

NOTE: A request form is available from the Deputy Town Clerk; please fill it in and return it prior to the start of the meeting if you would like to speak during public comment. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager at the start of the meeting. Thank you.

**TOWN OF BAY HARBOR ISLANDS
MORRIS N. BROAD COMMUNITY CENTER
1175 95TH STREET
BAY HARBOR ISLANDS, FL 33154**

**SPECIAL COUNCIL MEETING
AGENDA**

March 14, 2023

6:00 P.M.

**COMPLETION OF AGENDA FROM MARCH 8, 2023
REGULAR COUNCIL MEETING**

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts, or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

CALL TO ORDER at approximately 6:00 p.m.:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

1. **Consideration and Approval** of a Resolution amending the Building Permit Fee Schedule set by Resolution No. 2270 to establish a reduced fee for applicants that choose to use a "Private Provider" for Building Plan Review and Inspections, as per Florida Statutes, Section 553.791. Enclosed is a copy of the fee schedule and legislation.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING THE FEE SCHEDULE OUTLINED IN RESOLUTION NO. 2270 TO ESTABLISH A REDUCED FEE FOR APPLICANTS THAT HIRE A "PRIVATE PROVIDER" FOR PLAN REVIEW AND BUILDING INSPECTIONS AS SPECIFIED IN FLORIDA STATUTES, SECTION 553.791; PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

2. **Consideration and Approval** of funding for the Design-Build Project BHI-228- 92nd Street Dog Park Extension. Enclosed is a copy of Waypoint Proposal.

STAFF RECOMMENDATION: Approve

POLL VOTE

DISCUSSION ITEMS:

3. **Discussion** regarding an amendment to Sections 23-1, 23-4, and 23-5 of the Town Code to regulate the location of Real Estate Sales Centers in the town. Enclosed is the Town Planner's Staff Report and a draft ordinance.
4. **Discussion and Possible** action regarding the lease with Sunshine Gasoline Distributors, Inc. for operation of the gasoline service station. Enclosed is a copy of the lease agreement.
5. **Discussion and Possible** action regarding zoom meetings.
6. **Discussion and Possible** action regarding Section 23-12 (15)(e) iii of the Town Code regarding projections into setback areas. Sponsored by Council Member Bruder. Enclosed are copies of the Code provisions.

ADJOURNMENT: Approximately 8:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 1.

ITEM: Consideration and Approval of a Resolution amending the Building Permit Fee Schedule set by Resolution No. 2270 to establish a reduced fee for applicants that choose to use a "Private Provider" for Building Plan Review and Inspections, as per Florida Statutes, Section 553.791. Enclosed is a copy of the fee schedule and legislation.

DESCRIPTION:

A private provider is a company that can conduct plan review and/or inspections for a project. According to the Statute, the local jurisdiction must calculate the cost savings to a local enforcement agency, based on a property owner or contractors hiring of a private provider in lieu of the local building official, and reduce the permit fees accordingly. Because the legislation provides very limited guidance, staff has contacted other jurisdictions in this vicinity to see what they have adopted. After reviewing what other jurisdictions are doing, staff is recommending a 20% reduction for Plan Review and inspections performed by a Private Provider and 10% reduction for Plan Review performed by the Town and inspected by a "Private Provider".

This discount would not apply to fees for standalone trade permits, such as mechanical, electrical, plumbing, etc.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk

ATTACHMENTS

1.	Resolution- Building Permit Fee Schedule Revision-Private Providers (1)
2.	EXHIBIT A - Revised Building Department Fee Schedule
3.	Fla. Stat. 553.791 - Alternative Plan Review and Inspection

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING THE FEE SCHEDULE OUTLINED IN RESOLUTION NO. 2270 TO ESTABLISH A REDUCED FEE FOR APPLICANTS THAT HIRE A “PRIVATE PROVIDER” FOR PLAN REVIEW AND BUILDING INSPECTIONS AS SPECIFIED IN FLORIDA STATUTES, SECTION 553.791; PROVIDING FOR INCORPORATION OF RECITALS AND SETTING AN EFFECTIVE DATE.

WHEREAS, Florida Statute, Section 553.791, allows the fee owner of a building or structure, or the fee owner’s contractor to utilize the services of Private Providers to perform Building Code Plan Review and Inspections; and

WHEREAS, the regulations require local jurisdictions to reduce the permit fee, when an owner or contractor retains a private provider for purposes of plans review or building inspection services; and

WHEREAS, the Town’s professional staff recommends a 20% reduction for Plan Review and inspections performed by a Private Provider and 10% reduction for Plan Review performed by the Town and inspected by a “Private Provider” as indicated in the attached Fee Schedule by underlining; and

WHEREAS the Town Council desires to revise the Building Department Fee Schedule to establish a reduced fee for applicants who choose to use a “Private Provider” for Building Plan Review and Inspections, as per Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands that the Building Department Activities fee schedule attached hereto as Exhibit A and incorporated herein is hereby adopted, pursuant to Section 5-6(b) of the Town’s Code of Ordinances.

SECTION 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

SECTION 2. The Town Council hereby adopts the updated schedule of fees for Building Department activities as set forth in Exhibit A attached hereto.

SECTION 3. Resolution No. 2270 is hereby amended to adopt the Fee Schedule set forth herein.

SECTION 4. Resolutions or parts of Resolutions in conflict are hereby repealed.

SECTION 5. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this **14th** day of **March 2023**.

JOSHUA D. FULLER
MAYOR

ATTEST:

YVONNE P. HAMILTON
TOWN CLERK

**APPROVED AS TO FORM AND LEGAL
SUFFIENCY:**

Greenspoon Marder LLP – Town Attorneys
By: Joseph S. Geller

EXHIBIT A - RESOLUTION NO. _____ BUILDING DEPARTMENT-
PERMIT FEE SCHEDULE
AMENDED AS OF FEBRUARY 1, 2022

Master building permit fees will be based on the estimated cost of construction including all systems. For the purpose of determining the cost of construction and / or building estimated costs, a verified contract figure including all systems may be used to determine the construction value or the estimated construction cost computed per the latest edition of R.S. Means Square Foot Costs, as published by R.S. Means Co., Inc., whichever is greater. The estimated construction value will then be used to determine the master permit fee.	Separate sub-trade values, Electrical, Plumbing, Mechanical) shall be based on a verifiable contract amount or the estimated construction cost of work as calculated by the latest issue of R.S. Means Square Foot Costs, as published by R.S. Means Co, Inc. whichever is greater.
DESCRIPTION	FEE
PROCESSING FEE	\$25.00 MIN. \$5,001 OR MORE \$5/\$1,000 - JOB COST
UP FRONT PROCESSING FEES -(NON-REFUNDABLE)	SINGLE FAMILY - \$250.00 MULTI FAMILY / COMMERCIAL - \$1,000.00
UP-FRONT FEE IS REQUIRED AT THE TIME OF PERMIT APPLICATION, THIS FEE IS REQUIRED FOR RESIDENTIAL AND COMMERCIAL PERMITS.	30% OF PERMIT FEE
BUILDING PERMITS	
NEW CONSTRUCTION	\$150.00 MINIMUM OR 3% OF JOB COST **COPY OF CONTRACT REQUIRED
ADDITION AND OR ALTERATION TO EXISTING STRUCTURE	\$150.00 MINIMUM OR 2% OF JOB COST **COPY OF CONTRACT REQUIRED
ROLL-OFF WASTE CONTAINER	\$65.00/CONTAINER
DEMOLITION OF BUILDINGS	
SINGLE FAMILY	\$500.00
MULTI FAMILY / COMMERCIAL	\$1,500.00
SIGN PERMIT FEES MINIMUM SIGN FEE (ILLUMINATED SIGN REQUIRES AN ELECTRICAL PERMIT) For detailed sign fees see Town Code Chapter 17	\$75.00
REVIEW OF 40- YEAR RE-CERTIFICATION	\$250.00
STRUCTURAL	\$100.00/HOUR
PLAN REVIEW REVISIONS PER PAGE	\$25.00 RESIDENTIAL \$50.00 COMMERCIAL
PLUMBING PERMIT FEES	
MINIMUM PLUMBING OR GAS FEE PER PERMIT	\$150.00 MINIMUM OR 3% OF JOB COST (sub-trade value) **COPY OF CONTRACT REQUIRED
1	
ELECTRICAL PERMIT FEES	\$150.00 MINIMUM OR 3% OF JOB COST – (sub-trade value) **COPY OF CONTRACT REQUIRED
MECHANICAL PERMIT FEES	\$150.00 MINIMUM OR 3% OF JOB COST -(sub-trade value) **COPY OF CONTRACT REQUIRED
BUILDING INFORMATION LETTERS	\$25.00
CHANGE OF CONTRACTOR	\$100 FLAT FEE
LOST PLAN FEE	\$6.00 PER PAGE

DIGITIZED “JOB COPY” (PERMIT SET) SHEETS 11” X 17” OR SMALLER SHEETS LARGER THAN 11” X 17” CD BURNING OR USB	\$2.00 PER SHEET \$3.00 PER SHEET \$6.00
EXTENSION REQUEST – 180 DAYS	50% OF ORIGINAL PERMIT FEE
SEWER ALLOCATION LETTERS	\$25.00
CONSTRUCTION TRAILER	\$250.00 RENEWAL FEE - \$250 PER SIX MONTH
USE OF RIGHT OF WAY – PERMIT BOND – SEC 18-1 TOWN CODE	\$150.00 1 ½% OF JOB COST – NOT TO EXCEED \$20,000
NEW CONSTRUCTION – ZONING INSPECTION FINAL ZONING INSPECTION ZONING PLAN REVIEW	SINGLE FAMILY - \$500.00 MULTI FAMILY / COMMERCIAL - \$3,000.00 \$120.00 per hour
WORK WITHOUT PERMITS - AFTER THE FACT PERMIT	DOUBLE PERMIT FEE + \$100 FINE
PLANNING & ZONING INQUIRIES TO TOWN PLANNER	\$120 PER HOUR
PLAN REVIEW AND INSPECTIONS PERFORMED BY PRIVATE PROVIDER	20% Credit
PLAN REVIEW PERFORMED BY THE TOWN AND INSPECTIONS BY PRIVATE PROVIDER	10% Credit

Sec. 553.791, Florida Statutes

553.791 Alternative plans review and inspection.—

(1) As used in this section, the term:

(a) “Applicable codes” means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) “Audit” means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with the permit documents and that the minimum mandatory inspections required under the building code have been performed and properly recorded. The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.

(c) “Building” means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) “Building code inspection services” means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) “Deliver” or “delivery” means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) “Duly authorized representative” means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) “Electronically posted” means providing notices of decisions, results, or records, including inspection records, through the use of a website or other form of electronic communication used to transmit or display information.

(h) “Electronic signature” means any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record.

(i) “Electronic transmission” or “submitted electronically” means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which is suitable for the retention, retrieval, and reproduction of information by the recipient and is retrievable in paper form by the receipt through an automated process. All notices provided for in this

section may be transmitted electronically and shall have the same legal effect as if physically posted or mailed.

(j) “Immediate threat to public safety and welfare” means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(k) “Local building official” means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(l) “Permit application” means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required under subsection (6).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m) “Plans” means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner’s contractor to a private provider or duly authorized representative for review.

(n) “Private provider” means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term “private provider” also includes a person who holds a standard certificate under part XII of chapter 468.

(o) “Request for certificate of occupancy or certificate of completion” means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.
2. A certificate of compliance from the private provider required under subsection (12).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(p) “Single-trade inspection” means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.

(q) “Site work” means the portion of a construction project that is not part of the building structure, including, but not limited to, grading, excavation, landscape irrigation, and installation of driveways.

(r) “Stop-work order” means the issuance of any written statement, written directive, or written order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner’s contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner or the fee owner’s contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner’s contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner’s contractor to use a private provider to also provide required building inspections.

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person’s licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider’s firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official in writing at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the local building official or building code enforcement agency that a private provider has been contracted to perform the required inspections of construction under this section, including single-trade inspections, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and e-mail address of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly authorized representative named in the

permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so by 2 p.m. local time, 2 business days before the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c).

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and may be submitted electronically to the local building official.

(7)(a) No more than 20 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (6), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 20-day period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 20-day period, the 20-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 20-day period plus 5 business days from the date of resubmittal to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. Any subsequent review by the local building official is limited to the deficiencies cited in the written notice. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be deemed approved as a matter of law, and the local building official must issue the permit on the next business day.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days from the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. Such inspection may be performed in-person or virtually. The private provider may have a duly authorized representative perform the required inspections, provided all required reports are prepared by and bear the written or electronic signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must be an employee of the private provider entitled to receive reemployment assistance benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside the local building official's normal operating hours, including after hours, weekends, or holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. Such notice may be physically posted at the job site or electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11) Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must bear the written or electronic signature of the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, upon completion of the required inspection, shall post each completed inspection record, indicating pass or fail, and provide the record to the local building official within 2 business days. Such inspection record may be electronically posted by the private provider, or the private provider may post such inspection record physically at the project site. The private provider may electronically transmit the record to the local building official. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is electronically posted or posted at the project site and all such inspection records are submitted with the certificate of compliance. Unless the records have been electronically posted, records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(12) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1) or may be electronically transmitted to the local building official:

To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(13) No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or

certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(14) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, if the official determines that the noncompliance poses an immediate threat to public safety and welfare, subject to the following:

(a) The local building official shall be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

(b) If the local building official and private provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter.

(c) Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter, which shall consider the matter at the commission's next scheduled meeting.

(15) For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address listed for that person or entity in the permit application or revised permit application, or, if no e-mail address is stated, when actually received by that person or entity.

(16)(a) A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(n) and the insurance requirements of subsection (17).

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(17) A private provider may perform building code inspection services on a building project under this section only if the private provider maintains insurance for professional liability covering all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. Nothing in this section limits the ability of a fee owner to require additional insurance or higher policy limits. For these purposes, the term “construction cost” means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by insurers authorized to do business in this state with a minimum A.M. Best’s rating of A. Before providing building code inspection services within a local building official’s jurisdiction, a private provider must provide to the local building official a certificate of insurance evidencing that the coverages required under this subsection are in force.

(18) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a private provider’s performance of building code inspection services shall be conducted by the applicable professional board.

(19) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. However, the same private provider may not be audited more than four times in a month unless the local building official determines a condition of a building constitutes an immediate threat to public safety and welfare. Work on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (9) and, subsequent to such inspection and approval, the work shall not be delayed for completion of an inspection audit by the local building code enforcement agency.

(20) The local government, the local building official, and their building code enforcement personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

(21) Notwithstanding any other law, a county, a municipality, a school district, or an independent special district may use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure that is owned by the county, municipality, school district, or independent special district.

History.—s. 17, ch. 2002-293; s. 106, ch. 2005-2; s. 11, ch. 2005-147; s. 1, ch. 2005-216; s. 6, ch. 2006-65; s. 6, ch. 2007-187; s. 141, ch. 2008-4; s. 77, ch. 2012-30; s. 7, ch. 2017-149; s. 12, ch. 2019-86; s. 14, ch. 2019-165; s. 132, ch. 2020-2; s. 20, ch. 2020-27; s. 4, ch. 2021-201.

AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 2.

ITEM: Consideration and Approval of funding for the Design-Build Project BHI-228- 92nd Street Dog Park Extension. Enclosed is a copy of Waypoint Proposal.

DESCRIPTION:

In the October 2022 Council Meeting, the Town Council gave approval for the Town Manager to enter into negotiation with Waypoint Contracting, Inc. for the Design-Build Project BHI-228- 92nd Street Dog Park Extension. Additional direction was given by the Council to modify the site plan that was submitted by Waypoint Contracting, Inc. to look more like the site plan that was submitted by Florida International University (FIU).

Waypoint Contracting, Inc. met with Town staff onsite at the 92nd Street Dog Park to discuss the creation of a new site plan to merge structures and concepts suggested by Waypoint Contracting, Inc. and utilize many of the design elements suggested by FIU. Additional items such as painting the entire picket fence around the park and matching the exercise equipment with the landscape structure equipment were included in the original bid at no additional cost. The highlight of the design includes adding a pavilion in each dog park section (small dogs, large dogs).

Waypoint Contracting, Inc. provided the lowest-priced proposal to renovate the 92nd Street Dog Park and create two (2) separate areas for small dogs and large dogs. They were able to adjust their design at the direction of the Town Council to closely duplicate the FIU concept design. We are recommending the approval of the proposal from Waypoint Contracting, Inc. in the amount of Six Hundred Sixty-Nine Thousand Eight Hundred Sixty-Eight Dollars (\$669,868).

Staff recommends approval of the proposal submitted by Waypoint Contracting, Inc. in the amount of six hundred sixty-nine thousand eight hundred sixty-eight dollars (\$669,868) for the Design-Build Project BHI-228- 92nd Street Dog Park Extension.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk

ATTACHMENTS

1.	92nd St. Dog Park Waypoint Proposal
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WAYPOINT

— Contracting, Inc. —



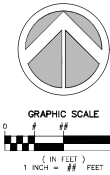
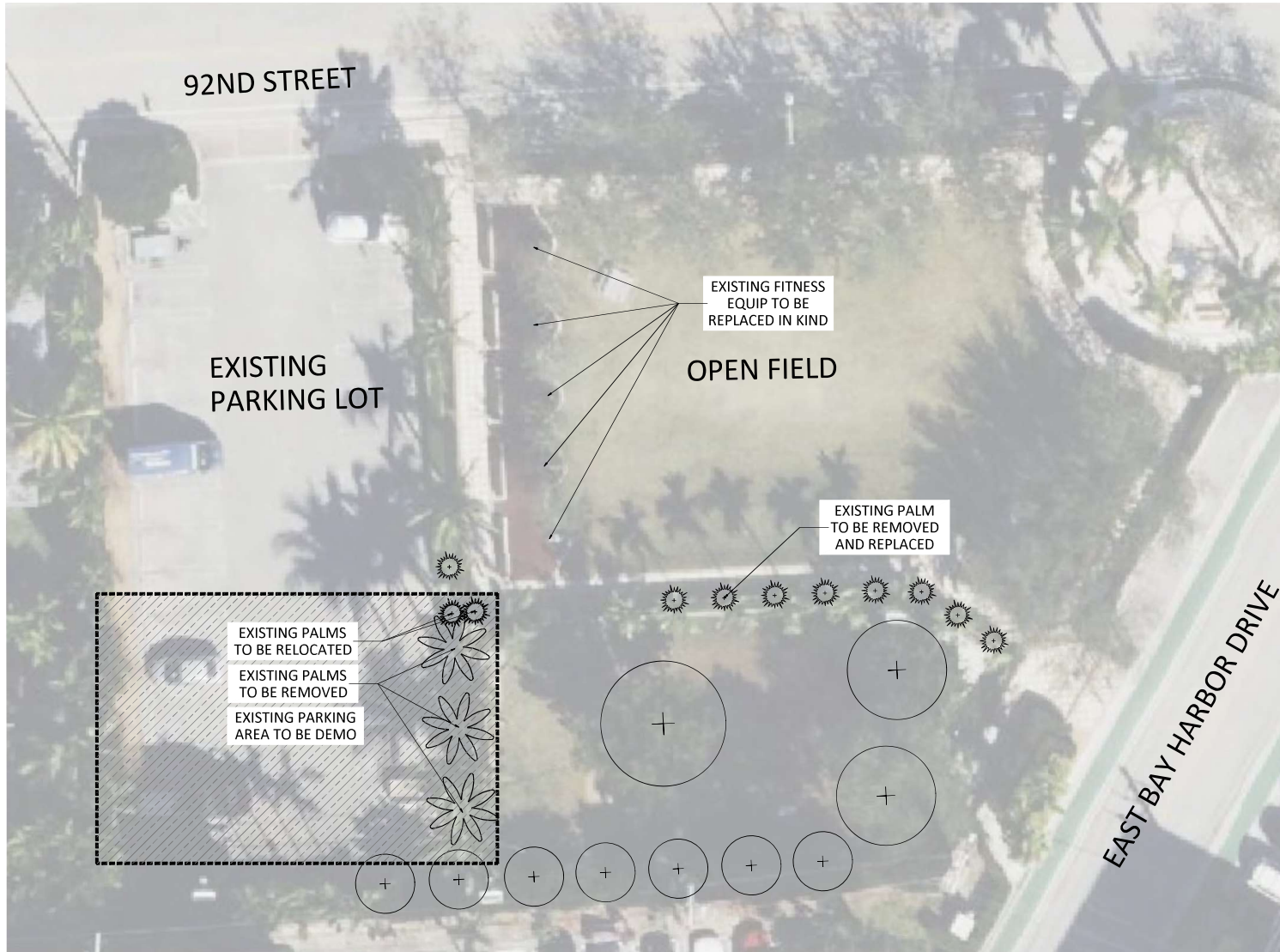
BHI - 228

92ND DOG PARK EXTENSION DB- NEGOTIATION PACKAGE

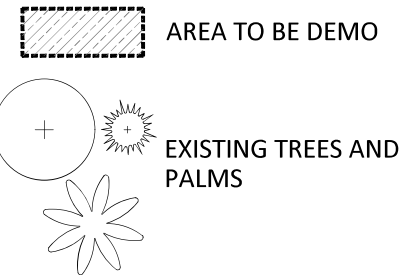
CONCEPTUAL DRAWINGS



WAYPOINT CONTRACTING, INC.



DEMO LEGEND:



DEMO PLAN

Coordinate System:

Project/Title No.:
22-P0286

Map/Sheet/Sec:

Date Drawn:
1/3/23



South Florida Office: 5747 N. Andrews Way
Ft. Lauderdale, Florida 33309-2364
954-436-7000 Fax: 954-436-8694
www.millerlegg.com

TOWN OF BAY HARBOR ISLANDS 92ND DOG PARK EXTENSION

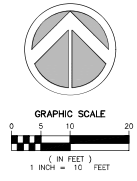
DEMO PLAN

FOR: TOWN OF BAY HARBOR ISLAND

FIG CON-0



CONCEPT PLAN



PLANT SCHEDULE						
TREES	CODE	BOTANICAL / COMMON NAME	CONT.	CAL	SIZE	
	LT	Large Tree	Field Grown	4" DBH	14' HT	
	SP	Small Palm	Field Grown	6 G.W.	8' HT	
	ST	Small Tree	Field Grown	2" DBH	10' HT	
SHRUB AREAS	CODE	BOTANICAL / COMMON NAME	CONT.	HT.	SPACING	SPACING
	HED	Screening Hedge	3 GAL	6' HT	24" OC	24" o.c.
	SHG	Shrub/Groundcover	3 GAL	24" HT	24" OC	24" o.c.

Coordinate System:
Project/Title No.:
22-P0286
Twp/Rng/Sec:
Date Drawn:
1/3/23


South Florida Office: 5747 N. Andrews Way
Ft. Lauderdale, Florida 33309-2064
954-436-7000 Fax: 954-436-8694
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TOWN OF BAY HARBOR ISLANDS 92ND DOG PARK EXTENSION
CONCEPT
FOR: TOWN OF BAY HARBOR ISLAND

PROJECT APPROACH



WAYPOINT CONTRACTING, INC.

D. PROJECT APPROACH



PROJECT DESCRIPTION

The scope covered in this technical proposal is for a design-build contract. Waypoint Contracting Inc shall provide services to prepare a complete set of construction documents consisting of design drawings, design analysis, landscaping plans, civil plans, and technical specifications for the extension of the existing dog park facility. The new extension is to include a new small dog area and a new large dog area at the facility located at 92nd Street & E Bay Harbor Drive, Bay Harbor FL 33154.

DESIGN REQUIREMENTS

The work covered by this contract consists of, but is not limited to, the furnishing of all general conditions, supervision, labor, materials, equipment, services, tools, transportation, and all miscellaneous requirements needed to provide complete design and engineering plans. All operations are in conjunction with the effort to accomplish the design requirements.

All work shall be done in conformance with the standard for the town of Bay Harbor Islands and applicable codes set by the Environmental Protection Specification, Miami-Dade Department of Environmental Management (DERM), and Occupational Safety and Health Administration (OSHA).

Waypoint contracting along with its design and subcontracting team shall provide all the necessary drawings to include architectural plans, structural plans, landscape plans, and civil plans for the permitting and construction of this project. The design and engineering shall also be included for any of the alternate items if selected by owner. Waypoint Contracting Inc. shall provide all geotechnical exploration testing, construction field testing, site and utilities surveys and ties, and all final grading plans as required for the dog park extension.

SCOPE OF WORK

- The area designated for construction shall be cleared, leveled, and graded for the construction of a small dog park, with an area of approximately +-4,800 square feet, and a large dog park with an area of approximately +-4,100 square feet.
- In the existing parking lot, a portion from the east area shall be demolished and graded for the extension of the proposed development.
- The area designated for sidewalks and the pavilion shelters shall be prepared and compacted to support the load from the shelters and structural elements.
- The existing exercise equipment at the people side park shall be demolished and removed and fitted with new equipment to match the existing as manufactured by Greenfield Equipment.
- A new four feet high aluminum picket fence and gates shall be constructed to separate the areas between the small dog and large dog areas.
- The new small and large dog park and the existing people side park shall be fitted with the following amenities:
 - Two (2) 12' x 12' pavilion shelter with tongue and groove wood deck and metal roofing
 - Two (2) pet pedestal fountains with two pet bowls
 - Two (2) spray dog high mist fire hydrant.
 - Five (5) exercise equipment stations
 - Two (2) bike racks units for five bikes each

D. PROJECT APPROACH



- Six (6) site benches
 - Two (2) site picnic tables for people area
 - Two (2) site picnic table under the new shelters
 - Two (2) Dero bike repairs stations
 - Small and large dog interactive places pieces
- The existing park water shall be extended to provide the service for the new pet fountains and pet hydrants. New backflow preventers shall be provided at each unit.
 - The area outside the fenced perimeter of the new dog and existing areas shall be provide with additional landscaping and shrub to enhance the park and to provide shade.
 - The 12' x 12' picnic shelter slab shall be a 4 -1/2" thick concrete floor slab and all concrete for the foundation and walkways shall be 3,500 psi.
 - The new park connecting sidewalks shall be 4" pavers to match the color and pattern to match the park existing sidewalks.
 - The remainder of the area of the existing parking lot shall be striped and reconfigured to accommodate (1) ADA parking space and 13 addition regular spaces.
 - New directional and warning signs shall be provided and installed.
 - The surface of the newly constructed small dog area shall be planted with 70/30 mix and shall be sodded with St. Augustine sod and shall be irrigated.
 - The existing park irrigation system shall be extended to provide the coverage at the new areas.

EXCLUSIONS

- Impact Fees
- Environmental Protection Fees
- Electrical Works
- Roadwork Improvements
- Any modifications to the existing site perimeter fence and gates
- Work at the existing rotunda entry.

PRICE



WAYPOINT CONTRACTING, INC.

92 STREET DOG PARK EXTENSION DESIGN BUILD

SCHEDULE OF VALUES

Proposal Date 1/18/2023

DESIGN AND PRECONSTRUCTION

Description		Costs
Design and engineering Fees (Landscape, architectural, civil, structural)		Included
Geotech Report & Percolation Testings		Included
Pre-Construction Management Services		Included
SUBTOTAL - DESIGN AND PRECONSTRUCTION		\$ 56,700.00

BOND & INSURANCES

Description		Costs
General and Liability Insurances		Included
Payments & Performance Bond		Included
SUBTOTAL - BOND & INSURANCES		\$ 21,980.00

GENERAL CONDITIONS- CONSTRUCTION

Description		Costs
Project Management and Supervision		Included
Field facilities General Conditions		Included
Temporary Facilities & Utilities		Included
Construction Photos		Included
Trash removal and Cleanup		Included
Surveys and Layouts		Included
Locates and Testings		Included
Maintenance of Traffic		Included
SUBTOTAL - GENERAL CONDITIONS		\$ 88,500.00

DIVISION 2: DEMOLITION, EARTHWORKS AND GRADING

Description		Costs
Storm Water Management Protection		Included
Silt Fence		Included
Tree removals		Included
Site demolition , removals and clearings		Included
Shelter pads and pavers base works		Included
Site gradings, and mounds		Included
Earthworks and 70/30 mix sand base		Included
Final Grading		Included
SUBTOTAL - DEMOLITION , EARTHWORKS AND GRADING		\$ 90,645.00

92 STREET DOG PARK EXTENSION DESIGN BUILD

SCHEDULE OF VALUES

DIVISION 3: CONCRETE

Description		Costs
Pavilion concrete footings and slabs		Included
Misc. equipment slabs		Included
Concrete curbs		Included
SUBTOTAL - CONCRETE		\$ 19,580.00

DIVISION 11: EXERCISE EQUIPMENT

Description		Costs
Demo and remove exercise equipment		Included
Replace equipment work out stations (5 pieces)		Included
Safety surface repairs		Included
SUBTOTAL - EXERCISE EQUIPMENT		\$ 62,520.00

DIVISION 12: Site FURNISHINGS

Description		Costs
Waste Receptacles (2 total)		Included
Bike Racks 5/ Units (2 total)		Included
Dero fix a flat bike station (2 total)		Included
Benches with backs 6ft long (6 total)		Included
Regular picnic tables (2 total)		Included
ADA picnic tables (2 Total)		Included
Pet pedestal Water fountains (2 total)		Included
Dog Spray Fire Hydrant (2 total)		Included
Dog Park signages (each location)		Included
Dogi pot Clean up (4 total)		Included
Install all furnishings		Included
SUBTOTAL - EXERCISE EQUIPMENT		\$ 64,870.00

DIVISION 13: SHADE PAVILIONS

Description		Costs
Shade pavilion 12x 12 with T&G decking & metal roof		Included
Roof permit		Included
Install shade shelter pavilions		Included
SUBTOTAL : SHADE PAVILIONS		\$ 37,025.00

DIVISION 32: Site Paving

Description		Costs
Site Pavers walkways- to match existing		Included
Misc. concrete sidewalks		Included
Asphalt restoration		Included
Misc. Striping and parking signages		Included
Site restoration		Included
SUBTOTAL - SITE PAVINGS		\$ 28,485.00

DIVISION 32: SITE FENCE & GAETS

Description		Costs
Aluminum picket Fence		Included
Dog park entry gates		Included
Maintenance site gate 10 ft wide_ (2 prs)		Included
SUBTOTAL -FENCE AND GATES		\$ 28,775.00

**92 STREET DOG PARK EXTENSION
DESIGN BUILD**

SCHEDULE OF VALUES

DIVISION 32: LANDSCAPING AND SOD

<i>Description</i>		<i>Costs</i>
Irrigation works		Included
New Trees		Included
Shrubs		Included
Landscape removal and Trimmings		Included
Sod - St Augustine Palmetto		Included
SUBTOTAL - IRRIGATION AND LANDSCAPE		\$ 37,875.00

DIVISION 33: UTILITIES & CONNECTIONS

<i>Description</i>		<i>Costs</i>
Water Connection extensions		Included
Service to fountain and dog spar fountains (2 each)		Included
Drywell		Included
SUBTOTAL - UTILITIES & CONNECTIONS		\$ 11,500.00

ESTIMATE SUB TOTAL		\$ 548,455.00
General Contractor Fees	18%	\$ 98,721.00
Permit Fees	1.50%	\$ 8,227.00
Design Build Contingency		\$ 14,465.00
GRAND TOTAL		\$ 669,868.00

**92 STREET DOG PARK EXTENSION
DESIGN BUILD**

SCHEDULE OF VALUES

Add Alternates

1. paint and pressure existing picket fence around the park	Add	\$ 28,700.00
2. match the exercise equipment with the landscape structures equipment	Add	\$ 7,045.00

CUT SHEETS



WAYPOINT CONTRACTING, INC.



