



To: Mario Garcia-Serra

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding the David William Hotel/700 Biltmore Way/Request for Determination of Permitted Uses for Ground Floor Commercial Units

Date: January 31, 2019

The City is in receipt of your request for determination of permitted uses for Units C-1, C-2, and C-3 (Folio Numbers 03-4117-034-2100 and 03-4117-034-2090) (hereinafter “the ground floor units”) of the David William Hotel Condominium owned by your client DW Hotel Corp.

The City’s Zoning Code currently in effect permits accessory uses, buildings or structures customarily associated with permitted uses within this Zoning District (MFSA) and those not listed within the Table No.2 may be permitted subject to Development Review Official (DRO) review and approval, Section 4-104(B)(1) of the City Zoning Code.

As you know, the City previously determined that a fitness studio showroom/sales office was an appropriate use permitted in one of the commercial ground floor units in question.

As your request correctly states, the ground floor units cannot be converted to residential units due to the current MFSA density requirements. In order to assist your clients in securing appropriate tenants for the ground floor units the City responds to your request for determination.

Any use proposed by your clients must comport with the definition of accessory use in Article 8 of the Zoning Code which requires that the use : “1) is subordinate to and serves a principal use; 2) is subordinate in area, extent, and purpose to the principal use served; 3) contributes to the comfort, convenience or necessities of the users or occupants of the principles use; and 4) is located in same building site as the principal use.”

The DRO and City retain the ability to impose conditions on any certificate of use for any category of use listed below. In addition, the DRO may require documentation such as floor plans, statements of proposed use, etc. for review under the applicable development standards and this opinion.

There are three categories of permissible uses for the ground floor units.

- 1) Uses pursuant to Section 4-104(B)(1) of the City Zoning Code, “Accessory uses, buildings or structures customarily associated with permitted uses within this Zoning District (MFSA) and not listed *within Table No.2*”;
- 2) Uses listed as permissible in MFSA *in Table No. 2* the City of Coral Gables Zoning Code, Article 4;
- 3) Uses subject to Development Review Officer approval and conditions, that are not more intense in nature than those uses historically allowed or customarily associated with permitted uses in the MFSA District, or uses that are required or useful for the operation of an apartment building.

1) Accessory uses contemplated in Section 4-104(B)(1) of the City Zoning Code

a) Historical Uses of the Commercial Units

In order to analyze any potential uses for the ground floor units the City needs to clarify what uses have been customarily associated with permitted uses within the Zoning District (MFSA), and what uses have historically existed in those units in question. As your request lays out, and the City’s September 10, 2018 staff report confirms, there have been various uses in the ground floor units over the years. There have been multiple restaurants, a banquet hall/event center, and it is this office’s understanding that there have been various professional offices, including leasing agents, over the almost sixty years that the David William has been in operation. Those uses - restaurant, banquet hall, and professional office - would all be permissible uses of the commercial units, subject of course, to requirements imposed by the DRO intended to preserve the peaceful use and enjoyment of the residential units in the building. These may include hours of operation, noise levels, etc.

b) Uses customarily associated with permitted uses

Additionally, the City has considered those uses historically associated with permitted uses in the MFSA Zoning District. When construction of the David William was approved by the City Commission (ultimately following litigation that went to the Florida Supreme Court), the City’s 1957 Zoning Code was in effect. The 1957 Zoning Code provided that auxiliary or accessory uses included “such facilities as are required or useful for the operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house... when conducted and entered only from the building.” (Section 3.17, 1957 Zoning Code). As your request correctly states, there were various uses permitted in the CA and CB districts in the 1957 Zoning Code which could be considered useful for the operation of or the entertainment of residents or guests in an apartment building (which the David William is). These are uses which

could be permitted today and which were historically associated with the permitted use of an apartment building/hotel (which the David William continues to be):¹ Those categories of uses are:

- Retail, generally. Retail uses that fit the definition of accessory uses, and are compatible with the requirements in this opinion. and all other Code requirements. For example, sundry stores, drugstores, clothing stores etc.²
- Artists Studios
- Banks, trust companies
- Barber shops and Beauty shops
- Cleaning or laundry agencies (no cleaning done on site)
- Dressmakers or Tailors
- Loan agencies (not pawn shops)
- Electronic repair shops
- Restaurants, cafes, cafeterias, and delis
- Shoe repair shop
- Slenderizing salons
- Studios for art, music, dancing, drama (lessons only)
- Ticket offices or travel agencies
- Upholstery shops
- Florist
- Insurance agencies
- Interior Decorating
- Optical stores
- Photographers photo gallery
- Real Estate offices
- Stock exchange and brokerage offices

Those uses listed above are ones that this office considers “required or useful for the operation of a hotel or apartment [building], or for the use or entertainment of guests or tenants of the hotel or apartment [building].” That is not to say that each and every application for a certificate of use for a type of use listed above would be automatically approved by the City. For example, a dance studio that catered to adults for private lessons could be permissible in the ground floor units. In contrast, a children’s dance studio or a studio offering group aerobic classes until late at night may not be approved. The DRO and City retain the ability to impose conditions on any certificate of use issued for the ground floor units. Those conditions include, for example: hours

¹ As your request notes, some of the nomenclatures utilized in the 1957 Code needs to be updated to reflect present day terminology, for example, apartment house versus apartment building, and all of the listed uses would be subject to DRO approval and any required limitations on hours of operation, etc.

² However, it is this office’s understanding that wholly retail uses are not permitted by the Declaration of Condominium of the David William.

of operation, noise regulations, decibel limitations on amplified music, requirements for extra noise proofing, limits on occupancy, capacity, intensity, and frequency of operation, as well as any other necessary conditions required for the public health, safety, and welfare, as well as the peaceful enjoyment of the David William residents and unit owners.

2) Accessory uses currently permitted in MFSA from Table No. 2

Those uses contemplated in the MFSA district in Table No. 2 would be permitted in the commercial units include: emergency preparedness shelter, playhouse, recreational equipment, Reflecting pool or fish pond, storage building and/or utility room, swimming pool and/or spa, or tennis courts, subject to DRO approval and any conditions imposed in the Certificate of Use.

3) Uses not more intense than those customarily associated with the units

An additional category of uses that may be permissible in the ground floor units is any other use not more intense in nature than those uses historically allowed or customarily associated with permitted uses in the MFSA District, or a use that is required or useful for operation of an apartment building. In order to determine intensity of a proposed use, the City would use the current parking requirements in the Zoning Code as a yardstick to determine intensity of use. Intensity also includes consideration of foot traffic, noise, and hours of operation, which the City retains the authority and discretion to regulate.

