional Use Permit be GRANTED, as provided below:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 90 days from the issuance of the Business Tax Receipt (BTR). The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code, Section 2.5.2 (c)
2. This Conditional Use Permit is issued to Our Haus Bay Road, LLC, as operator, for a restaurant with alcoholic beverages. The subject establishment shall always be licensed as a single restaurant serving full meals at all times. Any change of operator or fifty percent (50%) or more stock ownership shall require the new owners or operators to submit an affidavit, approved by City, to the City of Miami Beach Planning Department transferring approval to the new owners and/or operators and acknowledging acceptance of all conditions established herein, prior to the issuance of a new Business Tax Receipt. A progress report shall be scheduled within 60 days following the applicant's submission and staff's approval of the affidavit.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval.
5. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application.
6. The Applicant agrees to the following operational conditions for all permitted and accessory uses and shall bind itself, and successors and assigns and all successors in interest in whole or in part to comply with the following operational and noise attenuation requirements and/or limitations. The applicant shall ensure through appropriate contracts, assignments and management rules that these restrictions are enforced and the applicant agrees to include the rules and regulations set forth in these conditions in any contract or assignment:
  - A. The project authorized by this Conditional Use Permit includes the creation and operation of the proposed **120** seat restaurant, subject to the criteria listed below:
    - i. The restaurant and bar subject to this CUP shall have a maximum occupant content of **199** persons or any lesser such occupant content as determined by the Fire Marshal.
    - ii. The indoor portions of the establishment may operate from 11:00 AM until 2:00 AM and the outdoor seating areas shall close by 12:00 AM. These hours shall not supersede any future amendments to the City Code, pertaining to hours of operation for alcoholic beverage and/or entertainment establishments.
    - iii. Entertainment, as defined in City Code Section 1.2.2.9 shall be strictly prohibited in all indoor and outdoor areas.



- iv. Sound generated from the venue, including, but not limited to, recorded music and patron conversations, shall not be plainly audible from adjacent residential buildings.
  - v. No exterior speakers shall be permitted except those necessary for fire and life safety purposes
  - vi. Televisions and projectors shall not be located anywhere in the exterior areas of the property.
  - vii. No dancehall shall be permitted on the site.
  - viii. Special event permits shall be prohibited.
  - ix. After normal operating hours, the establishment shall remain closed and no patrons or other persons, other than those employed by the establishment, shall remain therein between the establishment's closing time and 8:00 AM.
  - x. At all times the establishment is open, food service with a full menu and operating kitchen shall be required throughout the venue.
- B. Deliveries may only occur between 9:00 AM and 12:00 PM each day, or as specified by the City approved loading zones in the vicinity.
- C. Delivery trucks shall not be allowed to idle in the loading zone.
- D. No patrons shall be allowed to queue on public rights-of-way, or anywhere on the exterior premises of the subject property. Security staff shall monitor the crowds to ensure that they do not obstruct the sidewalk.
- E. Equipment and supplies shall not be stored in areas visible from streets, or nearby buildings
- F. Waste collections may occur daily between 9:00 AM and 3:00 PM, or as specified by the City approved loading zones in the vicinity.
- G. Security staff and Restaurant staff shall monitor patron circulation and occupancy levels.
- H. All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
- I. Adequate trash room space, air conditioned and noise baffled, shall be provided, in a manner to be approved by the Planning and Public Works Departments. Sufficient interior space must be provided so that doors can remain closed while trash and trash bags are being deposited in dumpsters. Doors shall remain closed and secured when not in active use.
- J. Restaurant and bar personnel shall take measures to enforce the Patron Age Restriction of the City Code during the hours of operation of all alcoholic beverage establishments.

- K. The owner/operator shall be responsible for maintaining the areas adjacent to the facility, including the sidewalk, and all areas around the perimeter of the property. These areas shall be kept free of trash, debris and odor, and shall be swept and hosed down at the end of each business day
  - L. Street flyers and handouts shall not be permitted, including handbills from third-party promotions.
7. The applicant shall address the following Transportation, Mobility, Concurrency and Parking requirements, as applicable:
- A. The applicant shall pay all impact, mobility, and concurrency fees due prior to obtaining a Building Permit, Certificate of Occupancy, or Business Tax Receipt, whichever may occur first, and any other fair share cost that may be due and owing.
  - B. The applicant shall coordinate with the Transportation Department to develop an acceptable Transportation Demand Management (TDM) Plan, prior to the issuance of a building permit.
  - C. Any valet parking operations shall be reviewed and approved per Chapter 18, Article VIII division 2. Of the City Code.
  - D. The applicant will provide text-to-order valet parking services to limit crowding on the exterior of the venue.
  - E. All valet parking operations shall be conducted within parking district #5 within Sunset Harbour neighborhood.
8. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of an occupational license to operate this establishment.
9. The applicant shall obtain a full building permit within 18 months from the date of the meeting, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board.
10. The Planning Board shall retain the right to call the owner or operator back before them and modify the hours of operation or the occupant load should there be valid complaints about loud, excessive, unnecessary, or unusual noise. Nothing in this provision shall be deemed to limit the right of the Planning Board to call back the owner or operator for other reasons and for other modifications of this Conditional Use Permit.
11. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 2.5.2.5, Code of the City of Miami Beach, Florida.

12. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
13. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
14. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Chapter 1, Article III, 1.3.8 of said Miami Beach Resiliency Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
15. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
16. The applicant agrees and shall be required to provide access to areas subject to this Conditional Use Permit (not private residences or hotel rooms) for inspection by the City (i.e. Planning Department, Code Compliance Department, Building Department, and Fire Department staff), to ensure compliance with the terms and conditions of this Conditional Use Permit. Failure to provide access may result in revocation of the Conditional Use Permit.

Dated \_\_\_\_\_

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
Rogelio A. Madan, AICP  
Development and Resiliency Officer  
for Chairman

STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Rogelio A. Madan, Chief of Community Planning and Sustainability for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary:  
Print Name:  
Notary Public, State of Florida  
My Commission Expires:  
Commission Number:

Approved As To Form:  
Legal Department \_\_\_\_\_ ( )

Filed with the Clerk of the Planning Board on \_\_\_\_\_ ( )