



VILLAGE OF KEY BISCAIYNE

Office of the Village Manager

Village Council
Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

Village Manager
Jacqueline R. Menendez

DT: April 13, 2007

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Sonesta Project - 350 Ocean Drive: Request for Approval of a Site Plan

RECOMMENDATION

It is recommended that the Village Council approve the attached site plan for a 165 unit apartment project at 350 Ocean Drive. This recommendation is subject to the conditions as set forth in the attached memorandum from the Building, Zoning, and Planning Director. The recommendation is based on the Director's determination that the project is consistent with the review criteria.

The applicant has proffered a Voluntary Covenant which is attached to this memorandum. The Covenant provides for the applicant to contribute the following to the Village: \$7,000,000 for Local Park and Recreation, \$1,500,000 towards the Community Center, and \$1,500,000 primarily for sewers in Holiday Colony.

The applicant has filed an application for Site Plan approval for a 165 unit apartment project in four (4) towers. At the request of Staff, the applicant submitted an Alternate Site Plan which shows a reduction in the 115 ft. Ocean Drive right of way to 65 ft., Tower 4 is moved 50 ft. to the west, and there is now a 100 ft. setback to the building and a 75 ft. setback to a driveway. Tower 4 is split into two towers which are connected at the base by a one story lobby. Staff has determined that these changes are not a substantial deviation from the site plan that was submitted by the applicant. Furthermore, that the changes are consistent with the analysis for that site plan.

The Alternate Site Plan dated April 13, 2007 has a driveway on the west side of the property which is 75 ft. from the rear lot line of the homes along Atlantic Way. The driveway connects to a circular drive and descends into the garage. The building has been divided into two (2) towers which are 50 ft. from one another. The driveway and entry court, which face Ocean Drive.

BACKGROUND

The applicant desires to construct a project with 165 apartment units at 350 Ocean Drive. For this type of project, the Zoning and Land Development Regulations require approval of a site plan by the Village Council. The Regulations contain criteria to evaluate Site Plan

applications. The Building, Zoning, and Planning Director has compared the application with the criteria. The Director found that the request is consistent with the review criteria and has recommended approval of the application subject to the conditions as set forth in the attachment.

VOLUNTARY COVENANT

SBR-Fortune Associates, LLLP, a Florida limited liability limited partnership, ("Owner") hereby voluntarily makes, declares, and imposes on the property described below (the "Property"), these covenants running with the title to the land, which shall be binding on the Owner, its heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through, or under them until such time as this instrument is released in writing as hereinafter provided;

WHEREAS, Owner holds the fee simple title to the property in Dade County, Florida, described as follows:

See Exhibit "A"

WHEREAS, Owner intends to develop the Property with 165 residential condominium units and resort facilities, including a spa, restaurant, and beach bar and grill (the "Project"); and

WHEREAS, the Owner has filed an application for site plan approval with the Village of Key Biscayne (the "Village"), which application has been designated with Public Hearing No. AP-17 (the "Application"); and

WHEREAS, the Owner in a spirit of community support and as a gesture of good will has offered to make certain voluntary donations and other commitments for the benefit of the Village and the general public, all as more particularly set forth in this Voluntary Covenant.

NOW THEREFORE, in consideration of the premises and as an inducement for the approval of the Application, the Owner covenants as follows:

1. **CONTRIBUTIONS.** The Owner voluntarily commits to make the following monetary contributions to the Village:

1.1 Local Park and Recreation Contribution.

The Owner shall contribute the sum of \$7,000,000.00 to the Village to be used in its sole and absolute discretion for park and recreation purposes for the residents of Key Biscayne. Said contribution shall be made prior to or simultaneously with the issuance of the first Certificate of Occupancy issued for the Property or other approval allowing occupancy of the Project; however, in no event will said contribution be made later than four (4) years from the Effective Date under Section 3 of this Covenant.

1.2 Community Center.

(1) The Owner further agrees that it shall contribute \$1,500,000.00 to the Village to be used in its sole discretion for the (i) acquisition of land, or (ii) design and physical construction of improvements to the Village's Community Center or facilities directly related thereto. These funds shall be payable to the Village prior to or simultaneously with the issuance of the first full building permit for the development of the Project, not including demolition permits or site work permits) (the "First Building Permit."), however, in no event will said contribution be made later than four (4) years from the Effective Date under Section 3 of this Covenant.

