ORDINANCE NO. 2012 -

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTIONS 30-33(3) AND 30-73(G) OF THE VILLAGE CODE OF ORDINANCES, AMENDING THE SITE PLAN REVIEW PROCEDURES TO PROHIBIT THE APPROVAL OF ADDITIONAL DENSITY IN EXCESS OF DENSITY PREVIOUSLY APPROVED PURSUANT TO A VALID DEVELOPMENT ORDER; PROVIDING FOR EFFECTIVENESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") has adopted Zoning and Land Development Regulations in order to promote the health, safety, order, convenience, comfort, and general welfare of the public, and to promote and preserve the character and ecological quality of the Village as articulated in the Village's Comprehensive Plan; and

WHEREAS, during the preparation of the Village's Comprehensive Plan in 1995, Village residents were surveyed concerning their opinions on major planning issues affecting the Village, and 84% of residents responding to this survey answered yes when asked the question of whether "development on Key Biscayne should be completed at the lowest density that would be legally consistent with protection of reasonable private property rights;" and

WHEREAS, Goal 1 of the Future Land Use Element ("FLUE") of the Comprehensive Plan provides, in part, that "future residential development should be at the lowest densities consistent with protection of reasonable property rights," and Objective 1.1 of the FLUE includes an objective to "maintain existing development and achieve new development and redevelopment which is consistent with the community character statement articulated as Goal 1;" and

WHEREAS, the Community-Wide Assessment of the 2007 Evaluation and Appraisal Report of the Village's Comprehensive Plan found that the Village's population is expected to increase as

"many existing, modestly-sized residential structures are being redeveloped into substantially larger homes containing additional bedrooms," with "potentially dire consequences on the demand for infrastructure and services;" and

WHEREAS, Policy 1.2.1 of the Recreation and Open Space Element of the Village's Comprehensive Plan provides that "the Village shall maintain a Level of Service (LOS) standard of at least 2.5 acres of local public parkland per 1,000 persons (permanent population) based on U.S. Census population estimates;" and

WHEREAS, based on the current inventory of Village public parkland (25.1 acres) and the Village's 2010 United States Census population estimate (12,344 residents), the Village has a Level of Service deficit of 5.76 acres of public parkland; and

WHEREAS, Policy 3.5.5 of the Conservation and Coastal Management Element provides that "permitted population density maximums shall be reduced in accordance with the Future Land Use Map of this plan to better coordinate with the 1991 Metropolitan Dade County Emergency Operations Plan, which is the local hurricane evacuation plan for Key Biscayne, and the 1991 lower Southeast Florida Hurricane Evacuation Plan, the regional hurricane evacuation plan;" and

WHEREAS, the Community-Wide Assessment of the 2007 Evaluation and Appraisal Report of the Comprehensive Plan found that children under the age of 18 years now represent 24.2% of the total population of the Village, an increase which has resulted in deficiencies in classroom capacity in school facilities serving Village students; and

WHEREAS, in recognition of the constraints on the availability of infrastructure and services to serve new Development, as supported by the Comprehensive Plan and 2007 Evaluation and Appraisal Report, the Village Council recommends amendment of the site plan review

procedures of the Village Code of Ordinances, to provide that no Site Plan shall be approved which would permit any Development which would result in an increase in Density in excess of the Density previously approved for a property by a valid Development Order; and

WHEREAS, the Village Council intends that the proposed limitation on increases in Density of Development will directly further the Goals, Objectives and Policies of the FLUE of the Comprehensive Plan; and

WHEREAS, the Village Council further finds that the limitation on increases in Density of Development proposed in this Ordinance will, in accordance with Goal 1 of the FLUE, be consistent with the protection of reasonable property rights; and

WHEREAS, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS[1]:

Section 1. The preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Section 30-33(3) of the Village Code Amended. That Section 30-33 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-33. - Maximum allowed Density.

Density is used to determine the maximum number of Units allowed on a site based upon the

[1] Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

maximum allowed Density as set forth in the zoning district and as determined below:

(1) Easement areas located within the site are calculated in the area used for determining Density;

(2) Density from one site shall not be transferred to another site; and

(3) The maximum allowed Density on a site shall not exceed the limit as established in the zoning district Regulations except as provided for in the Comprehensive Plan, and in accordance with section 30-73(g)(7). In such cases, where the maximum Density may be exceeded, the repair or reconstruction of a Building shall only occur within the same building envelope as was originally permitted and approved at the time the certificate of occupancy was issued. This exception only applies to multiple Family Buildings that are consistent with the land use element of the Comprehensive Plan.

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Section 3. Section 30-73(g) of the Village Code Amended. That Section 30-73 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-73. - Site Plan review procedures.

* * *

(g) *Review criteria.* In order to approve a project, the Village Council must find that it is consistent with each of the below review criteria. The Council may require conditions that are necessary to minimize any adverse impacts on Adjacent Properties.

* * *

(7) *Density standards.* No Site Plan shall be approved which would permit any Development which would result in an increase in residential Density in excess of the Density previously approved for the subject property by a valid Development Order.

~~(7)~~ (8) *Other requirements.* Requirements and recommendations as provided in the Village tree and landscape Regulations shall be observed as will the requirements of all applicable standards and Regulations.

(h) *Resolution.* The resolution that memorializes the approval of a Site Plan shall be recorded in the public records of Miami-Dade County at the applicant's expense. A copy of the proof of recordation shall be submitted to the Building, Zoning, and Planning Department prior to the issuance of any building permits.

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Section 4. **Effectiveness.** The amendments to the Village Code of Ordinances shall become effective in accordance with Section 7 below.

Section 5. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 26th day of June, 2012.

PASSED AND ADOPTED on second reading this _____ day of _____, 2012.

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MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY