

Prepared by and Return to:

Bercow Radell Fernandez and Larkin
Attn: Ben Fernandez
200 South Biscayne Blvd.
Suite 850
Miami, Florida 33131

(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the [20th] day of [April] 2020, by and among the VILLAGE OF EL PORTAL, a Florida municipal corporation (the "Village"), and BH 495 NE 83rd St., LLC (the "Developer").

Introduction

A. The property that is the subject of this Agreement lies in the Village of El Portal, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, and Article VIII, Section 24-B.21 of the Village's Code.

B. The Developer owns or has a legal or equitable interest in the property located at the 471 Northeast 83rd Street, El Portal, Florida, further identified by Miami-Dade County Property Appraiser as Folio Numbers 18-307-020-0140 and 18-3207-020-0130, and more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Developer Property").

C. The Developer intends to apply for an Exception to allow a residential project on the Property and wishes to avail itself of the Bonus Height of two (2) stories contemplated under Article VIII, Section 24-B.21 of the Village's Form Based Code. The proposed Project contemplates:

- 1) An eight (8) story, live/work structure, including two (2) levels of bonus height for the structure;

- 2) With no less than two-hundred eighty two (282) units;
- 3) Work space units lining the ground floor along Northeast 83rd Street and along Northeast 4th Court; and
- 4) No less than three-hundred and fifty one (351) parking spaces.

D. In exchange for the proposed bonus height, the Developer intends to make a contribution to the Village's Public Benefits program, including, but not limited to, *the acquisition of land for parks and open space, reinvestment in capital improvements to existing parks and open space, tree planting, and capital expenditures for landscaping within the Village boundaries.*

E. The Village is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, *Florida Statutes, the Village of El Portal Charter and the Village of El Portal Form Based Code.* The Village has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services, including the authority to adopt, implement and enforce (together with any other required governmental approvals) *comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the Village and its inhabitants.*

F. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; and, having determined that *the Project and this Agreement is in compliance with the Village's Comprehensive Plan and Form Based Code as of the Effective Date;* and, having further determined that it is in the Village's best interest to address the issues covered by this Agreement in a comprehensive manner; the Village has agreed to enter into this Agreement with the Developer.

G. The Village has determined that the Project will benefit the Village and the public, including without limitation, will improve pedestrianism and public access through providing wider sidewalks along Northeast 83rd Street and Northeast 4th Court. The Developer will provide the Village an easement which will track the Property line along Northeast 83rd Street and Northeast 4th Court, , running parallel with the Village sidewalks, providing three feet (3') into the Developer Property for the enlargement of the sidewalks, to increase pedestrianism and improvements to the area (the "Easement Premises").

H. The contribution of \$1,100,000.00 to the Village's Public Benefits program will allow for the acquisition of land for parks and open space, reinvestment in capital improvements to existing parks and open space, tree planting, and capital expenditures for landscaping within the Village boundaries. Payments shall be made as follows:

- 1) \$366,666.67 upon approval by the Village Council and execution of this agreement;
- 2) \$366,666.67 contemporaneous with the approval of the master building permit for the structure; and
- 3) \$366,666.66 at the issuance of a Temporary Certificate of Occupancy (TCO), for the structure.

I. All capitalized terms used in this Introduction are defined in Paragraph 3 of or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by Article VIII, Section 24-B.21 of the Village's Form Based Code.

3. Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this Paragraph 3 unless such terms are defined elsewhere in the body of this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2014)).

3.2 "Building Permit" shall mean any permit issued by the Village of El Portal Building Department or Building Official, including any foundation, building or phase permits.

3.3 "Business Day" shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

3.4 “**Village**” shall mean the Village of El Portal, a Florida municipal corporation, having its principal offices at 500 NE 87th Street, El Portal, Florida 33138. In the event the Village exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the Village’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to the Village’s regulatory authority as a governmental body and shall not be attributable in any manner to the Village as a party to this Agreement or in any way deemed in conflict with, or a default under, the Village’s obligations hereunder.