Size:	22" Dia x 44" tall
Weight:	125 Lbs.
Capacity:	36 Gallons
Material:	Steel
Parts:	1 Aluminum Lid 1 Metal Container 1 Polyethylene Liner 1 Concrete Base
Features	Side Entry Door

Finish Options

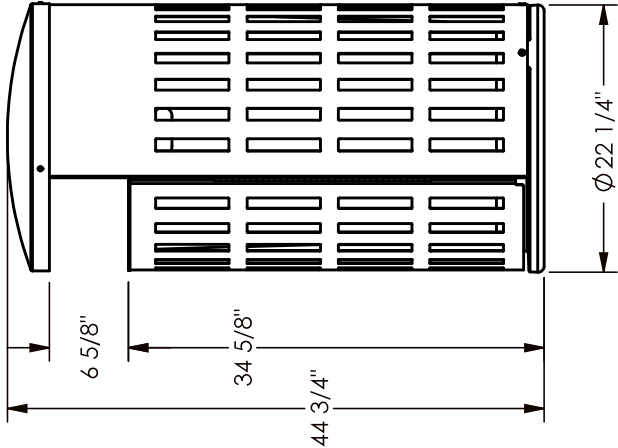
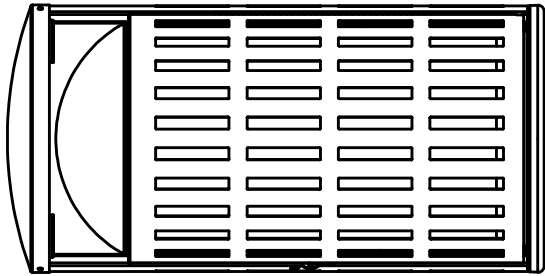
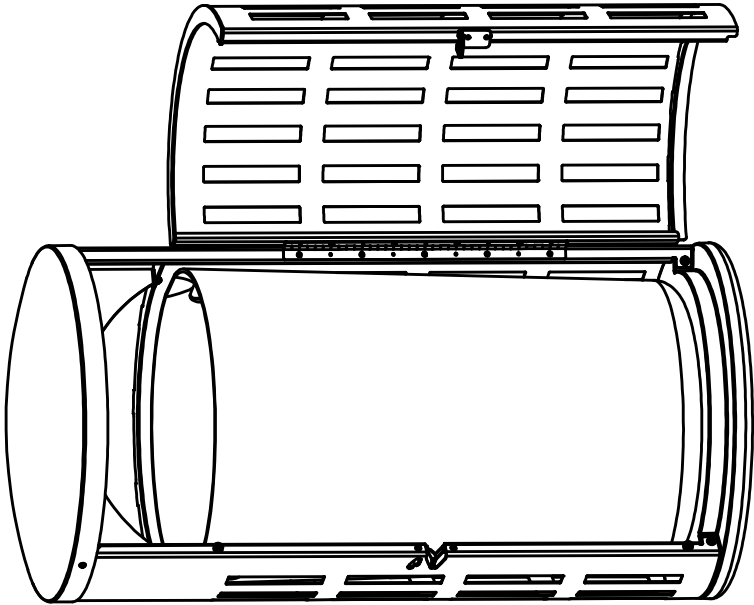
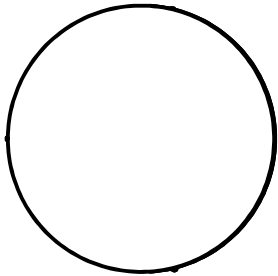
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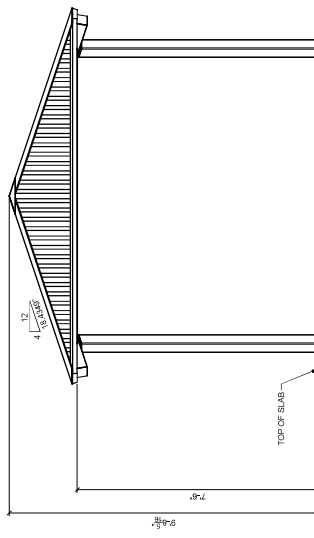
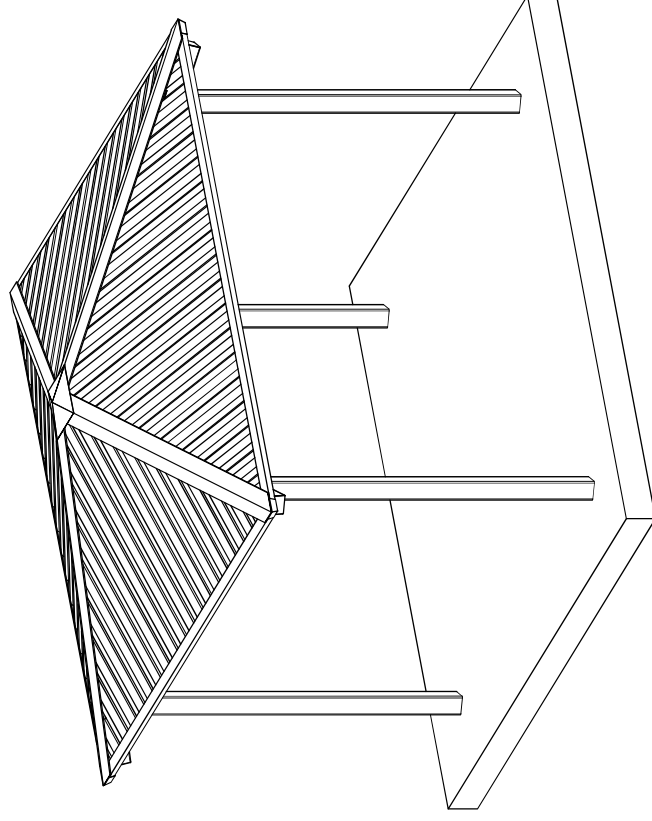
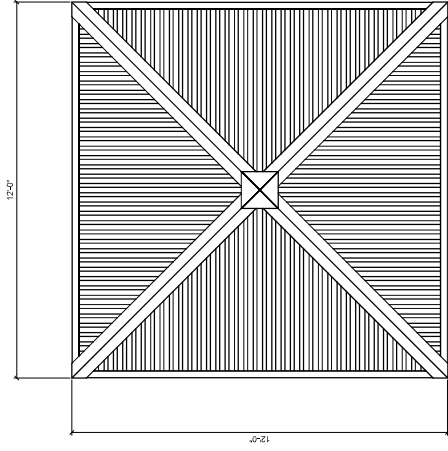
- Powder Coat Colors





ITEM	PART NUM	DESCRIPTION	QTY
1	800993	ASSY SHELL	1
2	800994	ASSY DOOR	1
3	238951	COVER - 16 GA STEEL	1
5	351066	DIVIDER TRASH	1
13	800961	HINGE, 18" SS	1
14	800982	ASSY LOCK TAB	1
15	801001	ASSY LATCH	1
16	400295	RIVET, BLIND, Ø.12 X 3/16, 18-8 SS	9
17	400296	RIVET, BLIND, Ø.156 X .18, 18-8 SS	2
18	400105	NUT, K-LOCK, 10-24, SS	2

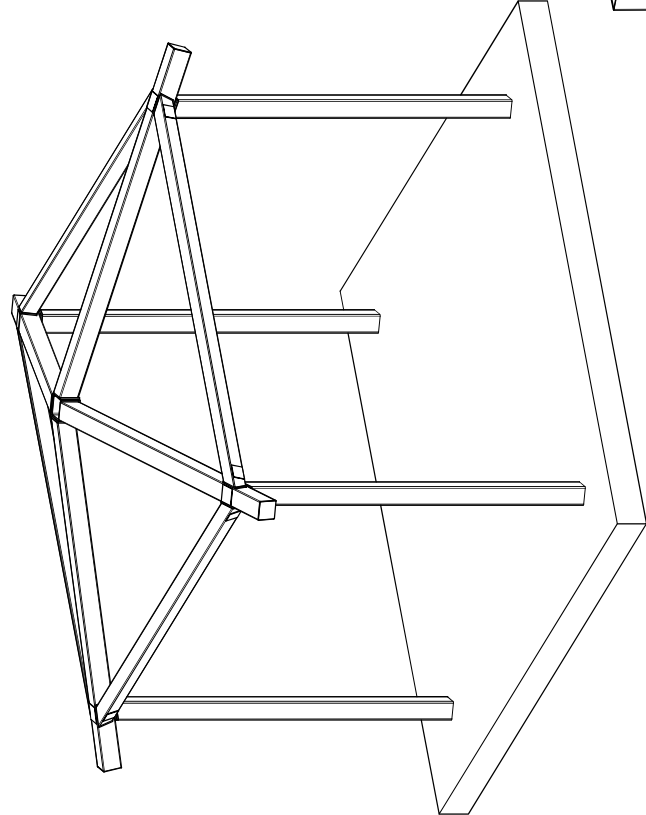




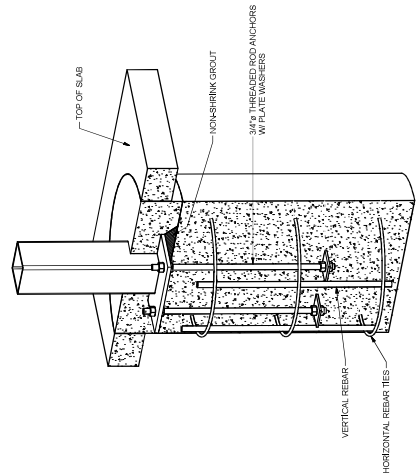
PRELIMINARY DRAWING - NOT FOR CONSTRUCTION

These drawings are preliminary in design and are subject to change pending final engineering. All member sizes, dimensions, quantities, and locations have the potential to be altered. Only use the final engineered drawings when performing the construction of this structure.

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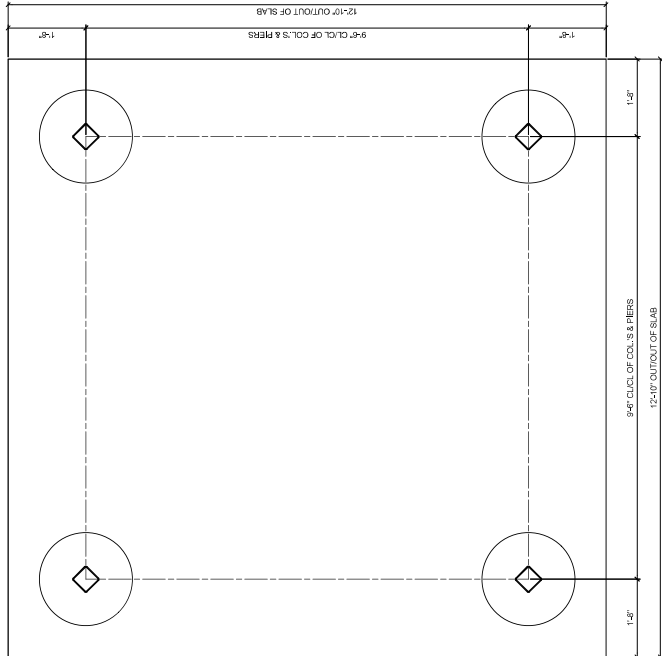


AUXILIARY FRAMING VIEW



COLUMN PIER DETAIL

TYPICAL PIER DIAMETER IS BETWEEN 2'-0" AND 2'-6"
TYPICAL PIER DEPTH IS BETWEEN 3'-0" AND 3'-6"
ACTUAL DESIGN WILL VARY DUE TO BUILDING CODE
REQUIREMENTS AND MAY BE SUBSTANTIALLY LARGER.



FOUNDATION PLAN

TS-SQ12-04

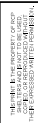
RCP SHELTERS, INC.
2100 SE RAY'S WAY STUART, FL 34994 PO BOX 25 STUART, FL 34995-0025
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FAX 772-288-0207 Email info@rcpsshelters.com
www.rcpsshelters.com



PROJECT NO.	TS-SQ12-04
SHEET NO.	2 OF 3
DATE	4/30/2019
BY	TS
CHKD	TS
REV 1	
REV 2	
REV 3	
REV 4	

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RCP SHELTERS, INC.
2100 SE HAYS WAY STUART, FL 34994 PO BOX 25
STUART, FL 34995-0025

■ SHELTERS ■ PAVILIONS ■ RESTROOMS ■ BANDSTANDS ■ CONCESSIONS ■ KIOSKS ■ DUNGONS ■ FABRIC SHADE

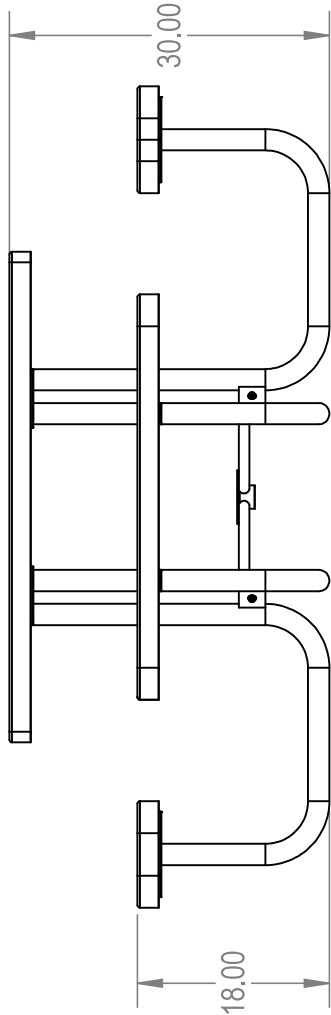
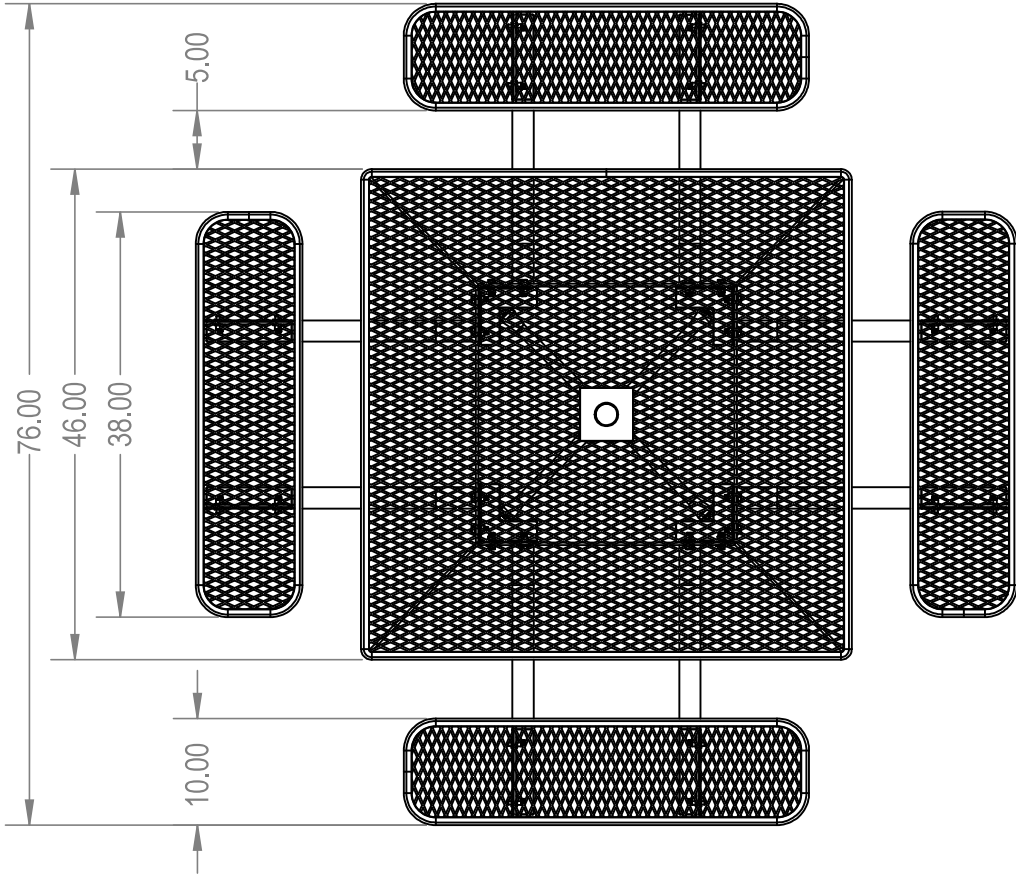
Fax 772-288-0207 Email mfo@rcpselters.com
Phone 800-525-0207 www.rcpselters.com



PROJ. NO.	
DRAWN: JCS	4/30/2019
CHKD:	
REV 1:	
REV 2:	
REV 3:	
REV 4:	
SHOP NO.	TS-SQ12-04
BEC JOB NO.	
SHEET NO.	3 OF 3

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SKU: 766pt110
Variations:
766pt110-1
766pt110-7
766pt110-13
766pt110-19
766pt110-25
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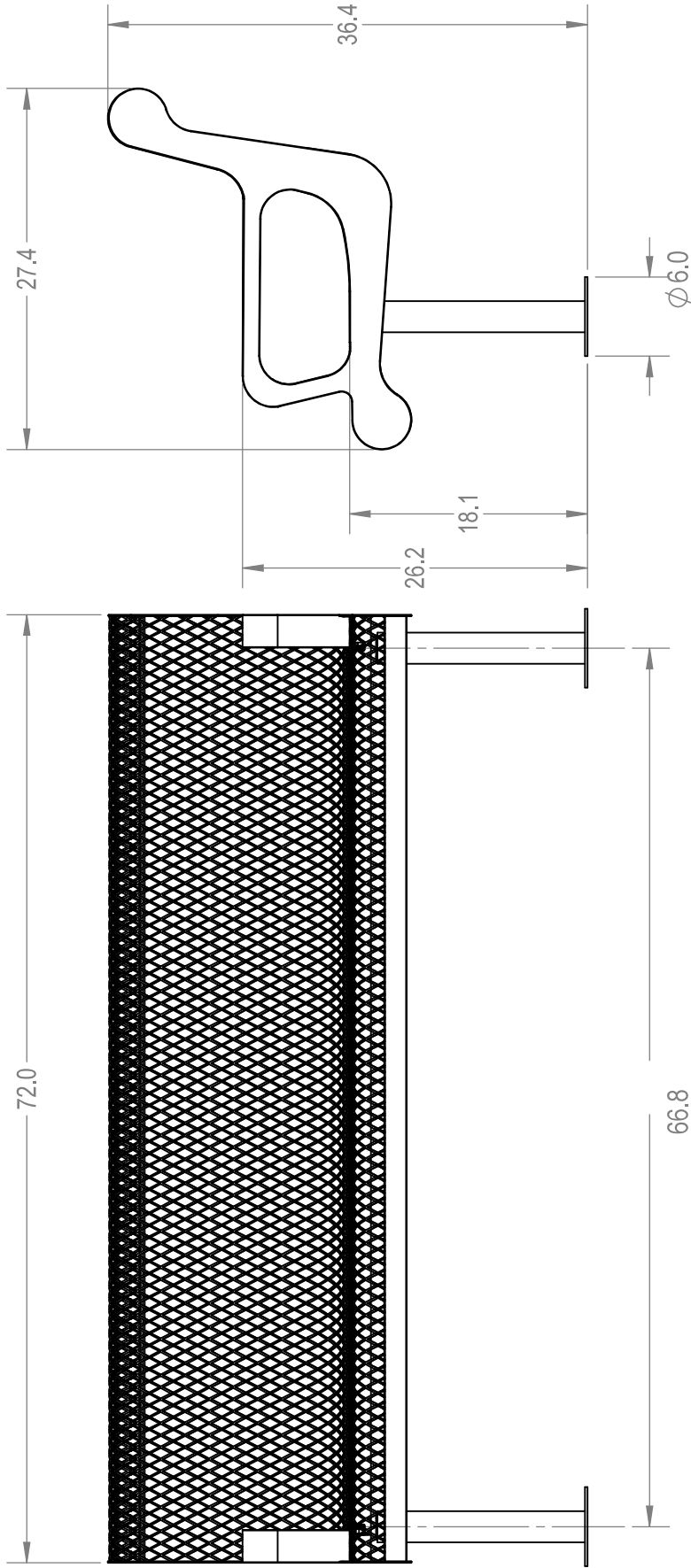


Manufactured For:

PROPRIETARY AND CONFIDENTIAL
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ParkTastic		NAME	DATE
DRAWN	GM	GM	1/3/2016
SALES APPR.			
CLIENT APPR.			
MFG APPR.			
Q.A.			
Design By -		CADWorksPro Chicago, IL	
TITLE:		46in Square Table - Portable	
Expanded Metal Version		REV	
SIZE	DWG. NO.	766pt110	
A			
WEIGHT:		SHEET 2 OF 3	

SKU: 766be130
Variations:
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766be130-132



ParkTastic		NAME	DATE
DRAWN	GM	GM	2/23/2016
SALES APPR.			
CLIENT APPR.			
MFG APPR.			
Q.A.			
Design By -		CADWorksPro Chicago, IL	
www.cadworkspro.com		SIZE	DWG. NO.
		A	766be130
		REV	REV
		WEIGHT:	SHEET 3 OF 4

TITLE:

6' Contoured Bench Surface Mount

Expanded Metal Version

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Manufactured For:

Two Station Pet Fountain

Model Number: M-PM74 Series

SPECS

DOWNLOADS



M-PM74 SERIES

Two Station Pet Fountain

+ Add to Favorites

This two station outdoor pet fountain is push button activated and is non-squirt bubbler will ensure pets get the hydration they need without unwanted surprises.

The entire unit is constructed of durable, vandal and corrosion resistant, stainless steel. Finishes available include satin finish stainless steel and green, red, or blue powder-coat. Custom color finishes are available upon request.

A year-round freeze resistant option is also available.

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov - Learn More about this warning.

SPECS

 Shows specifications for standard configuration. Configuration options may change specifications.

DELUXE PUBLIC WORK STAND



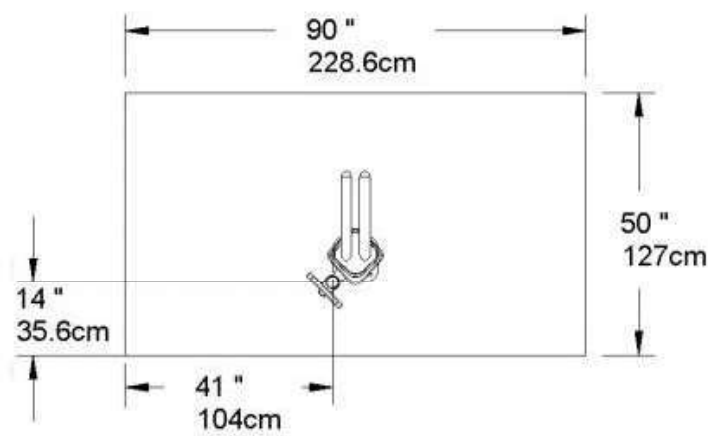
The Deluxe Public Work Stand puts the tools where the people need them — on the trails, near the streets, and in the bike rooms. Nine tools on retractable braided stainless steel cables brings durable, easy to use tools to the hands of cyclists. With a high quality vinyl decal, your branding stands out and reflects your commitment to the benefits of cycling.

Product Specifications

- Tools securely attach by retractable braided stainless steel cables
- Large surface area for custom branding/signage.
- Designed to directly interface with all three High Security manual pumps and Wheel Chock attachments (sold separately)
- Long hose provides wide range of motion without touching the ground
- Impact and UV resistant front plate won't show wear and tear from pedal strikes
- ADA-compliant design

Deluxe Public Work Stand

Recommended Setbacks



- Minimum of 41" from side of Deluxe Public Work Stand to wall or other objects
- Minimum of 14" from back of Deluxe Public Work Stand to wall
- Minimum of 60" from an adjoining street or cycle path

Tools Included



- Philips & standard screwdrivers
- Steel core tire levers (2)
- Headset/pedal wrench
- 8/10mm cone wrench
- 9/11mm cone wrench
- Torx T-25
- Hex key set



Thick-walled DOM tubing;
TIG welded to laser-cut steel;
stainless steel aircraft cable



Powder Coat
Galvanized
Stainless Steel



Installation hardware
included



2 year
warranty



Made in
the USA

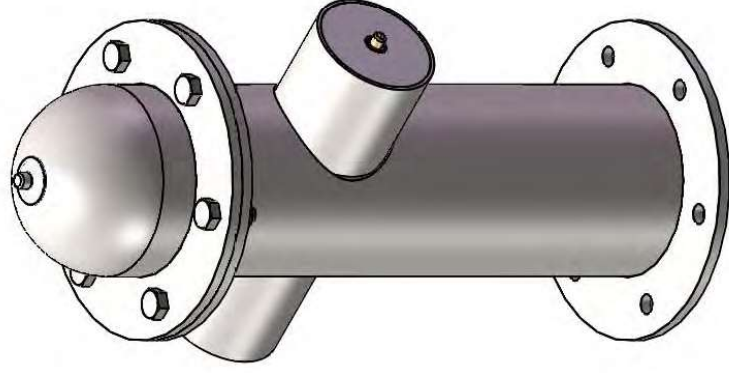


Standard Colors

Dimensions							
Model #	Description	Type of Mount	Weight	Length	Width	Height	Space Requirement
26347C	Powder Coat	Flange	84 lbs.	10"	10"	55"	See Back
26347G	Galvanized	Flange	84 lbs.	10"	10"	55"	See Back
26347S	Stainless Steel	Flange	84 lbs.	10"	10"	55"	See Back



A **PLAY**CORE company



Model # BARK-466



1675 Locust Street
Red Bud, IL 62278
Phone: 618-282-8200
Fax: 618-282-8202

WARRANTY & TERMS

WARRANTY: 5 Year Limited Warranty on Thermoplastic/Canine coated elements.

Bark Park guarantees all items for one full year to be free of defects in workmanship or materials when installed and maintained properly. We agree to repair or replace, any items determined to be defective. Items specifically not covered by this warranty include vandalism, man made or natural disasters, lack of maintenance, normal weathering or wear and tear due to public abuse.

ORDER INFORMATION: When ordering please include a brief description of all items. Be sure to include colors for Canine coated and powder coated surfaces. To assist Bark Park in entering orders properly, please fax or mail orders on your standard purchase order form. Quotes are good for 30 days.

SPECIFICATIONS: Due to Bark Park's continuous product improvement, we reserve the right to change specifications when necessary without notice.

PRICING: Bark Park strives to keep pricing as low as possible. However, should we encounter increases in our costs that are simply too large to absorb, we reserve the right to increase prices without notice.

TERMS: Approved accounts net 30 days. Initial order requires payment in full before shipment. A finance charge of 1-1/2% per month will be applied to all delinquent accounts. We accept VISA, MASTERCARD and AMERICAN EXPRESS.

FREIGHT CHARGES: Terms of sale are F.O.B. factory. Bark Park will prepay and add the freight to the invoice if requested to do so. All weights are approximate.

Damages or loss in transit is the responsibility of the carrier, whether visible or concealed. It is the responsibility of the recipient to assure that the order is received complete. Before signing the delivery receipt, inspect the shipment immediately and completely. Note any damages or shortages on the bill of lading. Damage reports must be filed within 5 days. Bark Park is NOT responsible for damages or loss in transit. Title to all goods passes to the customer at the time of shipment. Bark Park will assist in filing claims if the freight arrangements were made by Bark Park at your request.

CANCELLATIONS AND RETURNS: Cancellations are only accepted with approval of Bark Park. No merchandise shall be returned without a Return Goods Authorization number which is issued by customer service. Any authorized merchandise must be carefully packed and received in saleable condition. A restocking charge of up to 25% will be applied to all returned goods when the error is not the fault of Bark Park. All returns must be shipped freight prepaid.



A PLAYCORE Company

SAFETY WARNINGS & EQUIPMENT INSPECTION

- Owners and installers please note these safety warnings and make use of this checklist on a regular basis.
- Follow installation instructions when erecting equipment.
- Ground surfaces around equipment should be restored as needed. Concrete footings should never be exposed. Surface depth should comply with ASTM and CPSC specifications.
- Check for and repair damage caused by wear or vandalism, a major factor in injury causing situations.
- All protruding bolts should be covered or cut off and finished smooth. Sharp edges on pipes should be capped or removed. Check for bent, broken, or severely worn pipe, and replace.
- All equipment should be free of rust and repainted whenever necessary to deter rusting.
- We provide our customers with layout sheets and installation instructions. Please keep on file the specifications sheet that contains the listing of every part used.
- Never add components not intended for use with this product.
- Regular maintenance is necessary in this and all park and recreational equipment to insure the safety of the user.
- Note: Proper maintenance of equipment requires regular tightening of all bolts, nuts, and setscrews.
- Note: Regular checking of all parts, castings, etc. should be made. If a part is broken or worn, it should be replaced immediately.
- Check to be sure all fittings are tight and that bars and pipes do not move.
- Replace all worn S-hooks. S-hooks must be completely closed. Failure to close S-hooks can result in serious injury to the user. NEVER reuse S-hooks.
- Test for free movement of swing hanger and other moving attached parts.
- Check for worn chains and replace them.
- A soft resilient surface should be placed under all swings extending at least twice the height of the top rail both front and back.

BARK PARK PRODUCT SPECIFICATIONS

BARK-466 MISTING FIRE HYDRANT

Construction: Fire Hydrant is constructed using 6"dia. x 11ga. and 4"dia. x 11ga. tubing and 3/8" plates all electrically MIG welded together.

Misting Components: Internal misting components are fully assembled and plumbed for easy installation. Mist Pattern is 2' dia. cone shape x approx. 4' outwards. Mist Duration is 10 seconds. Water Supply must be 1/2" NPT.

Coating: Oven fused functionalized polyethylene copolymer-based thermoplastic. Fluidized bed coating application with superior mechanical performance, impact resistance and UV-stability.

Dimensions: 25" Tall and Max Width of 13 1/2" Wide.

Note: A concrete slab, minimum of 8' x 8', is recommended to reduce mud and erosion.

IMPORTANT: Spraying Fire Hydrant is not frost resistant. Draining of system is necessary for colder temperatures to prevent damage to internal components.