1.3 Holiday Colony Sewer Installation.

(1) The Owner agrees that it shall contribute \$1,500,000.00 to the Village to be used in its sole discretion for the installation, improvement, or maintenance of sewers in the Holiday Colony neighborhood located between Crandon Boulevard and the Property. Said contribution to be made prior to the issuance of the First Building Permit,

however, in the event that the Village is prepared to commence construction of the Holiday Colony sewer facilities prior to the issuance of the First Building Permit, the Owner agrees to advance said contribution to the Village upon 90 days written notice from the Village. Should this advance payment be made and the development of the Project not proceed for any reason, the amount of the advanced contribution shall remain as a credit attributable to the Property to be applied to future or other permit fees due and owing to the Village for the future development of the Property.

2. **ALTERNATE SITE PLAN.** The Owner hereby acknowledges that the Village intends to consider abandonment and vacation a portion of Ocean Drive adjacent and contiguous to the Property, specifically the west fifty feet (50') of said public right-of-way (the "Excess ROW").

The Owner voluntarily agrees that if the Village vacates the Excess ROW on or before December 4, 2007, the Owner will develop the Property substantially in accordance with the plans entitled Sonesta Resort, Alternate Site Plan, dated April 13, 2007 and consisting of 6 sheets, prepared by Glover, Smith, Bode Inc.

3. **EFFECTIVENESS.** The obligations and commitments of the Owner under this Covenant shall become effective and binding upon the expiration of all appeal periods available for any challenge to the approval of the Application and any subsequent approvals required by conditions of approval and, in the event that judicial or administrative proceedings ensue as a result of approval of the Application or approval of the ancillary permits or approvals necessary for the development of the Project, the terms and conditions contained herein shall not become effective until final adjudication, upholding the approvals, or the issuance of the first full building permit (not including demolition permits) for development of the Project should the

Owner choose to seek issuance of such permits prior to final adjudication. For the purposes of this Section and the Covenant the date upon which all appeal periods have expired or the date of final adjudication upholding the approval of the Application and any subsequent approvals required by conditions of approval shall be deemed the "Effective Date".

4. TERM OF DECLARATION.

The provisions of this instrument shall become effective in accordance with the terms contained herein. Upon the expiration of all applicable appeal periods so that the approval of the Application is final, this Covenant shall be recorded in the public records of Miami-Dade County, Florida, and shall be a covenant running with the land binding upon the Owner and its successors and assigns, and shall continue in effect for a period of thirty (30) years after the date of such recordation, or until all of the obligations and conditions of this covenant have been satisfied, or until the final expiration of the Approval of the Application without the development of the Project proceeding, whichever comes first. The Village agrees to release this Covenant in writing upon the satisfaction of the obligations or the final expiration of the Approval of the Application in writing.

5. MODIFICATION.

The provisions of this instrument may be amended, added to, derogated, deleted, modified, or changed from time to time by recorded instrument executed by the then Owner or a majority of the owners of all of the Property, or in the event a property owners association or other similar entity has been created by that entity, provided that such modification, amendment, or release is also approved by the Village of Key Biscayne Council, after public hearing.

Should this Voluntary Covenant be so modified, amended, or released, the Village Manager, or his/her successor, shall forthwith execute a written instrument effectuating and acknowledging such modifications, amendment, or release.

6. ENFORCEMENT.

Enforcement shall be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. The prevailing party in the action or suit shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the court may adjudge to be reasonable for the services of his attorney.

IN WITNESS WHEREOF, these presents have been executed this ____ day of April, 2007.

SBR-FORTUNE ASSOCIATES, LLLP, a Florida limited liability limited partnership

By: Fortune KB GP, LLC, a Florida limited liability company, General Partner

By: Fortune International Management Inc., a Florida corporation, its Manager

By: _____
Name: Edgardo Defortuna
Title: President
Date: April ____, 2007

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

Signature of Applicant Sworn to (or affirmed) and subscribed before me this _____ day of _____, 200____, by _____ (name of person making statement).