3.5 “**Comprehensive Plan**” shall mean the comprehensive plan which the Village has adopted and implemented for the redevelopment and continuing development of the Village pursuant to Chapter 163 Part II, of the Florida Statutes.

3.6 “**Developer**” shall mean the persons or entities named in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof; provided, however, the term “Developer” shall not mean the Village.

3.7 “**Development Order**” shall mean any order granting, denying, or granting with conditions an application for a Development Permit.

3.8 “**Development Site**” shall mean the property more specifically described in **Exhibit “B”** attached hereto and incorporated herein by this reference.

3.9 “**Development Permit**” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2017).

3.10 “**Effective Date**” shall mean the date when the Village records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2017), and subparagraph 26(a) of this Agreement.

3.11 “**Execution Date**” shall mean the date the last of the required parties executes this Agreement.

3.12 “**Land Development Regulations**” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2017) and shall also include, without limitation Chapter 24 - Zoning and Land Development Code of the Village’s Code of Ordinances.

3.13 “**Laws**” shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the Village’s Comprehensive Plan, the Village’s Form Based Code and Zoning and Land Development Code.

3.14 "**Project**" shall mean the development of the Development Site consistent with the zoning regulations of the Village's Form Based Code and the following provisions:

(a) Any mixed-use project located within the Property, which complies with the Village's regulations.

3.15 "**Property**" shall mean the property more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference.

DEVELOPMENT APPROVALS

4. Submittal for Site Plan Approval.

(a) The Developer acknowledges that development of the Project will require site plan approval by the Village Council (the "**Site Plan Approval**").

(b) The Developer shall prepare applications requesting the Site Plan Approval. The preparation of the Site Plan Approval Application and process shall be at the sole cost and expense of the Developer, in accordance with all Village requirements, and shall include proposed plans sufficiently developed to permit the Village Council to act on the Application.

GENERAL PROVISIONS

5. Laws Governing this Agreement. For the entire Term of this Agreement, the Village hereby agrees that the Village's Land Development Codes (as may be amended by the Land Development Regulation Amendments) and the Form Based Code governing the development of the Property as it exists as of the Execution Date of this Agreement shall govern the development of the Property during the entire Term of this Agreement. Notwithstanding the foregoing, the Village may apply subsequently adopted laws or policies of general applicability to the Property as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the Village apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Project or any amendments or modifications to the Project Zoning Approvals.

6. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The Developer and the Village agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, open space requirement, term or restriction in effect on the Effective Date shall not relieve the

Developer of the necessity of complying with any such permit, approval, procedure, condition, fee, open space requirement, term or restriction, subject however to the terms and provisions of this Agreement.

The Village and Developer agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Village and Developer agree that time is of the essence in all aspects of their respective responsibilities pursuant to this Agreement. The Village shall use its best efforts to expedite the permitting and approval process in an effort to assist Developer in achieving its development and construction milestones. The Village will accommodate request from Developer's general contractor and subcontractors for review of permitting applications, such as those for excavation, site work and foundation Building shell, core and interiors. Notwithstanding the foregoing, the Village shall not be obligated to issue development permits to the extent that they do not comply with the applicable requirements of the code, the comprehensive plan, this Agreement and applicable building codes.

The development of the Property in accordance with the Exception approval is contemplated by the Developer. The Project may require additional permits or approvals from the Village, county, state, or federal government and any division thereof. Subject to the required legal process and approvals, the Village shall make a good faith effort to take reasonable steps to cooperate with and facilitate all such approvals, including acting as an applicant. Such approvals include, without limitation the following approvals and Permits:

- a. *Covenant or unity of title acceptance or release of existing unities or covenants;*
- b. *Building permits;*
- c. *Certificate of use and/or occupancy;*
- d. *Stormwater permit;*

7. Adequate Public Facilities. The Village , makes affirmative concurrency findings that all public services and facilities necessary to serve the development herein described meet or exceed the established level of service standards. Furthermore, the Village agrees that during the term of this Development Agreement, it shall provide and reserve concurrency-related public facility capacity for the Project. This reservation of capacity shall include the following facilities: roadways, water and sewer, and parks.

8. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under any applicable law, rule or regulation and each party hereto reserves any and all of such rights.