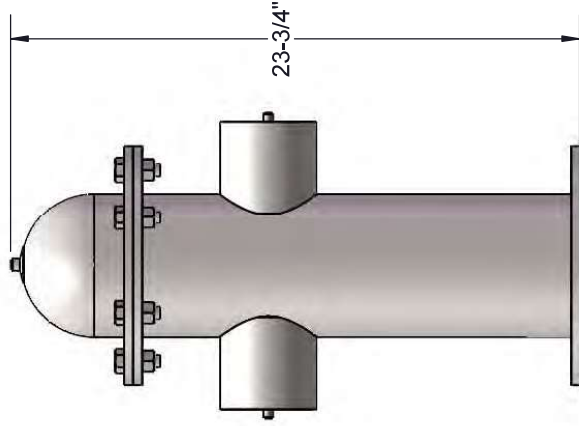
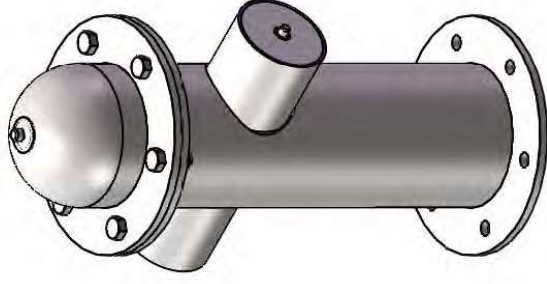
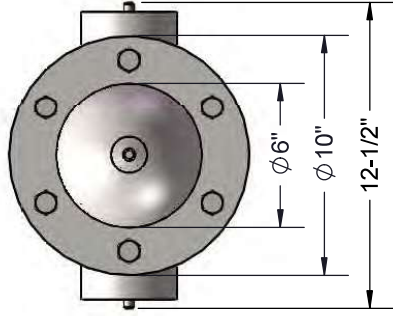


Bark Park

800-45-ULTRA

www.barkparkproducts.com

OVERALL DIMENSIONS

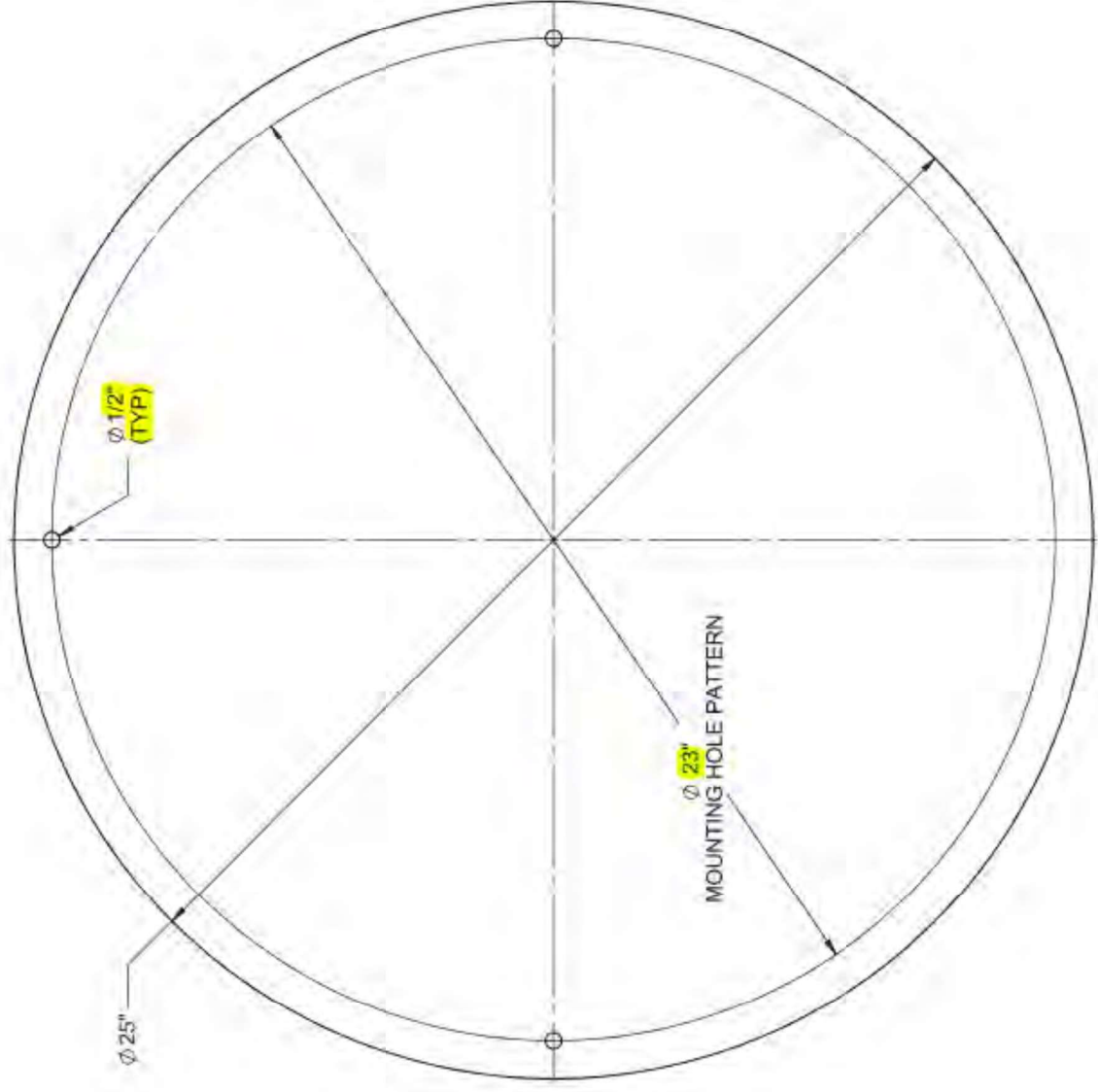


Recommended surface mount hardware:
 3/8" x 3 1/2" Concrete Expansion Anchor
 Bolts (NOT INCLUDED)



Custom Dog Park Rules Sign

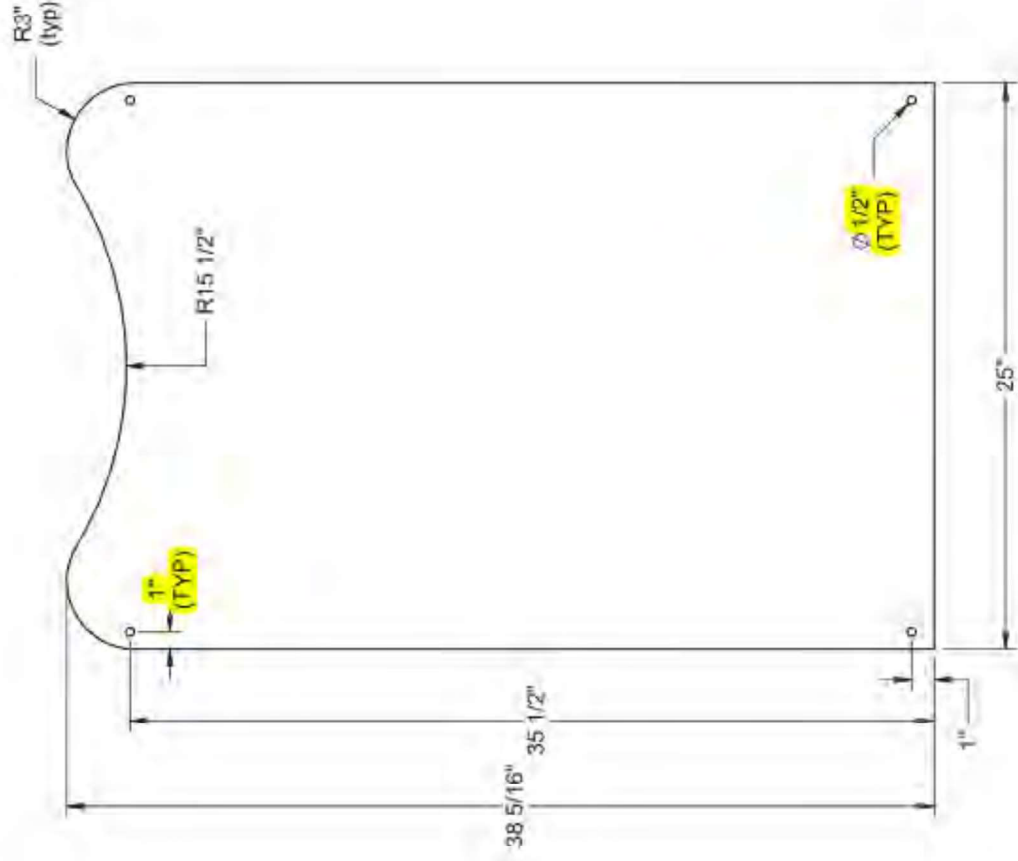
SKU: 622dp400





Custom Dog Park Rules Sign

SKU: 622dp400



- NOTE:
1. PP - OPTION 4
 2. MOUNTING HOLE IN APPROX. LOCATION

800.364.7681



www.DOGIPOT.com

ALUMINUM DOGIPOT® HEADER PAK PET STATION (ITEM #1003HPA-L) SPECIFICATION, INSTALLATION AND OPERATION SHEET



YOUR ALUMINUM DOGIPOT® HEADER PAK PET STATION INCLUDES:

- Aluminum **DOGIPOT**® Pet Sign, with mounting hardware (two (2) 2¼" x ¼" tap bolts, washers and locknuts)
- Aluminum **DOGIPOT**® HEADER PAK Bag Dispenser (ITEM #1002HP-4), with mounting hardware (two (2) 2½" x ¼" bolts, washers and locknuts)
- Two (2) keys for Dispenser locking front access panel
- Four (4) HEADER PAKS OF **DOGIPOT**® Smart Litter Pick Up Bags™ (100 count per pak), installed in **DOGIPOT**® HEADER PAK JUNIOR Bag Dispenser
- 10 Gallon Aluminum Trash Receptacle (ITEM #1206A-L) with attached hinged lid and trash liner bag retainer bands, with mounting hardware (one (1) 2½" x ¼" and (1) 2¾" x ¼" bolts, washers and locknuts)
- One (1) box **DOGIPOT**® Smart Liner Trash Bags™ (ITEM #1404) (50 Count)

SEPARATE SHIPPING BOX

- 2" x 2" x 4' - 8' Galvanized Steel Telescopic Mounting Post, with installation hardware (two (2) carriage bolts (2½" x 5/16"), washers and locknuts)

PLEASE CHECK THE ABOVE INVENTORY AND CALL YOUR DISTRIBUTOR IF ANY PARTS ARE MISSING.

INSTALLATION AND OPERATION INSTRUCTIONS

1. Select a good visible spot in your community or park where you want to install the Aluminum **DOGIPOT**® HEADER PAK Pet Station.

2. Prior to installation, remove the 1¾" x 1¾" x 4' portion of the mounting post from the 2" x 2" x 4' portion of the mounting post before cementing. **Insert the larger portion of the mounting post (2" x 2" x 4') approximately 14"**

into an 18" deep by 8" diameter hole filled with a 40 lb. bag of "ready to use" concrete mix. To stabilize the post while cementing, place a rod, bolt or other device through the two bottom holes, prior to inserting into the ground and cementing. Level the post in a straight vertical position and let concrete dry for at least 12 hours.

3. After the concrete is dry, insert the smaller portion of the post (1¾" x 1¾" x 4') into the larger cemented portion of the post (2" x 2" x 4') until the first 4 holes are lined up between the two posts. Use two (2) carriage bolts, washers and locknuts to fix the telescopic post in position, the upper bolt in the top overlapping hole, pointing from right to left and the lower bolt in the bottom overlapping hole, pointing from front to back. The total height above ground with both post parts should now be approximately 6'6".

4. Start by installing the **DOGIPOT**® Pet Sign on top of the 1¾" post, with the upper hole matching the most upper hole in the square post using the enclosed 2¼" bolts, washers and locknuts. Continue installing the Aluminum **DOGIPOT**® HEADER PAK JUNIOR Bag Dispenser according to the mounting instruction enclosed with the Dispenser, ensuring that the upper edge of the Dispenser is approximately **1" below** the lower edge of the **DOGIPOT**® Pet Sign.

5. Install the Aluminum **DOGIPOT**® Trash Receptacle through the pre-drilled top oval holes in the back wall of the receptacle and through the square post with the remaining bolts, washers and locknuts, using the 2¾" bolt on top and the 2½" bolt below. **The upper edge of the trash receptacle must be approximately 12½" below the lower end of your Aluminum DOGIPOT® HEADER PAK JUNIOR Bag Dispenser so that the lid may completely open.** The upper back wall of the trash receptacle is supposed to touch the head of the lower post carriage bolt, which creates some space between the post and the receptacle, allowing the receptacle lid to open from left to right, without touching the post.

6. Insert one of the enclosed **DOGIPOT**® Smart Liner Trash Bags™ into the trash receptacle, folding it over the interior retainer bands. Proper installation and general maintenance will help prevent and minimize corrosion and expand the life of the aluminum trash receptacle and dispenser unit. **DOGIPOT**® offers Product Maintenance Paint to help cover any paint chips which may occur in the powder coating during the life of the product.

7. ENJOY WATCHING PET OWNERS PICK UP AFTER THEIR DOGS!

800.364.7681



www.DOGIPOT.com

ALUMINUM DOGIPOT® HEADER PAK PET STATION (ITEM #1003HPA-L)

SPECIFICATION, INSTALLATION AND OPERATION SHEET

(A) DOGIPOT® PET SIGN (ITEM #1203 / 1204)

- H: 18" x W: 11.5"
- 14 gauge reflective aluminum
- Weight: 1.35 lbs.
- Forest green on white

(B) ALUMINUM DOGIPOT® HEADER PAK JUNIOR BAG DISPENSER (ITEM #1002HP-4)

- H: 15'5" x W: 9.4" x D: 3.25"
- 12 gauge powder coated forest green aluminum
- Weight: 7 lbs.
- 400 bag capacity
- One bag dispenser slot
- Front locking access panel
- Clearly posted instructions

(C) ALUMINUM TRASH RECEPTACLE WITH LID (ITEM #1206A-L)

- H: 23" x 11.5" diameter
- 16 gauge powder coated forest green aluminum
- Weight: 14.6 lbs.
- 10 gallon capacity with interior trash liner bag retainer bands
- Attached aluminum hinged lid
- One (1) box 50 count **DOGIPOT®** Smart Liner Trash Bags™ (ITEM #1404) included (5 lbs.)

(D) TELESCOPIC GALVANIZED STEEL MOUNTING POST (ITEM #1301-P)

- 2" x 2" x 8'
- 11 gauge galvanized steel
- Weight: 15 lbs.

TOTAL HEIGHT FROM ABOVE GROUND:

- 6'.6"

SPACE BETWEEN DISPENSER AND SIGN:

- 1.0"

SPACE BETWEEN RECEPTACLE AND DISPENSER:

- 12.5"

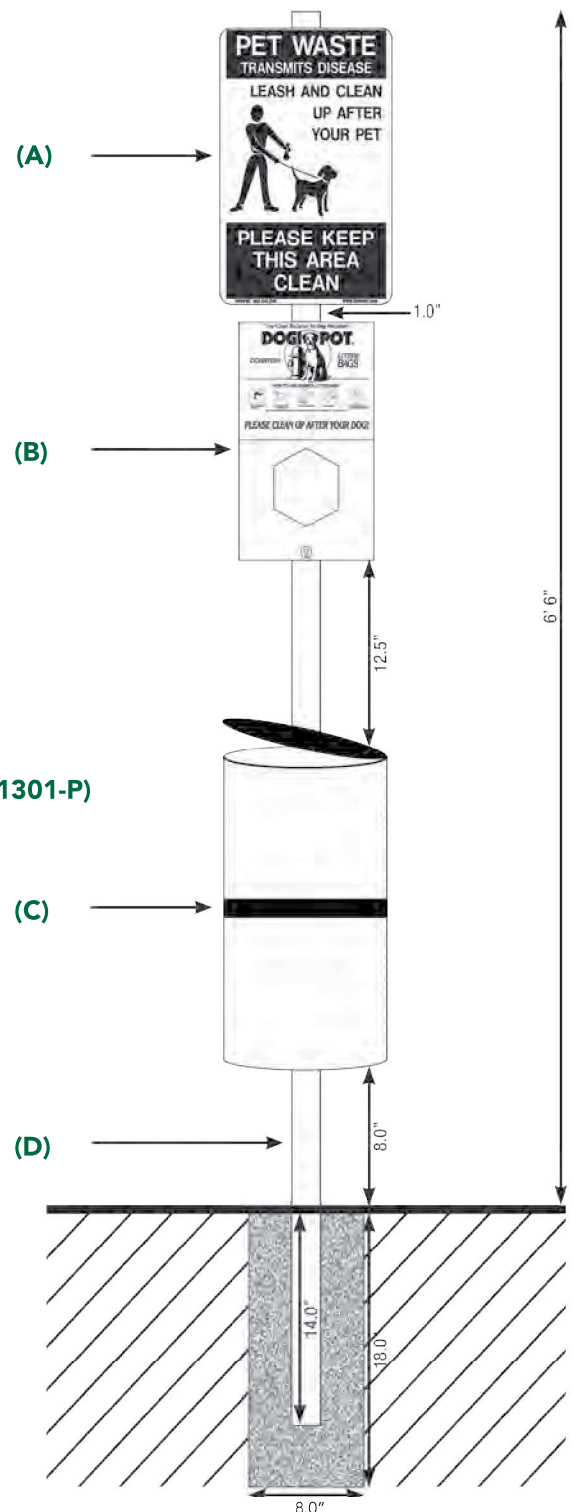
SPACE BETWEEN GROUND AND RECEPTACLE:

- 8.0"

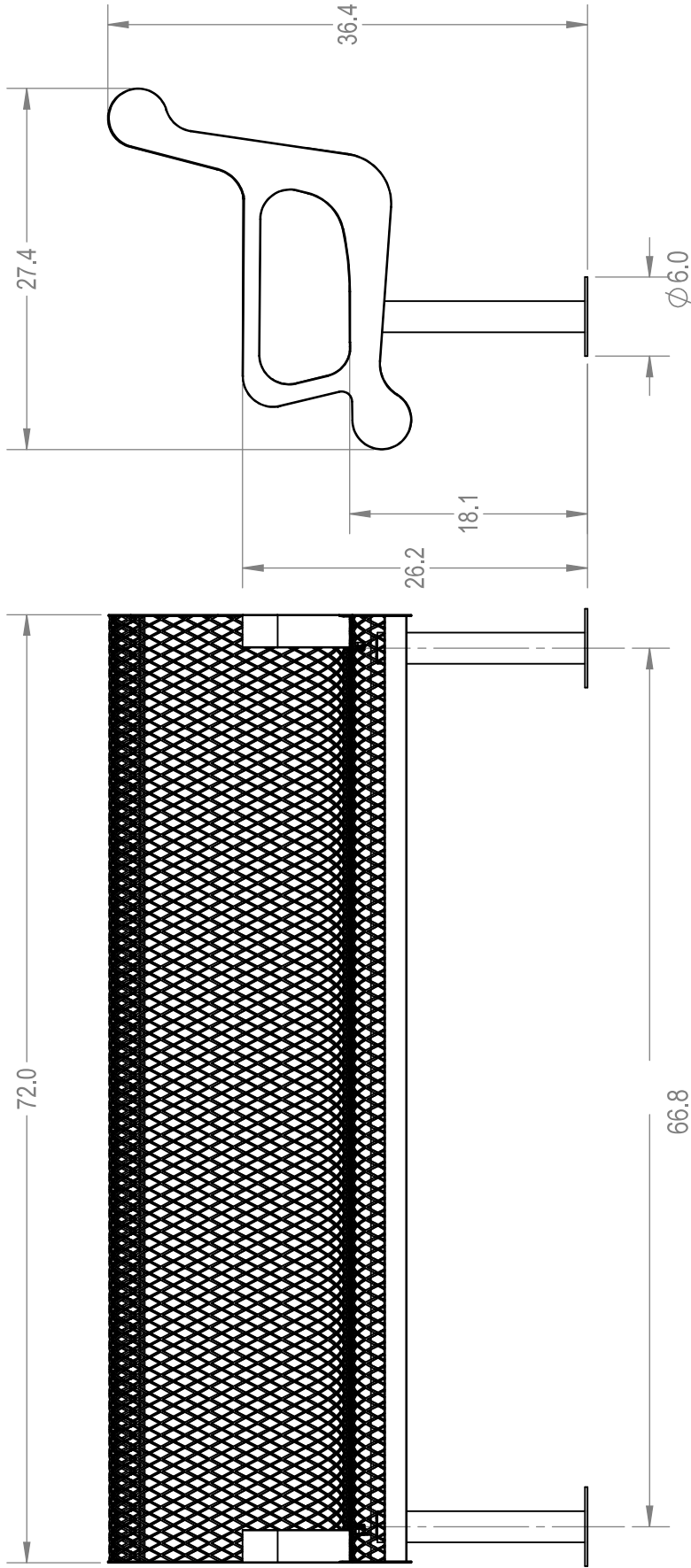
HOLE:

- D: 18.0" x W: 8.0"
- Fill with 40 lbs. "ready to use" cement

TOTAL SHIP WEIGHT: 45 LBS.
(MOUNTING HARDWARE INCLUDED)



SKU: 766be130
Variations:
766be130-6
766be130-12
766be130-18
766be130-24
766be130-30
766be130-36
766be130-42
766be130-48
766be130-54
766be130-60
766be130-66
766be130-72
766be130-78
766be130-84
766be130-90
766be130-96
766be130-102
766be130-108
766be130-114
766be130-120
766be130-126
766be130-132



ParkTastic		NAME	DATE
DRAWN	GM	GM	2/23/2016
SALES APPR.			
CLIENT APPR.			
MFG APPR.			
Q.A.			
Design By -		CADWorksPro Chicago, IL	
www.cadworkspro.com		www.cadworkspro.com	

TITLE:		6' Contoured Bench Surface Mount	
Expanded Metal Version		REV	
SIZE	DWG. NO.	A 766be130	
WEIGHT:		SHEET 3 OF 4	

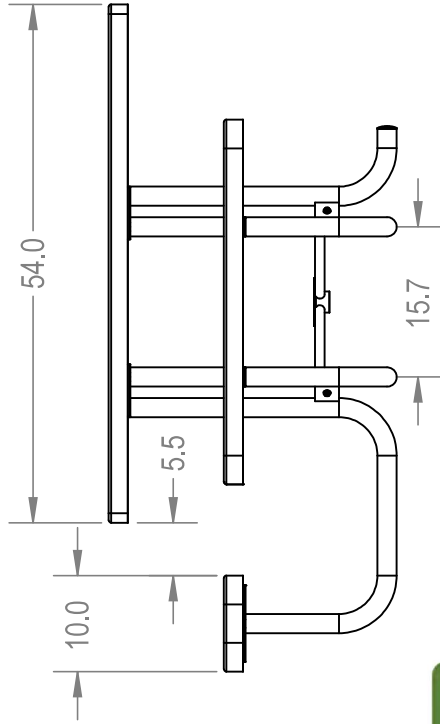
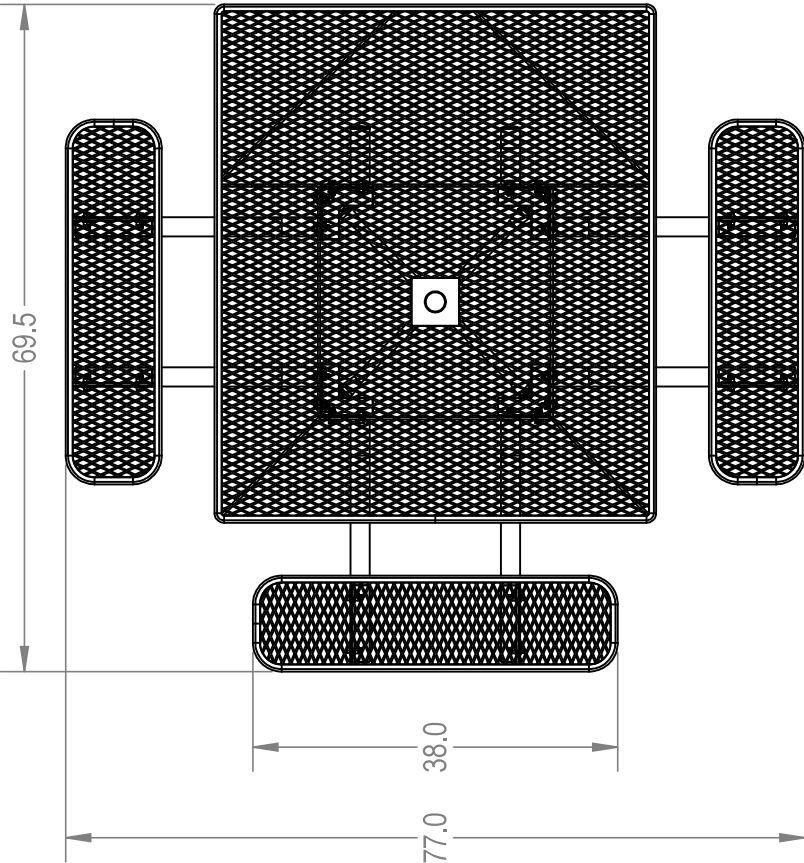
PROPRIETARY AND CONFIDENTIAL
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5301 North Federal Highway, Suite 140,
Boca Raton, FL, IS PROHIBITED.



Manufactured For:



SKU: 766pt110
Variations:
766pt110-2
766pt110-3
766pt110-14
766pt110-20
766pt110-26
766pt110-32
766pt110-38
766pt110-44
766pt110-50
766pt110-56
766pt110-62
766pt110-68
766pt110-74
766pt110-80
766pt110-86
766pt110-92
766pt110-98
766pt110-104
766pt110-110
766pt110-116
766pt110-122
766pt110-128



Manufactured For:

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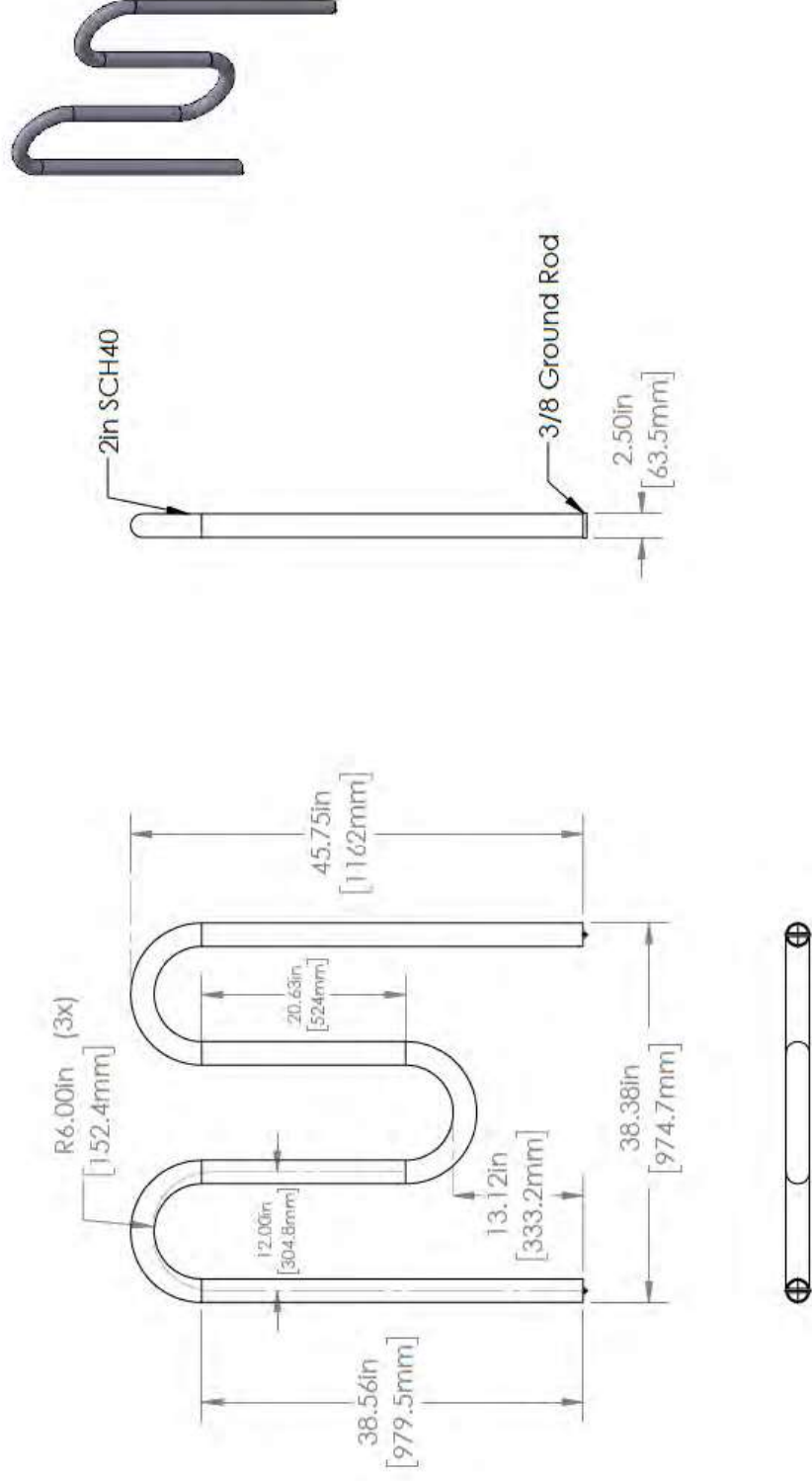
ParkTastic		NAME	DATE
DRAWN		GM	2/13/2016
SALES APPR.			
CLIENT APPR.			
MFG APPR.			
Q.A.			
Design By -		CADWorksPro Chicago, IL	
TITLE:		46in Square Table - Portable	
SIZE		DWG. NO.	REV
A		766pt110	
3 Seat Accessible - Expanded Metal Version		WEIGHT:	
		SHEET 2 OF 3	

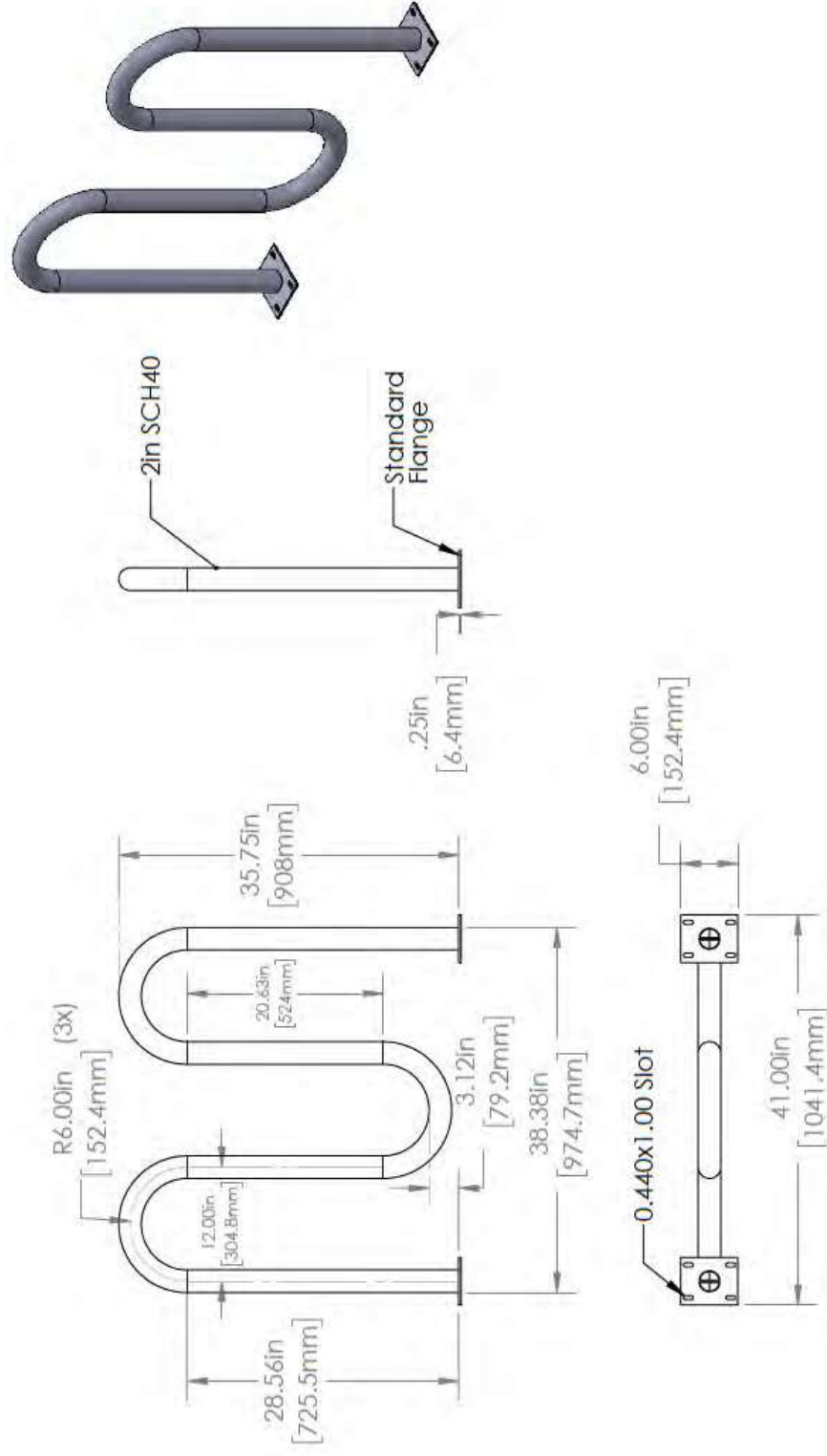
www.cadworkspro.com



Radius Bike Rack – In-Ground Mount

900br140-1





Installation Instructions:

UBX292

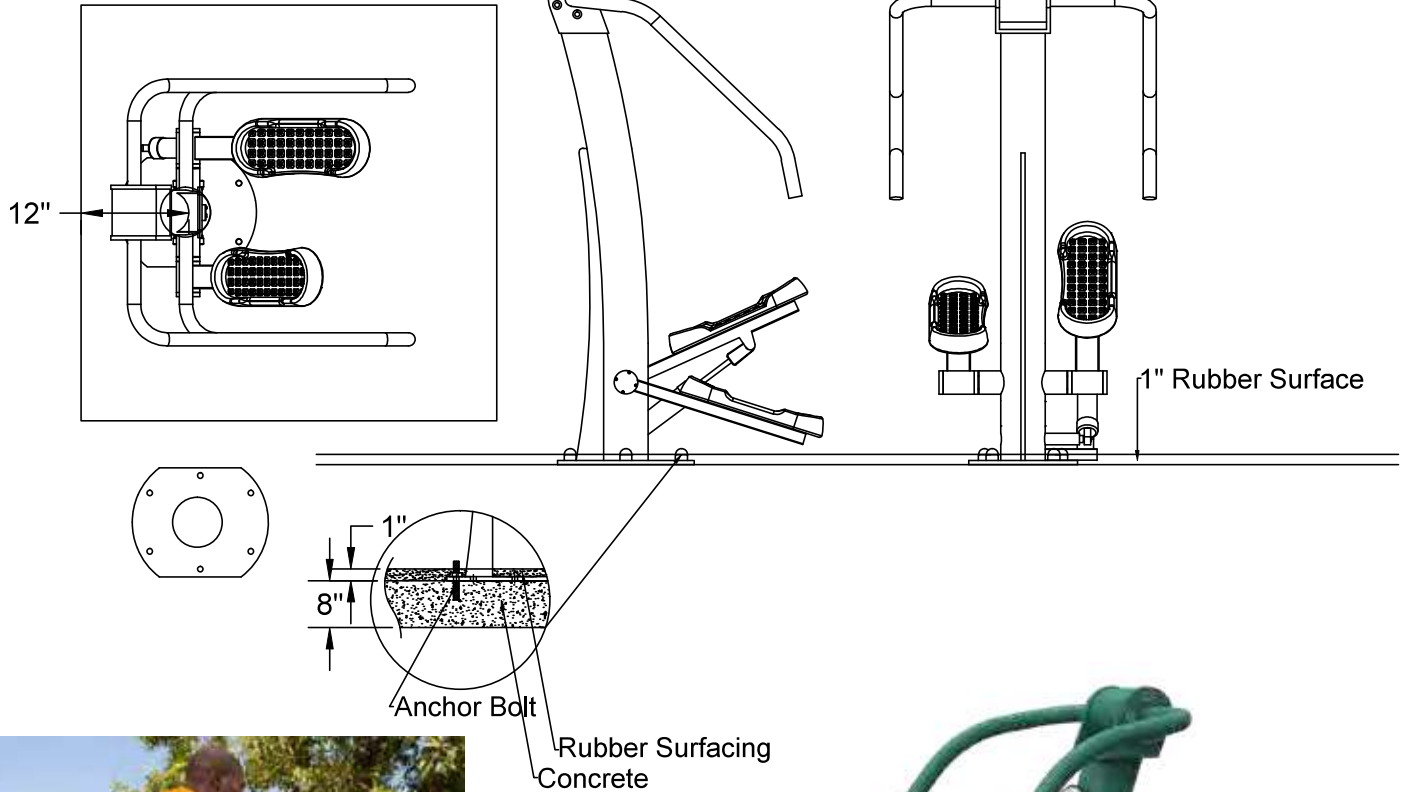
Stepper



Questions? Please call 888-315-9037 x105

- When pouring a single pad for multiple units, use concrete thickness 6"
- When pouring standalone pads, concrete thickness minimum 8"

CONCRETE PAD 48"x48"x8"



During installation, please be sure to also refer to the general installation instructions for surface mount. Epoxy is not included in shipment and must be provided by installer.

In order to honor our commitment to quality and safety, Greenfields Outdoor Fitness reserves the right to make changes and revise the design specifications without notice.

