

## Attachment No. 4

### AFFIDAVIT OF RAPHAEL ADES

The undersigned, on behalf of BB Hotel LLC, 846 Lincoln Road, 4th Floor, Miami Beach, Florida 33139, being first duly sworn, state that to the best of my belief and knowledge, the following statements are true and correct, and are provided in support of the claim of economic hardship as related to the Special Certificate of Appropriateness for the demolition of the former Belleview Biltmore Hotel, pursuant to Section 74-332(g) of the Town of Belleair Code.

1. BB Hotel LLC acquired the former Belleview Biltmore Hotel property ("Hotel Property") by Deed In Lieu of Foreclosure from Belleview Biltmore Resort, LTD on December 20, 2010. The consideration allocated to the purchase of the Hotel Property was \$3,120,000. See **Tab 1.3.1.1.**

2. The assessed value of the Hotel Property for the previous two years, including the improvements thereon, was \$7,414,400 in 2012, and \$6,171,600 in 2013 as reported on the Pinellas County Property Appraiser web site. See **Tab 1.3.1.2.**

3. The real estate taxes paid on the Hotel Property for the previous two years were \$163,449.91 for 2012, and \$132,510.30 for 2013 as reported on the Pinellas County Tax Collector web site. See **Tab 1.3.1.3.**

4. There has been no annual debt service paid for the past two (2) years by BB Hotel LLC as it holds the mortgage on the Hotel Property.

5. No appraisals on the Hotel Property have been obtained within the previous two years by BB Hotel LLC in connection with the purchase, financing or ownership of the Hotel Property.

6. The Hotel Property was listed for sale in June, 2012. An offer was received from Belleview Biltmore Partners ("BBP") and a purchase agreement was executed on March 15, 2012 with BB Hotel LLC and affiliates for a purchase price of \$12,500,000 for the purchase of the Hotel Property and other properties ("BBP Contract"). The BBP Contract was cancelled due to default of BBP. An offer was received from Convergent Capital Partners LLC in October 2012 for a purchase price of \$10,000,000. No contract was finalized. A new offer was made by BBP in November, 2013 for a purchase price of \$7,250,000. The required deposit from BBP was never made. A contract was entered into with Dimension Capital Partners in December 2013 for a purchase price of \$6,000,000, which was terminated by the buyer during the due diligence period. An offer was received from JMC Communities, Inc. and an option agreement was executed on January 17, 2014 for a purchase price of \$6,600,000, which remains in full force and effect. A portion of the Hotel Property consisting of approximately 2.3 acres was sold by BB Hotel to the adjoining golf club and closing occurred on July 16, 2014.

7. The reuse of the former Belleview Biltmore Hotel has been considered by BB Hotel LLC. As stated above the BBP Option was entered into with BPP which stated an intention of restoring and operating the former Belleview Biltmore Hotel. BPP could not secure investment capital or financing and could not make minimal option payments. BB Hotel, LLC also

considered possible reuse as an Adult Living Facility but the Town Commission indicated that this use should not be considered. No serious interest by a capable purchaser has been expressed as to reuse of the existing structures comprising the former Belleview Biltmore Hotel. No adaptive reuse has been determined to be feasible due to the cost prohibitive expense required to restore the former Belleview Biltmore Hotel and the location which will not generate needed leisure or commercial hotel room demand.

8. Cost estimates or reports obtained within the previous two years relating to the demolition of the Belleview Biltmore Hotel are provided at **Tab 1.3.1.8**.

9. Cost estimates or reports obtained within the previous two years relating to the rehabilitation or restoration of the Belleview Biltmore Hotel are provided at **Tab 1.3.1.9**.

10. Reports obtained within the previous two years relating to the engineering, architectural, or construction feasibility of rehabilitating or restoring the Belleview Biltmore Hotel are provided at **Tab 1.3.1.10**.

11. All reports obtained within the previous two years relating to the economic feasibility of restoring or rehabilitating the Belleview Biltmore Hotel, including market studies, are provided at **Tab 1.3.1.11**. The Report by Stonecreek Partners, commissioned by City and funded by BB Hotel LLC, is on record at the City and not included in this submittal.