None of the uses listed above are required to be for the exclusive use of the residents. Historically, previous uses have been open to public, though the businesses in the ground floor units have been primarily accessed from inside the building (pursuant to Section 3.17 of the 1957 Zoning Code) and historically no storefronts or signs have been visible from the exterior of the building.³

This opinion does not address what, if any, further limitations the declarations of condominiums place on the use of those ground floor units. In addition, all other zoning and City Code provisions also apply to these units and must be complied with. The Planning and Zoning Director has reviewed this opinion and is in agreement with the uses contemplated herein. Any uses not discussed in this opinion would be reviewed in accordance with the categories above and are subject to such reasonable conditions as outlined herein.

³. To the extent exterior doors are service entrances, necessary for emergency exits, or requirements of the fire code, exterior doorways are permissible, subject to DRO approval . Any proposed exterior entrance doors to the ground floor units would be reviewed by the DRO for compatibility with the Zoning Code and this Opinion. To the extent a proposed exterior entrance alleviates any potential nuisance to the residents of the building, or adds to the peaceful enjoyment of the residents of the David William, an exterior doorway may be permissible, subject to DRO approval.

This opinion is issued pursuant to Sec. 2-252(e)(1) and (8) of the City Code and Sec. 2-702 of the City's Zoning Code.



November 21, 2018

VIA ELECTRONIC MAIL

Miriam S. Ramos, Esq.
City Attorney
City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, Florida 33134

Re: The David William Hotel / 700 Biltmore Way / Request for Determination of Permitted Uses for Ground Floor Commercial Units

Dear Ms. Ramos:

As you know, an issue has arisen regarding which commercial uses are permitted in the ground floor commercial units (the "Commercial Units") at the David William Hotel Condominium located at 700 Biltmore Way in Coral Gables, Florida (the "D.W."). As documented in the Staff Report issued September 10, 2018 and prepared for the Board of Adjustment hearing regarding an appeal of the issuance of a certificate of use for a fitness studio membership showroom, which was later rendered moot, the City had determined that a fitness studio membership showroom is permitted in the Commercial Units (1) as an accessory use in the MFSA District as determined by the City's Planning and Zoning Director pursuant to Section 4-104(B)(1) of the Zoning Code; and (2) as a lawful nonconforming use pursuant to Section 6-601 of the Zoning Code. Since it is of the utmost importance to my client, D.W. Hotel Corp., the owner of the Commercial Units, that it have better certainty as to what sort of commercial uses are permitted in the Commercial Units, we are requesting that you make a determination on this issue. Provided below is additional information which we respectfully submit should be considered in making your determination.

Commercial Uses Permitted as an Accessory Use

The MFSA District regulations provide in part that "[a]ccessory uses...customarily associated with permitted uses within this Zoning District and not listed within the Table No. 2 may be permitted subject to Development Review Official review and approval." To determine whether a use is "customarily associated with" the D.W., the City has customarily considered the history of uses previously permitted for and in existence in the Commercial Units. An analysis of uses permitted at the time of approval, excerpted from the 1957 Zoning Code, the Code pursuant to which the D.W. was designed and built, the relevant excerpts of which are attached hereto as

Exhibit A, suggests that commercial uses with appropriate limitations and conditions should be permitted for the Commercial Units. Specifically, the 1957 Zoning Code provided that auxiliary or accessory uses included “such facilities as are required or useful for the operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house...when conducted and entered only from within the building.” (Section 3.17). Accordingly, the accessory uses permitted at the time of the D.W.’s construction, need to be considered in determining at the present time what accessory uses have been “customarily associated” with the main permitted apartment house use. The 1957 Zoning Code included three categories of commercial uses, CA, CB, and CC. The CA and CB districts were the less intense use districts with uses that were most compatible and complimentary to residential uses. Although the 1957 Zoning Code does not explicitly permit all CA and CB uses as accessory uses to apartments, we can turn to those uses to determine which would be permitted as “required or useful for the operation of” an apartment house or “for the use or entertainment of” the tenants in an apartment house. The following uses are those permitted in CA and CB districts under the 1957 Zoning Code and which, in our opinion, would be required or useful for the operation or for the entertainment of residents or guests in an apartment house,:

- (1) Artists’ studios
- (2) Banks, trust companies, savings institutions, finance companies and other similar financial institutions
- (3) Barber shops and beauty shops
- (4) Insurance agencies and offices
- (5) Interior decorating, costuming, drapery stores
- (6) Office for business and professional purposes
- (7) Photographers, photograph galleries
- (8) Post Office
- (9) Real Estate Office
- (10) Stock exchanges and brokerage offices
- (11) Cleaning and laundry agencies
- (12) Conservatories
- (13) Employment agencies
- (14) Loan agencies
- (15) Repair shops for electrical appliances, radio, television, jewelry, watches, typewriters and business machines
- (16) Restaurants and cafes, cafeterias, delicatessen
- (17) Shoe repair shops
- (18) Slenderizing salons
- (19) Studios for art, music, dancing and drama where pupils are taught, but not permitting dancing or any entertainment to which the public is admitted or which is a source of nuisance
- (20) Tailor shop

- (21) Upholstering shop
- (22) Various types of retail stores
- (23) Or other similar enterprises or business which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or business herein enumerated.

While some of the nomenclature and terms utilized in the 1957 Code need to be updated to reflect present day terminology, the uses listed above are all required or useful for an apartment building's operation and/or the use and entertainment of residents and guests. Indeed, as has been shown by the City's previous research of this issue, much of which is mentioned in the Staff Report referred to above, many of these uses have previously existed at the D.W., including: restaurant, fitness center, management office, night club/bar and banquet hall facilities. What the uses enumerated above and historically in existence at the D.W. all have in common is that they are uses which provide a nearby convenience for everyday life and entertainment. Access to these convenient uses was previously never exclusive to the D.W. residents nor should it be now. The D.W. was originally designed and approved to have these accessory commercial uses which were open to the general public and they should be allowed to continue since they are "customarily associated" with the main permitted use.

Commercial Uses Also Have Legal Non-Conforming Status

Aside from the fact that the Planning and Zoning Director has the authority to determine appropriate accessory uses, the City has also recognized that the Commercial Units are shielded from any legislative attempt to deprive them of appropriate commercial use by the fact that commercial uses were clearly permitted at the D.W. when it was originally built and have historically existed at the D.W. Even if there have been periods of time when some of this commercial space was vacant, it could still continue with a legal non-conforming status because, pursuant to Section 6-501 of the Zoning Code, legal nonconforming accessory uses continue for as long as the principal use is in existence.