9. Consistency with the Village's Comprehensive Plan. The Village has adopted and implemented the Comprehensive Plan. The Village hereby finds and declares that the provisions of this Agreement dealing with the Property is consistent with the Village's Comprehensive Plan and the Form Based Code, subject to all *applicable requirements, permits and approvals.*

10. Concurrency. The Developer shall be solely responsible for obtaining all land use permits for the Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2017), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the "Concurrency Requirements"). Prior to applying for the Initial Building Permit for the Project, Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that the Developer has satisfied all applicable Concurrency Requirements with respect to the Project, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements, and shall pay such impact fees or mobility fees as may then be due or applicable to meet Concurrency Requirements. The Project shall be subject to the level of impact fees in effect in the Village at the time of the execution of this Agreement. Impact, or other similar fees, enacted by the Village subsequent to the execution of this Agreement shall be inapplicable to the Project.

11. Effective Date; Duration; and Term.

(a) Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the Village shall record this Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. The Developer agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

(b) This Agreement shall run for an initial term of five(5) years from the Effective Date (the "Term"); the Term of this Agreement may be extended only by the mutual consent of the Village and the Developer subject to a public hearing pursuant to Section 163.3225, Florida Statutes; and (ii) consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

12. Permitted Development.

(a) Permitted Development and Uses. The Property is to be constructed as Mixed-Use Development in Zone 5 (Z5) Urban Center according to the Village's Form Based Code and the Official Zoning Map of the Village of El Portal contained in Article II. Figure 2 of the Form Based Code. The Property may be used for the purposes permitted and regulated in these designations and zoning district, as further limited by the by the Village's Land Development Codes, Form Based Code, and Comprehensive Plan.

(b) Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the Village's Form Based Code, Comprehensive Plan and any applicable Federal, State or County laws, rules and regulations.

13. Public Reservations and/or Dedications. A description of the reservations and/or dedications of land for public purposes, including the Easement to the Village for public access over the Property, parallel to the Village sidewalk area, allowing for the creation of a wider sidewalk along Northeast 83rd Street and Northeast 4th Court, are set forth in Exhibit "C" attached hereto and incorporated herein by this reference.

14. Default. Each of the following shall be an "Event of Default" by the Developer hereunder:

(a) If the Developer shall fail to observe or perform any term, or condition of this Agreement on the Developer's part to be observed or performed and the Developer shall fail to cure or remedy the same within (i) thirty (30) days of the Developer's receipt of written notice from the Village with respect to monetary defaults, or (ii) sixty (60) days of the Developer's receipt of written notice from the Village with respect to non-monetary defaults (each, a "Default Notice"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within such sixty (60) day period, then the Developer shall have such additional time as is necessary to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Developer commences such cure within such initial sixty (60) day period and diligently and in good faith pursues such cure to completion.

(b) If the Developer shall make an assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due; or shall consent in writing to the appointment of a receiver or trustee or liquidator of all or substantially all of its property; or if all or substantially all of the assets of the Developer are attached, seized, subjected to a writ or distress warrant, or are levied upon, and the same is not dismissed, discharged or satisfied within one hundred fifty (150) days after such attachment, seizure, subjection or levy occurs.

(c) If the Developer shall commence a voluntary case under the Title 11 of the United States Code (the "Bankruptcy Code"); or an involuntary proceeding is commenced against the Developer under the Bankruptcy Code and the same is not dismissed or stayed within one hundred fifty (150) days after the commencement of the case; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of the Developer in any proceeding under the Bankruptcy Code and such custodian is not discharged or dismissed within one hundred fifty (150) days after such appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian in any proceeding under the Bankruptcy Code; or the Developer commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect (an "Other Insolvency Proceeding") relating to the Developer; or there is commenced against the Developer any such Other Insolvency Proceeding and the same is not dismissed or stayed within one hundred fifty (150) days; or a custodian, trustee or person of similar capacity is appointed for or takes charge of all or substantially all of the property of the Developer in any such Other Insolvency Proceeding and such custodian, trustee or person of similar capacity is not discharged or dismissed within one hundred fifty (150) days after such appointment; or the Developer consents in writing or joins in an application for the appointment of a custodian, trustee or person of similar capacity in any such Other Insolvency Proceeding.