12. At the time the Hotel Property was acquired, the former Belleview Biltmore Hotel was not operational and the improvements were in serious disrepair. Financial records from the former owner confirm that the former Belleview Biltmore Hotel was closed due to substantial operating losses. The repair and renovation costs are so substantial that no owner would conduct piecemeal repairs without a viable plan to reopen and produce income meeting reasonable investment expectations. Since acquisition, no income has been received by BB Hotel, LLC from the Hotel Property and the costs incurred and paid by BB Hotel, LLC have exceeded \$1,500,000. The Hotel Property improvements are commercial income generating improvements however BB Hotel, LLC has been unable to achieve any financial return. If the Hotel Property improvements cannot be demolished, the Hotel Property will not be capable of any beneficial use as the Hotel Property improvements physically occupy the entire property. The improvements will continue to deteriorate and be a blight on the community.

Signature on following page.

[Signature]  
Name: Daniel Ades  
BB Hotel LLC

STATE OF FLORIDA  
COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of July, 2014, by Daniel Ades. He is personally known to me  or has produced \_\_\_\_\_ as identification.



[Signature]  
NOTARY PUBLIC  
Print Name: Katherine Handley  
My Commission Expires: 3/23/15

## SECTION 1.3 - SPECIAL CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION

### CLAIM FOR ECONOMIC HARDSHIP

#### A. Claim for Economic Hardship – Town Code Section 74-332(g)

Section 1.2 of this Application addresses the provisions of Town Code Section 74-332(f) and the review process and general criteria for a Special Certificate of Appropriateness (“SCA”) for demolition of a designated structure. Additionally, in certain circumstances, the Town of Belleair Code empowers the Town Commission to “**vary or modify**” the requirements of SCA criteria set forth in Section 74-332 and approve a SCA for demolition based on a proven “economic hardship” which would result in either (a) a “taking of property without just compensation”, or (b) “for properties producing income at the time of the application for a certificate of appropriateness, failure to achieve a reasonable economic return to the applicant”. Specifically, Town Code Section 74-332(g) provides that:

“(g) *Economic hardship.* Where, by reason of particular site conditions and restraints, or because of unusual circumstances applicable solely to the particular applicant property, strict enforcement of the provisions of this section would result in serious undue economic hardship that would amount to a taking of property without just compensation or, for properties producing income at the time of the application for a certificate of appropriateness, failure to achieve a reasonable economic return to the applicant, the town commission shall have the power to vary or modify adherence to this section; provided, always, that its requirements ensure harmony with the general purposes hereof and will not adversely affect the town.”

As addressed in Section 1.2 of this Application, Applicants assert that they have fully met the Code requirements set forth in Section 74-332(f) to support approval of a SCA for demolition. Additionally, Applicants assert that denial of an SCA for demolition “would result in serious undue economic hardship that would amount to a taking of property without just compensation” and/or “failure to achieve a reasonable economic return to the applicant”. Applicants ask that Town also determine that Applicants have met their burden of proof that denial of a SCA for demolition will result in economic hardship to Applicants and that pursuant to Section 74-332(f) that the Town approve immediate issuance of the SCA for demolition.

**B. Information required for Economic Hardship Claim – Town Code Section 74-332 (g)**

Based on criteria set forth in Section 74-332(g), Applicants request the Town Commission find that strict enforcement of Section 74-332 would result in serious undue economic hardship that would amount to a taking of property without just compensation, and that the Town Commission vary or modify application of the Code as necessary to approve the SCA for demolition. To support such a request or claim, Section 74-332(g)(1) requires that

“In any instance where there is a claim of undue economic hardship, the owner shall submit, by affidavit, to the town commission at least 30 days prior to the public hearing...”, eleven (11) different documents providing information regarding the property.

Attached at Tab 1.3.1 is the Affidavit of the property owner, BB Hotel LLC, Raphael Ades, Managing Partner (“Affidavit”), which Affidavit and supporting documents provide the required information set forth in Section 74-332(g)(1). The Tab numbers of the following documents correspond to the Code section number of each of the following eleven (11) documents required for the Economic Hardship affidavit:

1. The amount paid for the property, the date of purchase and the party from whom purchased (Tab 1.3.1.1);
2. The assessed value of the land and improvements thereon according to the two most recent assessments (Tab 1.3.1.2);
3. Real estate taxes for the previous two years (Tab 1.3.1.3);
4. Annual debt service, if any, for the previous two years (as noted in Tab 1.3.1.4 there has been no annual debt service);
5. All appraisals obtained within the previous two years by the owner or applicant in connection with his purchase, financing or ownership of the property (Tab 1.3.1.5);
6. Any listing of the property for sale or rent, price asked and offers received, if any (Tab 1.3.1.6);
7. Any consideration by the owner as to profitable adaptive uses for the property (Tab 1.3.1.7);
8. All cost estimates or reports relating to the demolition of the property obtained within the previous two years (Tab 1.3.1.8);
9. All cost estimates or reports relating to the rehabilitation or restoration of the property obtained within the previous two years (Tab 1.3.1.9);
10. All reports relating to the engineering, architectural, or construction feasibility of rehabilitating or restoring the property obtained within the previous two years (Tab 1.3.1.10); and

11. All reports relating to the economic feasibility of restoring or rehabilitating the property obtained within the previous two years, including market studies (Tab 1.3.1.11).