How to Ensure Compatible Use of Commercial Units

It is important to note that the City may impose reasonable conditions on the issuance of a certificate of use for these Commercial Units so as to ensure that their use does not constitute a nuisance, including but not limited to limitations on hours of operation and noise level. Furthermore, it is important to make sure that new commercial uses in the Commercial Units continue to be of the same intensity or less than what has historically existed. While new commercial uses at the D.W. are exempt from parking requirements pursuant to Section 5-1401(B)(4) of the Zoning Code, a proposed use's parking requirement is a useful indication of whether it will be a more intense use than the other commercial uses which have historically

existed at the D.W. Other factors which are relevant to the intensity of use consideration are noise levels and hours of operation, both of which, as mentioned above, are within the City's authority and discretion to regulate.

Equity Considerations

In order to put the exercise of your interpretative authority in the appropriate context, it is important for you to consider the following:

- These ground floor Commercial Units have been part of the D.W. since the first day that it opened and have been used in one form or another to varying extents for 55 years.
- Evidence that the D.W. was designed and permitted by the City to include these ground floor commercial uses can be found in the D.W. Declaration of Condominium which provides that the Commercial Units shall only be used for commercial uses. Relevant excerpts of the D.W. Declaration of Condominium are attached as **Exhibit B** to this letter.
- The existing MFSA zoning districts density limitations would not allow for conversion of the commercial units to residential use and it is also unlikely that the Declaration of Condominium could ever be amended to permit a residential use in the commercial units.
- The Commercial Units pay a total of \$12,933 monthly in Associate dues and \$18,000 annually in local taxes. Due to the questions and doubts previously raised about their use rights, these Commercial Units are in the unreasonable situation of having to bear all the burdens of property ownership but to not be able to generate any income, along with having their market value severely impacted.

The law will not tolerate a situation whereby the Commercial Units are deprived of any and all uses. Accordingly, in order to resolve this "Catch 22" situation, we request that you determine what types of commercial uses are allowed for the Commercial Units subject to reasonable conditions as may be subsequently determined by the Planning and Zoning Director at the time of permitting. If you would like to discuss this request further or have any questions, please contact me at 305-376-6061. Thank you for your attention to this matter.

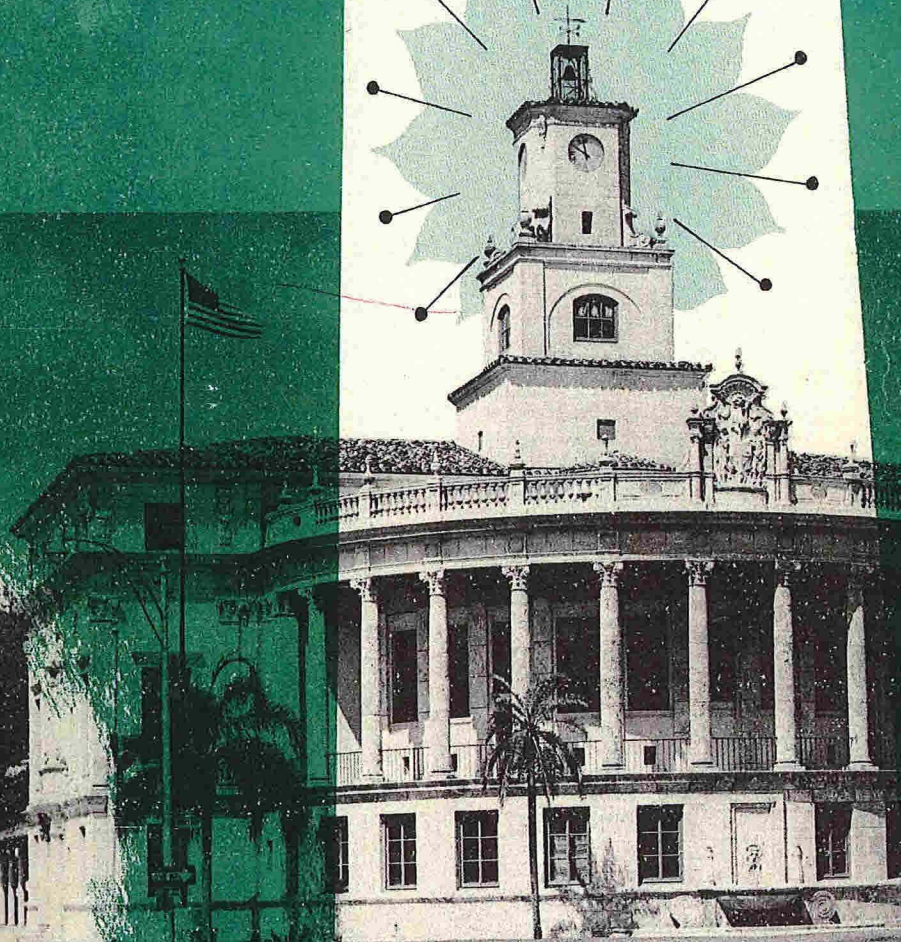
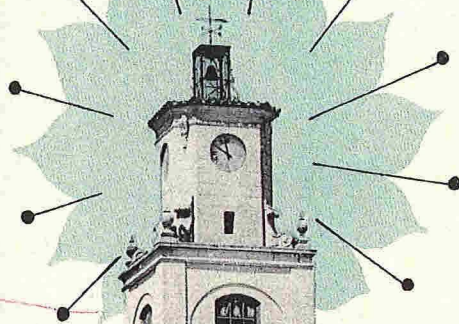
Sincerely,



Mario Garcia-Serra

Exhibit A

ZONING
CODE
OF



CITY OF

*Coral
Gables*

FLORIDA

SECTION 2.38 YARD, FRONT. An unoccupied area between the front property line and the main building, and extending across the full width of the lot.

SECTION 2.39 YARD, REAR. An unoccupied area extending across the full width of the lot between the building and the rear line of the lot.

SECTION 2.40 YARD, SIDE. An unoccupied area between the main building and the side line of the lot and extending from the required front yard to the required rear yard.