Greenfields' units are designed to accommodate the majority of users age 14 and above; however, due to the nature of outdoor fitness equipment, units are "one size fits most".

© 2022 Greenfields Outdoor Fitness, Inc.
LU22x2x2

Installation Instructions:

UBX217

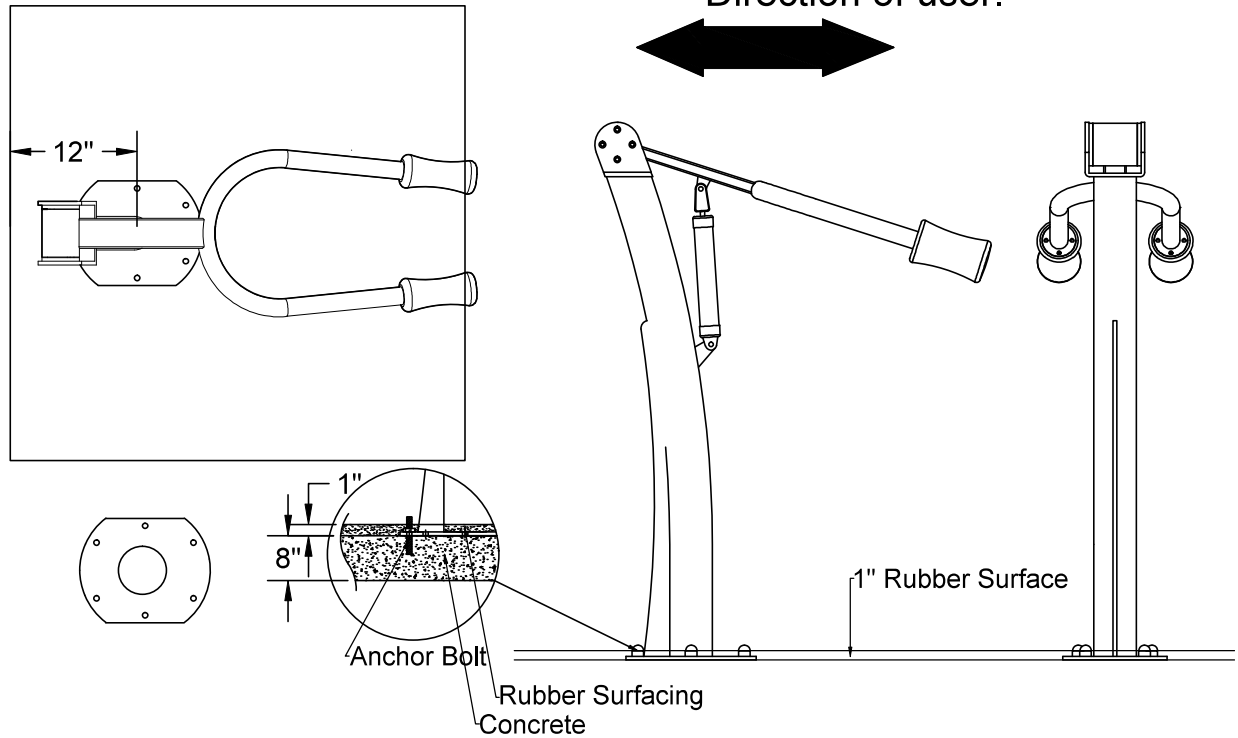
Squat



Questions? Please call 888-315-9037 x105

- When pouring a single pad for multiple units, **use concrete thickness 6"**
- When pouring standalone pads, **concrete thickness minimum 8"**

CONCRETE PAD 48"x48"x8"



During installation, please be sure to also refer to the general installation instructions for surface mount. Epoxy is not included in shipment and must be provided by installer.

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LU22x2x2

Installation Instructions:

UBX246

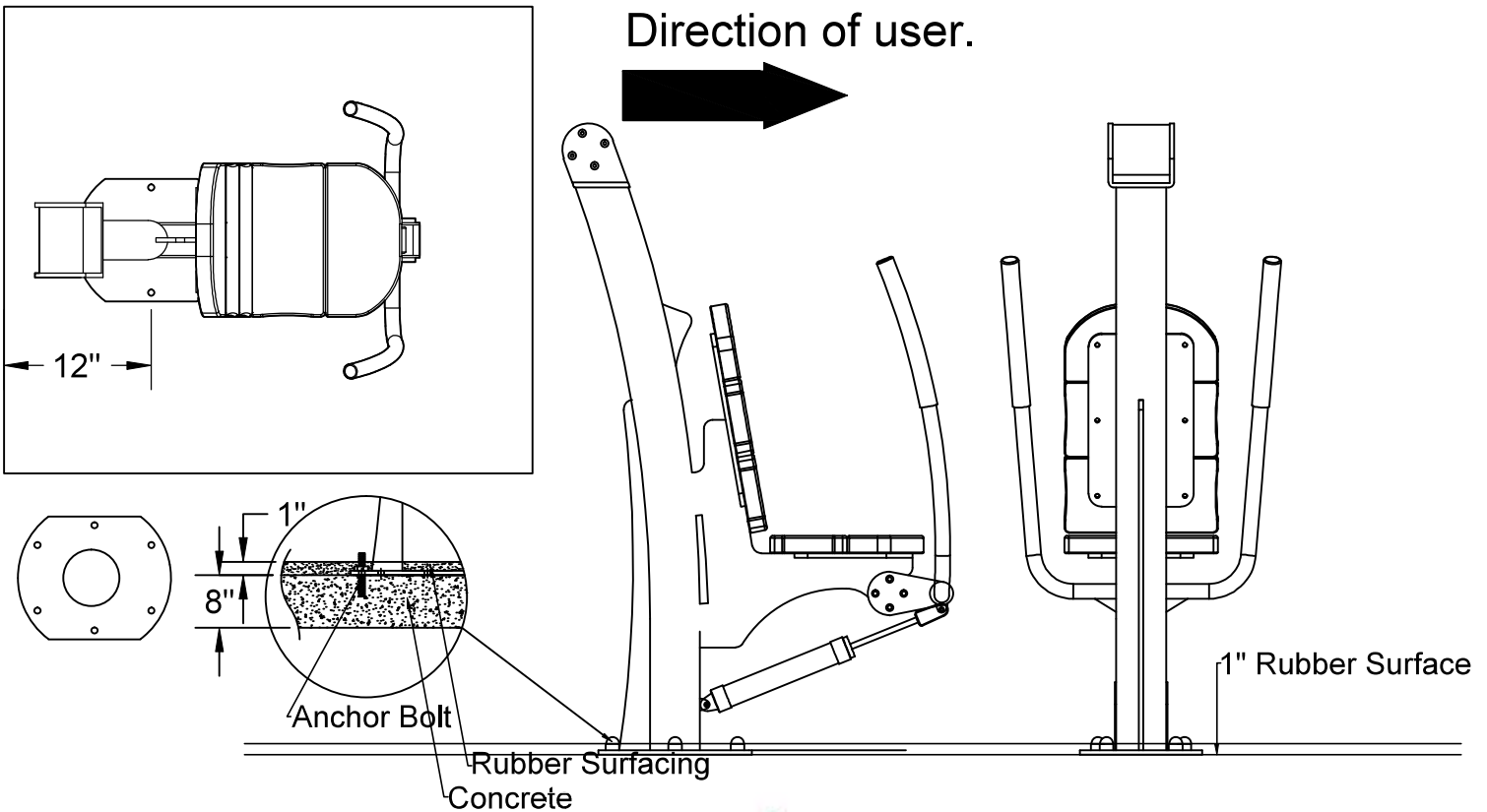
Chest Press (adjustable resistance)



Questions? Please call 888-315-9037 x105

- When pouring a single pad for multiple units, use concrete thickness 6"
- When pouring standalone pads, concrete thickness minimum 8"

CONCRETE PAD 48"x48"x8"



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LU22x2x2

Installation Instructions:

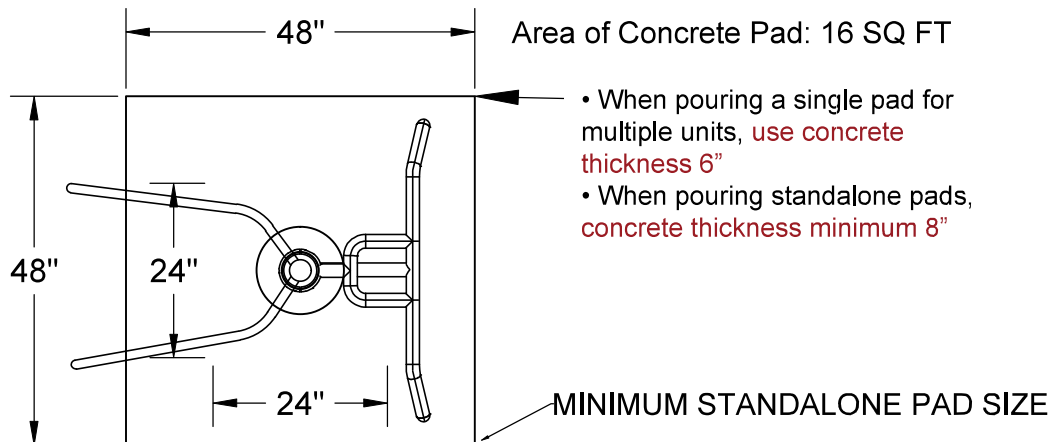
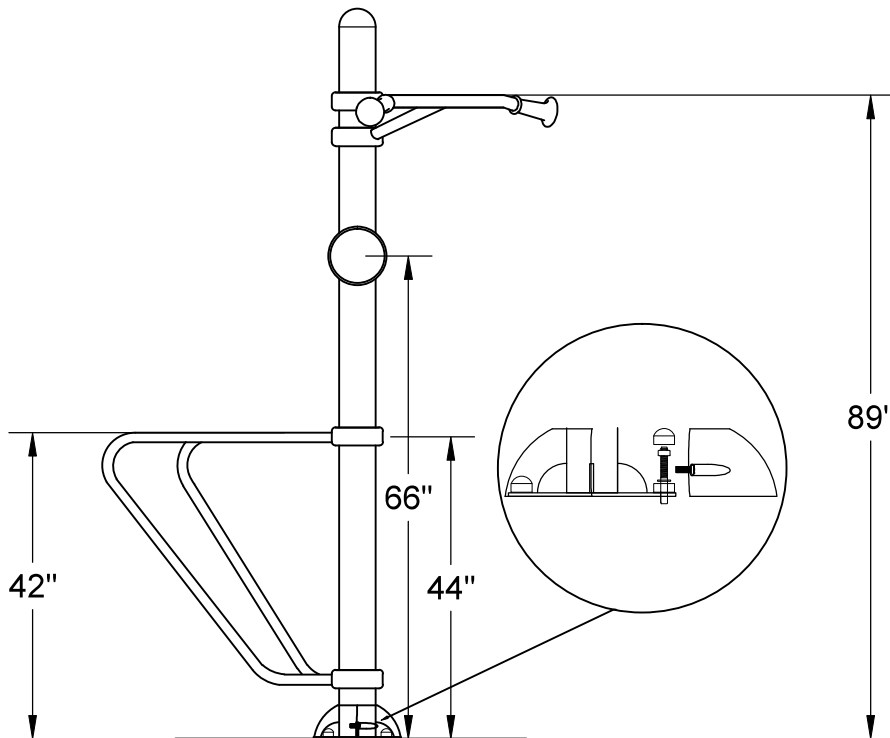
SGR070

2-Person Pull-Up & Dip Station

This unit ships in 3 separately wrapped components.



Questions? Please call 888-315-9037 x105



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LU22x2x2

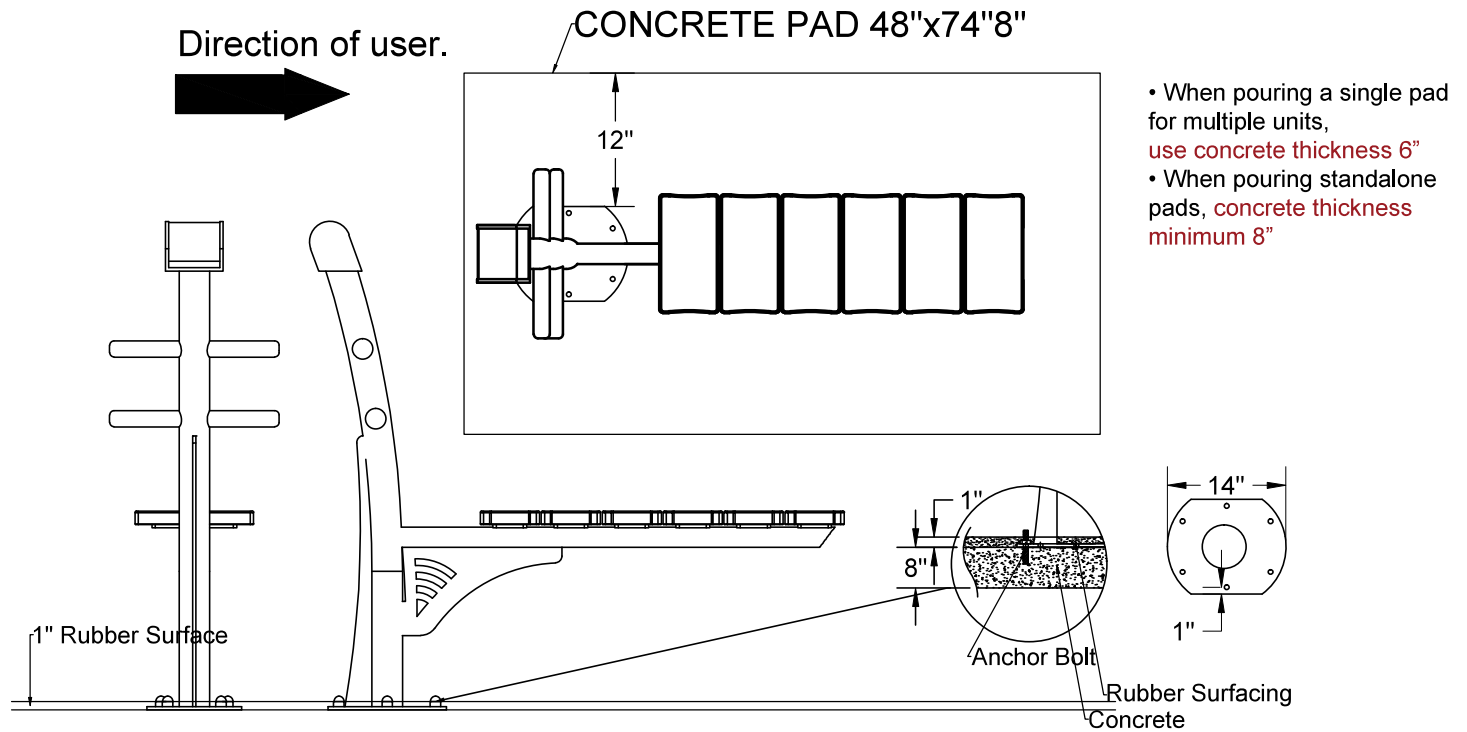
Installation Instructions:

UBX223

Sit-Up Bench



Questions? Please call 888-315-9037 x105



***During installation, please be sure to also refer to the general installation instructions for surface mount.
Epoxy is not included in shipment and must be provided by installer.***

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LU22x2x2

AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 3.

ITEM: Discussion regarding an amendment to Sections 23-1, 23-4, and 23-5 of the Town Code to regulate the location of Real Estate Sales Centers in the town. Enclosed is the Town Planner's Staff Report and a draft ordinance.

DESCRIPTION:

The proposed ordinance seeks to amend the Town Code to define Real Estate Sales Centers and/or Model Centers as follows, and to regulate the location of such centers in the town. The new language is shown by underlining, and deletion shown by ~~striketrough~~:

Real Estate Sales and/or Model Centers. A temporary use for the leasing or sale of new real estate developments and/or for the display of proposed dwelling unit floor plans and models, or office or commercial occupancy spaces in any new developments, and for the display of interior room finishes for kitchens, bathrooms, cabinetry, flooring, general living areas, and the like. This shall not be construed to include commercial real estate brokers or offices for the general sale or leasing of real estate.

Temporary sales and business construction offices, construction trailers, and model dwelling units, sanitary, storage and staging facilities, but only in connection with the construction of dwelling units, and upon specific approval and permit of the town council, including but not limited to such time limits and other any other conditions as may be imposed by the town council at its discretion. Freestanding sales offices, model centers and parking facilities shall not be permitted.

Business and profession office uses: Banks, savings and loan associations, business and professional offices, medical offices and clinics, stock and commodity broker, employment agency and similar uses. The above list shall not include real estate development sales and model centers located at street level.

Real estate development sales offices and model centers shall not be permitted at any street level location. This shall not prohibit such uses from occupying space in the upper floors of multistory commercial buildings. As related to any existing real estate development sales or model centers approved by the Town prior to the effective date of this provision (insert date), upon the completion of the specific real estate development project and termination date of each such temporary use approved by the Town for a street level location, the premises shall be vacated and no longer be used for any real estate development sales and model centers.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk

ATTACHMENTS

1.	BHI TC Staff Report RE Sales Centers Ord Feb 27 2023
2.	Ordinance - Sales Model Centers

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

CC: Maria Lasday – Town Manager
Joseph S. Geller, Esq. – Town Attorney
Yvonne P. Hamilton, CMC – Town Clerk

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: February 27th, 2023

Subject: Land Development Regulation (LDR) Code Amendments
Real Estate Development Sales and Model Centers
Suggested Code Modifications
MMPA Acct. No. 01-0702-0800

ISSUE / ANALYSIS

The Town has had some form of Land Development Regulations (LDRS) for many decades (1957). The LDRs have been studied extensively and updated over the years to cover a broad range of topics. For each Zoning District there is a list of permitted uses, those uses that may require a separate special use approval, and a list of prohibited uses. There are also specified land development regulations (setbacks / parking / etc.). The Town's officials have spent a lot of time over the years considering what uses are desired or not desired in the Town. The Town's B-1 Business District applies to the four (4) Blocks in the so-called "downtown" area extending east / west from West Bay Harbor Drive to East Bay Harbor Drive and north / south from 95th Street to 97th Street. Kane Concourse (96th Street / SR 922) is the Town's main roadway. This area is developed with a range of business / commercial complexes ranging from 1-story to 7-stories in height. Many types of businesses occupy the complexes. In earlier times the Town allowed most land uses to occupy almost any portion of a complex – from street level to the upper floors. For many years the street level was "quiet" and not much activity occurred, especially in the evening hours. In an effort to "activate" the street level, the Town incentivized the Codes to encourage more retail / café & restaurant / personal service type uses and restrict office type uses that could be located in the upper floors of multistory buildings, as storefront visibility is not that important. Parking restrictions were relaxed, and signage was expanded. Sidewalk seating was allowed for cafes & restaurants. In my opinion, the Town has been very successful in achieving its goals to revitalize the downtown / Kane Concourse area.

REAL ESATE DEVELOPMENT SALES & MODEL CENTERS

The RM-1 / RM-2 / RM-3 Multifamily Zoning Districts specifically list sales centers / models as permitted uses subject to Town Council approval. In the B-1 Business District Sec. 23-5 includes a list of permitted uses that allows a wide range of permitted uses, including business / professional offices. General real estate offices are considered a professional or business office. Real estate development sales centers / model centers for specific land development projects are not listed at all. The Code includes a provision that for land uses not specifically listed, the Town Council has the ability to consider other land uses on a case-by-case basis deemed compatible and similar in nature that would not disrupt the area.

As mentioned above, the Code was amended in 2006 to encourage ground floor uses to be more active with retail sales / restaurants. For buildings that existed prior to the adoption of the 2006 Code update at least 75% of the ground floor space must be other than offices. There is also a provision for smaller complexes (50%). Pre-existing office uses could remain – if a space is vacated for more than 180 days any new land use must comply (no offices).

Over the years the Town has been requested to approve a few “not-listed” uses, including temporary real estate development sales office and model centers. For years the Town's staff that handled business licensing allowed a few of these temporary uses to occupy space at street level along Kane Concourse. A few years ago (May 2021) a building owner / manager requested the Town allow him to temporarily lease a ground floor space at the 1111 KC center for a multifamily sales / model center (La Baia – formerly Island House & Royal House). MMPA / Town Attorney were requested to advise if these uses were allowed – it was determined the use was not specifically listed; therefore, Town Council approval was required. Normally it takes about 2-3 years to obtain permits / construct a large multifamily building. The Town Council approved that request for a 2-year term with a possibility to extend. There have been some delays with moving forward with the LaBaia projects due to the new owner's redesign and parking issues. As of 2023 construction on those complexes has not yet begun, yet the sales center has been open during some of that time. The Town Council made it very clear during that 2021 hearing that all future requests for real estate sales / model centers must be OK'd by the Town Council prior to them occupying any space in the B-1 areas, particularly at street level locations – as those uses conflict with the Town's goal to activate the street. In today's world with internet sales / mobile devices / social media opportunities the need for leasing valuable street level space has waned – upper floors could easily be used just like any other office use.

At the February 2023 Town Council meeting there were two requests for new temporary real estate sales / model centers (1160 & 1170 KC). The TC reluctantly approved both with 2-year time limits but reiterated the Town does not want such uses at street level. Staff was instructed to prepare a draft Ordinance that would modify the B-1 Business Code to prohibit future street level real estate development sales & model centers. In addition, a request was made to possibly prohibit such uses in the multifamily residentially zoned areas as well. To my knowledge there is one (1) sales / model center currently operating in the RM areas (ONDA).

**Town of Bay Harbor Islands
Town Council Staff Report
Possible Land Development Regulation (LDR) Code Amendments
Real Estate Development Sales and Model Centers
Suggested Code Modifications
February 27th, 2023
Page 3**

As requested, MMPA has worked with the Town Attorney / other staff to draft some possible Code amendments for consideration. A new definition is recommended for these uses. The draft text provides some options for the Town Council to consider for 1st reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO REAL ESTATE DEVELOPMENT SALES AND MODEL CENTERS; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING; AMENDING ARTICLE 1 ENTITLED ZONING REGULATIONS; AMENDING SECTION 23-1 ENTITLED DEFINITIONS; AMENDING SECTION 23-4 ENTITLED USE REGULATIONS RM-1 AND RM-2 MULTIPLE FAMILY DISTRICTS; AMENDING SECTION 23-5 ENTITLED USE REGULATIONS B-1 BUSINESS DISTRICT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Town's Land Development Regulations accordingly; and

WHEREAS, the Town Council has studied the Town's current Zoning and Planning Code provisions pertaining to real estate development sales and model centers in the Town, and find that certain modifications are necessary and desirable to regulate these uses in various zoning districts; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to (1) modify Section 23-1 to establish a definition for such uses, (2) to modify Section 23-4 to amend the list of uses in the RM-1 and RM-2 Multiple Family Districts, and (3) to modify Section 23-5 to amend the list of uses in the B-1 Business District, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Strike-Through = Delete / Underline = New Text

Section 3: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2023.

PASSED on Second Reading this ____ day of _____, 2023.

JOSHUA D. FULLER
MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GREENSPOON MARDER, LLP
TOWN ATTORNEYS
BY: JOSEPH S. GELLER, ESQ.

EXHIBIT "A"

The Town of Bay Harbor Islands, Florida Code of Ordinances is hereby amended as follows:

CHAPTER 23

ZONING AND PLANNING

ARTICLE I. ZONING REGULATIONS

Sec. 23-1. - Definitions.

For the purposes of this article, certain terms and words are herein defined. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not discretionary; the word "lot" includes the words "plot" and tract."

Real Estate Sales and/or Model Centers. A temporary use for the leasing or sale of new real estate developments and/or for the display of proposed dwelling unit floor plans and models, or office or commercial occupancy spaces in any new developments, and for the display of interior room finishes for kitchens, bathrooms, cabinetry, flooring, general living areas, and the like. This shall not be construed to include commercial real estate brokers or offices for the general sale or leasing of real estate.

Sec. 23-4. - Use regulations, RM-1 and RM-2 Multiple Family districts.

In the RM-1 and RM-2 Multiple Family districts, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

- (1) Two-family dwellings.
- (2) Multiple-family dwellings or apartments, including townhouses, and accessory buildings including duly licensed home occupation.
- (3) Accessory uses and site improvements, including outdoor recreational game court facilities, subject to the provisions specified in [section 23-12](#).
- (4) Reserved.
- (5) Public schools, but only upon specific approval and permit of the town council.

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(6) Single-story drive-in bank tellers' structures and parking facilities for a national or state bank situated in an adjacent block of the national or state bank which block is zoned B-1, but only upon the specific approval and permit by the town council as to the precise location and type and kind of improvements as well as landscaping requirements.

Option #1

(7) Temporary ~~sales and business~~ construction offices, construction trailers, ~~and model dwelling units, sanitary, storage and staging facilities,~~ but only in connection with the construction of dwelling units, and upon specific approval and permit of the town council, including but not limited to such time limits and other any other conditions as may be imposed by the town council at its discretion. Freestanding sales offices, model centers and parking facilities shall not be permitted. Notwithstanding the above prohibition, such temporary uses located within the building being constructed shall be permitted.

Option #2

(7) Temporary ~~sales and business~~ construction offices, construction trailers, ~~and model dwelling units, sanitary, storage and staging facilities,~~ but only in connection with the construction of dwelling units, and upon specific approval and permit of the town council, including but not limited to such time limits and other any other conditions as may be imposed by the town council at its discretion. Freestanding sales offices, model centers and parking facilities shall not be permitted.

(8) Parks, recreation and open space as either a primary use or accessory use.

(9) Public or private off-street parking facilities as either a primary use or accessory use. Commercially owned and/or operated parking facilities are not permitted without the prior approval of the town council.

(10) Vacation rentals subject to the provisions in [Chapter 23](#), Article VI of the Code of Ordinances of the Town of Bay Harbor Islands.

Sec. 23-5. - Use regulations, B-1 Business district.

Intent. The purpose of the district is to provide appropriate land development regulations for the business/mixed-use properties on the eastern island of the town. The lots abut the Kane Concourse, the main roadway within the town. This area is the most urban in form with higher intensity development, narrow setbacks, on-street and/or garage parking facilities. The district regulations provide guidelines to encourage desired land uses such as restaurants and retail shops at street grade with other uses, including residential uses, above or behind the Kane Concourse frontage uses.

Permitted uses. In the B-1 business district, no building or land shall be used, and no building shall hereafter be erected, constructed, reconstructed, or structurally altered which is designed, arranged, or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

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(1) Multiple-family dwellings including condominiums, rental apartments, townhouses, lofts and similar dwelling units, provided the residential uses are part of a mixed-use development. No residential dwelling units may be located at ground level adjoining Kane Concourse; provided however, a lobby access is permitted. Single-family detached and two-family (duplex) dwellings are not permitted. Live/work dwelling units may be permitted if approved by the town council.

(1a) Vacation rentals subject to the provisions in [Chapter 23](#), Article VI of the Code of Ordinances of the Town of Bay Harbor Islands.

(2) Business and profession office uses: Banks, savings and loan associations, business and professional offices, medical offices and clinics, stock and commodity broker, employment agency and similar uses. The above list shall not include real estate development sales and model centers located at street level.

(3) Retail uses: Clothing and wearing apparel, neighborhood grocery stores, liquor and wine sales, tobacco sales, stationary, shoe sales and repairs, luggage and leather goods, sporting goods, electronic and music sales and service, telephones and communication goods, computers sales and service, optical and eye glasses, office supplies, florists, drug and sundries.

(4) Personal service uses: Barber shop, beauty shop, skin care, day spas, dog grooming salon, nail salons, wigs and hair, fitness, exercise, weight loss, yoga, meditation center.

(5) Miscellaneous uses: Antique display and sales, jewelry sales and repairs, furniture sales, confectionary and ice cream store, bakery and pastries, art galleries and studios, auction house, post office, theater, hardware store.

(6) Restaurant uses: Sit-down restaurants including indoor, outdoor and sidewalk cafes; coffee shops, sandwich shops, except that no fast-food shall be permitted unless approved by the town council. A fast-food restaurant is defined as an establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in cars on the premises, or off the premises.

(7) Notwithstanding the foregoing, 100 percent of the ground floor space of any newly developed building or land facing Kane Concourse shall be used for the purposes set forth above excluding business and professional offices, including but not limited to physicians, attorneys, general real estate offices, real estate development sales and model centers, medical offices and clinics and stock and commodity broker offices. As used in this subsection, "newly developed" shall mean buildings constructed on vacant land or demolition of any existing building and subsequent construction of a new building. For existing buildings, at least 75 percent of the ground floor space facing Kane Concourse shall be used for the purposes set forth above excluding the above referenced office uses. For existing buildings with two or fewer ground floor uses, at least 50 percent of the ground floor space shall be used for the purposes set forth above excluding the above referenced office uses. If an existing nonconforming use vacates a ground floor space for more than 180 days, any future use shall conform to the use provisions herein.

(8) Religious institutions provided any such use is located on the second floor or higher floors of buildings.

(9) Private clubs, but only upon specific approval at a public hearing and permit from the town council. The applicant shall demonstrate compliance with subsection (8.1)(c)1., 2. and 3. herein.

(10) Hotels and customary accessory uses, including but not limited to, restaurants, bars, swimming pools, spas and other recreational facilities, and meeting facilities. This shall include the ability of a private school to operate a facility as part of hospitality education, provided the school is open to the general public.

(11) Duly licensed home occupations are permitted subject to the requirements of the Town Code for those uses.

(12) Convention organization services; community centers; show and film direction or production; import/export services; interior design; internet sales and service; municipal offices, parking facilities and related functions; parking of motor vehicles as accessory uses; valet parking services if approved by the town council.

(13) Dry cleaning pick-up and delivery, provided no on-site dry cleaning occurs; tailors, clothing alterations.

(14) Other similar uses as may be permitted by the town council, provided that such uses are compatible with and do not adversely affect the character of the district.

(15) Activities occurring on the rooftop of the building shall be subject to the following restrictions:

(a) Uses and facilities shall be limited to recreational facilities for the building tenants, such as jogging/walking paths, swimming pool and/or spa, sun decks, seating areas, food preparation and/or serving areas (barbecue grill/sink/storage) and similar facilities.

(b) Passive recreational activities, such as jogging, walking, conversation, eating, meditation, and similar passive recreational activities shall be permitted, provided no such rooftop activities shall occur prior to 8:00 a.m. or after 11:00 p.m. from Sunday through Thursday, and prior to 8:00 a.m. or after 12:00 a.m. (midnight) on Friday and Saturday.

(c) No commercial business activities shall operate on the building rooftop, unless specifically approved by the town council at an advertised public meeting. A commercial business is defined as one holding a valid town business tax receipt (formerly known as occupational license) or certificate of use.

(d) All electrical loudspeakers, amplifiers or musical instruments shall limit sound emission for background music or entertainment purposes, regardless of whether it is "live" or recorded. Such sound emissions shall not exceed 70 decibels at any time at its source, in accordance with the town's noise ordinance (article II of [chapter 12](#)).

(e) Certain limited events and/or functions such as charity events, fundraising receptions, cocktail parties and the like may be permitted for the building owner or tenants, their guests and invitees, if approved in writing by the town manager, prior to the event and/or function occurring. All such requests shall be submitted to the town manager's office, on a form provided by the town, at least 24 hours in advance of the event/function, except that the town manager may approve, but is not required to approve, an event/function on short-term notice based on special circumstances. At a minimum, the application form information shall include:

1. The name, address, telephone number and e-mail address of the tenant/sponsor;
2. The name, address, telephone number, e-mail address and signature of the building/property owner and any designated property manager;
3. The estimated number of persons attending;
4. A description of the purpose of the event/function;
5. The hours of the event/function;
6. A description of any planned beverage/food or entertainment; and
7. An off-street parking plan to accommodate the attendees (if required).

(f) All events and/or functions must be sponsored or hosted by the building owner or a building tenant, with the building owner's written consent. The building owner shall sign the town's request form or submit a separate written consent letter to the town with the request. No such limited rooftop event/function activities shall occur prior to 9:00 a.m. or after 11:00 p.m. on Sunday through Thursday and prior to 6:00 p.m. or after 12:00 a.m. (midnight) on Friday or Saturday.

(g) No bright lights, globes, strobes or flashing lights shall be permitted.

(h) The town reserves the right to order that any activities causing a nuisance be altered immediately to comply with Town Code provisions, or to close any activity immediately that is deemed to be in violation of this criteria that negatively affects properties both within the town and within adjoining communities.

(i) Should these land development regulations conflict with any previously approved limitations for rooftop uses, the provisions set forth herein shall take precedence.

Prohibited uses. In the B-1 business district, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed, or structurally altered which is designed, arranged, or intended to be used or occupied for any of the following uses: Thrift shops or stores selling secondhand merchandise; pawn stores, gas stations; tattoo parlors or body piercing; check cashing stores; psychic or fortune tellers; flea markets; adult entertainment establishments; shops or stores selling dogs and cats; any

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use not specifically listed, unless permitted by the town council. Notwithstanding the above, bona fide antique or vintage stores selling clothing, accessories, jewelry and furnishings may be permitted by the town council so long as such stores are compatible with and do not adversely affect the character of the district. Antique and vintage sale items, as opposed to thrift or secondhand stores, are characterized as items from earlier periods of time. By way of example (in 2011), vintage items are typically from the time period prior to 1980 and antique items are typically from the time period prior to 1920 having some intrinsic value. Real estate development sales offices and model centers shall not be permitted at any street level location. This shall not prohibit such uses from occupying space in the upper floors of multistory commercial buildings. As related to any existing real estate development sales or model centers approved by the Town prior to the effective date of this provision (insert date), upon the completion of the specific real estate development project and termination date of each such temporary use approved by the Town for a street level location, the premises shall be vacated and no longer be used for any real estate development sales and model centers.