The following sections also briefly summarize the attached Affidavit and supporting documents and address how denial of the SCA for demolition would result in a serious undue economic hardship which would amount to a taking of property without just compensation and/or deprive Applicants of a reasonable economic return.

### **C. Background regarding BB Hotel's Efforts to Support Restoration**

Given the current dilapidated physical condition of the Hotel and the fact that the Hotel structures and infrastructure occupy substantially all of the land area comprising the Property, Applicants could not proceed with any economic use of the Property without first either (i) restoring the Hotel or (ii) demolishing the Hotel. With regard to restoration, it is appropriate at this point to provide some perspective on the past four-year period when such restoration was considered. The current property-owner, BB Hotel LLC, acquired the Property in December 2010 as a result of the previous owner's default on its mortgage.

The previous owners were unable to overcome the investment risks and site limitations in order to successfully finance restoration of the Hotel. Upon its acquisition of the Property, BB Hotel committed to work cooperatively with the Town and private parties to pursue restoration. Among these efforts, BB Hotel provided funding support (\$56,000) for the feasibility study commissioned by the Town ("**Stonecreek Partners Report**"), which examined various land use options, including the feasibility of restoring the Hotel, adaptive reuse as an adult living facility and options for demolition to allow for new construction. The Stonecreek Partner's Report was criticized by the Town for many shortcomings; however, it recognized that the site was poorly situated for hotel use.

BB Hotel LLC met with many hotel management firms and developers during the past four years to pursue proposals for restoring the Hotel. Applicants consistently heard the same basic response — *that the site is not even suitable for a new hotel, why would we consider the additional high costs and risks required for restoring the existing hotel?*

In March 2012 a contract with Belleview Biltmore Partners ("BBP") was executed for the purchase of the Hotel, the Pelican Golf Course and the Cabana Beach site. BBP's efforts were spearheaded by Richard Heisenbottle. BBP determined that the best scenario to maximize opportunity for restoration of the Hotel would be to include the two additional properties in an effort to overcome the Hotel site limitations. BBP's proposed development included a 38-unit boutique hotel at the Cabana site to provide Hotel guests access to a facility at the beach. BBP's proposed development also would provide Hotel guests access to golf at the Pelican Golf Course. BBP was unable to obtain financing for preservation and restoration of the Hotel and failed to make payments on the option contract. BB Hotel even provided a contract extension at no cost

(which was not required under the contract), but BBP was still unable to obtain financing for its restoration plan. It should be emphasized, that unlike the former owners who defaulted due to the inability to finance the restoration and maintain the carrying costs on a substantial loan, BBP was only required by the contract to make minimal option payments, and yet BBP was still unable to honor the contractual commitments. **The failed efforts of the former owner and BBP to obtain financing for restoration plans clearly demonstrate that preservation and restoration is not financially achievable.**

#### **D. Financial Feasibility Analysis for Rehabilitation or Restoration**

##### **1. Costs of Rehabilitation or Restoration under Various Scenarios**

In 2014, the Applicants obtained cost estimates for the restoration of the Hotel from three (3) different general contractors, Biltmore Construction Company, Hunt Construction Group and Skanska. Note that the cost estimates include “hard costs” only and do not include soft costs, furniture, fixtures and equipment (“FF&E”), or preopening and working capital costs. The cost estimates do not include the costs of renovating the Cottages due to the determination that this was immaterial to the feasibility analysis (See letter from Biltmore Construction at Tab 1.3.1.9.A).

The Hunt and Skanska cost estimates include a larger scope of work than the Biltmore Construction Company’s cost estimate. Based upon the previous contract purchaser, BBP’s, plans for restoration, the Hunt and Skanska estimates included Hotel restoration with expansions (East wing addition) and supporting upgrades to the Cabana Beach Club property and the Pelican Golf Course. As stated previously, inclusion of the Cabana Beach Club property and Pelican Golf Course were deemed necessary by BBP in order to overcome the Hotel site limitations and lack of on-site amenities.