3. USE DISTRICTS AND REGULATIONS

SECTION 3.01 USE DISTRICTS. For the purpose of classifying, regulating and restricting the location of trades and industries, and the location of buildings designed for industry, business, residence and other uses, the City of Coral Gables is hereby divided into Use Districts, as follows:

- (a) SINGLE FAMILY RESIDENCE USE DISTRICTS, being designated herein and upon the Use and Area Map as "R" Use Districts;
(b) DUPLEX RESIDENCE USE DISTRICTS, being designated herein and upon the Use and Area Map as "D" Use Districts;
(c) APARTMENT - HOTEL USE DISTRICTS, being designated herein and upon the Use and Area Map as "A" Use Districts;
(d) COMMERCIAL USE DISTRICTS, being designated herein as "C" Use Districts; and which are subdivided, further defined and classified and designated herein and upon the Use and Area Map as "CA", "CB" and "CC" Use Districts.
(e) INDUSTRIAL USE DISTRICTS, being designated herein and upon the Use and Area Map as "M" Use Districts.

The Use Districts herein above referred to are designated upon the Use and Area Map and expressly made a part of this code. No building shall be erected, nor shall buildings or premises be used for any purpose other than a purpose permitted by this code in the Use District in which such building or premises is or are located.

SECTION 3.02 USES - DEFINITION. Uses shall be classified and defined as follows:

- (a) R-USE. An "R" Use shall be used for a single family residence, as defined herein.
(b) D-USE. A "D" Use shall be used for a duplex or two-family residence, as defined herein.
(c) A-USE. An "A" Use shall be used for an apartment, including efficiency and bungalow court apartment, or as a hotel, all as defined herein.
(d) C-USE. A "C" Use shall be any use other than an R, D, A or S Use which is permitted by this code in any CA, CB or CC Use District; "C" Uses shall be further classified as "CA", "CB", or "CC" Uses, which shall be defined as follows:
(1) A "CA" Use is any use other than an R, D, A or S Use, permitted by this code in a "CA" Use District.
(2) A "CB" Use is any use other than a R, D, A or S Use, permitted by this code in a "CB" Use District, but not permitted in a "CA" Use District.
(3) A "CC" Use is any use other than an R, D, A or S Use, permitted by this code in a "CC" Use District, but not permitted in a "CA" or "CB" Use District.
(e) An "M" Use shall be any use for commercial or industrial purposes which is permitted by this code only in "M" Use Districts.
(f) S-USE. An "S" Use shall be any special use as described in Section 3.12 hereof.

SECTION 3.03. DESIGNATION OF USES AND USE DISTRICTS. The designation of Use Districts and Uses by letter symbols as set forth herein, when used throughout this code and upon the Use and Area Map, shall have the same effect as if the full description of the Use Districts or Uses were stated. The use of a letter symbol, coupled with a number, shall connote both use and minimum building area, in accordance with Use and Area regulations set forth herein.

SECTION 3.04 R-USE DISTRICTS. In single family residence or R-Use Districts no use shall be permitted other than an "R" Use, except that certain special uses, as described in Section 3.12 hereof, may be permitted after passage of a special authorizing ordinance therefor. In R-Use Districts no buildings or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed to be used, for a D, A, C or M Use as defined herein.

SECTION 3.05 D-USE DISTRICTS. In a duplex residence or D-Use District no use shall be permitted other than an R or D Use, except that certain special uses, as described in Section 3.12 hereof, may be permitted after passage of a special authorizing ordinance therefor. In D Use Districts, no building or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed to be used, for an A, C or M Use as defined herein.

SECTION 3.06 A-USE DISTRICTS. In an apartment-hotel or A-Use District, no use shall be permitted other than a D-Use, except that certain special uses as described in Section 3.12 hereof may be permitted after passage of a special authorizing ordinance therefor. In A-Use Districts no building or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed to be used for an R, C or M Use as defined herein. (1073, 1307)

SECTION 3.07 CA-USE DISTRICTS. In CA-Use Districts no building or premises shall be used nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed for an R, D, A, CB, CC or M Use as defined herein. In a CA-Use District only CA Uses, as defined herein, and Special Uses as defined in Section 3.12 hereof shall be permitted. A CA-Use shall be carried on entirely within buildings completely enclosed with walls and roof, and provided no operations are of such a nature as to become offensive or obnoxious to the adjacent premises devoted to or adopted for other uses. For the purpose of this Code CA Uses are hereby defined as follows:

- (1) Apartment or hotel units above the first floor if recommended by the Zoning Board and approved by the City Commission.
(2) Antique and curio shops.
(3) Art goods stores.
(4) Artists' studios
(5) Banks, trust companies, savings institutions, finance companies and other similar financial institutions.
(6) Barber shops and beauty shops.
(7) Book stores.
(8) China, crockery, glassware and earthenware stores.
(9) Cigar and cigarette stores.
(10) Clinic, Medical or Dental (establishments where two or more medical or dental practitioners have offices together with consultation rooms, laboratories, and other common facilities).
(11) Confectionery and ice cream stores.
(12) Cosmetic, perfumes and toiletries stores.
(13) Department and dry goods stores.
(14) Drug and sundray stores.
(15) Florist shops (does not include the growing of plants).
(16) Furniture stores (retail only) similar to Simms located at 450 Biltmore Way, Coral Gables, Florida.

- (17) Haberdashery shops.
- (18) Hardware stores.
- (19) Hobby supplies.
- (20) Insurance agencies and offices.
- (21) Interior decorating, costuming, drapery stores.
- (22) Jewelry stores.
- (23) Leather goods stores.
- (24) Luggage shops.
- (25) Millinery shops.
- (26) Modiste, wearing apparel and furriers.
- (27) Motel.
- (28) Music, radio, television and electrical appliance stores. (retail only)
- (29) Office for business and professional purposes.
- (30) Office supply and equipment stores. (retail only)
- (31) Optical stores.
- (32) Parking Lots -- Commercial (Ordinance No. 1037).
- (33) Photo equipment and supplies.
- (34) Photographers, photograph galleries.
- (35) Post Office.
- (36) Real Estate Offices.
- (37) Shoe Stores.
- (38) Souvenir stores.
- (39) Sporting goods stores.
- (40) Stationery stores.
- (41) Stock exchanges and brokerage offices.
- (42) Special uses as defined under Section 3.12 herein.
- (43) Telegraph and telephone offices (does not include telephone exchanges).
- (44) Theatres and motion picture houses, except open air or drive-in type.
- (45) Or other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the businesses or enterprises herein enumerated. These enterprises shall be determined by the Zoning Board upon application, subject to approval by the City Commission. (1084, 1307)

parking space is provided and maintained adjacent to and in addition to the site upon which the building is located and providing a 4' wall is constructed on the perimeter of the parking area).