Sec. 23-6. - Use regulations, RM-3 district.

In the RM-3 Multiple Family Residential district, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

- (1) Any use permitted in the RM-1 or RM-2 Multiple Family districts.
- (2) Allowable residential uses shall not be construed to include hotels, motels, condo-hotels, and interval ownership (timeshare) units.
- (3) Vacation rentals subject to the provisions in [Chapter 23](#), Article VI of the Code of Ordinances of the Town of Bay Harbor Islands.

AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 4.

ITEM: Discussion and **Possible** action regarding the lease with Sunshine Gasoline Distributors, Inc. for operation of the gasoline service station. Enclosed is a copy of the lease agreement.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk
Stephanie Bruder, Council Member

ATTACHMENTS

1.	Sunshine Gasoline - restated Lease
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AMENDED AND RESTATED LEASE

This Lease (the "Lease") effective August 1, 2008 between the Town of Bay Harbor Islands, a Florida municipal corporation ("Lessor"), and Sunshine Gasoline Distributors Inc., a Florida Corporation; and Maximo Alvarez (collectively "Lessee"), supersedes and replaces the Amended and Restated Lease effective March 1, 1994.

RECITALS

- A. Lessor and S. Wright Services Incorporated ("Wright") entered into a lease dated May 8, 1989 of the Property (described below) which lease was assigned by Wright to Howard Winick ("Winick") by Assignment, Assumption and Release of Lease Agreement dated June 7, 1991 and subsequently assigned to Winick to Lessee by Assignment and Assumption of Leases dated June 1, 1992 and subsequently modified by Amendment to lease dated March 1, 1993.
- B. Lessee has been operating a gasoline service station on the Property since May, 1995.
- C. Lessor and Lessee amended the lease documents and restated its terms as set forth in the instrument, entitled Amended and Restated Lease, effective as of March 1, 1994.
- D. Lessor and Lessee now desire to execute a new Lease.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the parties agree as follows:

1. LEASE OF THE PROPERTY. Lessor hereby leases to Lessee the following described property in Miami, Dade County, Florida (hereinafter collectively referred to as the "Property"):

PARCEL A

and

PARCEL B

As set forth on Exhibit "A" attached hereto and incorporated herein.

2. USE. Lessee shall use the Property described as Parcel A for a high class gasoline service station including the sale of other items defined in Section 9.G., below, and for no other purpose. The particularities of the use are more specifically set forth below in this Lease. Nothing shall be built on Parcel B, which parcel shall be used only for beautification purposes and parking. During the term of this Lease, Lessee shall maintain the landscaping on the Property in good condition and in accordance with the specifications drawn on the plans designated BC-41. The area comprising Parcel B may be used by Lessor in common with Lessee for septic tank purposes and subterranean drainage purposes with priority to Lessor for such use as Lessor may need.



3. TERM OF LEASE AND EXTENSION.

- A. This Lease is for a ten (10) year period (the "Lease Term") commencing 12:01 A.M., August 1, 2008 (the "Commencement Date") and ending at midnight on the last day of July, 2018 (the "Termination Date").
- B. Provided this Lease is in full force and effect and provided Lessee is not then in default of any provisions of this Lease, Lessee shall have the option to renew this Lease for one (1) five (5) year term under the same terms, conditions, agreements and provisions as provided herein. Lessee shall exercise such option by delivering written notice to Lessor by certified mail, return receipt requested at least one hundred eighty (180) days prior to the Termination Date.

4. RENT.

- A. The minimum guaranteed annual rental is \$72,840.00 (the "Base Annual Rent") for each of the first two (2) years of the Lease (each year of the Lease being from 12:01 A.M. on August 1, 2008 to midnight on the last day of July of the following year). These sums shall be payable as follows: On the 1st day of each month beginning August 1, 2008, Lessee shall pay to Lessor the sum of \$6,070.00. All government taxes and charges including state and county sales taxes shall be added to the rental sums set forth herein.
- B. The Base Annual Rent shall be increased by six percent (6%) during the term of this Lease (and during the option period if renewed), every two (2) years on the anniversary date of the Commencement Date (the "Adjustment date") commencing on the second (2nd) anniversary of the Commencement Date and continuing on the two (2) year anniversary thereafter.
- C. It is understood and agreed that Lessee's obligation to pay the adjustments in Base Annual Rent or Additional Rent as provided for in this Lease shall, for the purposes of the default provision herein, entitle Lessor to all remedies provided herein and at law or equity on account of Lessee's failure to pay rent.
- D. Any delay or failure of Lessor in computing or billing for adjustments in Base Annual Rent or taxes due under Section 5 shall not constitute a waiver or in any way impair the continuing obligation of the Lessee to pay such adjustments in Base Annual Rent or taxes due under Section 5.

5. SALES, USE AND RENT TAXES, PERSONAL PROPERTY TAXES. Lessee shall pay all sales, use and other taxes imposed by any governmental authorities upon the manufacture, sale, use, transmission, distribution or other process necessary or incidental to the furnishing of sewer, water, electricity and domestic water or other service to the Property. Lessee shall pay before delinquency all personal property taxes and assessments on the furniture, fixtures, equipment and other property of Lessee located in the Property and improvements in the Property belonging to Lessee. Lessee shall also pay all sales taxes assessed by any governmental authority against the Base Annual Rent and additional taxes due hereunder, if applicable, even though the taxing statute or ordinance may purport to impose such sales tax against Lessor. The payment of all sales tax shall be made by Lessee on a monthly basis, concurrently with monthly payment of the Base Annual Rent. Failure to pay these taxes shall constitute a default under the terms of Section 23, below.



6. LESSEE'S PROPORTIONATE SHARE OF TAXES AND ASSESSMENTS. Lessee shall pay to Lessor in each year of the Lease, as Additional Rent, Lessee's proportionate share of all real estate and other ad valorem taxes and assessments of every kind and nature (including, but not limited to, general and special assessments, foreseen as well as unforeseen) with respect to all land, buildings and improvements on the Property. If the tax bills cover not only the Property but other property, Lessor shall make a reasonable allocation between the Property and such other property. The tax payment shall be paid by Lessee in equal monthly installments on the first of each month in such amounts as are estimated and billed for each year of the Lease by Lessor. If the total amount paid for any tax payments made by Lessee shall exceed the amount of payments actually made by Lessor for taxes and assessments, such excess shall be credited by Lessor on subsequent payments to be made by Lessee for such times. If, however, such monthly tax payments shall not be sufficient to pay such items when the same shall become due and payable, then Lessee shall pay to Lessor any amount necessary to make up the deficiency upon written demand from Lessor stating the amount of the deficiency. If the taxes are increased, Lessor may require the monthly tax payment to be increased so that upon receipt of the tax bill, Lessor will have a sufficient sum in escrow to meet Lessee's tax payment obligations under this Lease. Lessor may also require Lessee, upon the execution of this Lease, to fund a sufficient sum of money into the tax escrow to cover Lessee's total tax liability upon Lessor's receipt of the tax bill. Upon the proper termination of this Lease and payment in full of the tax bill for such year, Lessor shall refund to Lessee any credit balance accumulated under the provisions of this paragraph. Lessee shall remain liable to Lessor for any tax increases not included in the escrow amounts for the last year of the Lease Term. No interest or dividends shall be allowed or paid to Lessee on account of such deposits made hereunder and said deposits need not be kept separate and apart from the other funds of Lessor. Failure to pay these taxes and assessments shall constitute a default under the terms of Section 23, below.

7. METHOD OF RENTAL PAYMENT. Rentals are due and payable to Lessor in legal tender of the United States of America at Lessor Town Hall, attention Town Manager, or at such place as Lessor may from time to time designate in writing.

8. IMPROVEMENTS BY LESSEE. Lessee represents and warrants to Lessor that the Lessee has completed the following work:

- A. The removal and replacement, in compliance with all applicable laws, rules and regulations, of all fuel dispensing and storage facilities and equipment, including secondary containment, and Stage II vapor recovery as more particularly described on Exhibit B.
- B. The proper disposal of all replaced equipment and facilities along with any soils or other materials removed in connection with the replacement activities;
- C. The renovation of the station structure and landscaping in accordance with the plans previously agreed to by Lessor, attached here as Exhibit C.

9. USE AND OPERATION OF THE SERVICE STATION.

- A. The service station must remain open every day of the year, including Sundays and Holidays, with an adequate staff. On all days except Sundays and Holidays, the station must be open for business at least from 7:00 A.M. to 9:00 P.M. On Sundays and Holidays the station must be open for business at least from 9:00 A.M. to 5:00 P.M.



- B. The service station must provide a complete line of normal services including, but not limited to, towing, tuneup, wheel alignment, brake service, muffler and exhaust service, air-conditioning service, washing, waxing, polishing and major repairs.
- C. No major repairs to motor vehicles will be done on the Property between 8:00 P.M. and 8:00 A.M. No body work or painting will be done on the Property at any time. Body work includes, but is not limited to, replacement of doors and fenders, rust-proofing, dent removal and repair, and the like.
- D. There must be a minimum of one pump for each grade of gasoline for self-service. In addition, there must be full service pumps to completely serve customers with each grade of gasoline sold.
- E. The service station will provide at least two distinct grades of a nationally recognized brand of gasoline capable of providing for the full requirements of all automobiles: (1) premium unleaded gasoline; and (b) regular unleaded gasoline. The octane rating of such gasoline will be at least equivalent to the standards set by government agencies charged with the responsibility of establishing and maintaining such standard.
- F. The service station will not rent any vehicles of any type, whether motor driven or not, including any U-haul vehicles or trailers.
- G. Lessee shall be permitted to sell to the public no more than ten (10) categories of grocery items, including food and food byproducts which are used for human consumption. No alcoholic beverages shall be sold. It is the intent of the parties that the primary business operation of the Property be a service station and not a convenience store.

10. SECURITY DEPOSIT. Prior to the execution of this Lease, Lessee has deposited with Lessor the sum of \$7,500.00, receipt of which is hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of all of the terms of this Lease. The security deposit shall be returned to Lessee after the time fixed as the expiration of the term hereof, provided Lessee has fully and faithfully carried out all of the terms, covenants and conditions on Lessee's part to be performed. Lessor shall have the right, but not the obligation, to apply any part of said deposit to cure any default of Lessee, and if Lessor does so, Lessee shall upon demand, deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this Lease. Lessee's failure to pay to Lessor a sufficient amount to restore said security to the original sum deposited within five (5) days after receipt of demand therefor, shall constitute a breach of the Lease.

In the event of a sale of the Property or a lease of the land upon which it stands subject to this Lease, Lessor shall have the right to transfer the security to the buyer or lessee and Lessor shall be considered released by Lessee from all liability for the return of such security and Lessee shall look to the new landlord or lessee solely for the return of the said security and it is agreed that this shall apply to every transfer or assignment made of the security to a new buyer or landlord. The security deposited under this Lease shall not be mortgaged, assigned or encumbered by Lessee or Lessor without the written consent of the other, and any attempt to do so shall be void and a default in this Lease.



11. TERMINATION IF SERVICE IS NOT ADEQUATE. It is a condition of this Lease that the service station be operated and maintained in an efficient and high class manner and as a credit to the standards of the Town of Bay Harbor Islands.

What is "an efficient and high class mariner, and as a credit to the standards of the Town of Bay Harbor Islands" shall be within the sole judgment and discretion of Lessor; provided, however, that its sole judgment and discretion are not arbitrary or capricious. Lessor acknowledges that Lessee's current operation of the gasoline station is consistent with Lessor's high standards. It is the intent of the parties that if Lessor is of the opinion that the operation and maintenance is not as set forth above, no one else's opinion will be substituted for that of Lessor as the standards of Lessor are higher than the normal standards of operation required by the major oil companies, and it is intended that Lessee live up to Lessor's standards. The Lease to Lessee rather than to a major oil company is based on this intent. Failure to so maintain the service and aesthetic appearances of the Property in such manner shall be deemed a default and at the option of Lessor, a ground for termination of this Lease subject to the provisions of Section 23. Should this Lease be cancelled under the provisions of this paragraph, Lessee shall be reimbursed for the cost of improvements made during the first five years of the term hereof but not removed by Lessee at termination of this Lease. The cost shall be reduced by depreciation at the rate of ten percent (10%) per year. Lessor shall have the right from time to time and upon notice to Lessee to inspect the Property to determine compliance with the provisions of this paragraph.

12. APPROVAL OF LESSEE'S SUPPLIER. The supplier of gasoline to Lessee for dispensing on the demised Property must be a major oil company and must be approved in writing by Lessor. CITGO has been submitted by Lessee to Lessor and has been approved. If there is any proposed change thereafter during the term of this Lease, the proposed new major oil company's name shall be submitted to Lessor for approval at least thirty (30) days before any change is contemplated to be made, and is subject to Lessor's reasonable approval.

13. CONSUMER PRICES. Lessee agrees to reasonably meet competitive prices of major oil company service stations in the area in pricing gasoline dispensed from the Property and in performing services on the Property. Meeting competitive prices is defined as prices by Lessee to the consumer within ten percent (10%) of the lowest price in the area market for gasoline and for the particular services involved.

14. DISCOUNT TO LESSOR VEHICLES. Lessee will give a twenty percent (20%) discount on all services to Lessor vehicles, but not on gasoline.

15. ASSIGNMENT OR SUBLEASE. Lessee may not assign, sublet, mortgage or pledge this Lease or any portion of Lessee's interest in the property without the prior written consent of Lessor which consent will not be unreasonably withheld. The consent by Lessor to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include an assignment or subletting by operation of the law and transfer of a controlling interest of stock in Lessee. If this Lease be assigned or the Property or any part thereof be sublet or occupied by anybody other than Lessee, Lessor may collect rent from the assignee, and apply the net amount collected to the rent herein reserved, but no such assignment or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. Notwithstanding any assignment or sublease, Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

Prior to consenting to any assignment or sublease, Lessor shall require a full financial report and service station experience and investigation of the assignee or sublessee including, but not limited to, financial statements, tax returns, credit investigations, prior experience reports and investigations (in operating service stations of this type) together with similar reports and investigations of the principal officers, directors or partners of any assignee or sublessee, as the case may be. Lessor may refuse to consent to an assignment or sublease if Lessor is not satisfied with the credit, financial status or service station experience of the assignee, sublessee or any of its officers, directors or partners. Lessor's refusal to consent to any such assignment or sublease shall not be deemed unreasonable if Lessor is dissatisfied with any of the foregoing. Lessee agrees, further, that Lessor shall not be liable to Lessee or anyone else for any refusal to consent to any such assignment or sublease consistent with the terms of this paragraph. Lessor agrees, however, that within ten (10) days after Lessor notifies Lessee in writing of its refusal of any assignment or sublease, Lessee may notify Lessor in writing of Lessee's intention to enter into the assignment or sublease notwithstanding Lessor's prior disapproval. In this event and as Lessee's sole and exclusive recourse and remedy to Lessor's refusal to consent to the assignment or sublease, Lessor agrees to submit to arbitration to be conducted by the American Arbitration Association and under said Association's rules governing commercial arbitration or before any other mutually agreeable arbitrators. Both Lessee and Lessor agree to be bound by the decision of any arbitrators with respect to whether Lessor acted unreasonably in refusing to consent to the assignment or sublease by Lessee. Lessee agrees, however, that no liability will be imposed on Lessor if the arbitrators vote in favor of any assignment or sublease after Lessor has refused to consent to same. The prevailing party shall be entitled to costs and reasonable legal fees, as determined by a court of competent jurisdiction, resulting from any arbitration, and the same shall be due and payable within thirty (30) days after a final decision.

16. PERSONAL SERVICES. Lessee agrees that the overall supervision of the management and operation of the service station shall be performed by Maximo Alvarez or a qualified manager having at least five (5) years experience as a manager of a service station, who shall be personally present on a full-time basis (i.e., forty (40) hours per week minimum to be in charge of day-to-day operations and management of the service station).

17. CREDITS FOR CERTAIN TAXES LEVIED BY LESSOR. Lessee shall be entitled to a credit, at the end of each year of this lease, for the total amount paid by Lessee for taxes levied or assessed, if any, by Lessor against any building or personal property of Lessee situated on the Property and used in conjunction with the operation of the Property or for any license or privilege tax imposed by Lessor in conjunction with Lessee's operations conducted on the Property.

18. MAINTENANCE AND RETURN OF PROPERTY IN GOOD CONDITION. Lessee, at its own expense, will keep the Property in good state of repair and clean condition at all times during the term hereof, including responsibility for all capital expenditures relating to repair and maintenance of the building and underground fuel tanks and any related facilities. Lessee will comply with any and all applicable laws or regulations of any governmental authority including Lessor, and will use the Property for lawful purposes at all times, and will return to Lessor at the expiration of this Lease, except as provided in Section 20, below, all of the Property together with any and all improvements thereon, whether or not made by Lessee during the term hereof, in good condition and state of repair, ordinary wear and tear excepted. If Lessee fails to adequately maintain the Property, including but not limited to, all landscaping around the service station and all improvements on Parcel A, the same shall constitute a default hereunder. In addition, Lessor shall have the right, but not the obligation, to maintain all or any portion of the Property if Lessee fails to do so to the sole and exclusive satisfaction of Lessor and any costs or expenses suffered by Lessor shall be reimbursed by Lessee to Lessor due and payable within five (5) days of written



demand therefor.

19. NOTICES UNDER THIS LEASE. All notices provided for under this Lease shall be in writing and mailed to Lessor whose address is Town Hall, Town of Bay Harbor Islands, Florida 33154, Attention: Town Manager, and a copy to the Town Attorney, who currently is Craig B. Sherman, Esq., or at such other place or places as their parties may designate in writing from time to time, and to Lessee at 1101 North 16th Court, Hollywood, Florida 33020.

20. DISPENSING EQUIPMENT. Lessee shall own and, at its own expense, furnish, maintain and replace the necessary storage and dispensing equipment for the proper and convenient operation of a service station on the Property. Lessee, at any time during the term hereof, shall have the right to change and replace the same, whether or not the said equipment or any part thereof be embedded in the soil or affixed to the realty in accordance with applicable law. Unless Lessor agrees otherwise in writing, at the expiration for the Lease, Lessee shall promptly and properly remove all storage and dispensing equipment provided that Lessee shall repair any damage to the Property caused by such removal and provided further, Lessee shall provide documentation evidencing that the equipment was properly removed and disposed of in accordance with all applicable Legal Requirements. Lessee shall also undertake any necessary remediation of the Property in connection with the removal of the dispensing equipment at Lessee's sole cost and expense. Lessee shall not change, replace or remove any buildings or permanent structural improvements to the Property, unless Lessor agrees otherwise in writing.

21. FIRE AND CASUALTY INSURANCE. Throughout the term of this Lease, Lessee shall keep the buildings and equipment on the Property insured for their full insurable replacement value against loss or damage by fire or by risks insured under extended coverage at its own expense by insurance companies authorized to do business in Florida and acceptable to Lessor. The said policy or policies of insurance shall name Lessor as an additional insured so that any claim for any loss or damage under any policy shall be in favor of Lessor and Lessee as co-insured, or, at Lessee's option, Lessee may provide the aforementioned insurance coverage under Lessee's usual scheduled policies furnishing Lessor satisfactory evidence of such coverage. Any proceeds or claim for such loss or damage during the term of this Lease shall be used exclusively for the purpose of restoring and repairing the Property or any improvements or equipment thereon. It shall be the obligation of Lessee to keep and maintain the buildings and improvements herein referred to in good condition and state of repair at all times, including capital repairs, during the term of this Lease or any renewal hereof irrespective of the amount of insurance coverage maintained by Lessee and irrespective of how damage may occur to the buildings and improvements. In case of damage to the building and improvements including ordinary wear and tear, Lessee shall promptly commence to make repairs to rebuild and restore the damaged buildings and equipment and such work or renovation or restoration and repair shall be carried through continuously to completion as promptly as may be done to the end that the buildings and all equipment after such damage shall be restored to a state of having not less than the same value, use and function as existed prior to such damage. Lessee shall demonstrate coverage for the building on the Property through a policy issued by the Florida Windstorm Underwriting Association or similar insurer. Lessor shall be named as Loss Payee.

22. LIABILITY INSURANCE. Lessee will keep and maintain, at its own expense, during the term of this Lease, full and complete comprehensive public liability insurance with limits of not less than \$1,000,000 in respect to injuries to or death of any one person, and not less than the total aggregate sum of \$2,000,000 in respect to injuries to or death of persons in any one accident, and in an amount of not less than \$1,000,000 for damage to property, which policies will name Lessor as an additional insured. The insurance referred to in this paragraph will be in a company or



companies approved by Lessor. Lessee understands that Lessor shall schedule such policies as an underlying insurer under Lessor's umbrella liability policy. Lessee agrees that any additional premium incurred by Lessor as a result of scheduling such policies under Lessor's umbrella liability policy shall be the obligation of Lessee and payable to Lessor upon delivering of a bill therefor to Lessee. Lessee shall be required to provide evidence of garagekeepers liability relating to the repair shop operations and evidence of Workers' Compensation coverage for all personnel involved in the gasoline and repair operations.

23. DEFAULT. If Lessee defaults in the payment of rent or any taxes provided herein on the day the same becomes due and payable, and such default shall continue for ten (10) days after written notice by Lessor delivered to Lessee by certified mail, or in case Lessee shall fail to perform or observe any of the terms or provisions under this Lease other than with regard to the payment of rent or Additional Rent, and such default shall continue for a period of thirty (30) days after written notice of the same has been given by Lessor to Lessee by certified mail, return receipt requested, specifying the default complained of, during which period of time Lessee shall have the opportunity to cure such default complained of, then in either of such events, Lessor, at its election, may reenter upon said Property and the buildings and improvements thereon on any part thereof and avail itself of any of Lessor's remedies provided for by Florida law including acceleration of any rent due hereunder and/or termination of this Lease. Such remedies of Lessor shall not be deemed to be exclusive remedies of the Lessor. Lessee agrees upon the termination of the Lease, Lessee will surrender and deliver up said Property, real and personal, peaceably to Lessor upon the effective date of the termination. If Lessee shall hold the said Property or any part thereof one day after the same should be surrendered according to the terms of this Lease, Lessor shall be required to pay rent at 200% of current rent and Lessor shall have all the remedies available to it under Florida law and the terms of this Lease for the removal of Lessee and the ability to recover any damages suffered by Lessor arising from the wrongful holding over of Lessee.

24. ADEQUATE EMPLOYEES AND STOCK TO BE KEPT. Lessee agrees that during the term of this Lease, it will keep an adequate and competent group of employees to handle the business of the service station and will keep a full stock of gasoline, supplies and merchandise as are customarily kept in a well-operated gasoline service station business.

25. BANKRUPTCY. If Lessee shall file a voluntary petition in bankruptcy, or shall be adjudged a bankruptcy, or shall make an assignment for the benefit of creditors, or should there be appointed a receiver to take charge of the Property or any part thereof in any court, then in any of such events, Lessee shall be deemed in default under this Lease and Lessor may, at its option, terminate this Lease and reenter the Property, and Lessee shall thereupon become a tenant at sufferance. In the event of any default in any provision of this Lease, Lessor shall have the option to declare the entire rent and any Additional Rent for the balance of the term as due and payable forthwith, based upon the minimum rental guaranteed under the terms of this Lease, and may proceed to collect the same by distress or otherwise. Thereupon, the term shall be terminated and the exercise of such remedy by Lessor shall be deemed to be cumulative, not exclusive of any remedy sought by Lessor for possession of the Property.

26. INDEMNIFICATION. Lessee hereby indemnifies and saves harmless Lessor from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease for any personal injury, loss of life and damages to persons or property sustained in, on or about the Property, by reason or as a result of Lessee's occupancy thereof, or violation by Lessee of any legal requirements as defined in Section 33 below, and from and against all costs, counsel fees, expenses and liabilities occurred in and about the defense of any such claim and the investigation thereof. Compliance with the liability insurance requirement of Section

22 shall not relieve Lessee of the obligations of this Section 26. It is the parties' intention that this indemnification apply from the date Lessee first occupied the Property.

27. ATTORNEYS' FEES. In any action concerning, arising out of, or relating to this Lease including actions to collect the rent or Additional Rent hereunder, and actions for declaratory judgment under Chapter 86, Florida Statutes, the prevailing party shall be entitled to reasonable attorneys' fees and court costs in all courts, trial and appellate.

28. PARKING AREAS. Lessee shall have a nonexclusive license to the use of parking areas designated as Parcel B, all as shown on the sketch attached hereto. Said parking areas shall be kept paved and maintained in good condition by Lessee at Lessee's sole cost and expense through the term of this Lease. The license terminates with the termination of this Lease.

29. CONSTRUCTION, IMPROVEMENT, RENOVATIONS. The parties acknowledge and agree that Lessor has already and may at any time in the future, commence construction, improvements or renovation on the Broad Causeway, Toll Plaza and Service Station area or install a new bridge. The parties agree and acknowledge that Lessor shall have no liability of any nature to Lessee for any business interruption, loss of profits or interference of any nature with Lessee's business because of said construction, improvements or renovations. Provided, however, if Lessee is required to close its business completely and is unable to conduct any business at all because of any act of Lessor as described in this paragraph, then the monthly rent shall be reduced on a per diem basis for each day Lessee is closed.

30. TERMINATION.

A. If by reason of any prohibitory or restrictive federal or state statute, county ordinance, judgment, court ruling or administrative ruling, Lessor or Lessee is prevented from using or occupying the Property, the Lease will be terminated forthwith upon such use being declared illegal, and neither party will have any future liability under this Lease except for liabilities which have been incurred up to the point of termination. The provisions of this paragraph shall apply regardless of whether Lessor or Lessee or both are subject to the statutes, ordinances, judgments, court rulings or administrative rulings, referred to above.

B. This Lease may also be terminated and if Lessor decides to reconstruct, renovate, replace or repair the bridge, the Toll Plaza or service station area and if as a result of such renovation, etc., the Property can no longer be used for a service station. In that event, Lessor shall give Lessee twelve (12) months' advance written notice of its intention to terminate this Lease. Upon the effective date of the termination of this Lease, Lessee shall immediately deliver occupancy and possession of the leased Property to Lessor. In such event, Lessor shall give Lessee a right of first refusal or the right to match the prevailing bid, if such bidding is required by applicable law, to operate a service stations should the Lessor desire to use its property for such activities during the term of the Lease and option, provided Lessee is not in default at the time.

31. NO WARRANTIES BY LESSOR AS TO CONDITION OF PROPERTY. Lessor makes no warranties express or implied as the condition of the Property or any improvements thereon.



32. HAZARDOUS MATERIALS.

A. Lessee shall:

- (1) neither cause nor permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Legal Requirements;
- (2) neither cause nor permit a release of Hazardous Materials onto the Property or any other property as a result of any intentional or unintentional act or omission on the part of Lessor;
- (3) comply with all applicable Legal Requirements related to Hazardous Materials and within three (3) days provide Lessor notice of any notice inquiry, violation, discharge or suspected discharge in any way related to the Property or the operation of the service station.
- (4) timely conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions on, from or affecting the Property in accordance with such applicable Legal Requirements and to the satisfaction of Lessor;
- (5) upon the expiration of the Lease, deliver the Property to Lessor free of all hazardous material; and
- (6) defend, indemnify and hold harmless Lessor and Lessor's employees and other agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of any kind or nature, known or unknown, contingent or otherwise (including, without limitation, accountants' and attorneys' fees, including fees for the services of paralegals and similar persons, consultants' fees, investigation and laboratory fees, court costs and litigation expenses at the trial and all appellate levels), arising out of, or in any way related to (1) the presence, disposal, release or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (b) any personal injury, including wrongful death, or damage to property, real or personal, arising out of or related to such Hazardous Materials; (c) any lawsuit brought, threatened or settled by Legal Authorities or other parties, or ordered by Legal Authorities, related to such Hazardous Materials; and/or (d) any violation of Legal Requirements related in any way to such Hazardous Materials, all except as may be related to the existing contamination as more fully discussed in Section 33.

B. As used in this section the following terms shall have the meanings set forth below.

- (1) "Hazardous Materials": Any flammable, explosive, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances,



pollutants, contaminants or related materials as defined currently or in the future under any Legal Requirements including, without limitation, the following statutes and the regulations promulgated under their authority: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*); (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, *et seq.*); (c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901, *et seq.*); (d) Chapter 376, Florida Statutes, as amended; and (3) Chapter 24 of the Code of Metropolitan Dade County, as amended.

- (2) "Legal Authority": Any domestic or foreign federal, state, county, municipal or other government, governmental department, commission, board, bureau, court, agency or instrumentality having jurisdiction or authority over Lessor, Lessee and/or all or any part of the Property.
- (3) "Legal Requirement": Any law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, registration or other direction or requirement of any Legal Authority, which is now or in the future applicable to the Property, including those not within the present contemplation of the parties.

C. The provisions of this Section 32 shall survive the expiration or termination of this Lease.

33. EXISTING FUEL SPILL REMEDIATION. The Lessee and Lessor acknowledge that there is existing contamination at, on and under the Property as more particularly described in the Remedial Action Plan dated February 11, 1994 and related documents prepared by Clark Engineers-Scientists, Inc. Without waiving any claims either party may have against the other with regard to contamination at the Property, the Lessor and Lessee have cooperatively submitted Florida Petroleum Liability and Restoration Insurance Program ("FPLRIP") Claims to the Florida Department of Environmental Protection ("DEP") for coverage for the existing contamination and the site has been determined eligible for state restoration funding under FPLRIP. The parties agreed that Lessee would be designated as the "person responsible for conducting site rehabilitation" and the parties further cooperated with one another to obtain their respective reimbursement of costs incurred under FPLRIP. The parties agree that the reimbursement process has been completed to their mutual satisfaction and waive any claims against each other with respect to costs which may have been covered under the Reimbursement Program. As to further remediation activities, Lessee shall have the right to designate a "qualified contractor" and shall have the duty to complete cleanup as may be required by DEP or the Dade County Department of Environmental Resource Management ("DERM") in accordance with the DEP's Preapproval Program and shall provide Lessor with copies of all documents submitted to DERM or DEP relating to the remediation. In the event remediation is necessary beyond the scope of the FPLRIP coverage, Lessee shall be solely responsible for the costs of such assessment and remediation activities.

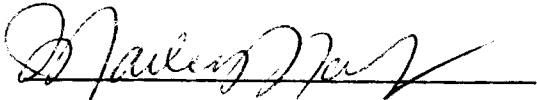
34. ADDITIONAL INSURANCE REQUIREMENTS. Throughout the term of this Lease Lessee shall insure that the Property qualifies for coverage under the Florida Petroleum Liability and Restoration Insurance Program ("FPLRIP"), any successor program or through another allowable mechanism in order to provide the scope and liability of coverage required by state and federal law. Lessee shall also insure that Lessor is named as an additional insured on all applicable insurance policies. Lessee shall annually, at the beginning of each Lease Year, provide evidence to Lessor of such coverage. Failure to continuously provide such coverage shall be a default under



this Lease. Lessee shall maintain and provide evidence of financial responsibility for petroleum storage systems at the Property in a form and manner in compliance with federal and state laws and regulations, and limits of at least \$3 million/incident and \$5 million aggregate shall be provided. Lessor shall be named as an Additional Insured under the policy.

35. RADON. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

ATTEST:


Name: Marlene Marante, Town Clerk

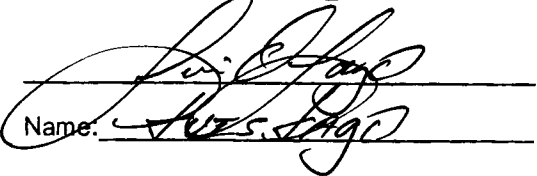
LESSOR:

TOWN OF BAY HARBOR ISLANDS

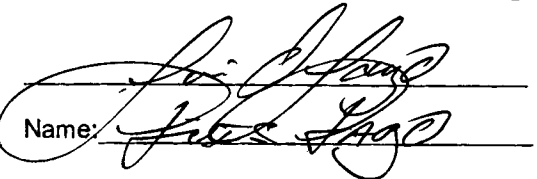
By: 
Name: Peter G. Lynch, Mayor

WITNESSES:


Name: H.E. MENDHEIM


Name: Peter Jago


Name: H.E. MENDHEIM


Name: Peter Jago

LESSEE:

SUNSHINE GASOLINE DISTRIBUTORS,
INC., a Florida Corporation

By: 
MAXIMO ALVAREZ, President

(Corporate Seal)

By: 
MAXIMO ALVAREZ, Individually

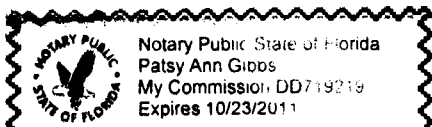
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing was signed and acknowledged before me this 23rd day of August, 2008, by Martine Mantele and Peter G. Lynch, respectively, the Mayor and Town Clerk of the Town of Bay Harbor Islands. They are personally known to me or who have produced _____ and _____ as identification.