The Biltmore Construction Company’s cost estimate does not include the upgrades to the Cabana Beach Club nor the Pelican Golf Course since these properties have now been sold. The Biltmore Construction Company’s estimate is based upon renovation of the Hotel as a 260 room hotel renovated to the quality of a 4 star hotel, renovation of the spa, and construction of a 600 car underground parking facility, new pool and other recreational amenities. (See “Bellevue Biltmore Hotel Renovation Analysis” dated June 4, 2014, and included as part of the Biltmore Construction Company’s cost estimate at Tab 1.3.1.9.A.) In an effort to compare similar scopes of work, Applicants have utilized components of the Hunt and Skanska estimates, and the three hard cost estimates (rounded to the nearest million) for similar scopes of work are presented as follows:

Biltmore Construction Company - \$159,000,000  
Hunt Construction Group - \$141,000,000  
Skanska - \$161,000,000

All three estimates are set forth at Tab 1.3.1.9.A. – C, respectively.

## 2. HVS Report

The Affidavit and supporting documents demonstrate that demolition and redevelopment is the only viable option to achieve an economically beneficial use of the Property. As part of the documents supporting the Affidavit, Applicants have submitted a feasibility report dated July 1, 2014 prepared by Hotel Valuation Services, (“HVS”). The HVS report was requested for the purpose of evaluating the current financial feasibility of restoring the Hotel. (See HVS Report at Tab 1.3.1.11) HVS is a renowned consulting firm in the hospitality industry, very well respected and highly experienced in conducting market and feasibility analyses, and is also very knowledgeable as to the lodging market in Pinellas County.

The HVS Report evaluated feasibility based upon a restoration scenario of a 260 room hotel renovated to the quality of a 4 Star hotel, 24,000 square feet of meeting space, a 13,000 square feet spa, on-site recreational amenities, and a 600 car underground parking facility. The HVS Report evaluated the three construction cost estimates and derived an “apples-to-apples” average construction cost estimate for restoring the Hotel of \$ 153,666,667. HVS also reviewed its 2013/2014 Hotel Development Cost Survey and determined that soft costs, FF&E, preopening and working capital expenses for the restoration would be \$45,864,000 for total restoration and other opening costs of **\$199,530,667**.

The HVS Report evaluates the hospitality market in three distinct segments: tourists, business and convention. The findings calculate the Hotel's potential market share within each of these segments based on its location, site attributes, potential amenities, etc., as compared to competing hotels within each market. To oversimplify the results, the Report confirms that the Hotel will compete poorly within the tourist segment due to:

- its inland, non-beachfront location and lack of water views;
- limited on-site amenities; and
- lack of nearby attractions and destinations for tourists

The HVS Report confirms that restoration of the Belleview Biltmore Hotel is not financially feasible. The HVS Report projects that the unleveraged internal rate of return would be a **negative 6.76%**, and leveraged internal rate of return (return to equity) would be a **negative 10.01%** which is well below the current range of positive 11-14% necessary to potentially attract investment and secure financing. Quoting from the HVS Report “**the projected internal rates of return (IRR) would be judged unacceptable by every measure**”. The HVS Report confirms that even under this carefully considered and realistic restoration scenario, it would not be possible to attract investment capital and finance restoration of the Hotel due to its projected poor financial performance and excessive cost.

The results of the HVS Report are consistent with the actual experience. Since 2010, BB Hotel has been repeatedly advised by prospective hoteliers and management firms that the site's poor location (i.e., not on the beach or within a business center) and limited amenities combined with the excessive restoration costs, results in a high risk proposition that the market simply will not accept.

As stated in the Affidavit of Mr. Ades, the former owner ceased operation of the Hotel due to operating losses. Since its acquisition in 2010, BB Hotel has incurred substantial financial losses. Since there is no realistic prospect for reopening the existing Hotel and the Hotel physically occupies the entire Property, any requirement by the Town that it be preserved would constitute a serious economic hardship constituting a taking without compensation and would deprive BB Hotel of any reasonable economic return from the Property.

### 3. Stonecreek Partners Market Study and Town Manager's Report

The Town Commission previously commissioned a market study by Stonecreek Partners in 2011, which BB Hotel funded at a cost of \$55,000 ("Stonecreek Report"). The Stonecreek Report is not included among the exhibits, given that the Town already possesses the report. The Town and BB Hotel were generally dissatisfied by the Stonecreek Report for a variety of reasons. BB Hotel determined the report to be of limited value primarily because it failed to adequately evaluate the regional market, and instead referred to historic restoration projects throughout the world with inadequate documentation to understand whether the financial return to the property owner was acceptable or not. Similarly, the Stonecreek Report also lacks documentation to substantiate critical assumptions, such as occupancy rates and room rates. However, notwithstanding its significant limitations, the Stonecreek Report recognizes two critical factors that significantly impact the financial feasibility of restoring the Hotel:

- 1) The Hotel will have limited draw for tourists based on its non-beachfront location;
- 2) The Hotel lacks convenient amenities, including a resort golf course.