- (7) Broadcasting stations.
- (8) Car, new, sales and service -- must have building the minimum size of which is to be as required for "C" Use buildings. The service area shall be located in the rear of the building and there shall be no entrances or exits from the front of the building.
- (9) Catering.
- (10) Cleaning and Laundry Agencies, where no gasoline or explosives of any kind are stored or used therewith and provided no cleaning or laundry shall be done on the premises.
- (11) Conservatories.
- (12) Dairy products (retail only).
- (13) Display stores.
- (14) Dressmaking and alteration shops for wearing apparel.
- (15) Employment agencies.
- (16) Fruit store (retail only).
- (17) Grocery stores.
- (18) Hospital or sanitarium, public or private, provided a minimum of one (1) off-street parking space for each four (4) hospital beds and in the case of a sanitarium one (1) off-street parking space for each six (6) beds, is provided and maintained upon the building site.
- (19) Loan agencies (excluding pawn shops).
- (20) Lodge halls and convention halls.
- (21) Mail order offices, without storage of products sold.
- (22) Meat market, retail only (except the handling of live poultry).
- (23) Motorcycle and bicycle stores.
- (24) News stands, provided the business is carried on within and under cover of a building as defined by this Ordinance.
- (25) Paint stores (retail only).
- (26) Pet shops (caged birds and fish only).
- (27) Plumbing fixture stores.
- (28) Repair shops for electrical appliances, radio, television, jewelry, watches, typewriters and business machines.
- (29) Restaurant, cafes, cafeterias and delicatessen.
- (30) Retail package beverage stores, retail beverage stores, retail package liquor stores and retail liquor stores (subject to approval by the City Commission). (See Section 4.11 for distance requirements).
- (31) Schools, business.
- (32) Shoe repair shops.
- (33) Slenderizing salons.
- (34) Studios for art, music, dancing and drama where pupils are taught, but not permitting dancing or any entertainment to which the public is admitted or which is a source of nuisance.
- (35) Surgical and orthopedic appliance sales.
- (36) Tailor shop.
- (37) Ticket offices for Airplane, Bus and Railroad.
- (38) Telegraph stations.
- (39) Telephone answering service.
- (40) Telephone exchange.
- (41) Travel agencies.

SECTION 3.08 CB-USE DISTRICTS. In CB-Use Districts, no building or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed for an R, D, A, CC or M Use as defined herein. In a CB-Use District only CA and CB Uses, as defined herein and Special Uses, as defined in Section 3.12 hereof, shall be permitted. A CB-Use shall be carried on entirely within buildings completely enclosed with walls and roof, and provided no operations are of such a nature as to become offensive or obnoxious to the adjacent premises devoted to or adopted for other uses. For the purpose of this code CB Uses are hereby defined as follows:

- (1) Every use permitted in a CA-Use District.
- (2) Awning stores.
- (3) Automotive Accessory store.
- (4) Bake shops, retail only, provided no baking shall be permitted on the premises.
- (5) Boats -- display and sale -- in a building only.
- (6) Bowling lanes (in wholly air-conditioned and sound-proof buildings, provided ten thousand square feet of off-street

- (42) Upholstering shop, provided the business is limited to recovering of furniture only, painting or repainting is done elsewhere, show room and office is in front of store separated from work area by a partition and a temporary license be issued subject to cancellation on justifiable complaint.
- (43) Or other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated. These enterprises shall be determined by the Zoning Board upon application, subject to approval by the City Commission. (1084, 1307)

SECTION 3.09 CC-USE DISTRICTS. In CC-Use Districts, no building or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed for an R, D, A, CA, or M Use as defined herein. In a CC-Use District only CB and CC Uses, as defined herein and Special Uses, as defined in Section 3.12 hereof, shall be permitted. A CC-Use shall be carried on entirely within buildings, completely enclosed with walls and roof, and provided no operations are of such a nature as to become offensive or obnoxious to the adjacent premises devoted to or adopted for other uses. For the purpose of this code CC Uses are hereby defined as follows:

- (1) Every Use permitted in a CB-Use District except CA Uses.
- (2) Auto repair shop for mechanical, electrical, body and upholstery repairs.
- (3) Automotive service stations. (See Section 4.10 for Distance Requirements).
- (4) Assembly of electrical appliances, electronic instruments and devices, radios, phonographs and television sets.
- (5) Bakery.
- (6) Beverage and liquor distributors (Ord. No. 1014).
- (7) Cleaning, pressing and dyeing plants for treatment of wearing apparel.
- (8) Confectionery manufacturing (5,000 square ft. maximum floor area).
- (9) Day Nurseries.
- (10) Fish market (only upon special permission of the City Commission).
- (11) Funeral homes provided ten thousand square feet of off-street parking space is provided adjacent to and in addition to the site upon which the building is located.
- (12) Garage, public, including parking garage.
- (13) Glass and mirror shops.
- (14) Health and athletic clubs (only upon approval by the City Commission).
- (15) Jewelry assembling from such prepared materials as the following: Precious or semi-precious metals or stones, bone, cellophane, feathers, glass and plastics.
- (16) Locksmith shops.
- (17) Medical or dental laboratories.
- (18) Motion picture, television and recording studios (in wholly soundproof buildings).
- (19) Photograph developing and printing.
- (20) Photostating, photocopy and blueprinting (must provide proper ventilation).
- (21) Picture framing.
- (22) Printing shops, mimeographing and addressing.
- (23) Private schools (not specifically designated as CB-Use).
- (24) Publishing companies.
- (25) Shop for making of cloth awnings or canopies for retail sales to the ultimate consumer only (5,000 square ft. maximum floor area).

- (26) Shops for repair of any merchandise permitted to be sold in any C Use District.
- (27) Storage in fireproof warehouses of clothing, dry goods, furniture, hardware and household goods.
- (28) Sign painting shops, subject to approval of proper ventilation and paint booths by the Fire Department.
- (29) Transfer companies.
- (30) Or other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated. These enterprises shall be determined by the Zoning Board upon application, subject to approval by the City Commission. (1084, 1307)

SECTION 3.10 M-USE DISTRICTS. In M-Use Districts no building or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed for an R, D, A, CA or CB Use as defined herein or designed for any use prohibited in The City of Coral Gables by this code or by any other ordinance; nor shall any use be permitted which by reason of noise, odors, noxious fumes, smoke or otherwise shall constitute a nuisance to residents in adjoining R, D, A or CB Use Districts. In an M-Use District only M or CC Uses as defined herein and Special Uses, as defined in Section 3.12 hereof, shall be permitted. For the purpose of this code M Uses are hereby defined as follows:

