

**RESOLUTION NO. 10 - 1933**

**A RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE AMENDMENT TO THE AGREEMENT BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND LIMOUSINES OF SOUTH FLORIDA, INC.; AUTHORIZING THE TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AMENDMENT TO THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission of the Town of Surfside, Florida would like “piggy-back” on the bid of the Village of Bal Harbor, Florida by entering into an amended Agreement with Limousines of South Florida, Inc.;

**WHEREAS**, the Town Commission believes that it is in the best interest of the Town to enter into the agreement attached as Exhibit “A”;

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above and foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Authorization.** The Town Commission hereby authorizes the execution of the amendment to the Agreement with Limousines of South Florida, Inc. and the Town of Surfside attached hereto as Exhibit “A” and authorizes the Town Manager to do all things necessary to effectuate this Agreement.


**Section 3. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED** and **ADOPTED** on this 13 day of April, 2010.

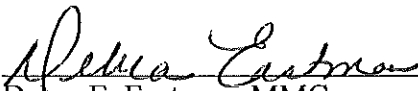
Motion by Commissioner Kopelman, second by Commissioner Karukin.

**FINAL VOTE ON ADOPTION**


|                              |            |
|------------------------------|------------|
| Commissioner Michael Karukin | <u>yes</u> |
| Commissioner Edward Kopelman | <u>yes</u> |
| Commissioner Marta Olchyk    | <u>yes</u> |
| Vice Mayor Joe Graubart      | <u>yes</u> |
| Mayor Daniel Dietch          | <u>yes</u> |

  
\_\_\_\_\_  
Daniel Dietch, Mayor

Attest:

  
\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Lynn M. Dannheisser, Town Attorney

**FIRST AMENDMENT TO**  
**THE TOWN OF SURFSIDE AGREEMENT**  
**FOR MUNICIPAL BUS SERVICES**

**THIS FIRST AMENDMENT** (this "First Amendment") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between the Town of Surfside, a municipal corporation of the State of Florida, hereinafter referred to as the "Town" and Limousines of South Florida, Inc. a Florida corporation, hereinafter referred to as "Contractor".

**WITNESSETH**

**WHEREAS**, this First Amendment shall serve to amend that certain Surfside Agreement for Municipal Bus Service attached as Exhibit "A", dated February 2, 2006, by and between the Town and the Contractor, whereby the Town had entered into an agreement with the Contractor and waived competitive bidding utilizing the existing contract terms and prices entered into by the Village of Bal Harbour and whereby the Village of Bal Harbour has entered into an Amendment to their Agreement and attached as Exhibit "B".

**IN CONSIDERATION OF THE MUTURAL COVENANTS SET FORTH IN THIS FIRST AMENDMENT, THE AGREEMENT, IS HEREBY AMENDED, AS FOLLOWS:**

1. **Extension of Term.** Section Seven, Term and Time of Performance, is hereby deleted in its entirety and replaced with the following:

**"Section Seven. Term and Time of Performance**

The term of this Agreement shall begin on February 1, 2006 and shall remain in effect until January 31, 2011, unless sooner terminated as provided in Section Eight. The Town may, but is not obligated to extend or renew, this Agreement after its expiration."

2. **Amendment of Payment.** The first sentence of Section Twelve, Payment is hereby amended and replaced with the following:

"In return for satisfactory performance of Bus Services provided by the Contractor as specified in this Agreement, the Town agrees to pay contractor the following rates per hour of bus operations:

\$30.25 per hour and beginning February 1, 2010 \$32.25 per hour."

3. **Termination.** Town shall have the right at any time, on not less than thirty (30) days prior written notice to the Contractor, to terminate this Agreement without cause and/or for Town's convenience. All monies due and owing shall be paid up to and upon termination.

4. **Effect Upon Agreement.** Except as specifically provided herein, the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have accepted, made and executed this First Amendment to Agreement upon its terms and conditions above stated on the day and year first above written.

**TOWN OF SURFSIDE**

BY: \_\_\_\_\_  
Debra E. Eastman, Town Clerk

BY: \_\_\_\_\_  
Gary L. Word  
Town Manager

APPROVED AS TO LEGAL SUFFICIENCY:

BY: \_\_\_\_\_  
Lynn M. Dannbeissier, Town Attorney

**LIMOUSINES OF SOUTH FLORIDA, INC. :**

ATTEST:

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Levitt, President

EXHIBIT "A"

AGREEMENT BETWEEN THE TOWN OF SURFSIDE  
AND LIMOUSINES OF SOUTH FLORIDA, INC.  
FOR MUNICIPAL BUS SERVICES

This Agreement is entered into on ~~January~~ <sup>Feb. 2</sup> \_\_\_\_\_, 2006, between the TOWN OF SURFSIDE, a municipal corporation of the State of Florida, hereafter referred to as the "Town" and LIMOUSINES OF SOUTH FLORIDA, INC., a Florida Corporation, hereafter referred to as the "Contractor."