In the event the Village shall claim any Event of Default shall have occurred under this Agreement, the Village's Default Notice shall state with specificity the provisions of this Agreement under which the Event of Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement (if applicable), and, if elected by the Village, that the failure of the Developer to cure such Event of Default by the date set forth in such Default Notice will result in the Village having the right to terminate this Agreement.

15. Enforcement of Performance; Damages; and Termination. If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within any applicable notice and cure period, the Village may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:

- (a) Enforce strict performance by the Developer;
- (b) Terminate this Agreement; or
- (c) Pursue any other remedy available to the Village at law or in equity.

The Village's election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the Village's right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

In the event the Village elects to terminate this Agreement after the occurrence of an Event of Default that was not cured within any applicable notice and cure period, and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the Village shall have the right, at its election, to terminate this Agreement with five (5) Business Days' written notice to the Developer, the Developer as debtor in possession, or if a trustee has been appointed, to such trustee.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Village have the right to terminate this Agreement after the Developer has conveyed the initial \$366,666,.67 issued at the execution of this Agreement, unless the Event of Default is a "Material Event of Default" (as more specifically defined below). For purposes of this subparagraph 14, the term "Material Event of Default" shall mean:

(a) the Developer's failure to deliver contribution of \$1,100,000.00 to the Village for the Public Benefits program pursuant to and in accordance with the terms and provisions of this Agreement and such failure is not cured within the notice and cure period set forth in subparagraph 31(a) of this Agreement;

(b) the Developer's breach of any term or provision contained in Paragraph 24 (Transfer and Assignment) of this Agreement and such breach is not cured within the notice and cure period set forth in subparagraph 13 (a) of this Agreement;

(c) The Village hereby acknowledges and agrees that its sole and exclusive remedy for any Event of Default by the Developer under this Agreement that is not a Material Event of Default shall be limited to an action for damages and/or specific performance to the extent such remedies are available and permitted to the Village under this Agreement and applicable law.

16. Termination Outside of Default. In the event either party chooses to exercise its right to terminate this Agreement under any of Paragraphs 4(a) and (b) of this Agreement (apart from the Village's right to terminate under Paragraph 14 of this Agreement as a result of an Event of Default by Developer), each party shall bear its own fees, costs and expenses incurred in connection with this Agreement, and the Project, and neither party shall have or owe any further obligation or liability to the other party.

17. Strict Performance; Waiver. No failure by the Village or the Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default hereunder shall constitute a waiver of any such default or of such other covenant, agreement, term or condition hereunder.

18. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Village at: Village of El Portal, Village Hall
500 NE 87th Street
El Portal, Florida 33138
Attn: Village Manager

With a copy to:

Norman C. Powell, Interim Village Attorney
1666 J. F. Kennedy Causeway, Suite 420
North Bay Village, Florida 33141

If to Developer at:

With a copy to: Bercow Radell Fernandez & Larkin
200 S. Biscayne Boulevard
Miami, Florida 33131
Attn: Ben Fernandez

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

19. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The Developer and the Village agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the

parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE VILLAGE AND THE DEVELOPER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

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

21. Time of Essence. Time shall be of the essence for each and every provision hereof.

22. Entire Agreement. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. *This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.*

23. Other Agreements. This Agreement has no effect on any other agreement, the Village's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

24. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

25. Transfer and Assignment. The Developer shall not be entitled to assign or transfer this Agreement or any of the rights and obligations hereunder prior to the satisfaction or deemed satisfaction of the conditions set forth in subparagraphs 17(a)

through (d) of this Agreement without the prior written consent of the Village (which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the Village), except as hereinafter provided. The Developer shall have the right at any time and from time to time to sell, transfer and convey all or any portion of the Property to any person or entity (a "**Subsequent Owner**") and assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any Subsequent Owner in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the Village, provided, that this Agreement and the rights and obligations hereunder can be assigned and transferred to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Foreclosure Purchaser**") who acquires the Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior consent or approval of the Village. This Paragraph and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur, or (y) the acquisition of the Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure; whereupon, the Developer, any Subsequent Owner and/or any Foreclosure Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior consent or approval of the Village. Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of the Developer under this Agreement at the time of such assignment or transfer of this Agreement.