- (1) Every Use permitted in a CC-Use District except CB Uses.
- (2) Auto Laundries (car wash).
- (3) Beauty shops (for dogs and cats — no boarding).
- (4) Beverages, Bottling, such as Coca-Cola, 7-Up, Royal Crown Cola, Pepsi-Cola, etc., but not including any intoxicants.
- (5) Boat Building.
- (6) Cabinet making, carpentry shops.
- (7) Carpet cleaning.
- (8) Car Lots, used.
- (9) Cement products, such as concrete blocks, pipe, etc., provided the area is enclosed by a 4' high wall. (Does not include manufacturing). Must have building for office.
- (10) Cigar and cigarette manufacturing.
- (11) Commercial laundries.
- (12) Commercial self-service laundries.
- (13) Concrete products manufacturing (only upon special permission from the City Commission).
- (14) Contractors yards, lumber yards and building supplies, provided the area used is enclosed by a 4' high wall.
- (15) Electro plating.
- (16) Fortune tellers, clairvoyants, etc., (Ordinance No. 651).
- (17) Furniture manufacturing.
- (18) Garment manufacturing.
- (19) Hat manufacturing.
- (20) Ice plants.
- (21) Leather goods manufacturing (excluding any tanning).
- (22) Machine shops.
- (23) Metal awning or metal canopy, manufacturing or assembly.
- (24) Metal fabricating.
- (25) Musical instruments, toys, novelties, rubber and metal stamps, manufacture of.
- (26) Nursery — growing trees, plants, flowers and the like — must have building for office.

- (27) Ornamental iron and metal working shops (does not include foundry or blacksmith shops).
- (28) Paint mixing, wholesale, building to be used for such purpose must be approved by Fire Department.
- (29) Pawn shops, swap shops and trading posts.
- (30) Petroleum product dealers or distributors where products are stored on the premises.
- (31) Plastic articles, including novelties (manufacturing of).
- (32) Public utility service yards or electrical receiving or transformer stations, provided the area is enclosed by a 4' high wall.
- (33) Quick freeze meat processing plant — no fish or live poultry.
- (34) Radio and television towers and transmitters — shall be approved by CAA, FCC and the structural engineer of the City of Coral Gables.
- (35) Research laboratories.
- (36) Screens for windows, patio and etc. — assembling or manufacturing.
- (37) Second hand dealers for the disposal of furniture, fixtures, tools and the like.
- (38) The manufacture, compounding, processing, packaging or treatment of such products as cosmetics, perfumes, pharmaceuticals and toiletries, provided no toxic or corrosive fumes, offensive odors or dust are permitted to escape from the building.
- (39) The manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay and kilns fired only by electricity or gas.
- (40) Tinsmiths, roofers and plasterers.
- (41) Tire, Automobile, vulcanizing shops.
- (42) Tool and die shops.
- (43) Venetian blind manufacturing.
- (44) Veterinarian clinics and animal hospitals (provided the building is properly soundproofed and no animal shall be permitted to remain on the premises over night).
- (45) Welding shops (does not include blacksmith shop).
- (46) Or other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the enterprises or businesses herein enumerated. These enterprises shall be determined by the Zoning Board upon application, subject to approval by the City Commission. (1084, 1307)

SECTION 3.11 SPECIFIC NON-COMPLYING OR QUALIFIED USE WITHOUT CHANGE OF USE DISTRICT. The City Commission may, by ordinance, permit a specific use of a particular premises for a less restrictive or lower classification than that permitted in the Use District in which the premises are situated, without permitting any other uses of less restricted or lower use classification upon the premises. In such cases the property shall be zoned and designated by the letter symbol "X" placed before the basic Use District symbol, i.e., premises zoned and designated "XCB" may be used for a specifically named use, such as automobile service station, but not for any other use of lower classification than "CB", and but for the specifically named use, the premises shall be restricted to "CB" use. The letter symbol "X" may also be used to designate some other deviation, restriction or qualification from or to the basic use requirement. The Commission may provide that upon cessation of the specific lower class or deviating or conditional use (designated by the letter symbol "X" as above provided) for a continuous period of six months the use of the premises shall revert to the previous and more restricted use classification.

SECTION 3.12 SPECIAL USES. The following special uses, which do not fall within the definition of R, D, A or C Uses, will be permitted in any M or C Use District any may be permitted in any R, D, or A Use District only after a special ordinance granting permission for such use shall have been passed and adopted by the City Commission, after a public hearing before the Zoning Board at which persons interested shall be accorded an opportunity to be heard.

- (a) Golf or tennis grounds, or similar use.
- (b) Church, convent or parish house.
- (c) Private club (including vending therein of alcoholic beverages and intoxicating liquors).
- (d) Public recreation building, park or playground.
- (e) Community Center Building.
- (f) Music school, public school, private school, boarding school or college, unless such private school, boarding school or college is operated so as to bring it within the definition of a C Use.
- (g) Police station, fire station or other municipal building or facility.
- (h) Public library, museum or art gallery. (1073)

SECTION 3.13 SPECIAL USES — DESIGNATIONS AND RESTRICTIONS. Any ordinance permitting special uses as provided in Section 3.12 hereof shall be construed as permitting only the specifically named or described special use, and not any other special use. Any property or premises designated upon the Use and Area map by the letter symbol "S" alone shall be restricted to the specific special use permitted, and may be used for no other use whatsoever. Any property or premises designated by the letter symbol "S" before and in conjunction with the letter symbol for an R or D Use District shall be restricted to use for the particular special use specified or for a use permitted in the designated Use District, i.e., the letters "SR" shall denote a special use permitted in an R Use District, and the premises so designated may be used only for the specific special use permitted or for single family residences; and the letters "SD" shall denote a special use permitted in a D Use District, and the premises so designated may be used only for the specific special use designated, or for single family or duplex residences.

SECTION 3.14 AUXILIARY OR ACCESSORY USES, GENERAL. Except as otherwise provided herein, auxiliary or accessory uses, which do not alter the character of the premises in respect to their basic use, shall be permitted in connection with all uses. Specific enumeration hereinafter mentioned or permissible auxiliary or accessory uses shall not be deemed to prevent other proper auxiliary or accessory uses not so enumerated. Subject to provisions of this or other ordinances of this city, an auxiliary or accessory use may include a subordinate building or portion of the main building, the use of which is incidental to that of the main building and which is located on the same building site as the main building. No subordinate and accessory building or structure permitted as an auxiliary use may be constructed before, but may be built concurrently with, the main building, nor shall any such building be completed before the main building is completed, except as to interior trim and decoration, or be used or occupied before the main building is completed.