WITNESS my hand and seal this 5th day of August, 2008.

Patsy A. Gibbs
Notary Public Patsy A. Gibbs

My commission expires: 10/23/2011



STATE OF FLORIDA
COUNTY OF BROWARD Miami-Dade

The foregoing was signed and acknowledged before me this 23rd day of July, 2008, by Maximo Alvarez, individually and as President of Sunshine Gasoline Distributors, Inc., on behalf of the corporation and by Maximo Alvarez, individually. He is personally known to me or who has produced _____ as identification.

WITNESS my hand and seal this 23rd day of July, 2008.

Michael S. Cummins
Notary Public

My commission expires



ADDENDUM TO AMENDED AND RESTATED LEASE

On August 14, 2000, the Town of Bay Harbor Islands, a Florida municipal corporation ("Lessor") and Sunshine Gasoline Distributors, Inc., a Florida corporation, and Maximo Alvarez (collectively "Lessee") entered into an Amended and Restated Lease (the "Lease") effective March 1, 1994, of Property in Miami, Dade County, Florida, more specifically described in Exhibit "A" of the lease. Now therefore in consideration of the mutual covenants and promises contained herein, the parties agree to amend the Lease as follows:

1. Section 21 is amended to require that Lessee demonstrate coverage for the building on the Property through a policy issued by the Florida Windstorm Underwriting Association or similar insurer with. Lessor named as Loss Payee.
2. Section 22 is amended to require that Lessee shall be required to provide evidence of garagekeepers liability relating to the repair shop operations and evidence of Workers' Compensation coverage for all personnel involved in the gasoline and repair operations.
3. Section 34 of the Lease is amended to require that Lessee maintain and provide evidence of financial responsibility for petroleum storage systems at the Property in a form and manner in compliance with federal and state laws and regulations, kept that limits of \$3 million/incident and \$5 million aggregate shall be provided. Lessor shall be named as an Additional Insured under the policy.
4. Section 35 of the Lease is deleted.

ATTEST:



Name: Marlene Marante, Town Clerk

LESSOR:

TOWN OF BAY HARBOR ISLANDS

By: 

Name: Peter G. Lynch, Mayor

WITNESSES:



Name: H.E. MENDHEIM



Name: H.E. MENDHEIM

LESSEE:

SUNSHINE GASOLINE DISTRIBUTORS,
INC., a Florida Corporation

By: 

MAXIMO ALVAREZ, President

(Corporate Seal)

WITNESSES:

Name: _____

By: _____
MAXIMO ALVAREZ, Individually

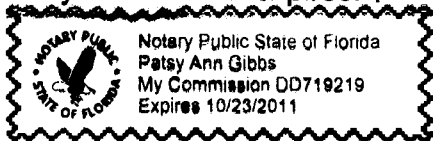
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing was signed and acknowledged before me this 5th day of August, 2008, by Marlene Marante and Peter G. Lynch, respectively, the Mayor and Town Clerk of the Town of Bay Harbor Islands. They are personally known to me or who have produced _____ and _____ as identification.

WITNESS my hand and seal this 5th day of August, 2008.

Patsy A. Gibbs
Notary Public

My commission expires: 10/23/2011



STATE OF FLORIDA
COUNTY OF BROWARD Miami Dade

The foregoing was signed and acknowledged before me this 23rd day of July, 2008, by Maximo Alvarez, individually and as President of Sunshine Gasoline Distributors, Inc., on behalf of the corporation and by Maximo Alvarez, individually. He is personally known to me or who has produced _____ as identification.

WITNESS my hand and seal this 23rd day of July, 2008.

Michael S. Cummins
Notary Public

My commission expires:



AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 5.

ITEM: Discussion and **Possible** action regarding zoom meetings.

DESCRIPTION:

The town has been holding zoom meetings to accommodate the residents and the public. Due to constant technical interruptions with the system, that feature is no longer available for Council Meetings. The Town Council requested the matter be placed on the agenda to discuss the feasibility of resuming this feature.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

March 14, 2023

ITEM NUMBER: 6.

ITEM: Discussion and Possible action regarding Section 23-12 (15)(e) iii of the Town Code regarding projections into setback areas. Sponsored by Council Member Bruder. Enclosed are copies of the Code provisions.

DESCRIPTION:

Section 23-12 (15)(e) iii allows certain open, airy and decorative structures such as freestanding canopies and awnings, thatched huts, pool cabanas, fixed umbrellas and gazebos to project into the rear and side yard setback areas (or into the front and side yard setback areas of waterfront lots) to a point no closer than five feet from the lot line or the seawall for waterfront lots, subject to written approval by the Design Review Board.

Sec. 23-11. Land development regulations.

In all area districts hereinabove set forth and designated, there shall be front, rear and side yard setbacks provided for of not less than the dimensions specified, and other land development standards, as follows, to wit:

(A) RD-Single Family Area:

(1) Front yard setback (any street frontage including corner lots).

All lots except Kane Concourse frontage: 25 feet.

All lots fronting Kane Concourse: 40 feet.

(2) Rear yard setbacks (waterfront).

Block 23, Lots 29-95: 40 feet measured from the outside bulkhead wall.

Block 23, Lots 1-28 and Lots 96-104: 25 feet measured from the outside bulkhead wall.

(3) Rear yard setbacks (non-waterfront).

Lots fronting Kane Concourse: Ten feet.

All other lots: 15 feet.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Cynthia Garcia, Deputy Clerk

ATTACHMENTS

1.	Sec. 23 11. Land development regulations. (1)
2.	Sec. 23 12. General provisions

Sec. 23-11. Land development regulations.

In all area districts hereinabove set forth and designated, there shall be front, rear and side yard setbacks provided for of not less than the dimensions specified, and other land development standards, as follows, to wit:

(A) *RD-Single Family Area:*

(1) Front yard setback (any street frontage including corner lots).

All lots except Kane Concourse frontage: 25 feet.

All lots fronting Kane Concourse: 40 feet.

(2) Rear yard setbacks (waterfront).

Block 23, Lots 29-95: 40 feet measured from the outside bulkhead wall.

Block 23, Lots 1-28 and Lots 96-104: 25 feet measured from the outside bulkhead wall.

(3) Rear yard setbacks (non-waterfront).

Lots fronting Kane Concourse: Ten feet.

All other lots: 15 feet.

(4) Side yard setbacks (all lots).

All lots: Ten feet.

(5) Notwithstanding the above, as to triangular or otherwise odd-shaped lots, the town shall have the power to adjust the street or front yard setback restrictions in the interest of proper, useful and equitable planning.

(6) Height limits.

a. No building in RD-Single Family area, shall exceed two and one-half stories or 25 feet in height above the base flood elevation (BFE) plus any additional freeboard per the Florida Building Code, or as otherwise prescribed by United States, state or county flood control laws or regulations.

b. Notwithstanding the above, roofs with a slope exceeding two and one-half inches per foot may exceed the above height restriction to a maximum height of 35 feet on waterfront properties and a maximum height of 30 feet on non-waterfront properties, provided that the point on the roof at which the slope begins such excess height is no closer to the property lines than as described below:

- i. On all lots in the RD-Single Family district: 15 feet from each side property line.
- ii. Block 23, Lots 29-95: 45 feet from the outside bulkhead wall, 60 feet from any street.
- iii. Block 23, Lots 1-28: 30 feet from the outside bulkhead wall, 55 feet from any street.
- iv. Lots facing Kane Concourse: 15 feet from the rear property line, 30 feet from any street.
- v. Corner lots in Blocks 30, 31, 33 and 34: 35 feet from any street.
- vi. On all other lots in the RD-Single Family district: 40 feet from any street (front) property line, 20 feet from any rear property line.

(7) Building articulation. Architectural embellishments, including but not be limited to, windows, eyebrows, material changes, reliefs, reveals, ornamentation, banding, canopies, copings, etc., must be incorporated into the design to avoid large flat uninterrupted wall surfaces for at least 50 percent of the length of all elevations of the main house and any accessory structures.

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- (8) Open space requirements.
 - a. Each plot shall provide for a minimum of 35 percent open space at ground level for one-story homes. Each plot shall provide for a minimum of 40 percent open space at ground level for homes with any portion of the home above one story.
 - b. Each plot shall provide for a minimum of 50 percent landscaped "green" pervious open space at ground level in the front yard area. The use of pervious pavers or landscape strips in driveways or walkways shall not be included in the 50-percent landscaping requirement. Within front setback areas sufficient open space and landscaping materials shall be provided to break large expanses of hardscapes, screen parking areas and provide shade.
 - (9) Second story building area restrictions. For residences designed as two-story structures, the second story shall not exceed 80 percent of the first (ground) floor gross floor area inside exterior walls (air-conditioned/non-air-conditioned areas). The reduced secondary story percentage listed herein may be applied to the first floor, if approved by the Design Review Board. Notwithstanding the above, the Design Review Board may allow modifications to this requirement in instances where enhanced architectural articulation and detailing is provided on the exterior house façades to break the massing of the structure.

(B1) *RM-1 Multiple Family Residential district (Waterfront lots).*

The purpose of the district is to provide appropriate land development regulations for the waterfront properties on the eastern island of the town. As the lots abut the wide waterways surrounding the island where no adjacent development occurs, the regulations reflect appropriate development criteria.

- (1) *Front yard setback (street frontage).* All lots in the RM-1 Multiple Family zoning district shall have a minimum front yard (street) setback as follows:
 - a. *Buildings less than 30 feet in height.* Twenty feet.
 - b. *Buildings less than 45 feet in height.* Twenty-five feet.
 - c. *Buildings less than 75 feet in height.* Thirty feet.
- (2) *Rear yard (waterfront) setback.* All lots in the RM-1 Multiple Family zoning district shall have a minimum rear yard (waterfront) setback of 20 feet.
- (3) *Side yard setbacks.* All lots in the RM-1 Multiple Family zoning district shall have minimum side yard setbacks as follows:
 - a. *Buildings less than 30 feet in height.* Ten feet.
 - b. For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.
 - c. Notwithstanding the above provisions for developments on more than one lot the minimum setback from each side lot line shall be equal to ten percent of the street frontage of the lot but not less than ten feet. The maximum required side setback width shall be 22.5 feet.
- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.

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- (5) The maximum overall length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Design Review Board may modify the application of this requirement for townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (7) *[Minimum unobstructed distance.]* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (8) *[Corner, waterfront lots.]* In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.
- (9) *Maximum building height:* No building in the RM-1 Multiple Family area shall exceed the following height limits as measured from the base flood elevation (BFE) plus any additional freeboard per the Florida Building Code, or as otherwise prescribed by United States, state or county flood control laws or regulations:
- Block 1.* Seventy-five feet.
- Block 2, Lots 1 through 13, inclusive.* Sixty-five feet.
- Block 2, Lots 14 through 29, inclusive.* Seventy-five feet.
- Block 3.* Sixty-five feet.
- Block 4.* Seventy-five feet.
- Each building level/story shall be a minimum of nine feet in height from floor to ceiling inside measurement. The term level/story shall refer to any floor within a residential development. Parking garage levels are not included.
- (10) *Landscape requirements.* Each plot shall provide for a minimum of 20 percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the town for consideration at the time of site plan approval. Trees shall be provided to provided shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (11) *Maximum allowable density.* The maximum allowable base density is 34 dwelling units per acre. The maximum allowable overall density (includes base density/TDR units) shall be 70 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project densities may be increased on a case-by-case basis only through the process described elsewhere in Chapter 23.
- (12) *Maximum number of hotel rooms.* The maximum number of hotel rooms shall not exceed 70 rooms per acre.
- (13) *Building roof design.* All rooftops of buildings with flat roof decks shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for on-site recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for recreational purposes, a

minimum of 15 percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.

(B2) RM-2 Multiple Family Residential district (Nonwaterfront).

Purpose. The purpose of the district is to provide appropriate land development regulations for the nonwaterfront properties on the eastern island of the town. As the interior lots abut other lots, and the relationship of buildings to other buildings require the regulations to reflect appropriate development criteria.

- (1) *Front yard setback.* All lots in the RM-2 Multiple Family areas shall have a minimum front yard setback as follows, the front yard being the yard abutting on any street:
 - a. *Buildings less than 30 feet in height.* Twenty feet.
 - b. *Buildings less than 45 feet in height.* Twenty-five [feet].
 - c. *Buildings less than 65 feet in height.* Thirty feet.
- (2) *Rear yard setback.* All lots in the RM-2 Multiple Family areas shall have a minimum rear yard setback as follows:
 - a. *Buildings less than 30 feet in height.* Ten feet.
 - b. *[Additional setback.]* For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height.
- (3) *Side yard setbacks.* All lots in the RM-2 Multiple Family areas shall have minimum side yard setbacks as follows:
 - a. *Buildings less than 30 feet in height.* Ten feet.
 - b. *[Additional setback.]* For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.
 - c. Notwithstanding the above provisions, for developments on more than one lot the minimum setback from each side lot line shall be equal to ten percent of the street frontage of the lot but not less than ten feet. The maximum required side setback width shall be 22.5 feet.
- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.
- (5) *Maximum building length.* The maximum length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Design Review Board may modify the application of this requirement for Townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.

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- (7) *Minimum distance between buildings.* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
 - (8) *[Corner lots.]* In the case of corner lots, side setbacks shall be regarded as those setbacks other than ones abutting streets.
 - (9) *Maximum building height.* No building in the RM-2 Multiple Family district shall exceed 65 feet in height as measured from the base flood elevation (BFE) plus any additional freeboard per the Florida Building Code, or as otherwise prescribed by United States, state or county flood control laws or regulations.

Each building level/story shall be a minimum of nine feet in height from floor to ceiling, inside measurement. The term level/story shall refer to any floor within a residential development. Parking garage levels are not included.

- (10) *Landscape requirements.* Each plot shall provide for a minimum of 20 percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (11) *Maximum allowable density.* The maximum allowable base density is 34 dwelling units per acre. The maximum allowable overall density (includes base density/TDR units) is 60 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project densities may be increased on a case-by-case basis only through the process described elsewhere in Chapter 23.
- (12) *Building roof design.* All rooftops of buildings with flat roof decks shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for on-site recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for recreational purposes, a minimum of 15 percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.

(C) *B-1 Business district.*

Building setbacks:

- (1) *Kane Concourse (96th Street):* No building or structure or part thereof, other than permissible accessory and/or decorative structures specified in section 23-12, and permissible sidewalk cafes and other uses specified herein, shall encroach into the public right-of-way for the Kane Concourse (55 feet from the centerline of the roadway).
- (2) *East Bay Harbor Drive, West Bay Harbor Drive, Bay Harbor Terrace, 95th Street and 97th Street:* No building or structure or part thereof, other than permissible accessory and/or decorative structures specified in section 23-12, and permissible sidewalk cafes and other uses specified herein, shall be erected or altered to be less than an average of five feet from the aforementioned public rights-of-way. Within the required setback areas, landscaping including foundation plantings, plazas, sculptures and the like shall be installed. At least 75 percent of the area shall be provided with landscape materials. The remaining area may include hardscape such as walkways, pavers and the like. For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for

developments located on single lots, the maximum setback shall be 15 feet. The town council reserves the right to modify the additional building setback provisions listed above due to increased building height for parking garage structures on town-owned lands.

- (3) *Alleys depicted on the recorded plat for Bay Harbor Islands between Blocks 11, 12, 20 and 21* No building or structure or part thereof, other than permissible accessory and/or decorative structures specified in section 23-12 shall encroach into the public right-of-way. Notwithstanding and above, setbacks shall be provided to provide for required loading areas and service deliveries so that the alley is not blocked from vehicular traffic movements.
- (4) *Interior side setbacks:* No setback is required along interior side property lines.
- (5) *Special provisions for Lot 2 in Block 1:*
 - (a) *East Bay Harbor Drive.* The minimum setback shall be not less than 20 feet for buildings up to 25 feet in height. In addition, for any structure over 25 feet in height, the setback shall be increased one foot for each two feet in height for that portion of the building over 25 feet in height with a maximum setback of 30 feet.
 - (b) *Waterfront property line.* The minimum setback shall be not less than 20 feet.
 - (c) *Side property lines.* A side yard setback on the southerly side of the lot of not less than ten feet for buildings up to 25 feet in height. A side yard setback on the northerly side of the lot of not less than ten feet for buildings up to 25 feet in height. For each additional two feet of building height above 25 feet, there shall be one additional foot of building setback for that portion of the structure over 25 feet in height. Notwithstanding the above, if Lot 2 is developed as part of a unified development with Lot 1 in Block 1, a side setback shall not be required on the lot line separating the lots. If Lot 2 is developed independently from Lot 1 in Block 1, the maximum side yard setbacks shall be 15 feet.
 - (d) *[Exceptions.]* Notwithstanding the above regulations, the Town Council may modify setback requirements for any building area above 25 feet in height on East Bay Harbor Drive and waterfront property lines if a continuous pedestrian plaza environment is constructed the full width of the setback area. Perpendicular vehicular driveways and/or drop-off areas may be permitted. In no instance shall any building setback be less than ten feet.
- (6) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 25 feet in height.
- (7) *Special residential/hotel setback provisions.* If a residential or hotel use is provided as part of a mixed-use development, and the uses are located at ground level fronting the streets described in subsection (2) above, the minimum building setbacks shall be increased to a minimum of 20 feet. The minimum required setback areas may be utilized for landscaping, patios, stairs and terraces provided the area is walled and/or fenced from the adjoining roadway with landscaping between the right-of-way and the face of any wall/fence.

Miscellaneous regulations:

- (8) *Building height:* No building or portion thereof shall exceed 65 feet in height as measured from the base flood elevation (BFE) plus any additional freeboard per the Florida Building Code, or as otherwise prescribed by United States, state or county flood control laws or regulations, except for those

allowable rooftop structures listed in subsection 23-12(25) ("standard height"). Notwithstanding the above, buildings or portions of buildings in the district may be increased with bonus height up to a maximum of 75 feet in height ("maximum height") except for those allowable rooftop structures listed in subsection 23-12(25), upon the submission of a written request setting forth the proposed participation and contribution into the town's public benefit program ("request"), as set forth below, provided:

- a) The town council approves the request at a public meeting; and
- b) The developer participates and contributes to the town's public benefits program as set forth herein.

(8.1) Public benefits program. The intent of the public benefits program established in this section is to allow bonus building height in the B-1 Business District up to the maximum height in exchange for a developer's contributions to specified programs that provide benefits to the public. The bonus height may be permitted if the proposed development contributes toward the specified public benefits, in the manner and amount set forth herein.

(8.2) The bonus height may be permitted from the standard height up to the maximum height in exchange for contribution to the town for one or more of the following public benefits:

- Affordable/workforce housing equal to at least 25 percent of the number of dwelling units proposed (sales/rental costs 120 percent or less of the median family income of Miami-Dade County);
- Dedication and construction of public parks and open space (land/facilities) of a size, location, and types of facilities acceptable to the town;
- Undergrounding electrical, telecommunication and other overhead wire and pole facilities (min. underground one complete platted block in the business district, or payment in lieu of the cost to the town thereof);
- Green buildings (USGBC Gold or Platinum only);
- Excess parking spaces above the minimum Code requirements for the project that are available and open for general public use (at least 25);
- Public buildings, land and facilities owned by the town;
- Public infrastructure projects listed in the town's capital improvement plan (CIP); or
- Any other contribution(s) acceptable to the town council, provided that the contribution(s) serve a public purpose.

(9) *[Recreational amenities:]* Residential development shall provide recreational amenities for its residents. The recreational facilities shall be located on site or in near proximity to the subject site if approved as part of the site development plan for the property. The criteria shall be at least the standard in the town's adopted comprehensive plan and land development regulations (LDRs) and may include land dedications, construction of facilities, payment of monies in lieu thereof, or other arrangement as approved by the town.

(10) *Maximum allowable density:* The maximum allowable base density shall be 34 dwelling units per acre. The maximum allowable overall density (includes base density/TDR units) is 80 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in section 23-22 entitled Transfer of Development Rights (TDR).

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- (11) *Maximum number of hotel rooms:* The maximum number of hotel rooms shall not exceed 70 rooms per acre.
- (12) *Maximum building length/breezeways.* A building containing residential uses may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height nor buildings within 50 feet of the Kane Concourse. The Design Review Board may modify the application of this requirement in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (13) *Transparent storefronts on Kane Concourse:* Building facades fronting on Kane Concourse shall provide for a "storefront" appearance; that is, primarily glass windows to showcase products and activities. A minimum of 75 percent of the first floor building facade must be glass. No window film or interior improvements within ten feet of the window shall be constructed which have the effect of blocking visibility into the storefront. No existing storefronts shall be allowed to remodel with the replacement of glass storefronts to other materials.
- (14) *Pedestrian walkways required from Kane Concourse, 95th Street and 97th Street to rear parking areas:* Buildings constructed along the Kane Concourse, 95th Street or 97th Street frontage shall provide for periodic pedestrian walkways from the sidewalk on those roadways to any parking areas to the rear of the buildings unless otherwise approved by the town council during consideration of a site plan. A walkway shall be a minimum of five feet in width. This requirement shall apply to new developments and redevelopment activities. The exact location, spacing and design shall be determined at the time of site plan approval. At a minimum, the town's goal is to provide at least one walkway in each block fronting on the Kane Concourse. Pedestrian walkways between the Kane Concourse and any rear parking areas located less than 150 feet from West Bay Harbor Drive, East Bay Harbor Drive or Bay Harbor Terrace shall not meet the intent of this provision.
- (15) *Shared parking/parking reduction for mixed-use development:* Mixed-use developments may require less parking than indicated by traditional parking rates due to varying parking demands for each land use. If an applicant requests to reduce the parking requirements for a mixed-use development below the minimum requirements of this chapter, a shared parking study shall be submitted to the town for consideration. The town may elect to retain qualified professionals to review and comment on the request and the applicant shall reimburse the town for any expenses incurred in that review. The shared parking study shall be prepared and certified by a registered professional engineer, architect or planner experienced in parking studies. The shared parking study shall comply with the methodology in the Urban Land Institute's "Shared Parking" manual, as it may be amended. As a minimum, the study shall include tenant uses, square footage, the required parking code for each use, hours of operation, total parking provided, uses utilizing shared parking, hourly parking accumulation and requested reduction of parking spaces. The town council shall determine if shared parking arrangements will provide adequate parking for the development and any reasonably foreseeable future user(s) of the site.
- (16) *Sidewalk cafes/outdoor seating for restaurants.*
- (a) *Purpose.* To establish conditions and requirements under which a sidewalk cafe permit will be issued for sidewalk cafes.
- (b) *Definitions.*
1. *Accessory use* is a use that (a) is located on the same lot as the principal use; (b) contributes to the comfort, convenience or necessity of the principal use; and, (c) does not exceed 30 percent of the gross floor area (the areas within the perimeter of the inside walls of the

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- building/bay with no deductions for corridors, stairs, closets, thickness of wall, columns or other features, but excluding utility rooms).
2. *Sidewalk cafe* is a portion of a restaurant or eating establishment located outside of the principal building (unenclosed, without a permanent structural roof covering) on a private or public sidewalk that provides a sit-down area for food and/or beverage consumption purposes.
 3. *Sidewalk cafe permit* is a permit issued after approval has been granted by the Town based on the criteria outlined below.
- (c) *Uses permitted/permit application.* Sidewalk cafes are permitted as an accessory use to a restaurant or eating establishment. Application for a sidewalk cafe permit shall be made to the town manager, or his/her designee. If approved, a permit for a sidewalk cafe will be issued for one year and shall be automatically renewed by the town if the use remains in compliance with all conditions stated herein. Such permit will not be transferable in any manner.
- (d) *Permit types.* Sidewalk cafes greater than 400 square feet in area shall be approved by the town council. Fees for sidewalk cafes greater than 400 square feet in area shall be paid in accordance to the fee schedule established by the town.
- (e) *Submittal requirements.* All site plans (including architectural plans) for sidewalk cafes shall include a sketch; existing interior floor plans; exterior floor plans; building elevations; setbacks; types of landscaping/ground covering; signs; lighting; location of tables, chairs and other furniture; pedestrian ingress and egress (clear path) and other information that is deemed necessary for review. In addition, photographs, drawings, or manufacturers' brochures describing the appearance of the proposed tables, chairs, umbrellas or other objects related to the sidewalk cafe shall be provided.
- (f) *Development standards and criteria.* In order to protect the public health, safety, convenience and general welfare of the surrounding uses, sidewalk cafes shall be subject to the following criteria:
1. The operations of such sidewalk cafe seating area shall be conducted in such a way as to not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets or sidewalks. There shall be a minimum of five feet of clear distance for through pedestrian movements. The minimum five-foot requirement will be measured and maintained when chairs and tables are occupied and any umbrellas are open;
 2. All permanent kitchen equipment and refuse containers used to service the sidewalk cafes shall be located inside the primary restaurant; provided however, a portable service area for dishes, silverware, glassware, beverage service facilities and refuse may be permitted provided it is moved into the main building each night. Service counters or pass through windows are not permitted;
 3. Required parking for sidewalk cafes shall be calculated and provided in accordance with the provisions found in chapter 23, article II of the Town Code entitled Off-Street Parking;
 4. The restaurant owner/operator shall be responsible for maintaining the sidewalk cafe in a clean, neat, orderly and safe condition. All debris and litter shall be removed daily. The sidewalk shall be pressure washed not less than one time a month and more often when required. Private trash containers in the sidewalk cafe dining area are prohibited. Public sidewalk trash containers shall not be used as a means of disposing of table waste generated by restaurant consumers;

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5. Sidewalk cafe furniture must be kept in a clean, orderly and safe condition. Sidewalk cafe furniture must be moved into the main building each night. White plastic furniture is not permitted in sidewalk cafe areas. All white plastic furniture currently in place shall be removed within one year from the date of adoption of this subsection. Plastic furniture other than the color white is permitted, as well as metal or wood. The use of other furniture materials not listed above shall be first submitted to the design review committee for a recommendation to the Design Review Board. The town is not obligated to approve alternative materials;
 6. Restaurants may serve alcoholic beverages in the sidewalk cafe dining area provided the restaurant complies with state law and applicable Town Code provisions;
 7. Audio/visual devices (televisions) are permitted in the sidewalk cafe dining area provided the devices are located under a permanent roof, are not visible from the public right-of-way and are not audible across property boundaries or through partitions common to two or more parties within a building. Loud speakers or public address systems in the sidewalk cafe dining area are prohibited for those sidewalk cafes where the sound may affect residential uses. Loud speakers or public address systems located in adjoining sidewalk cafe dining areas shall limit the volume to patrons within the boundaries of the establishment only;
 8. One menu board or sandwich sign is allowed per restaurant which shall meet the requirement set forth in subsection 17-20(V);
 9. The hours of operation for the sidewalk cafe shall be no greater than that of the principal restaurant and may be less as determined in the review process; and
 10. Upon the issuance of a hurricane warning, all outdoor furniture shall be removed from the sidewalk cafe dining area.
- (g) *Liability and insurance for sidewalk cafe dining:*
1. Prior to the issuance of a permit, the applicant shall provide the town with certified copies of all insurance policies providing coverage as required.
 2. Prior to the issuance of a permit, the applicant shall furnish the town with a signed statement from an authorized officer, or legal representative, of the restaurant that the permittee shall hold harmless the town, its officers and employees and shall indemnify the town, its officers and employees for any claims for damages to property or injury to persons arising out of or in any way contributed by the use, maintenance, or operations of the restaurant. Proof of worker's compensation coverage shall also be provided.
 3. The applicant shall furnish and maintain such public liability, food products liability, and property damage insurance from all claims and damage to property or bodily injury, including death, which may arise from the use, maintenance or operations of the sidewalk cafe dining area. Coverage shall specifically include policies of not less than \$500,000.00 for bodily injury, and property damage respectively per occurrence. Such insurance shall name as additional insured, the town, its officers and employees, and shall further provide that that policy shall not terminate or be canceled prior to the completion of the permit period without 30 days written notice to the town. Such insurance will be primary to any insurance or self-insurance whether collectible or not which may be available to the town, its officers or employees.
 4. For restaurants with sidewalk cafes that serve alcoholic beverages, liquor liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage is required. The applicant shall furnish and maintain such public liability, liquor products

liability, and property damage insurance from all claims and damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Coverage shall not be less than \$1,000,000.00 for bodily injury, and property damage respectively per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insured, the town, its officers and employees, and shall further provide that that policy shall not terminate or be canceled prior to the completion of the permit period without 30 days' written notice to the town. Such insurance will be primary to any insurance or self-insurance whether collectible or not which may be available to the town, its officers or employees.

5. An endorsement must be issued as part of the policy reflecting compliance with these requirements.
6. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least 30 calendar days' written notice has been given to the town by certified mail.
7. The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the state with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+.

(h) *Revocation, suspension of permit; emergencies:*

1. A sidewalk cafe permit may be revoked or suspended by the town manager or his/her designee upon a finding that a violation of the provisions of this subsection occurred, or the sidewalk cafe is being operated in a manner which constitutes a nuisance, that unduly impedes or restricts the movement of pedestrians, is a safety or public health concern, or in any way contributes an undue liability. The revocation or suspension shall be in writing, setting forth specific reasons and providing an effective date.
2. A sidewalk cafe may be suspended by the town manager or his/her designee for community or special events, utility, sidewalk or road repairs, or emergency situations or violations of provisions contained herein. The length of the suspension shall be for a duration(s), as determined by the town manager or his/her designee. Removal of all tables, chairs and related obstructions shall be the responsibility of the restaurant owner/operator.

- (17) *Flood proofing for ground floor uses:* Because the current FEMA base flood elevation (+8.0 - +10.0 NGVD) is considerably higher than the existing ground/roadway/sidewalk elevation (+4.5 +/- NGVD) and the town desires to encourage pedestrian interaction from the sidewalk areas into the ground level building areas which would otherwise require steps or ramps, as an alternative, an owner may elect to flood-proof the building, or portion thereof, in accordance with allowable FEMA regulations from the ground level to the base flood elevation. Metal flood plates or other approved flood-proofing techniques may be utilized.

(D) *RM-3 Multiple Family Residential district.*

Purpose. The purpose of the district is to provide appropriate land development regulations for the large waterfront properties (tracts A—F) located on the northern and southern tips of the eastern island of the town. As the platted lots are considerably larger than other multifamily sites in the town and abut wide waterways surrounding the island where no adjacent development occurs, the regulations reflect appropriate development criteria.

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- (1) *Front yard setback (street frontage).* All lots shall have a minimum front yard (street) setback as follows:
 - (a) Buildings up to 30 feet in height—Twenty feet.
 - (b) Buildings up to 45 feet in height—Twenty-five feet.
 - (c) Buildings up to 75 feet in height—Thirty feet.
 - (d) For buildings over 75 feet in height as approved under subsection (11) below the front setback dimension shall be negotiated during the site plan process, but shall not be less than 30 feet.
 - (2) *Rear yard (waterfront) setback*> All lots shall have a minimum rear yard (waterfront) setback of 20 feet.
 - (3) *Side yard setbacks.* All lots shall have minimum side yard setbacks as follows:
 - (a) Buildings up to 30 feet in height—Twenty feet.
 - (b) For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, the maximum required setback shall be 30 feet.
 - (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the Design Review Board may allow portions of the building structure to encroach into the setback requirements stated above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.
 - (5) *Maximum building length.* The maximum overall length of any single building in a linear shape with no breaks or angles greater than 15 degrees facing parallel to a street frontage shall not exceed 260 feet, except as hereinafter provided.
 - (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Design Review Board may modify the application of this requirement for townhouse development or in instances where enhanced architectural articulation and detailing is provided on the building façade to break the massing of the building. A breezeway is not required on a building constructed on a single platted lot. For the purpose of this section platted lots are those depicted on the subdivision plat of Bay Harbor Island recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County, Florida.
 - (7) *Minimum distance between structures.* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
 - (8) *Maximum building coverage.* The maximum building coverage of any lot shall not exceed 40 percent of the plot area for all principal structures. If an elevated parking garage structure is provided the combined total of all building coverage shall not exceed 60 percent of the plot. An elevated parking garage shall not include any living quarters, meeting rooms or recreational facilities. See section 23-1 for the definition of building coverage.
 - (9) *Maximum building height.* No building shall exceed 75 feet in height above the base flood elevation (BFE) plus any additional freeboard per the Florida Building Code, or as otherwise prescribed by United States, state or county flood control laws or regulations, unless otherwise approved by the town residents and town council in accordance with section 86 of the Town Charter, but in no case more

than 120 feet in height, which includes the primary building, parking garage or any other accessory structure, but does not include rooftop mounted structures as defined in subsection 23-12(25). The town council reserves the right, as part of any consideration to allow a building to exceed 75 feet in height, to require site plan modifications, project mitigation and/or tradeoffs (including but not limited to off-site improvements, on-site improvements, pedestrian walkways, enhanced view vistas to adjoining waterways, etc.).

Each building level/story shall be a minimum of nine feet in height from floor to ceiling, inside measurement. The term level/story shall refer to any floor within a residential development. Parking garage levels are not included.