26. Force Majeure and Third Party Challenges. All time periods set forth in this Agreement and in any approval or permit issued in connection with the Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, hurricanes and severe weather, and other causes beyond the control of either party), and due to delays in obtaining permits and approvals from governmental agencies, during the pendency of any "Lawsuit" (as hereinafter defined) and any unexpired appeal period thereof. In the event that a third party unrelated to or unaffiliated with the Village or the Developer institutes any action, suit or proceeding relating to the Project, including, without limitation, any action, suit or proceeding challenging the validity or execution of this Agreement, the Land Development Regulation Amendments, the Project Zoning Applications, the Project Zoning Approvals, or any Building Permit (in each instance, including any related appeals, a "Lawsuit"), then the Developer shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the Village. The Developer shall *further indemnify and hold the Village harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys' fees, costs and expenses)*

of any and every kind arising out of or relating to any such Lawsuit. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

If a Lawsuit is commenced prior to the vacation and conveyance of the Village Parcel as contemplated by this Agreement, then the Village shall not be required to effectuate such vacation and conveyance of the Village Parcel until thirty (30) days after the Lawsuit has been completed and finally disposed of (by judgement, settlement or otherwise) on terms and conditions acceptable to Developer in its sole and absolute discretion; provided, however, if the Lawsuit is still pending more than sixty (60) months after it has been commenced, then either party, at its option, may from and after the expiration of such sixty (60) month period and while the Lawsuit remains unresolved, elect to terminate the transaction contemplated by this Agreement by delivering a written notice of termination to the other party, whereupon the Vacation Resolution shall be rescinded and this Agreement shall be terminated, and the Village and the Developer shall have no further obligation and/or liability to each other hereunder.

27. Indemnification of Village. The Developer shall indemnify, defend, and hold harmless the Village from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the Village in any action, suit or proceeding brought against the Village by any third-party as a result of any negligent act or omission of the Developer and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. The Developer shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the Village, using legal counsel reasonably acceptable to the Village, pursuant to the foregoing. The Village shall reasonably cooperate and collaborate (but at no expense to the Village) with the Developer in connection with any legal proceeding in which the Developer is defending the Village. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

28. Indemnification of Developer. Notwithstanding paragraph 26 hereof, should the Village accept the Easement Premises provided by the Developer, the Village shall indemnify, defend, and hold the Developer harmless, against all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments of any nature recovered from or asserted against Developer on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, , wholly or in part, by any act, omission, negligence or misconduct on the part of the Village or any of its agents, servants, employees, contractors, guests, licensees or invitees or of any other person entering the Easement Premises hereunder with the express or implied invitation or permission of the Village, or when any such injury or damage is the result, , of the violation by Village or any of its agents, servants, employees, contractors, guests, licensees or invitees of any law, ordinance or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the use by the Village, its agents, servants, employees,

contractors, patrons, guests, licensees or invitees of the Easement Premises used hereunder. The Village shall directly pay all actual costs and reasonable expenses related to any expense or cost charged, or legal defense required by the Developer, using legal counsel reasonably acceptable to the Developer, pursuant to the foregoing. The Developer shall reasonably cooperate and collaborate (but at no expense to the Developer) with the Village in connection with any legal proceeding in which the Village is defending the Developer resulting from an action directly relating to the use of the Easement Premises. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

29. Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and Councilperson of the Village) or employees, as such, of the Developer, the Village, or any successor or assign of any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and Councilperson of the Village) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

30. No Conflict of Interest. The Developer represents and warrants that no member, official or employee of the Village has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. The Developer represents and warrants that no officer, agent, employee, or representative of the Village has received any payment or other consideration for the making of this Agreement, directly or indirectly, from the Developer.

31. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowners association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

32. Limitations of Liability and Waiver of Consequential Damages.

(a) Any tort liability to which the Village is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and Village expressly does not waive any of its rights and immunities thereunder.

(b) The Village will not in any event whatsoever be liable for any injury or damage to the Developer (unless caused by the gross negligence or willful misconduct of the Village, its agents, contractors or employees), nor for any injury or damage to the Property (unless caused by the gross negligence or willful misconduct of the Village, its agents, contractors or employees).

(c) Except as may be otherwise expressly provided herein, no approval to be made by the Village in its proprietary capacity under this Agreement or any inspection of the Project by the Village under this Agreement, shall render the Village liable for its failure to discover any defects or nonconformance with any governmental requirement.

(d) No member, official, elected representative or employee of the Village shall be personally liable to the Developer or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the Village or for any amount which may become due to the Developer or successor, assign or heir thereof under this Agreement.

33. Police Power.

(a) The parties recognize and agree that certain provisions of this Agreement require the Village and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the Village's jurisdiction under the police power. *Nothing contained in this Agreement shall entitle the Developer to compel the Village to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Project Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.*

(b) The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the Village from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

32. Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Vacation Resolution, the terms of this Agreement shall control.

TABLE OF EXHIBITS



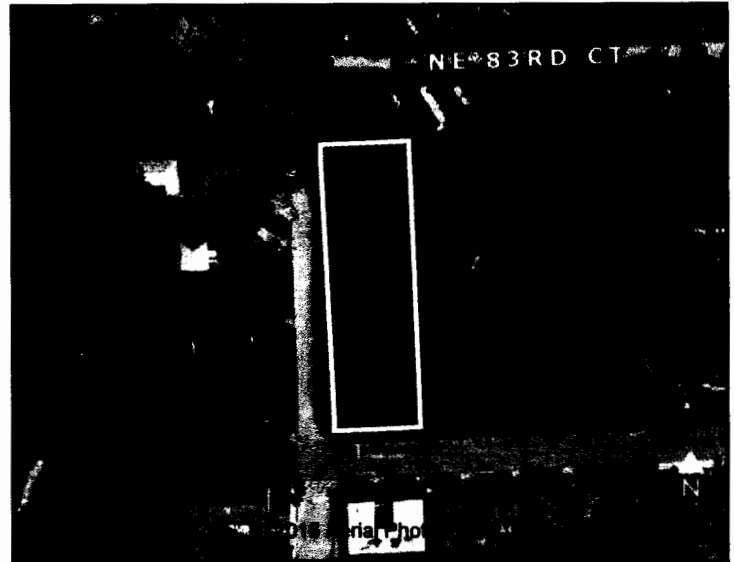
OFFICE OF THE PROPERTY APPRAISER

Summary Report

EXHIBIT A

Generated On : 8/19/2019

Property Information	
Folio:	18-3207-020-0140
Property Address:	471 NE 83 ST El Portal, FL 33138-0000
Owner	BH 495 NE 83RD ST LLC
Mailing Address	730 NE 86 ST MIAMI, FL 33138 USA
PA Primary Zone	5000 HOTELS & MOTELS - GENERAL
Primary Land Use	1081 VACANT LAND - COMMERCIAL : VACANT LAND
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	27,450 Sq.Ft
Year Built	0



Assessment Information			
Year	2019	2018	2017
Land Value	\$549,000	\$494,100	\$452,925
Building Value	\$0	\$0	\$0
XF Value	\$0	\$0	\$0
Market Value	\$549,000	\$494,100	\$452,925
Assessed Value	\$442,083	\$401,894	\$365,359

Benefits Information				
Benefit	Type	2019	2018	2017
Non-Homestead Cap	Assessment Reduction	\$106,917	\$92,206	\$87,566

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
7 53 42 0.63 AC
TUTTLES SUB PB B-3
W90FT OF N305FT OF E815FT LOT 4
LOT SIZE 90.000 X 305
COC 25390-4058 25522-4539 0207 6

Taxable Value Information			
	2019	2018	2017
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$442,083	\$401,894	\$365,359
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$549,000	\$494,100	\$452,925
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$442,083	\$401,894	\$365,359
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$442,083	\$401,894	\$365,359