SECTION 3.15 AUXILIARY USE — PRIVATE GARAGE, GARAGE APARTMENT. A private garage, or garage apartment providing living quarters for the use only of members of the family living in the main residence building or servants employed on the premises, will be permitted with R and D uses as an auxiliary use. Occupancy or garage apartments in R and D Use Districts shall be limited to members of the family living in the main residence or to servants employed on the premises. Only one private garage or garage apartment shall be permitted upon the building site occupied or used for the main residence. No kitchen or cooking facilities shall be permitted in private garages or garage apartments in R and D Use Districts.

SECTION 3.16 AUXILIARY USE - APARTMENT GARAGES. An apartment garage will be permitted in connection with A Uses as an auxiliary use. Only one apartment garage shall be permitted on the building site occupied or used by the main building.

SECTION 3.17 AUXILIARY USES - APARTMENTS AND HOTELS, GENERAL. Subject to any limitations in this code or in other ordinances of the city, such facilities as are required or useful for the operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house, shall be permitted as auxiliary uses thereto, when conducted and entered only from within the building.

SECTION 3.18 AUXILIARY USES - HOTELS. A public dining room or restaurant shall be permitted as an auxiliary use in any hotel. Hotels with one hundred (100) or more guest rooms may contain business establishments of CA or CB classification as auxiliary uses, providing the exterior of the building shall not contain store fronts or have the appearance of commercial or mercantile activities or any display of articles or services for sale which are visible from the exterior of the building, or on the grounds facing a public highway or water frontage, and providing further that places of business established under the provisions of this section shall only be entered from within the building. Hotels with one hundred (100) or more guests rooms may contain a retail liquor store, as an auxiliary use, provided that such retail liquor store shall have no entrances or exits thereto except from within the hotel itself and not from the exterior of any such hotel or from any street; and no signs advertising such retail liquor store, or the sale of alcoholic beverages or intoxicating liquors therein, shall be permitted upon the exterior, or to be visible from the exterior, of any such hotel.

SECTION 3.19 AUXILIARY USE - BOAT HOUSES. A boat house shall be permitted as an auxiliary use to any use permitted upon property abutting the Coral Gables Waterway or other canal or waterway or Biscayne Bay. Every boat house shall maintain the same minimum setback from the platted canal line or bay front as established for the main structure permitted on the property. Every boat house shall maintain the same minimum setback from the side lot line as established for the main structure permitted on the property. Occupancy of living quarters in any boat house shall be restricted in R and D Use Districts to occupancy by members of the family residing in the main residence building or to servants employed on the premises. No kitchen or cooking facilities shall be permitted in living quarters in boat houses in R or D Use Districts. An escape ladder shall be provided from the water at some point in the boat house or between the boat house and the canal or bay. The eave line of the boat house shall not exceed in height the eave line of the main residence building. A wall or fence four (4') feet in height shall be provided so as to contain the boat house and its access to the canal or bay within the rear yard of the property. the canal or bay within the rear yard of the property. (1259)

SECTION 3.20 AUXILIARY USE - PLAYHOUSES. A playhouse shall be permitted as an auxiliary use to any R, D or A Use, subject to the following conditions and restrictions:

- (a) Such playhouse shall be of concrete block stucco construction with tile roof.
- (b) The ground dimensions thereof shall not exceed 12 ft. x 12 ft.;
- (c) The head room therein shall not exceed 5 ft.;
- (d) No plumbing facilities or fixtures shall be installed therein; and
- (e) Such playhouse shall be screened by shrubbery to obscure the view of such playhouse from the street.

SECTION 3.21 AUXILIARY USE - UTILITY ROOM OR BUILDING. A separate utility building, or the use of a portion of the main building therefor, shall be permitted as an auxiliary use to any A Use, and in connection with any motel. Such separate building or part of the main building shall be restricted to use for laundry facilities, for housing of electrical meters or other electrical equipment, toilet facilities, and storing of tools or equipment used on the premises, and, in the case of motels, shall be located at the rear of the building site.

SECTION 3.22 AUXILIARY USE - STORAGE BUILDING. A separate building for the storage of storm shutters and other similar adjuncts to the main building, or for the storage of garbage

and trash cans and to keep the same from being exposed to the public view (providing, however, that proper facilities shall be made for cleaning same as required by standard health practices), shall be permitted as an auxiliary use to any C or M Use. Such building may be erected only at the rear of the property upon which it is to be located, and within a radial distance of 100 feet from the main building, and under no condition shall there be more than one such building erected upon a building site.

SECTION 3.23 NON-CONFORMING USES. A non-conforming use lawfully existing on February 16, 1937, the date of passage of Ordinance No. 271 of the City of Coral Gables, may be continued subject to the following conditions:

- (a) A non-conforming use shall not be extended, but the extension of a use at any portion of a building which was arranged or designed for such non-conforming use on February 16, 1937 shall not be deemed the extension of a non-conforming use.
- (b) A building designed or devoted to a non-conforming use may not be added to or structurally altered to an extent exceeding an aggregate cost, during any ten-year period, of fifty percent of the value of the building, unless the use of the building is changed to a conforming use. The "value of the building" as used herein shall be construed to be the estimated cost of replacement of such building at the time of consideration.
- (c) A non-conforming use, if changed to a more restricted non-conforming use shall not thereafter be changed to a still more non-conforming use.
- (d) A non-conforming use shall not be changed, unless changed to a more restricted use, providing that in R, D or A Use Districts an M Use shall not be changed unless changed to a conforming use.
- (e) A non-conforming use shall not be continued, if by reason of odors, noxious fumes, smoke, noise or otherwise it shall become a nuisance to residents in adjoining R, D or A Use Districts.
- (f) Whenever a non-conforming use of a building has been discontinued for a period of one year or more, such non-conforming use shall not thereafter be re-established, and the future use shall be in conformity with the provisions of this code.
- (g) Nothing herein contained shall validate any non-conforming use existing on February 16, 1937, the effective date of Ordinance No. 271, and not permitted hereby.

SECTION 3.24 AUXILIARY USE - PRIVATE SWIMMING POOL. A private swimming pool shall be permitted as an auxiliary use to any R, D, A, C or S Use, subject to requirements set forth in this ordinance and in Ordinance No. 1052.