WHEREAS, Bal Harbour Village executed an agreement with Contractor on June 15, 2004, to provide mini-bus services in Bal Harbour Village; and

WHEREAS, on January 10, 2006, the Town Commission waived competitive bidding and thereafter authorized this contract for mini-bus services in the Town utilizing the existing contract terms and prices entered into by Bal Harbour Village and Contractor; and

WHEREAS, this Agreement contains the terms and conditions under which the Contractor shall furnish all services necessary for mini-bus public transportation services desired by the Town; and

WHEREAS, Contractor desires to perform such services subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

SECTION ONE. RECITALS

1.1 The foregoing recitals are true and correct and incorporated herein by reference.

## SECTION TWO. SCOPE OF AGREEMENT

2.1 Contractor agrees to provide mini-bus service to Town Residents (with no charge or fare) in accordance with the terms of this Agreement ("Bus Services").

2.2 The Town shall provide a 25' mini-bus ("Town Bus") to the Contractor for use solely for the provision of Bus Services. The Town Bus is owned by the Town, and the Contractor shall NOT utilize the Town Bus for any other use except as authorized by this Agreement.

2.3 Contractor shall provide Bus Services within the Town according to the schedule determined by the Town. The Town shall be responsible for designation of the route and transit stops and Contractor shall only use such stops for the authorized route(s). The established service shall include locations within the Town, Bal Harbour Village, Bay Harbor Islands, the City of North Miami, Miami Beach, and the City of Aventura. The transit stops to be established by the Town shall include, but shall not be limited to, existing public transit bus stops, the Town Hall, multi-family buildings, shopping centers, malls, and office buildings. Contractor shall provide Bus Services a minimum of five (5) days per week and a maximum of seven (7) days per week. Contractor shall provide Bus Services at a minimum of four (4) hours per day and a maximum of eight (8) hours per day. No Bus Services shall be provided on New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, or Christmas Day.

2.4 The Contractor shall make available to the Town, upon seventy-two (72) hours advance notice by the Town, the Town Bus or an alternate back-up bus of equivalent quality and size for any Town special event at the same hourly rate specified in Section 12 for the applicable year of service.

2.5 The Town shall provide to the Contractor all diesel fuel necessary for the provision of Bus Services. Diesel fuel shall be provided from the Town fuel facility located at Town Hall. The Contractor shall not use fuel provided by the Town for any purpose other than the provision of Bus Services.

### SECTION THREE. PERSONNEL REQUIREMENTS

3.1 Vehicle chauffeurs ("Drivers") employed by Contractor for the purpose of providing Bus Services shall be properly licensed operators. The Drivers shall possess the qualifications as required by the State of Florida and Miami-Dade County, Florida (the "County") including a current commercial driver's license with a passenger endorsement. All Drivers shall be employees of Contractor.

3.2 Drivers must be considerate and courteous to all patrons. Contractor agrees to replace any Driver who is inconsiderate or discourteous as determined by the Town Manager. If needed, all Drivers must provide assistance to elderly and/or disabled residents with loading and unloading of packages on and off the bus. Drivers must be well groomed and in uniform attire consistent with that used by transportation providers.

3.3 Drivers shall display the proper route sign when in operation and the "out of service" sign when out of operation.

3.4 Contractor shall provide communication between the Town Bus, Contractor's headquarters, and the Town. The Town must, at all times, be able to make contact with the Town Bus Driver.

SECTION FOUR. MAINTENANCE AND STORAGE OF TOWN BUS

4.1 Contractor shall properly store the Town Bus when not in use, and shall provide interior and exterior cleaning for the Town Bus so that the Town Bus is clean at all times.

4.2 Contractor shall be responsible for performing all routine scheduled maintenance of the Town Bus including oil changes, tire rotation and replacement, and all other work considered routine scheduled maintenance by the manufacturer, Ford Motor Company. Ford Motor Company's scheduled maintenance manual for the Ford Diesel engine bus shall be used to define the phrase "scheduled maintenance."