- (10) *Building roof design.* All rooftops of buildings with flat roof decks, including parking garage roof decks, shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for on-site recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for parking or recreational purposes, a minimum of 15 percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.
- (11) *Landscape requirements.* Each plot shall provide for a minimum of 20 percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (12) *Maximum allowable density.* The maximum allowable base density is 34 dwelling units per acre. The maximum allowable overall density (includes base density/TDR units) is 80 dwelling units per acre. If the Town approves a development with a height exceeding 75 feet in accordance with the Town Charter provisions, the maximum density shall be as determined at the time of Site Development Plan/TDR approval. Partial units below one-half are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in Chapter 23.
- (13) *Interpretation of side lot lines.* Side setbacks shall be regarded as those setbacks other than ones abutting streets and water.
- (14) *Vested rights.* Notwithstanding the above regulations, for those developments existing as of December 10, 2002, when section 86 of the Town Charter was approved by the town voters that established a maximum building height for any new building of 75 feet, the existing residential density, building height, lot coverage, building setbacks and other land development regulations are vested and may continue so long the owners elect to maintain the development as originally approved. If the existing development is damaged by a natural disaster, fire or flooding to the extent of 50 percent or more of the assessed value of the building improvements when the damage occurs, and the owners voluntarily elect to demolish and rebuild the project, the subsequent new development shall comply with all current land development regulations, except existing building height and residential density, which shall continue to be vested without the need to acquire TDR units. However, in no event shall the new development be greater in density or height than the development being replaced, unless TDR units are acquired or pursuant to section 86(1) of the Town Charter.
- (15) *Parking garage structures.* For any redevelopment of an existing RM-3 site after the effective date of Ordinance No. 907, not less than 90 percent of the required parking spaces shall be contained within a fully enclosed parking garage structure. The portion of a parking garage structure above finished grade

shall be substantially screened from view from adjoining roads and adjacent properties. This shall not prohibit the parking garage structure driveway openings from being visible from an adjoining street. The exterior building façade of any parking garage structure not substantially screened by earthen berming, planters and adequate landscaping materials shall incorporate the same architectural features and elements on the main building façade to disguise the parking garage structure.

(E) *CA-Causeway Area:*

(1) No restrictions.

(Ord. No. 108, § 11, 6-10-57; Ord. No. 112, § 1, 1-13-58; Ord. No. 115, § 1, 1-13-58; Ord. No. 125, § 3, 1-12-59; Ord. No. 183, § 3(1)—(11), 11-9-64; Ord. No. 227, § 1, 3-9-70; Ord. No. 224, § 1, 8-9-71; Ord. No. 266, §§ 3, 4, 7-20-73; Ord. No. 303, § 1, 8-9-76; Ord. No. 313, § 1, 12-13-76; Ord. No. 314, § 3, 2-4-77; Ord. No. 317, § 3, 6-13-77; Ord. No. 425, § 4, 4-8-85; Ord. No. 481, § 1, 8-14-89; Ord. No. 592, § 3, 7-8-96; Ord. No. 627, § 1, 1-12-98; Ord. No. 713, § 1, 2-10-03; Ord. No. 721, § 1, 6-9-03; Ord. No. 757, § 1(Exh. A), 12-13-04; Ord. No. 759, § 1(Exh. A), 12-13-04; Ord. No. 771, § 1(Exh. A), 5-9-05; Ord. No. 775, § 1(Exh. A), 6-20-05; Ord. No. 798, § 1(Exh. A), 7-10-06; Ord. No. 799, § 1(Exh. A), 7-10-06; Ord. No. 819, § 1(Exh. A), 7-9-07; Ord. No. 820, § 1, 7-9-07; Ord. No. 867, § 1(Exh. A), 12-8-08; Ord. No. 868, § 1(Exh. A), 12-8-08; Ord. No. 907, § 1(Exh. A), 12-13-10; Ord. No. 946, § 1(Exh. A), 3-11-2013; Ord. No. 948, § 1(Exh. A), 5-13-2013; Ord. No. 956, § 1(Exh. A), 11-12-13; Ord. No. 957, § 1(Exh. A), 12-9-13; Ord. No. 960, § 1(Exh. A), 2-10-14; Ord. No. 961, § 1(Exh. A), 2-10-14; Ord. No. 967, § 1(Exh. A), 10-13-14; Ord. No. 972, § 1(Exh. A), 1-12-15; Ord. No. 1018, § 1(Exh. A), 1-18-18; Ord. No. 1021, § 1(Exh. A), 5-14-18; Ord. No. 1024, § 1(Exh. A), 9-17-18; Ord. No. 1045, § 1(Exh. A), 2-18-20; Ord. No. 1070, § 2(Exh. A), 3-9-22)

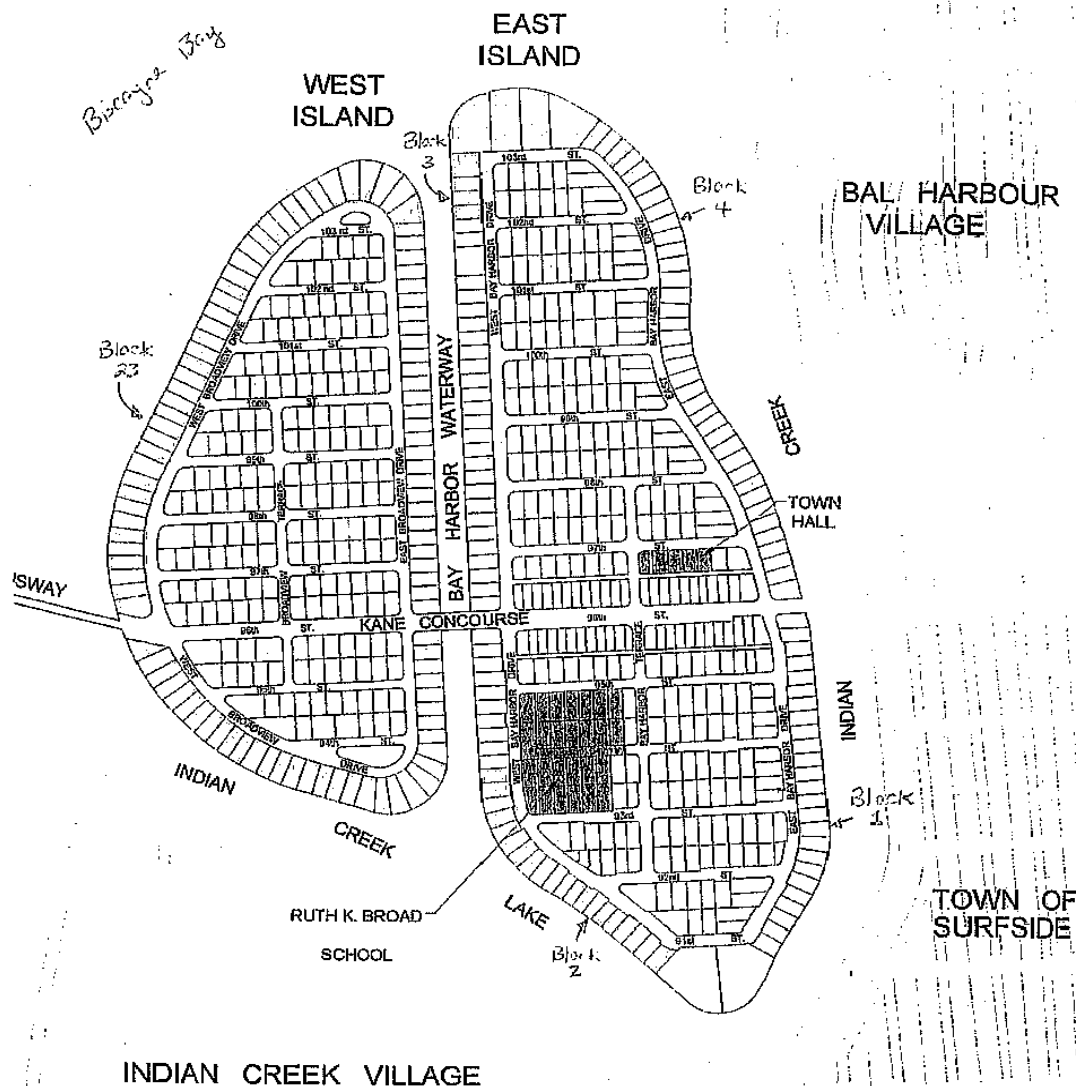
Sec. 23-12. General provisions.

- (1) Nothing shall be done or suffered to be done or permitted to exist on any improved or unimproved property which may be or become an annoyance, blight, eyesore, danger or nuisance to the neighborhood, the inhabitants of buildings or the safety and welfare of the general public. Without limiting the foregoing, the following shall constitute a nuisance: deteriorated landscaping, deteriorated fences, deteriorated roofs, deteriorated windows, deteriorated shutters, deteriorated screens, deteriorated exterior paint, deteriorated railings, deteriorated fascia boards, deteriorated exterior doors, deteriorated driveways, deteriorated parking areas, deteriorated garbage containers, deteriorated swimming pools and pool areas or any deteriorated part of structures to the extent it causes a blight on the neighborhood or endangers life or property. Deteriorated is defined as degeneration in the substance of the thing such as that arising from decay, corrosion, disintegration, lack of paint, broken parts, holes, or leaking in the case of roofs. No monkeys, apes, reptiles, horses, cattle, swine, goats, poultry, fowl or any other livestock shall be kept on any lot.
- (2) Excepting as is otherwise provided in the "sign ordinance" of the town, which is now chapter 17 of the Code, no sign of any character shall be erected displayed or maintained on any of the vacant land in the town unless the maintenance or erection of such sign shall first have been specifically approved by the town council.
- (3) No weeds, brush or other unsightly growths, shall be permitted to grow or remain upon the land in the town, and no refuse pile or garbage pile or unsightly objects including but not limited to building materials and equipment if no building permit exists for improvement on said land or if a certificate of occupancy has been issued for improvements on said land, shall be allowed to be placed or suffered to remain thereon; and in the event that the owner of any land in the town shall fail or refuse to keep his land free of growths, underbrush or refuse piles or other unsightly growths or objects, including but not limited to building materials and equipment if no building permit exists or if a certificate of occupancy has been issued, then the town may enter upon said land and remove the same at the expense of the owner; and such entry shall not be deemed a trespass. This paragraph includes the requirement that the owner of any land in the town shall empty or secure with a cover, dumpsters containing construction debris and materials, as well as remove or otherwise tie and secure yard debris and other trash, including tree trimmings, within three hours after notice of a Hurricane Watch has been posted for Miami-Dade County, Florida. Said requirements shall remain in full force until notice of an "all clear" has been posted for Miami-Dade County, Florida.

The foregoing paragraph creates a civil liability in addition to the penalty provision of section 23-17. The civil liability of the owner for any expenses of the of the town in removal of the weeds, brush, refuse, piles, garbage piles, or other unsightly growths or objects, construction debris and materials, yard debris and other trash including tree trimmings, may be enforced in any court of appropriate jurisdiction in the state.
- (4) For the purpose of insuring the development of the town as an area of high standards, the town reserves the right and power to control the type, kind and character of buildings, structures and improvements which may be sought to be placed on any land in the town. Therefore, no building or structure may be commenced or begun until all plans and specifications therefor have been submitted to the town, and shall have been first approved by the town. Refusal of the town to approve any plans or specifications submitted to the town for approval may be based upon any valid reason or concern with the general welfare of the town, including but not limited to aesthetic grounds.
- (5) No tents or temporary accessory buildings or structures shall be erected on any land in the town without the prior written approval of the town.
- (6) (a) No boathouse or dock building shall be created on or adjoining any of the lots in the town, but a dock extending such as distance from the line of the outside face of the seawall cap of the waterfront lots as may be approved by the town manager may be permitted, provided:

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- (i) No deck of any dock shall be higher than the existing height of the seawall cap, or a retaining wall attached directly to the seawall cap, or a retaining wall abutting the seawall; provided, however, if a property has a deck and/or walkway in the adjacent yard and wishes to carry the same material across the seawall cap onto the dock so that there is an unbroken appearance between the deck and/or walkway and dock with respect to materials, the dock may be higher than the seawall cap, but not to exceed 6.5 feet above mean sea level (MSL);
 - (ii) No dock or deck constructed within the town shall bear any weight upon the seawall or seawall cap unless structural calculations (including vertical and lateral) are presented to the town by a licensed professional engineer. The engineer shall certify that the additional loading (including vertical and lateral) presented by the proposed dock is within the design loading calculations of the seawall;
 - (iii) No dock shall extend more than 25 feet beyond the outside face of the seawall cap, except as provided hereinafter;
 - (iv) As to those docks projecting into the Bay Harbor Waterway between the east island and the west island, none shall extend more than 15 feet beyond the outside face of the seawall cap. This restriction specifically applies to lots one through 12 in block two; lots one through 32 in block three; and lots one through 28 and lots 96 through 104 in block 23;
 - (v) No dock which extends more than eight feet beyond the outside face of the seawall cap shall have a width of more than four feet, and shall have no obstructions to such width such as storage bins, benches, etc.;
 - (vi) No cover shall be permitted to be erected in connection with any dock;
 - (vii) No part of any dock shall be placed nearer than ten feet to a line formed by the projection of the sidelines of the dock;
 - (viii) No boat landing, dock or pier shall be constructed until the plans and specifications therefore shall have been approved in writing by the town manager; and
 - (ix) No portion of any vessel shall extend more than 30 feet beyond the outside face of the seawall cap in the Bay Harbor Waterway;
 - (x) Notwithstanding the above provisions as related to the allowable projection of docks from the outside face of a seawall, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site;
 - (xi) The minimum height of a dock surface (top) extending seaward of a seawall shall be at least five feet above mean sea level (MSL), unless otherwise approved by the applicable regulatory agency (Miami-Dade DERM/US Corp of Army Engineers).
- (b) Boat lifts and/or davits shall be permitted to be constructed and/or installed on or upon adjoining waterfront properties, subject to the following provisions:
- (i) Boat lifts and/or davits: Any device used to raise and/or lower a boat, or other water vehicle to and/or from the surface of the water.

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- (ii) Boat lifts and/or davits shall not be constructed nor installed in such a manner which would allow any portion of the boat lift or davit or watercraft lifted or suspended from same to be any closer than ten feet to a line formed by the projection of the side property lines of the lot.
 - (iii) No portion of a boat lift or davit shall extend more than 25 feet beyond the outside face of the seawall cap.
 - (iv) No boat lift or davit shall be constructed or installed with any attachment or fastening to the seawall or seawall cap. Boat lifts and davits shall be structurally self-supporting and not dependent upon the seawall or seawall cap for structural integrity.
 - (v) No cover or canopy shall be permitted to be erected in connection with any boat lift or davit.
 - (vi) No boat lift or davit shall be constructed or installed until the plans and specifications therefore shall have been approved in writing by the town manager.
- (7) No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the town. The town shall have the right to regulate the size and types of boats, yachts, or vessels which may be moored to any dock or mooring along the waters adjacent to the town, regardless of the location.
- (8) No mooring piles shall be placed more than 40 feet beyond the outside face of the seawall cap of any lot, provided however, no mooring piles shall be placed more than 30 feet beyond the outside face of the seawall cap of any lot on the Bay Harbor Waterway between the east and west island, and no mooring pile shall be nearer than seven and one-half feet to a line formed by the projection of the side lot lines to the lot. Notwithstanding the above provisions, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
- (9) No lot or parcel shall be increased in size by filling in the waters on which it abuts.
- (10) No seawall shall be erected, constructed or repaired in the town or adjacent thereto unless and until its location, design, materials, structures, strength, etc. shall have been approved in writing by the town.
- (a) Seawall permit for use of municipal seawall. Any person needing to access a municipal seawall shall first obtain a permit and register with the town. In addition to a permit fee, the town might require the posting of a bond.
 - (b) *Damaging municipal seawall.* Any person injuring or damaging a municipal seawall shall be liable and shall immediately reimburse the town in an amount equal to the cost of repairing such damage or injury. The town shall have a specific lien on any vessel and its equipment that shall damage a municipal seawall due to the negligence in its operation or handling.
 - (c) *Height of seawalls.* The elevation at the top of any seawall cap shall be 5.50 feet above mean sea level (MSL). Notwithstanding the above, the following properties that experience more frequent and turbulent wave action from Biscayne Bay may elect to raise the top of a seawall cap to 6.0 feet above MSL: Lots 11 through 29 of Block 2; Lots 1 through 4 of Block 3; Lots 1 through 5 of Block 4; Lots 29 through 95 of Block 23; and Tracts C through F, as denoted on the plat of "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County.



- (d) *Design, construction of seawalls.* All seawalls shall be designed and certified by a registered engineer and constructed by a licensed contractor.
- (e) *Completion of construction, approval.* Seawalls, when completed and backfilled to grade shall be plumb and the coping straight before its final acceptance and release of bond by the Town.
- (f) *Extension of seawall into waterways.* No part of any seawall, including slabs, may extend beyond any lot line into any waterway. Piles and the cap beam may encroach into the adjoining waterway, if approved by the town and regulatory agency having jurisdiction.
- (g) *Construction methods.* Seawalls shall be constructed of reinforced concrete, with a cap beam and supported on concrete pilings driven to bedrock. Seawalls shall penetrate into the soil at least two feet. No rip-rap shall be permitted in place of a seawall; however, rip-rap may be installed adjoining a seawall if approved by the town and regulatory agencies having jurisdiction. If a seawall is replaced all existing tie backs shall be removed. Property owners are encouraged to remove failed tie backs when possible due to frequent system failures and damage caused on upland lands.

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- (h) *Non-conforming seawalls.* Existing seawalls and construction methods other than specified herein shall be allowed to remain as non-conforming structures and may continue to be repaired. Property owners are strongly encouraged to reconstruct and/or raise older low elevation seawalls to the heights specified in subsection (c) above and remove failed tie back systems as opportunities occur to increase flood protection and safeguard properties.
- (11) It shall be unlawful and a public nuisance for any property owner in the town to permit, or to fail to repair or reconstruct, any failed seawall upon his property. It is further declared unlawful and a public nuisance for any property owner to fail to remove from his property or an adjacent body of water the debris and rubble of any failed seawall.
- (12) The finished grade of any lot in the town may not be increased above the base flood elevation (BFE) prescribed by United States, state or county flood-control laws or regulations. All yards shall be sloped so as to drain to the street drainage gutter, seawall or on-site retention/discharge system, and shall not drain into adjacent property. Finished grades at adjoining lots shall be equal unless the town council approves a retaining wall system. All swale areas within adjoining roadways adjoining lots and yard areas adjacent to seawalls shall be designed to provide retention for sediments prior to discharge to meet NPDES permit requirements
- (13) The area of any lot, improved or unimproved, shall not be reduced or diminished so that the area of the lot is less than originally platted or as follows:
- (a) In the "RM-1" and "RM-2" Multiple-Family districts, the area of no lot shall be reduced to less than 11,250 square feet.
 - (b) In the "RD"-Single Family district, the area of no lot shall be reduced to less than 10,000 square feet, except the area of Lots 1 to 28, inclusive, and Lots 96 to 104, inclusive, which shall not be reduced to less than 11,250 square feet, and Lots 29 to 95, inclusive which shall not be reduced to less than 13,125 square feet.
 - (c) In the RM-3 Multiple-Family district, Tracts A, B, C, D, E, or F shall not be subdivided without prior approval by the town council of a subdivision plat. In any event, all lots in such subdivision shall contain a minimum of 11,250 square feet.
- (14) No kitchen or cooking facilities may be contained in any accessory building, but may only be contained in the main building on any building site.
- (15) Projections into setback areas:
- (a) Notwithstanding anything to the contrary set forth in this subsection, the following are permitted:
 - i. On the West Island in waterfront homes, balconies having accessibility from within the building may project into the front yard setback areas not more than four feet; provided there shall be not less than eight feet clear headroom under such projection and providing that such balconies shall not be screened, shuttered or enclosed in any fashion.
 - ii. On the West Island in waterfront homes which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the front yard setback area not more than four feet.
 - iii. On homes on the West Island which are on interior lots, which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the rear yard setback area not to exceed four feet.
 - iv. None of the foregoing subsections i., ii. or iii. shall permit any portion of the balconies or staircases to project into any side yard setback.

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- v. On the East Island for RM-1 (waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet to into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

Rear yards. Balconies may project into the minimum rear yard area not more than six feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than six feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

- vi. On the East Island for RM-2 (non-waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

Rear yards. Balconies may project into the minimum rear yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than four feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

- vii. On the East Island for RM-3 (waterfront) tracts, balconies extending from the exterior walls of the main building into the minimum front, side and rear yard areas shall not be permitted.
- viii. On the East Island for Gateway "G" zoned lots, balconies extending from the exterior walls of the main building into the minimum front, side and rear yard areas shall be permitted. Balconies may project into the minimum front (street) yard or rear yard areas by not more than four feet.

Balconies may project into the minimum side yard areas by not more than two feet. Notwithstanding the above, the town may approve variations to the above balcony projections, except for road right-of-way encroachments, as part of a site development plan.

- (b) No steps or platforms over three feet in height above the base flood elevation (BFE) shall extend into side, rear or front yard setback areas. Steps or platforms not exceeding three feet in height may be railed, provided that such railing shall not exceed in height above the base flood elevation (BFE), specified for walls in that district, and further, that there shall be clear, unobstructed passage of not less than three feet between such projection and the lot line adjacent. No portion of a sidewalk shall be constructed closer than three feet to a side lot line, five feet to a rear lot line nor closer than 15 feet to a front lot line, except for a public sidewalk parallel to the street and/or swale parking areas as part of a town-wide pedestrian plan. This provision shall not preclude a sidewalk placed perpendicular between the front lot line and building. No sidewalk shall exceed five feet in width.
- (c) Areaways, steps to basements and similar features will be permitted in side and rear yard areas, providing that no part of such feature shall exceed in height, three feet above grade, and further provided that there shall be a clear unobstructed passage of not less than five feet between such features and the lot lines adjacent. On corner lots, steps extending to more than four feet from the main building and not more than three feet in height above grade, leading to the basement or ground floor may be constructed in the front yard setback area parallel to the side yard setback areas.
- (d) Open-type, metal fire escapes may project four feet into side and rear yard setback areas, provided that the bottom run shall be counter-balanced and that when the bottom run is up there shall be at least nine feet of clear headroom below it. The bottom run shall be adjacent to the building and shall be so arranged that when down, there shall be at least three feet of clear unobstructed passage between it and the lot line adjacent. No open type, metal fire escapes shall be permitted in RD or RE districts. In RBA-Tract district that shall be permitted only on buildings designed for business or commercial use and then only on specific permission and approval as to location and design by the town council.
- (e) No main walls of any building shall encroach on setback areas; but eaves may project into setback areas which abut interior lot lines not more than three feet, and into setback areas which abut on street, alleys or waterways not more than four feet. **Other architectural features and accessory structures shall be regulated as follows:**
 - i. Chimneys may project into setback areas a distance not to exceed two feet. The width of the projecting chimney shall not exceed six feet.
 - ii. Planting bins on ground floor no higher than three feet will be permitted to project into setback areas. Such planting bins no higher than three feet, may project into the side yard setback areas to a point no closer than five feet from the lot line; and they may project into the front and rear setback areas a distance of not more than five feet.
 - iii. **Notwithstanding the provisions of subsection (19), certain open, airy and decorative structures such as freestanding canopies and awnings, thatched huts, pool cabanas, fixed umbrellas and gazebos may project into the rear and side yard setback areas (or into the front and side yard setback areas of waterfront lots) to a point no closer than five feet from the lot line or the seawall for waterfront lots, subject to written approval by the Design Review Board as required in accordance with the criteria and procedures set forth in section 5-23 of the Code and subsections thereto. Notwithstanding the foregoing, no such open, airy and decorative structure shall be installed or maintained which protrudes or extends beyond the imaginary extension of a line from the front wall of any building or structure to the side yard property line of said building or structure.**

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- iv. A trellis shall be defined as an open, airy structure of thin wooden or metal strips crossing each other in an open pattern of squares, diamonds, etc., such as a lattice, on which vines or other creeping plants are growing, so as to cover and camouflage in whole or part, the trellis. Structures meeting this definition may project in the rear and side yard setback areas (or into the front and side yard setback areas of waterfront lots) to the lot line or seawall for waterfront lots, in accordance with the criteria and procedures set forth in section 5-23 of the Code and subsections thereto.
 - v. Architectural features such as canopies attached to structures, planting bins, decorative balconies, oriel windows and cornices, may project into setback areas which abut interior lot lines not more than two feet and into setback areas which abut on streets, alleys, or waterways not to exceed four feet; provided that there shall be no less than eight feet clear headroom under such projection. No decorative balcony may be enclosed or screened if it projects into the setback areas as above described, nor shall such balcony have any means of access from the building to which it is attached.
 - vi. Porticos shall be defined as a structure consisting of a roof supported from above or below or cantilevered, only for the protection of vehicular driveways, at the main entrance of hotels, apartment buildings, and single family residences. The portico shall give the appearance of being an integral part of the original structure to which it is attached and its architectural style, as well as materials, must be such that will complement, enhance, and blend with that of the main structure. Such porticos shall at no time be enclosed or transformed into anything other than for the protection of vehicular driveways. Porticos shall be permitted on the West Island to extend into setback areas which abut on a street, provided the projection shall not exceed 20 feet into the setback area, and the width shall not exceed 33.33 percent of the front footage of the building to which the portico is attached. Porticos shall be permitted on the East Island to extend out from the building wall for a distance not to exceed 20 feet, and the width shall not exceed 25 feet. For the purpose of measuring the maximum allowable width of a portico with ground-mounted support columns, the maximum width shall be measured from the inside edge of any such support columns. Provided however, no portico shall be constructed into property dedicated to the town for parking purposes. The construction of porticos shall be subject to prior approval of the Design Review Board as provide in section 5-23.1 of the Town Code.
 - vii. Covered pedestrian walkways, only in connection with hotels, apartment buildings and business buildings, may be erected in setback areas which abut on a street; provided, no part of the walkway may be located on public right of way and further provided that the location, size, materials, design and overall appearance of such structures or canopies must be approved by the Design Review Board.
 - viii. Anything to the contrary in this Code notwithstanding, roofs of buildings in the B-1, Business district, may project into setback areas not to exceed five feet.
- (f) Open terraces projecting into the front yard setback areas shall not exceed in height two feet above grade and the railing of such terrace shall in no case be more than three feet above the terrace. Where necessary to provide access through side yards, terraces shall be provided with steps or ramps and gates, not less than 36 inches in width. Such terraces may be used for dining provided they do not project into side yard setback areas.
 - (g) Swimming pools, hot tubs, Jacuzzi, or spas may be constructed on any waterfront or nonwaterfront lot with following restrictions:
 - i. Swimming pools, hot tubs, Jacuzzi, or spas may be constructed on waterfront lots on the side which abuts the water with the following restrictions:
 - a. They must not exceed two feet above finish grade.

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- b. They must not be closer than five feet to the seawall.
 - c. They must not be constructed in the side yard setback areas.
 - ii. Swimming pools, hot tubs, Jacuzzi, or spas may be constructed on waterfront lots on the side or sides which abut the street with the following restrictions:
 - a. They must not exceed two feet above finish grade.
 - b. They must not be closer than 20 feet to the rear lot line.
 - c. They must not be constructed in the side yard setback areas.
 - iii. Swimming pools, hot tubs, Jacuzzi, or spas may be constructed on nonwaterfront lots on the side or sides which abut the street with the following restrictions:
 - a. They must not exceed two feet above finish grade.
 - b. They must not be closer than 20 feet to the front yard lot line.
 - c. They must not be constructed in the side yard setback areas.
 - iv. Swimming pools, hot tubs, Jacuzzi, or spas may be constructed on nonwaterfront lots in the rear yard setback with the following restrictions:
 - a. They must not exceed two feet above finish grade.
 - b. They must not be closer than five feet to the rear yard lot line.
 - c. They must not be constructed in the side yard setback areas.
 - v. Swimming pools, hot tubs, Jacuzzi, or spas and equipment may be constructed in setback areas with the following restrictions:
 - a. Swimming pool, hot tub, Jacuzzi, or spa and pool equipment must not be closer than five feet to the side or rear yard lot line.
 - b. [Reserved.]
 - c. Swimming pool, hot tub, Jacuzzi, or spa equipment must be screened from sight from adjacent property and from the street when viewed from ground level.
 - vi. Except for the foregoing permitted construction and restrictions, no swimming pools, hot tubs, Jacuzzi, or spas or pool equipment may be constructed in any setback area.
 - vii. All swimming pools, hot tubs, Jacuzzi, or spas to be constructed in areas abutting a street shall be screened from the street by a wall or fence and landscaping so that the pool cannot be seen from the street. Further, there shall be full compliance with all provisions of the town's ordinances regulating fences and walls.
 - viii. The construction of swimming pool, hot tub, Jacuzzi, or spa decks shall be subject to prior approval by the town manager or the Design Review Board. Plans showing the location of new or replacement decks shall be provided to the building department prior to issuance of a permit. A sample of the decking material will be required when submitting an application.
 - ix. No portion of a swimming pool, hot tub, Jacuzzi, or spa deck shall be placed closer than five feet to a side or rear lot line. No portion of a swimming pool, hot tub, Jacuzzi, or spa deck shall be placed in the minimum front yard setback area.
 - x. Notwithstanding the above restrictions, a swimming pool, hot tub, Jacuzzi, or spas and/or swimming pool decking may be constructed in a street side yard of a corner lot in the RD Single-family district and RM-2 Multi-family district with the following restrictions:

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- a. Swimming pools, hot tubs, Jacuzzi, or spas, and swimming pool decking shall not be closer than five feet to the street side lot line.
 - b. Swimming pools, hot tubs, Jacuzzi, or spas, swimming pool equipment and swimming pool decking shall be screened from sight from adjacent property and from the street when viewed from ground level pursuant to the provisions of subsection vii above.
 - c. The street side yard is the yard area of a corner lot other than the yard that the front of the building faces. If a building is placed on a corner lot in an angled configuration the town will designate the front and street side yards. Swimming pool, hot tubs, Jacuzzi, or spas, and swimming pool decking shall not be placed in front yard areas on corner lots.
 - (h) Air conditioning equipment and duct work may be installed in the side yard setback areas with the following restrictions:
 - i. All replacement and new air conditioning equipment shall be installed in accordance with chapter [subsection] 7½-26(5) of the town's flood damage protection code;
 - ii. All replacement and new air conditioning equipment shall be screened from view from the street and from adjacent property, when seen by a person at ground level;
 - iii. No portion of air conditioning equipment and duct work shall protrude more than five feet from the wall of the structure into the setback area;
 - iv. All screening material shall be approved by the town and constructed in such a way to minimize sound transmission to adjoining properties, and may be constructed of one of the following:
 - 1. Decorative concrete block.
 - 2. Concrete block with stuccoed finish.
 - 3. Wood fencing.
 - 4. Lattice work with growing vines.
 - 5. Hedge material of a height at planting equal to 50 percent or more of the height of the installed air conditioning equipment.
 - 6. Other materials as may be approved from time to time by the Design Review Board.
 - v. Air conditioning screening shall be constructed in such a manner as to allow proper ventilation and service access. The service access shall not be visible from the front of the property;
 - vi. All replacement and new air conditioning equipment shall meet or exceed the minimum SEER ratings as determined by the current Florida Energy Code;
 - vii. Plans showing the installation of new or replacement air conditioning equipment shall be provided to the building department prior to issuance of a permit and shall include the following:
 - 1. Location of equipment on property with dimensions.
 - 2. Type of screening and material.
 - 3. Elevation of equipment.
 - 4. SEER rating.
 - 5. Sound rating in bels as contained in the current Unitary Systems Manufacturer's ARI standard rating.
 - (i) Within the B-1 Business district, decorative architectural features, including bay windows or showcase windows extending from the face of the main building facade shall be permitted to project into the

setback areas, but in no instance project across or into public sidewalks, alleys or streets. Bay windows and/or showcase windows may only be installed on building facades where the use of the land abutting the site or across a street is commercial. For clarity of this section a hotel is defined as a commercial use per the comprehensive plan. Such bay windows and/or showcase windows shall not be installed on building facades facing a residential use. On those specified streets where an average five-foot setback is permitted, not less than one foot of setback shall be provided between any such decorative architectural feature and/or window projection and a property line. All such bay windows and/or showcase windows shall be maintained in proper working condition and appearance with all lighting operational, no broken glass and all structural members and framing maintained. All items displayed within bay windows and/or showcase windows shall be limited to the ground floor and only those products or services owned or sold by a tenant within the building upon which the bay window and/or showcase window is attached.

Editor's note(s)—Ord. No. 866, § 1(Exh. A), adopted Nov. 10, 2008, added subsection (i)(ix) to subsection 23-12(15). The city has clarified that the material is to be codified as 23-12(15)(i) as herein set out.