SECTION 3.25 COMMERCIAL PARKING LOTS. A commercial parking lot or lots may be operated in commercial or industrial use districts, subject to the following conditions:

- (1) The approval of the City Commission as signified by its issuance of a special use permit.
- (2) The owner or operator thereof may erect signs in accordance with the provisions of existing ordinances or future ordinances passed, dealing with the erection of signs on parking lots.
- (3) For the purpose of this ordinance the word "commercial" shall and does mean that the owner or operator of said commercial parking lot may make and collect fees or charges for the use thereof.
- (4) Nothing contained herein shall prohibit the use of the land for which it was originally zoned. (1037)

SECTION 3.26 AUXILIARY USE - SCREENED ENCLOSURES. A structure which openings are composed of screening shall be permitted as an auxiliary use in connection with an R, D, A or S Use, provided a major portion of one wall of the screened structure shall be a part of the main building or of a permitted auxiliary building located on the premises, subject to the following conditions and limitations:

Exhibit B

executed by the officers of the Association, certifying that the amendment was duly adopted. Such certificate shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. The amendment aforesaid shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Dade County, Florida. This paragraph shall apply to amendments made by the Developer except that such amendments need only be executed by the Developer.

H. The following rights to amend this Declaration are herewith specifically reserved to the Unit Owners of the Units identified below and said amendments need only be executed and acknowledged by the owner of the Unit and any Institutional Mortgagee whose mortgage encumbers the said altered Unit, and need not be approved by the Association, Unit Owners, lienors, or other mortgagees, whether or not their joinder is elsewhere required for amendments. Such amendments shall be reflected by an amendment to this Declaration with a survey, if applicable, attached reflecting such authorized alteration of Unit. The Association shall prepare and record the amendment based upon information, plans and surveys supplied by the Unit Owner at the Unit Owner's Expense. The Unit Owner initiating the amendment shall pay all reasonable costs of the Association in preparing and recording the Amendment including but not limited to attorney's fees. In the event a Unit Owner, from time to time, elects to subdivide a Unit into two (2) or more Units or to combine two (2) or more Units into one (1) Unit as specifically provided for below, then said Unit Owner shall have the right to do so and to create the altered Units by filing among the Public Records of Dade County, Florida an appropriate amendment or amendments to this Declaration as will serve to create the altered Units under Florida law and said amendment need be executed solely and only by the Unit Owner and any Institutional Mortgagee whose mortgage encumbers the altered Unit. Said amendment or amendments shall expressly set forth the share, expressed as a percentage or fraction, of the Common Elements, Common Expenses and Common Surplus that will be appurtenant to each of said Units, provided, however, that the total of said shares shall be the same as that which is appurtenant to the Units as originally set forth in this Declaration. The Grantee of a combined or subdivided Unit from the Unit Owner filing the amendment shall be obligated to the Association only for that particular Unit's share of the Common Expenses of the Condominium as shall be established in the amendment to this Declaration creating said altered Unit.

1. The C-1 Unit and/or the C-2 Unit may be converted to any retail, office, commercial service and/or restaurant use permitted by the City of Coral Gables Zoning Code.

2. The C-1 Unit and/or the C-2 Unit may be subdivided into smaller Units. If subdivided, said smaller Units subsequently may be recombined to form larger Commercial Units. For example, the C-1 Unit may be subdivided into several Commercial Units and, at some later date, two (2) or more of said subdivided Commercial Units may be recombined to form a larger Commercial Unit. If a Unit is subdivided, the share of Common Expenses, Common Elements, and Common Surplus and the Voting Interest for the Units created by the subdivision shall be calculated by apportioning the share and Voting Interest of the original Unit proportionately according to square footage area, amongst the Units created by the subdivision. If two or more Units are combined, the share of Common Expenses, Common Elements and Common Surplus and the Voting Interest for the resulting combined Unit shall be the sum of the shares and Voting Interest appurtenant to the two or more Units so combined.

Prepared by and return to:
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**SIXTH AMENDMENT TO
DECLARATION OF CONDOMINIUM OF
THE DAVID WILLIAM HOTEL CONDOMINIUM**

WHEREAS, the Restated Declaration of Condominium of The David William Hotel Condominium (the "**Original Declaration**"), was recorded on January 3, 1990 in Official Records Book 14380, at Page 2742 of the Public Records of Miami-Dade County, Florida;

WHEREAS, the Original Declaration was subsequently amended as evidenced by that certain Certificate of the Association for an Amendment to the Declaration of Condominium, recorded on January 29, 1990 in Official Records Book 14411 at Page 2996, and that certain Certificate of the Association for an Amendment to the Declaration of Condominium, recorded on March 9, 1990 in Official Records Book 14461 at Page 3277, that certain Certificate of the Association for an Amendment to the Declaration of Condominium, recorded on November 26, 1991 in Official Records Book 15287 at Page 734, that certain Certificate of the Association for an Amendment to the Declaration of Condominium, recorded on November 30, 1993 in Official Records Book 16147 at Page 1663, and that certain Fifth Amendment to Declaration of Condominium, recorded on June 24, 2003, in Official Records Book 21369, Page 1508, all of the Public Records of Dade County, Florida (collectively, the "**Amendments**"). The Original Declaration together with the Amendments shall herein after be referred to as the "**Declaration**"; and

WHEREAS, Article 9, Section A of the Declaration provides that the Association may amend the Declaration if such amendment is approved by at least 2/3 of the entire membership of the Board of Administration and 2/3 of the Voting Interests of the entire membership of the Association, at a regular or special meeting of the Unit Owners at which quorum was present; and

WHEREAS, a joint special meeting of the Board of Administration and the membership of the Association was held and the appropriate approval vote was obtained to amend the Declaration as set forth herein.

NOW, THEREFORE, the Declaration is amended as hereinafter provided.

I. **Article 34, Section B** to the Declaration is hereby amended as follows:

B. **Commercial Units**. Subject to the provisions of Article 9 of this Declaration and Article 33, Paragraph H of this Declaration, each Owner of a Commercial Unit (more specifically the Owners of Unit C-1, Unit C-2 and Unit C-3) shall occupy and use each such Commercial Unit only for the conduct of hotel, restaurant, office, ~~retail use and/or~~ commercial service purposes. No Commercial Unit shall be used for primarily retail purposes. However, a retail use that is ancillary to any of the permitted uses will be allowed. Notwithstanding the above provisions, the following uses shall be prohibited within any Commercial Unit: (1) adult bookstores; (2) topless bars and other topless commercial enterprises; and (3) the sale of sex paraphernalia.

Note: additions are underlined and deletions are ~~struck through~~.

All other terms and provisions of the Declaration not specifically amended or altered hereby shall continue in full force and effect.

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