4.3 Contractor shall perform all other necessary repairs, which shall be billed separately to the Town at rates competitive in the industry. No charge shall be made to the Town for work covered under the manufacturer's warranty. During periods of maintenance and repair, the Contractor shall provide, at Contractor's sole cost and expense, an alternate bus of at least equal quality and size for the provision of Bus Services.

SECTION FIVE. LICENSING AND REPORTING

5.1 Contractor shall obtain all applicable local, County, state, and federal licenses necessary for the provision of mini-bus service in Miami-Dade County, Florida, and Contractor shall have a Special Services license from the County Passenger Transportation Regulatory Division. Contractor shall also assist Town in obtaining any further County, State or federal authorizations.

5.2 Contractor shall record on a daily basis and report weekly to the Town all disruptions in service, late service, vehicle breakdowns, accidents, vehicles out of service/commission and any other incident affecting service.



5.3 Contractor shall implement a dispute resolution process for the rapid resolution of passenger complaints regarding the provision of Bus Services. Contractor shall document passenger complaints and describe any actions taken to resolve such complaints and verbally report to the Town the complaints and actions taken within twenty-four (24) hours of the complaint and in writing within four (4) calendar days.

5.4 Contractor shall maintain certain records of information and data requested by the Town and all records required pursuant to federal, state, County, and local law.

#### SECTION SIX. PRE-SERVICE REQUIREMENTS

The following items shall be delivered to the Town by Contractor at least two (2) days prior to the start of the service and are subject to approval by the Town:

An operations manual for the Bus Services which documents all operational procedures and policies, including but not limited to the following:

- (a) Vehicle operating procedures;
- (b) Communications operating procedures;
- (c) Drivers conduct rules and regulations;
- (d) Safety procedures;
- (e) Accident procedures;
- (f) Administration and reporting procedures;
- (g) Other operating procedures and policies as required for proper operation of Bus Services;
- (h) Dispute resolution procedures;
- (i) Maintenance procedures;
- (j) Training procedures for Drivers.

#### SECTION SEVEN. TERM AND TIME OF PERFORMANCE

The term of this Agreement shall begin on February 1, 2006 and shall remain in effect until January 31, 2008, unless sooner terminated as provided in Section Eight. The Town may, but is under no obligation to extend or renew, this Agreement after its expiration.

## SECTION EIGHT. TERMINATION

8.1 This Agreement may be terminated by the Town upon thirty (30) days advance written notice to Contractor.

8.2 This Agreement may be terminated by Contractor upon sixty (60) days advance written notice to the Town.

8.3 Either party may immediately terminate this Agreement upon the failure of the other party to cure a breach following fifteen (15) days prior written notice of the breach and a demand that it be cured.

8.4 Upon termination of this Agreement, Contractor shall return the Town Bus to the Town in the condition in which it was received at the commencement of this Agreement, normal wear and tear excepted. Any costs necessary to restore or prepare the Town Bus for return to Town shall be the sole responsibility of the Contractor. The Town shall have the right to inspect and to approve the condition of the Town Bus prior to acceptance and should the Town determine that the Town Bus is not in the proper condition, Contractor shall at its sole cost and expense remedy any and all deficiencies identified by the Town.

8.5 In the event this Agreement is terminated, any compensation payable by the Town shall be withheld until the Town Bus is returned pursuant to Section 8.4 of this Agreement.

## SECTION NINE. NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is

intended at the place last specified. Notice shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt. The place for giving notice shall remain the same as set forth in this Agreement until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For the Town: W.D. Higginbotham, Jr.  
Town Manager  
9293 Harding Avenue  
Surfside, FL 33154

With a Copy to: Stephen H. Cypen, Esq.  
Town Attorney  
Post Office Box 402099  
Miami Beach, FL 33140-0099

For Contractor: Mr. Mark Levitt, President  
Limousines of South Florida, Inc.  
2595 NW 38<sup>th</sup> Street  
Miami, FL 33142

#### SECTION TEN. INDEMNIFICATION

10.1 Contractor agrees to indemnify, reimburse, defend and hold harmless the Town and, at Town's option, defend or pay for an attorney selected by the Town to defend the Town and Town's officers, agents and employees for, from and against all claims, actions or causes of actions, losses, damages, liabilities, costs and expenses, including reasonable costs, attorneys' and paralegals' fees (at both the trial and appellate levels), imposed on or incurred by the Town in connection with any and all loss of life, bodily injury, personal injury and damage to property which arises or relates, directly or indirectly, to the Contractor's use of any vehicle provided for in this Agreement and the Contractor's performance of the services set forth in this Agreement. To the extent considered necessary by the Town, any sums due Contractor under this Agreement may be retained by Town

until all of Town's claims for indemnification, pursuant to this Agreement, have been settled or otherwise resolved and any amount withheld shall not be subject to payment of interest by Town.