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
07/30/2013	\$505,000	28751-0808	Qual on DOS, but significant phy change since
10/04/2010	\$300	27468-4119	Financial inst or "In Lieu of Foreclosure" stated
02/01/2007	\$1,150,000	25390-4058	Other disqualified
08/01/1990	\$206,250	14717-0060	Sales which are qualified

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp>

Version:

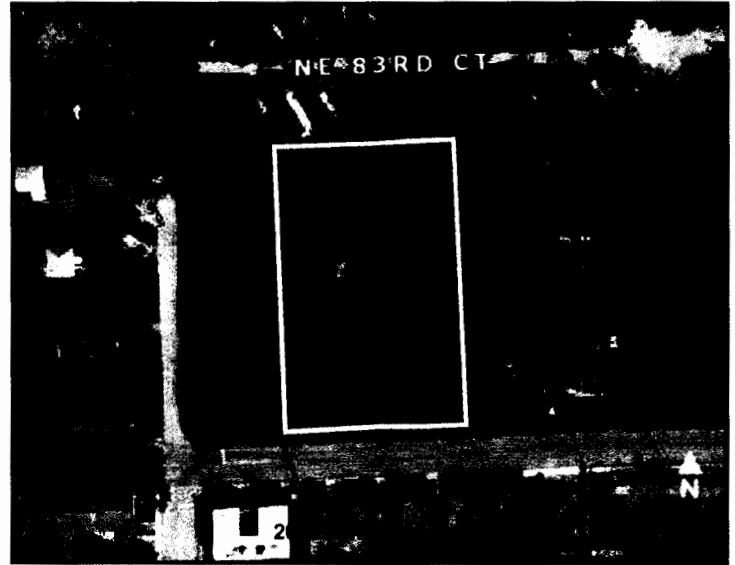


OFFICE OF THE PROPERTY APPRAISER

Summary Report

Generated On : 8/19/2019

Property Information	
Folio:	18-3207-020-0130
Property Address:	
Owner	BH 495 NE 83 ST LLC
Mailing Address	730 NE 86 ST MIAMI, FL 33138 USA
PA Primary Zone	5000 HOTELS & MOTELS - GENERAL
Primary Land Use	1081 VACANT LAND - COMMERCIAL : VACANT LAND
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	54,900 Sq.Ft
Year Built	0



Assessment Information			
Year	2019	2018	2017
Land Value	\$1,098,000	\$988,200	\$905,850
Building Value	\$0	\$0	\$0
XF Value	\$0	\$0	\$0
Market Value	\$1,098,000	\$988,200	\$905,850
Assessed Value	\$884,169	\$803,790	\$730,719

Benefits Information				
Benefit	Type	2019	2018	2017
Non-Homestead Cap	Assessment Reduction	\$213,831	\$184,410	\$175,131

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Short Legal Description
TUTTLES SUB PB B-3
W180FT OF N305FT OF E725FT OF
LOT 4
LOT SIZE 180.000 X 305
OR 21388-3127 06 2003 6