- (16) All plans submitted for a building permit shall include a plan showing proposed landscaping. The landscape plan shall identify the type, size and location of all plantings, trees and other associated features.
- (17) No lot in any block as platted on the plat of the subdivision of Bay Harbor Islands shall be divided or subdivided so that any person whosoever shall own in area less than the whole of an adjacent platted lot; no person shall have the right to give or acquire, by deed, lease, mortgage or any instrument, which would have the effect of constituting a conveyance or transfer of title to land, either legal or equitable, as to the portions of any platted lot in any block of Bay Harbor Islands less in area than the whole of such lot. The provisions of this paragraph shall not apply to Tracts A, B, C, D, E, and F, according to the plat of Bay Harbor Islands. Notwithstanding the foregoing, it shall be permitted for an owner of a lot to acquire a one-half portion of an adjoining lot if, simultaneously therewith, the remaining one-half portion of such lot shall be acquired by the owner of the property adjacent to the remaining one-half portion. This is for the purpose of giving effect to ownership of a lot and one-half in the town which may be improved only as provided in section 23-10 and section 23-12.
- (18) No guest hotel room may be constructed without an adjoining private bathroom for exclusive use of occupants of that hotel room. All replacement and new air conditioning units shall comply with section 23-12(15)(h)(i), (ii), (iv), (v), (vi), (vii).
- (19) No awning or canopy shall be erected on any land or building in the Town of Bay Harbor Islands without a prior approval of the town manager of the town. No awning or canopy shall be erected in any side yard setback. No awning or canopy shall be erected in any front yard setback except in waterfront lots. No awning or canopy shall extend more than five feet into the front yard setback area in waterfront lots. No awning or canopy shall extend more than five feet into any rear yard setback area. No awning or canopy made of canvas shall be erected on any land or building in the town as a carport or shelter for parked vehicles.
 - (a) If any awning or canopy erected outside of the BAA Business district of the town is not maintained in good condition as to material, frame, fastening and appearance, and if necessary replacements of such portions thereof as require replacing in the discretion of the town manager are not made, the awning or canopy shall be removed forthwith. If not removed forthwith, the town at its option may remove it at the cost of the permit holder or the owner of the premises.
 - (b) No awning or canopy shall be erected outside of the BAA Business district of the town bearing any sign. However, the awning or canopy may bear the name of the structure with which it is connected if the structure does not have a sign. All provisions of the town's ordinances regulating signs must be complied with.
 - (c) This ordinance [(a)—(d)] shall not apply to any awning or canopy (outside of the BAA Business district of the town) in existence at the time of the passage of this ordinance [No. 298] if that awning or

canopy complies with the law in effect when that awning or canopy was erected. If the preerected awning or canopy is not maintained in good condition with the necessary replacements, it shall be subject to all provisions of this ordinance [No. 298] as if it were not a preerected awning or canopy.

- (d) This ordinance [(a)—(d)] does not affect any awning or canopy in the BAA Business District of the town which is regulated pursuant to Ordinance No. 297 [(20) following], and Ordinance No. 297 regulating awnings or canopies in the BAA Business District of the town shall not affect any awning or canopy not in the BAA Business District.
- (e) If an awning or canopy is to be erected on an easement, the awning or canopy will only be permitted upon the execution in recordable form of an agreement by the owner of the property running with the land granting to the Town of Bay Harbor Islands, its successors or assigns, the right to examine, repair, replace or remove any utility equipment under any part of the awning or canopy, holding the town harmless for any damages to the awning or canopy of its supports in exercising such right, agreeing that the owner will pay his own costs in his own restoring of the awning or canopy or supports thereof, and agreeing that the owner will pay the town all the town's added costs in removing portions of the awning or canopy or supports thereof in the exercise of the town's right with respect to the utilities.

Editor's note(s)—The various ordinances amending this subsection (19) have, in many instances, continued previous ordinances in effect and therefore, at the editor's discretion, the designations of specific areas in subsection (19) have been retained and the area described in former subsection (20) combined herewith. The contents of Ord. No. 298 have been added to (19) as (a)—(d) at the editor's discretion. Ord. No. 297 has been inserted as a new (20) at the editor's discretion.

- (20) With respect to awnings and canopies sought to be erected on any land or building in the BAA Business district of the town:
 - (a) No awning or canopy shall be erected without prior approval of the town manager of the town.
 - (b) No awning or canopy shall be erected which extends more than three feet beyond the building line of any lot. Notwithstanding the foregoing, restaurants and sidewalk cafes shall be permitted to have retractable awnings and canopies or stationary awnings or canopies that extend beyond three feet as long as they comply with the Florida Building Code and other state and county laws.
 - (c) If any awning or canopy shall be erected and is not maintained in good condition as to material, frame, fastening and appearance, and if necessary replacements of such portions thereof as require replacing in the discretion of the town manager are not made, the awning or canopy shall be removed forthwith. If not removed forthwith, the town at its option may remove it at the cost of the permit holder or the owner of the premises.
 - (d) No awning or canopy shall be erected bearing any sign. However, the awning or canopy may bear the trade name of the establishment with which it is connected if the establishment does not have a sign on the same side of the building on which the awning or canopy is located. All provisions of the town's ordinances regulating signs must be complied with.
 - (e) Awnings placed on a building must be uniform as to color, style and shape as all other awnings on that same building.
 - (f) No awning or canopy made of canvas shall be erected on any land or building in the town as a carport or shelter for parked vehicles.
 - (g) This ordinance [(20)] shall not apply to any awning or canopy in existence at the time of the passage of this ordinance if that canopy or awning complies with the law in effect when that awning or canopy was erected. If the preerected canopy or awning is not maintained in good condition with the necessary replacements, it shall be subject to all provisions of this ordinance as if it were not a preerected awning or canopy.

Note(s)—See editor's note, (19) above.

- (21) Air-conditioning equipment and ductwork installed on the rooftop or on any portion of a single-family dwelling above the top floor in the town is hereby prohibited. Any permitted rooftop air-conditioning equipment in existence at the time of adoption of Ordinance No. 772 [May 9, 2005], shall constitute a nonconforming unit and shall be removed and replaced when the structure undergoes rehabilitation wherein the cost of rehabilitation is 50 percent or more of the assessed value of the existing structure as determined by the Miami-Dade County Property Appraiser's Office. As to all two-family, multifamily, commercial and any other land use or combination thereof, air-conditioning equipment and ductwork may be installed on the rooftop or on any portion of a building above the top floor provided the equipment and ductwork are so screened that they are not visible from the adjoining street or properties, and provided the screening is of such material and color that it matches or blends with the existing roof or portion above the top floor where it is installed. All installations of such air-conditioning equipment and ductwork, and the screening thereof, must be approved by the town manager or their designee prior to a permit being issued for such installation. This provision shall not be interpreted to require screening of air-conditioning equipment or ductwork from adjoining buildings that may exceed the height of the building upon which the equipment or ductwork is installed. In this instance, only screening to the maximum height of the equipment or ductwork is required from adjoining properties.
- (22) Walls and fences. The following provisions apply to the design, installation, location and maintenance of walls and fences:
- (a) *Approval of town.* No wall or fence of any kind shall be erected or maintained at any lot except as above set forth until the height, type, design, and location thereof shall have been approved by the [town]. Notwithstanding the above, walls will require approval by the Design Review Board.
 - (b) *Maximum height of walls or fences; placement restrictions.* No wall or fence may be erected or maintained in any setback areas on any lot in the town higher than six feet above the average finished grade of adjoining lots, except privacy walls or fences abutting Kane Concourse may be seven feet; all heights measured from the ground at the base of the wall or fence to the highest point of the wall or fence and shall in all cases be uniform and follow the contour of the land. Minor variations in the height of portions of walls, not to exceed four inches in any ten-foot section of a wall, may be permitted due to changing slopes of lots. The town may approve decorative columns with a height not exceeding one foot higher than the wall or fence. If a fence or wall is proposed in a front or side street setback area adjacent to a street right-of-way, the fence or wall shall not be placed in the public right-of-way nor closer than two feet to the property line. Within the two-foot area, landscape materials of a design and quantity, as deemed necessary by the town, shall be required.
 - (c) *Child-safe latch on swimming-pool gates.* Any fence or wall installed at a property with a swimming pool must have a self-closing gate with a child-safe latch located at a minimum of four feet above grade.
 - (d) *Chain link fence or wire fence prohibited in front yard setback.* No chain link or wire fence shall be installed or maintained which protrudes or extends beyond the imaginary extension of a line from the front wall of any building or structure to the side yard property line of said building or structure ("front yard setback").
 - (e) *Vinyl-clad material required.* If chain link fencing is proposed for installation where permitted, only green or black vinyl-clad material shall be allowed.
 - (f) *Hedge material required for fencing and walls.* All fencing or walls must have hedge material installed simultaneously with the installation of the fence or wall. Said hedge must be planted along the entire length of the fence or wall, except at gate locations or as otherwise approved by the town, and shall have a height at the time of planting of at least 50 percent of the height of the fence or wall and must be installed a maximum of two feet apart, measured from the center of the plants. Planting materials

associated with fences or walls must be of a type that will grow to a height equal to or greater than the height of the fence or wall and shall be of a depth so as to engulf and hide the fence or wall. The location of any required hedge material shall be determined on a case-by-case basis. Hedges shall be kept and maintained in a neat and attractive manner. If the hedge deteriorates, new planting material to match the existing hedge shall be added.

- (g) *Hedge planting material required with certain fences or walls.* If a wall or fence is installed in the front (street) yard setback (or for corner lots the side yard facing a street) without fencing or wall material along the sides of the property, then the sides shall be planted with hedge material in accordance with the requirements stated in subsection (f) above.
- (h) *Permit required for walls or fences.* The installation or maintenance of any walls or fence shall require the application and receipt of a permit authorizing said installation. Each applicant for a permit authorizing said installation shall be required to submit to the town for its approval, prior to the commencement of such installation the following:
 - 1. A landscaping plan, indicating type, sizes and quantities of proposed landscaping materials to be used between the wall or fence and the street or adjoining properties.
 - 2. A color sample of the proposed stucco, plaster or other materials, or paint sample, representative of the proposed finish surface of the wall or fence.
 - 3. In the case of walls, architectural drawings indicating some type of architectural features such as banding, quoins, etc., on stuccoed walls. Said drawings shall clearly indicate the proposed shape and design of said wall. See below for minimum design standards.
 - 4. In the case of wood fences, a scale drawing, photograph or brochure of the proposed style, as well as a color sample of the paint or stain, shall be submitted to the town for approval.
 - 5. If any wall or fence is to be constructed on a common property line, written permission from any adjoining lot owner shall be required to be submitted to the town with the permit application to construct, finish and/or maintain the exterior of the wall facing the adjoining owners lot. Any damage done to an adjoining owners property shall be repaired and/or replaced by the applicant.
- (i) *Minimum design standards for walls or fences.* The design of any wall or fence shall comply, at a minimum, with the following design standards:
 - 1. If walls are to be stuccoed, they must be finished and architectural features shall be required on both sides of a wall (facing interior of lot as well as any adjoining lot, street or waterway). Plain walls with large unbroken surfaces shall be prohibited. The architectural design of the wall/fence shall be compatible with the main building architecture.
 - 2. The use of brick, stone, coral, glass block, metal or other decorative material is encouraged.
 - 3. The finished side of a wood fence shall face the street or any adjoining property with any exposed structural columns facing the interior of the lot.
 - 4. If any wall or fence is to be constructed on a common property line, all improvements including support structures (footers, etc.) shall be placed on the applicant's property and may not encroach onto any adjoining owners property, without the adjoining property owners written consent.
 - 5. For those portions of walls/fences within the front setback area (adjoining any street), the following additional design standards are established to avoid the appearance of large expanses of solid wall/fence surfaces:
 - a) A maximum of three (3) feet of solid opaque wall/fence surface above grade shall be permitted, except as provided hereinafter.

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- b) The balance of allowable wall/fence height up to the maximum heights may be constructed of non-opaque material such as wrought iron, aluminum, decorative open weave concrete or clay products, glass block and similar materials.
 - c) Not more than 75 percent of any such overall wall/fence surface shall be opaque. Notwithstanding the above, portions of solid walls/fence surfaces not exceeding eight feet in width may be permitted for screening of parking areas, provided the design of the exterior surface of the wall/fence facing a street is approved by the town.
 - d) The Design Review Board may grant exceptions to the above criteria for specific sites based on creative and compatible design solutions and location issues.
6. For walls/fences/hedges constructed on waterfront lots within the minimum rear setback area to the seawall, including any such wall/fence parallel to the seawall, or on a dock adjoining the seawall, at least 75 percent of that portion of the wall/fence and any hedge materials placed similarly, shall provide for see-through visibility to the adjoining water.

The town shall determine whether the installation and maintenance of a wall or fence (is) appropriate and harmonious to the other buildings, structures, walls, fences and overall design of the town. Prior to obtaining a permit, the applicant shall be required to submit a property survey to verify the proposed location of said fence or wall to the town. All fences and walls which require landscaping shall require prior approval of the town. If the application is approved by the town, a permit shall be issued for the installation and maintenance of the wall or fence.

- (i) *Application to waterfront properties.* With respect to waterfront properties, the provisions of this section shall apply to the rear yard setback, which is that portion of the property abutting the street.
- (23) It shall be the duty of the immediately adjacent property owner, lessee, or mortgagee to properly and adequately maintain the area between the designated roadway and the property line of such property, regardless of whether such area is landscaping, parking of any kind, or sidewalks, or any combination thereof.
- (24.1) *Shutters, screens, glass or any material which enclose balconies.*
- (a) "Shutters, screens, glass or any material not flush with all original exterior walls of the building" are defined as covers, whether solid or partly solid, screens, glass, or any material any part of which projects beyond the original exterior walls of the building more than one inch.
 - (b) "Shutters, screens, glass and any material enclosing balconies" are defined as covers, whether solid or partly solid, screens, glass or any material placed on or near the perimeter or edge of balconies in such a manner as to partially or completely enclose the area contained on the balcony, thereby creating an enlarged, enclosed floor area of a building beyond its original exterior walls.
 - (c) No shutters, screens, glass or any material enclosing balconies or no shutters, screens, glass or any material not flush with all original exterior walls of the building may be installed on any building in the town. This prohibition shall not affect any shutters, screens, glass or any material which have been installed pursuant to a valid permit of the town prior to the passage of this subsection. Shutters shall be installed as close as practical to door openings. An illustration containing examples of prohibited and permitted installations is incorporated herein.
 - (d) Shutters, screens, glass and any material enclosing balconies shall be subject to prior approval by the town manager or the Design Review Board. See subsection (24.3) below for the town's approval process.
 - (e) No balcony may be enclosed by jalousies or other types of windows. No wall and/or railings surrounding the balcony shall exceed four feet in height from the balcony floor surface.

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- (f) Balconies may be screened only if all balconies on a building are screened at the same time. The architectural style and appearance of any screening shall be the same for all units in the building. If screening of balconies is provided the enclosed balcony must meet the primary building setback requirements.
 - (g) Balconies may be used for outdoor living and may contain lawn furniture and plants; however, plants shall not be placed on balcony railings, furniture or external ledges of said balcony so as to avoid objects falling.
 - (h) Balconies shall be specifically prohibited for the use of storage, mechanical equipment including air-conditioning units, laundry drying, barbecuing or cooking and sleeping quarters. Balconies are intended to be used for occasional use and as such, those activities that may lead to noisy or unsightly conditions to neighbors or passersby; will endanger the safety of the building; or will create weight loads beyond which the balcony was designed are prohibited.

(24.2) *Shutters, screens, glass or any material which enclose porches.*

- (a) "Shutters, screens, glass or any material not flush with all original exterior walls of the building" are defined as covers, whether solid or partly solid, screens, glass, or any material any part of which projects beyond the original exterior walls of the building more than one inch.
- (b) Shutters, screens, glass and any material enclosing porches or in openings to porches from the building exterior, installed in such a manner as to partially or completely enclose the area contained on the porch, thereby creating an enlarged, enclosed floor area of a building beyond its original exterior walls is prohibited. This provision shall not be construed to prohibit the uniform enclosing of porches into heated and/or air-conditioned living spaces if approved by the Design Review Board, provided all applicable principal building setbacks are met.
- (c) No shutters, screens, glass or any material enclosing porch openings not flush with all original exterior walls of the building may be installed on any building, unless otherwise approved by the Design Review Board. See subsection (24.3) below for the town's approval process. This prohibition shall not affect any shutters, screens, glass or any material which have been installed pursuant to a valid permit of the town prior to the passage of this subsection. An illustration containing examples of prohibited and permitted installations is incorporated herein.

(24.3) *Shutter appearance and approvals.*

- (a) All permanent shutters are to be uniform in color, material, design, configuration and type for each building. The building owners (sole owner, association, majority vote) shall select a uniform color, material, design, configuration and type of shutter for all units which shall be submitted to the town's Design Review Board for approval. Written evidence of the building owner's shutter selection shall be provided to the town as part of the application. The town is not obligated to approve the shutters as selected by the building owners and may require modifications for safety and appearance. Once approved by the town, all future shutter installations shall comply with the uniform design.
- (b) Permanently installed shutters, storage boxes and tracks should be installed and designed to compliment the principal buildings architectural design.
- (c) Permanently installed wood shutters are prohibited. This shall not be construed to prohibit decorative nonfunctional shutters consistent with the building's architectural design.
- (d) All decorative shutters maintained on the exterior of buildings for periods in excess of five business days, as opposed to temporary shutters installed for an impending storm event, shall be painted to match the exterior color scheme of the dwelling.
- (e) Roll-up or accordion shutters should match the window or door size exactly. No part of the shutter, storage box, track or associated hardware should damage or obscure architectural, historical or

decorative materials. Awnings or other decorative features are encouraged to screen the view of storage boxes or roll-up shutters.

(24.4) *Shutter placement and removal.* Hurricane shutters and/or hurricane resistant windows and doors are encouraged for all structures in the town. However, the placement and timely removal of shutters after storm events is essential for the safety of occupants and to preserve the high quality appearance of the community. It is prohibited to maintain storm shutters on a structure beyond the officially declared hurricane season, unless hurricane conditions are expected to occur within 36 hours. In accordance with the provisions in the Florida Building Code, it is prohibited to maintain storm shutters during hurricane season in a closed/secured position on a structure for periods in excess of five business days unless:

- (a) A hurricane occurs during the five-day period, at which point the five-day period begins anew the day after hurricane conditions have subsided;
- (b) Hurricane conditions are expected to occur within 36 hours after the fifth day;
- (c) The structure is used for residential purposes, but no person is in residence for a period in excess of five business days and the owner/occupant registers with the police department on a form prepared by the town; or
- (d) At least two means of ingress and egress are provided through a door, window or garage.

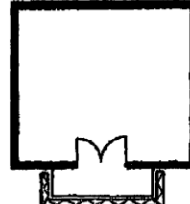
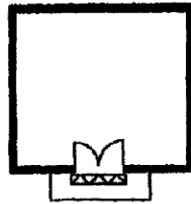
TOWN OF BAY HARBOR ISLANDS

Examples of Permitted and Prohibited Balcony and Porch Enclosures
(Note that some Porch Enclosures may be approved by Town – See Section 23-12(24.2))

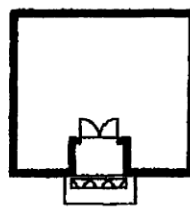
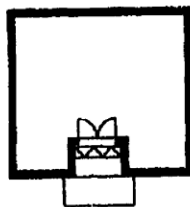
PERMITTED

PROHIBITED

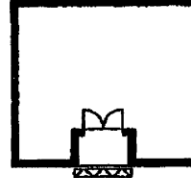
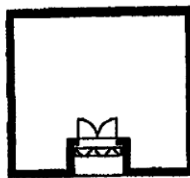
Example #1 Balcony



Example #2 Porch with Balcony



Example #3 Porch



FIGURES FEATURES



ENCLOSURE



BUILDING EXTERIOR WALL

(25) *Exceptions and guidelines from height limits.*

Single-family district. The height of all accessory roof structures in the RD single-family zoning district that are designed and utilized for any of the following may exceed the maximum allowable building height, provided such structure is architecturally compatible with the home design and the structure does not exceed five feet above that point of a flat roof or pitched roof utilized to determine building height, except as may be required to minimally comply with building codes for functional chimneys or similar features: chimneys, dormers, domes, spires, decorative architectural roof features, non-habitable structures such as a tower or cupola limited to a maximum of 100 cubic feet, weather vanes, flag poles, sun lights, ventilating roof vents, roof-mounted decorative or functional walls or fences for roof decks, solar energy equipment, telecommunication equipment and antennas. Other items such as, weather stations and the like may be attached in a stealth manner to one or more of the above referenced structures. No security cameras or other surveillance devices shall be attached to any of the aforementioned accessory roof structures extending above the maximum allowable building height. All such security cameras and surveillance devices must be mounted on the dwelling facade or fascia below the maximum roof height and shall not be mounted

to any roof surface. No equipment, fixtures or furniture shall be placed on any roof deck that exceeds the main roof height or any surrounding safety fence, railing or wall. All ventilating roof vents and equipment shall be painted to match the color of the roof material.

Business, causeway and multiple-family districts. The height of all accessory roof structures in the B-1, CA, RM-1, RM-2 and RM-3 zoning districts that are designed and utilized for the housing of mechanical equipment such as elevators, water storage, air conditioning and similar facilities, stairwells, chimneys, decorative architectural roof features, accessory recreational facilities, open-air trellis, canopies, fences, walls and similar facilities shall be limited to the following:

- (a) The structure is fully enclosed or screened and does not exceed 20 feet in height.
 - (b) The outside walls of the roof structure are set back a minimum of 15 feet from the exterior walls of the principal structure. This provision shall not apply to parapet walls located at the edge of the building facade, open-air trellis located on roof surfaces at least ten feet below the maximum allowable building height, elevator shafts, elevator machine rooms or stairwells, if approved by the town during the site plan approval process.
 - (c) No guest rooms, dwelling units, business establishments or other accommodations or public spaces, are contained within the structure. This restriction shall include enclosed exercise rooms, gyms, spas or other recreational facilities other than an open swimming pool, spa and deck areas. Notwithstanding the above, a maximum of two separate bathrooms (men/women/unisex) not exceeding the greater of 150 square feet in area each, or as otherwise required by the Florida Building Code to accommodate the minimum number of required fixtures based on occupancy and use, or to meet accessibility requirements for disabled persons (Chapter 11, Florida Accessibility Code) may be permitted, provided the exterior wall(s) of any bathroom structure are set back a minimum of 15 feet from the exterior walls of the principal structure. Bathroom facilities shall be integrated architecturally and structurally with other roof-mounted structures such as elevator shafts, stairwells or screened mechanical equipment areas, if possible, away from the edges of a building facade.
 - (d) Rooftop accessory recreational facilities shall be visually screened horizontally from neighboring properties by fences, walls or other screening materials or features that are no shorter in height than the object to be screened, all as approved by the town.
 - (e) Swimming pools, spas, accessory decks and any railings associated therewith shall not exceed five feet above the roof deck. Notwithstanding the above a safety railing, fence or wall surrounding a raised swimming pool, spa or deck as required by section 5-8 of the Town Code shall be permitted; provided however, such safety barrier is placed no closer than five feet to the edge of the roof and it is not visible above the parapet wall.
 - (f) Trellis, pergolas and similar structures shall not exceed ten feet in height above the roof deck.
 - (g) Skylights shall not exceed five feet in height above the roof deck.
 - (h) Parapet walls shall not exceed five feet in height as measured from the highest point of the roof deck to the highest point of the parapet wall. Notwithstanding the above provision, a parapet wall may exceed five feet in height to create architectural detailing on a building, if approved as part of a site plan by the town.
- (26) *Outdoor recreational game court facilities.* The following regulations shall apply to all recreational game court facilities, including but not limited to tennis, racquetball, handball, basketball, shuffleboard, children's multipurpose and similar facilities, or any combination thereof:
- a) In the RD district the only outdoor recreational game court facilities permitted are tennis, basketball and/or children's multipurpose facilities. Such facilities may be approved by the town subject to site

plan approval by the Design Review Board, except for a permanent or portable basketball pole installed in accordance with the provisions listed herein.

- b) In all other zoning districts any individual or combination of recreational game court facilities may be approved by the town subject to site plan approval by the Design Review Board.

Tennis courts.

- i) *Fencing.* The maximum height allowed for a tennis court fence shall be ten feet. Any such tennis court fencing shall be clad with either black or green vinyl on all posts and fence surfaces. Any fencing over five feet in height must be placed so as to comply with the minimum setback requirements within the district in which the tennis court is proposed.
- ii) *Playing surface location.* Within the RD district the playing surface of a tennis court may not be placed within 25 feet of a property line abutting a street or ten feet to either an interior side or rear property line. Within any other zoning district the playing surface of a tennis court may not be placed within the minimum base setback for the district in which the facility is proposed. The town council may consider variations to the above criteria for odd-shaped lots, corner lots or other special instances on a case-by-case basis through the submission of a variance application.
- iii) *Hours of operation.* The hours of operation of a tennis courts shall be between the hours of 9:00 a.m. and 10:00 p.m. during all days of the week. If any accessory lighting is provided the light fixtures shall not be illuminated outside of the hours of play specified herein. All such lighting shall be equipped with a timer switch to ensure the lighting will be controlled to operate in the specified time period listed herein. The town manager may authorize the temporary use of a tennis court and/or lighting for special occasions outside of the times listed herein on a case-by-case basis after a written request to do so is submitted to the town and approved by the town in writing.
- iv) *Lighting.* If any accessory lighting is provided, the lighting fixtures shall not produce more than one-half foot-candle at any property line nor more than 75 foot-candles overall. All such lighting shall be equipped with a timer switch to ensure the lighting will be controlled to operate within the specified time period listed herein. The color of any lighting fixture or pole shall match the fence color. No portion of an exterior lighting fixture may exceed ten feet in a required yard area nor a maximum of 18.5 feet in height in the RD district nor more than 25 feet in any other zoning district and shall be aimed and/or provided with cutoffs so that the light source is directed to the outdoor recreational play court facility so as to minimize negative impacts to adjoining properties.
- v) *Screening requirements.* Sufficient landscaping (trees and/or hedges) shall be approved as part of the site plan, installed when the facility is constructed, and maintained to opaquely screen the fence and all activities from view. The landscaping shall be at least six feet in height at the time of planting and equal to and maintained at the height of the fence within one year of the installation.
- vi) *Miscellaneous requirements.*
 - 1) No portion of an exterior wall surface shall be used for a backboard or rebound wall or structure.
 - 2) If multiple platted lots, or portions thereof, are required to allow for the principal structure as well as any accessory uses and structures, including recreational game courts, a unity of title declaration acceptable to the town attorney shall be provided and recorded in the public records prior to the issuance of building permits. This provision shall not be interpreted to prohibit a freestanding recreational game court as a principal use, provided the lands upon which the recreational game court is proposed are adequate "as is" to accommodate the use (i.e. setbacks/screening) or a unity of title declaration acceptable to the town attorney is provided and recorded in the public records prior to the issuance of building permits.

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- 3) In determining the percentage of coverage of a lot by buildings the area of a recreational game court shall not be provided in such computation. Notwithstanding the above, sufficient drainage shall be provided on-site so as not to negatively affect adjoining properties or public roads.
 - 4) Any recreational game court facilities constructed on the rooftop of a principal or accessory structure shall comply with the provisions contained in subsection (25).

Basketball.

- i) Outdoor basketball poles, including moveable relocatable poles, shall not be installed or placed within public road rights-of-way.
- ii) No exterior lighting shall be allowed specifically for basketball use, except as approved by the town manager.
- iii) No driveway may be enlarged to serve as a basketball game court.
- iv) No striping (paint/decal) for any basketball game court shall be placed on any public roadway. No striping (paint/decal) for a basketball game court shall be placed on any private roadway, driveway or sidewalk without the prior approval of the town. Any such striping or markings shall be limited to inconspicuous colors.

Other game court facilities.

- i) No other type of outdoor recreational game court facilities shall be placed closer than the minimum specified base setbacks for the zoning district in which the facility is proposed.
- ii) No exterior lighting shall be allowed, except as specifically approved by the Design Review Board.
- iii) No driveway may be enlarged to serve as a recreational game court and no portion of a parking lot may be used as a recreational game court without the prior approval of the town.
- iv) No striping (paint/decal) for any recreational game court shall be placed on any public roadway. No striping (paint/decal) for a recreational game court shall be placed on any private roadway, driveway or sidewalk without the prior approval of the town. Any such striping or markings shall be limited to inconspicuous colors.
- v) Any accessory structures such as fences, canopies, etc. shall meet the minimum design standards and setback requirements listed in this section.

Nonconforming preexisting game court facilities. As to any outdoor recreational game court facilities that existed as of the date this subsection was adopted (November 9th, 2009), that were previously issued permits from the town, but are in some way in conflict with the provisions stated herein, those improvements shall be allowed to remain as nonconforming, if maintained in a safe and aesthetic manner. If an existing nonconforming outdoor recreational game court facility is altered, it must comply with the current town regulations, to the extent possible, and may be reestablished if in need of repair caused by normal wear and tear to the facility or acts of God. The Design Review Board shall review and approve any alterations to non-conforming outdoor recreational game court facilities. The Design Review Board is authorized to grant variations to the regulations listed herein above for nonconforming facilities. This shall not be construed to require a property owner seeking to repair a nonconforming outdoor recreational game court to file a formal zoning variance application, unless a request is being made to expand the nonconforming of the facility.

(Ord. No. 108, § 12, 6-10-57; Ord. No. 125, § 4, 1-12-59; Ord. No. 183, § 4, 11-9-64; Ord. No. 243, § 1, 5-13-71; Ord. No. 263, § 1, 10-9-72; Ord. No. 274, § 4, 2-11-74; Ord. No. 275, § 2, 2-11-74; Ord. No. 243, § 1, 5-13-74; Ord. No. 279, §§ 1, 2, 8-12-74; Ord. No. 297, § 1, 3-8-76; Ord. No. 298, §§ 1—5, 5-10-76; Ord. No. 299, § 1, 6-14-76; Ord. No. 309, § 1, 10-11-76; Ord. No. 311, § 6(e), (g), 11-8-76; Ord. No. 318, §§ 1, 2, 6-13-77; Ord. No. 326, § 1, 10-10-77; Ord. No. 337, § 1, 10-9-78; Ord. No. 338, § 1, 10-9-78; Ord. No. 458, §§ 1—3, 11-9-87; Ord. No. 545, § 2, 12-13-93; Ord. No. 551, §§ 1, 2, 6-13-94; Ord. No. 570, §§ 1—5, 4-10-95; Ord. No. 569, § 1, 5-10-95; Ord. No. 576, § 1, 9-11-

95; Ord. No. 586, § 1, 10-9-95; Ord. No. 589, § 1, 4-8-96; Ord. No. 592, § 4, 7-8-96; Ord. No. 608, § 1, 11-12-96; Ord. No. 615, § 1, 4-14-97; Ord. No. 624, § 1, 11-10-97; Ord. No. 629, §§ 1—4, 2-9-98; Ord. No. 638, § 1, 9-14-98; Ord. No. 640, §§ 1—3, 12-14-98; Ord. No. 646, § 1, 3-8-99; Ord. No. 648, § 1, 6-14-99; Ord. No. 651, § 1, 7-12-99; Ord. No. 661, § 1, 4-10-00; Ord. No. 664, § 1, 7-10-00; Ord. No. 683, § 1, 7-9-01; Ord. No. 689, §§ 1, 2, 9-10-01; Ord. No. 725, § 1, 9-8-03; Ord. No. 749, § 1, 8-16-04; Ord. No. 772, § 1(Exh. A), 5-9-05; Ord. No. 775, § 1(Exh. A), 6-20-05; Ord. No. 776, § 1(Exh. A), 9-12-05; Ord. No. 785, § 1(Exh. A), 11-14-05; Ord. No. 808, § 1(Exh. A), 10-9-06; Ord. No. 830, § 1(Exh. A), 1-14-08; Ord. No. 849, § 1, 9-8-08; Ord. No. 852, § 1, 9-8-08; Ord. No. 853, § 1, 9-8-08; Ord. No. 865, § 1(Exh. A), 11-10-08; Ord. No. 866, § 1(Exh. A), 11-10-08; Ord. No. 893, § 1(Exh. A), 11-9-09; Ord. No. 898, §§ 2(Exh. A)—5(Exh. A), 4-12-10; Ord. No. 899, § 1(Exh. A), 5-10-10; Ord. No. 914, § 1(Exh. A), 8-8-2011; Ord. No. 922, § 1(Exh. A), 10-10-2011; Ord. No. 927, § 1(Exh. A), 11-14-2011; Ord. No. 958, § 2(Exh. A), 12-9-13; Ord. No. 971, § 1(Exh. A), 11-10-14; Ord. No. 975, § 1, 4-13-15; Ord. No. 988, § 1(Exh. A), 2-8-16; Ord. No. 991, § 1(Exh. A), 8-8-16; Ord. No. 1035, § 1(Exh. A), 9-9-19; Ord. No. 1075, § 2(Exh. A), 6-29-22)

Editor's note(s)—Ord. No. 922, § 1(Exh. A), adopted Oct. 10, 2011, set out provisions amending subsection 23-12(11)(c). To preserve the current subsection numbering, and at the editor's discretion, these provisions have been included as subsection 23-12(25)(c).

Subsequently, Ord. No. 927, § 1(Exh. A), adopted Nov. 14, 2011, set out provisions amending subsection 23-12(11). Again, at the editor's discretion, said provisions have been included as subsection 23-12(25).