The Stonecreek Report relies on the assumption that an arrangement could be worked out so that Hotel guests could play resort rounds at the Belleair Country Club course. This is a major flaw in the report. The financial feasibility analysis for the restoration of the Hotel cannot rely on the status of properties beyond the control of the applicant, nor would any financial institution allow such reliance for the purpose of financing the project.

Finally, Applicants have also reviewed the Town Manager's report titled, *The Belleview Biltmore: The Hotel and Its Impact on the Town of Belleair*, dated July 6, 2012 ("**Town Manager's Report**"), which evaluates the potential fiscal impacts of a restored hotel, an alternative townhouse development and the current condition. The Town Manager's Report clearly demonstrates the positive fiscal impact of redeveloping the site for residential use. We believe that this Application and supporting documents, especially the HVS Report, combined with the Town's findings regarding the fiscal benefits of redevelopment, clearly support a decision to approve the SCA Application based upon an undue Economic Hardship.

### **E. Balancing Economic Hardship and the Public Interest**

As previously mentioned, the Town Commission must consider whether the public interest will be served by approving or denying the SCA Application for demolition. While Applicants acknowledge that the Comprehensive Plan and Town Code recognize historic preservation as a significant public interest, **the purpose in evaluating an SCA Application for demolition is to consider whether the general public interest is served by approving demolition of a structure.** The public interest must be determined based on competent evidence submitted as to the particular situation. Denial of this SCA Application will not alter the fundamental physical, structural and economic conditions that realistically preclude the restoration of the Hotel or the fact that the Hotel physically occupies the entire Property and denial of the SCA Application will preclude any beneficial use. The public interest will not be advanced by denial of the SCA Application because in no event will the Hotel be restored due to the prohibitive cost and total lack of economic feasibility.

The positive fiscal advantages to the Town in considering an alternative use should be considered in weighing the public interest. The Town Manager's Report evaluates the potential fiscal impacts of a restored hotel, an alternative residential development and the current condition. If the SCA Application was denied without economic hardship relief granted pursuant to Section 74-332(g), the Hotel would remain closed due to the inability to finance the restoration of the Hotel. The Property would be deprived of any reasonable beneficial use, resulting in a taking without compensation and/or failure to achieve a reasonable economic return. This outcome would not be in the public interest and would result in significant, negative fiscal impacts to the Town.

If the SCA Application is approved and/or Applicants are otherwise provided relief pursuant to Section 74-332(g) to allow for demolition of the Hotel, the Town would significantly benefit from a fiscal perspective. Applicants have definitive plans to develop a planned mixed use project on the Property and in conjunction with this application have submitted applications for a rezoning, development agreement and preliminary development plan. Significant planning has occurred during the past year to develop the alternative use strategy. The companion rezoning application will further refine the development proposal in terms of the specific number of units and design; however, Applicants concur with the basic fiscal estimates for Scenario 3, Townhomes, as set forth in the Town Manager's Report. Applicants assert that the public interest in historic preservation would be served by approving the SCA Application for demolition so that the Town can benefit from substantial additional ad valorem and other revenues which are projected to result from redevelopment and from the proposed development of the Inn as the significant historic preservation component of the redevelopment.

### **F. Conclusion – Economic Hardship Amounting to Taking of Property Without Just Compensation and/or Failure to Achieve a Reasonable Economic Return to the Applicant**

In conclusion, Applicants assert that the required Affidavit and supporting documentation clearly establish that: (i) given the Hotel physically occupies the entire Property, no economic

use of the Property could proceed without first either restoring the Hotel or demolishing the Hotel and redeveloping the Property; and (ii) restoration of the Hotel is not financially feasible because it cannot achieve a financial return that would support investment and financing. Authorizing demolition is the only action which will allow any beneficial use of the Property or reasonable economic return to the owner. Based on these conclusions and findings, Applicants believe that the Town Commission must find that denial of the SCA Application for Demolition would result in (i) a serious undue economic hardship amounting to a taking of property without just compensation, and/or (ii) failure to achieve a reasonable economic return to the Applicant.