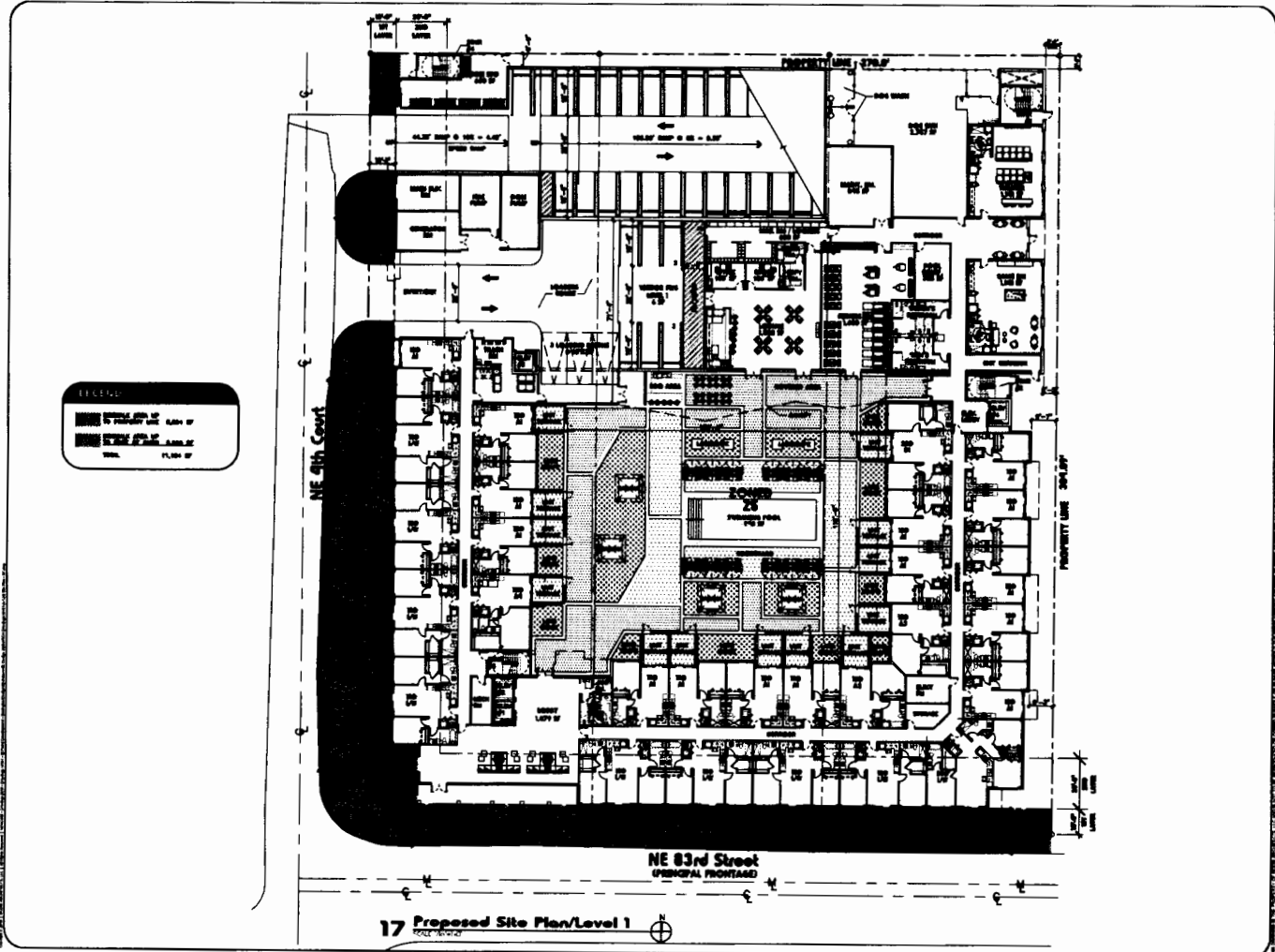
Taxable Value Information			
	2019	2018	2017
County			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$884,169	\$803,790	\$730,719
School Board			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$1,098,000	\$988,200	\$905,850
City			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$884,169	\$803,790	\$730,719
Regional			
Exemption Value	\$0	\$0	\$0
Taxable Value	\$884,169	\$803,790	\$730,719

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description
06/10/2013	\$680,000	28673-4489	Qual by exam of deed
07/23/2009	\$100	26992-0823	Financial inst or "In Lieu of Foreclosure" stated
02/01/2007	\$1,550,000	25366-0416	Other disqualified
06/01/2003	\$600,000	21388-3127	Other disqualified

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Version:

EXHIBIT C

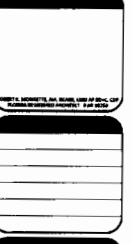


LEGEND
 STAIRS
 ELEVATOR SHAFT
 ELEVATOR

17 Proposed Site Plan/Level 1



El Portal
 Residential Apartments
 471 NE 83 Street
 El Portal, Florida 33128



SIDEWALK AREA DIAGRAM

18181
 AT
 As Shown 04/22/2019
 PRE-APP MEETING
A1.00