Signature of Notary Public - State of Florida

Print, Type, or Stamp
Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

**ACKNOWLEDGMENT AND ACCEPTANCE
BY VILLAGE OF KEY BISCAYNE**

KNOW ALL MEN BY THESE PRESENTS that:

The Village of Key Biscayne acknowledges and accepts the foregoing Voluntary Covenant, and each and all of the terms and provisions contained therein, made by SBR-FORTUNE ASSOCIATES, LLLP, a Florida limited liability limited partnership dated _____, _____, and attached hereto.

DATED this ____ day of _____, _____.

VILLAGE OF KEY BISCAYNE

By: _____

ATTEST:

Village Clerk

STATE OF FLORIDA)
)
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, of the Village of Key Biscayne and attested to by _____, Village Clerk, of the Village of Key Biscayne who are personally known to me, or produced Florida Driver's Licenses as identification.

NOTARY PUBLIC

Typed or Printed Name

Commission No.

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL I

ALL THAT PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW 1/4, SECTION 32 AND FRACTIONAL SECTION 33, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAIYNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.W. CORNER OF TRACT 6, SUBDIVISION OF A PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND, SAID POINT OF BEGINNING ALSO BEING THE S.E. CORNER OF THE PLAT OF HOLIDAY COLONY AS RECORDED IN PLAT BOOK 50 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE CONTINUE EAST FOR A DISTANCE OF 761.0 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE MEANDER NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN FOR A DISTANCE OF 518.3 FEET MORE OR LESS TO A POINT LYING 500.00 FEET NORTH OF THE SOUTH LINE OF TRACT 6 EXTENDED EAST AS MEASURED AT RIGHT ANGLES; THENCE RUN WEST ALONG A LINE 500.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTH LINE OF SAID TRACT 6, AS MEASURED AT RIGHT ANGLES, FOR A DISTANCE OF 631.9 FEET MORE OR LESS TO A POINT; THENCE RUN SOUTH 0°38'55" WEST FOR A DISTANCE OF 327.79 FEET TO A POINT; THENCE RUN NORTH 89°24'30" WEST FOR A DISTANCE OF 157.55 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS NORTH 89°51'26" WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY; SAID POINT ALSO BEING A POINT ON THE EASTERLY LINE OF BLOCK 5 OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 3°14'04" AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 2

ALL THAT PIECE PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE SW 1/4, SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST, IN THE CITY OF KEY BISCAYNE, COUNTY OF MIAMI-DADE, STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SW CORNER OF TRACT 6, SUBDIVISION OF A PORTION OF MATHESON ESTATE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46, PAGE 86 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN ALONG THE SOUTH LINE OF TRACT 6, EAST FOR A DISTANCE OF 1200.00 FEET TO A POINT OF NON-TANGENCY WITH A CIRCULAR CURVE CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS NORTH 86°37'22" WEST FROM THE AFOREMENTIONED POINT OF NON-TANGENCY, SAID POINT ALSO BEING THE SE CORNER OF THE PLAT OF HOLIDAY COLONY, AS RECORDED IN PLAT BOOK 50, PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CIRCULAR CURVE, HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 3°14'04" AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 173.96 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUE NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 10°46'23" AND A RADIUS OF 3081.59 FEET FOR A DISTANCE OF 579.42 FEET TO A POINT; SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF EAST DRIVE; THENCE RUN ALONG THE SAID RIGHT WAY LINE, EAST FOR A DISTANCE OF 160.62 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST; THENCE RUN ALONG THE ARC OF SAID CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 80°19'47" AND A RADIUS OF 25.00 FEET FOR A DISTANCE OF 35.05 FEET TO A POINT OF COMPOUND CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE WEST, SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF OCEAN BOULEVARD; THENCE RUN SOUTHERLY ALONG THE SAID WESTERLY RIGHT OF WAY LINE ON THE ARC OF THE CIRCULAR CURVE HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 4°03'53" AND A RADIUS OF 3260.29 FEET FOR A DISTANCE OF 231.29 FEET TO A POINT; THENCE LEAVING THE SAID RIGHT OF WAY LINE, RUN WEST 1.87 FEET TO A POINT; THENCE RUN SOUTH 0°38'55" WEST FOR A DISTANCE OF 327.79 FEET TO A POINT; THENCE RUN NORTH 89°24'30" WEST FOR A DISTANCE OF 157.55 FEET TO THE POINT OF BEGINNING