10.2 Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by Town. Nothing in this Agreement shall be construed as consent by the Town to be sued by third parties in any matter arising out of this Agreement or any other contract.

#### SECTION ELEVEN. INSURANCE

11.1 Contractor shall at all times during the term of this Agreement keep and maintain in full force and effect comprehensive general liability insurance, automotive liability insurance, and workers' compensation insurance, with minimum policy limits for each coverage in the amount of at least one million dollars (\$1,000,000.00) per occurrence (with a maximum deductible of \$10,000.00), combined single limit for property damage and bodily injury, including death, except that the dollar amount of workers' compensation coverage shall be as provided by Chapter 440, Fla. Stat.

11.2 The Town shall be named as an additional insured on all of the above insurance policies to the extent permitted by law.

11.3 Each insurance policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the Town thirty (30) days prior to the effective date of cancellation or reduction of coverage and shall provide for waivers of subrogation in favor of the Town.

11.4 Each insurance company utilized by the Contractor shall have a rating of no less than (A-) pursuant to Best's Insurance Guide. The forms and types of coverage shall be subject to the approval of the Town's risk management advisor.

#### SECTION TWELVE. PAYMENT

12.1 In return for satisfactory performance of Bus Services provided by Contractor as specified in this Agreement, the Town agrees to pay Contractor the following rates per hour of bus operation.

|          |                  |
|----------|------------------|
| Year One | \$30.25 per hour |
| Year Two | \$30.25 per hour |

12.2 The Town shall not be responsible for payment of any other monies to Contractor under this Agreement other than approved necessary repairs in accordance with Section 4.3 of the Agreement and any tolls and licensing fees directly associated with the provision of Bus Services. Such tolls and licensing fees are to be reimbursed to the Contractor at cost by the Town upon submission of receipts. No additional monies shall be paid by the Town for routine scheduled maintenance or storage of the Town Bus. Compensation for Bus Services shall be payable in arrears, each month, pursuant to the monthly invoice of Contractor, approved by the Town Manager which shall indicate the number of hours of Bus Service provided in the prior month. Invoices shall be processed by Town pursuant to the Florida Prompt Payment Act.

#### ARTICLE THIRTEEN. MISCELLANEOUS

13.1 Assignment and Performance: Neither this Agreement nor any interest in it shall be assigned, transferred or encumbered by either party.

The Contractor represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education or a combination of the foregoing, to adequately and competently perform the duties, obligations and services set forth in this Agreement and to provide and perform such services to the Town's satisfaction.

The Contractor shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner. The quality of the Contractor's performance shall be comparable to the best local and national standards.

Contractor shall complete one hundred percent of all scheduled trips on a daily basis, subject to delays which are attributable to vehicular accidents and mechanical failure which do not arise due to Contractor's failure to properly maintain the vehicles.

Contractor shall provide timely alternate transportation to any Town resident(s) left without transportation due to the preventable actions of Contractor.

13.2 Waiver of Breach and Materiality: Failure by the Town to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

The Town and the Contractor agree that each requirement, duty and obligation set forth in this Agreement is substantial and important to the formation of this Agreement and, therefore, is a material term of this Agreement.

13.3 Compliance With Laws: The Town and the Contractor shall comply with all federal, state, County, and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities and obligations related to this Agreement.

Contractor shall at all times during this Agreement comply with all applicable requirements of the United States Department of Transportation and the Federal Transit Administration, which shall include, but not be limited to, regulations for drug and alcohol testing. To the extent that any terms of this Agreement are inconsistent with the United States Department of Transportation regulations, the requirements of the United States Department of Transportation shall control.

Contractor shall comply with all applicable requirements of the Americans with Disabilities Act ("ADA") at all times while providing Bus Services for public transportation. To the extent that any terms of this Agreement are inconsistent with the ADA, the requirements of the ADA shall control.

13.4 Severance: In the event this Agreement or any portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the Town or the Contractor elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

13.5 Applicable Law and Venue: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami-Dade County, Florida.

13.6 Amendments: No modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both the Town and the Contractor.

13.7 Prior Agreements: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in

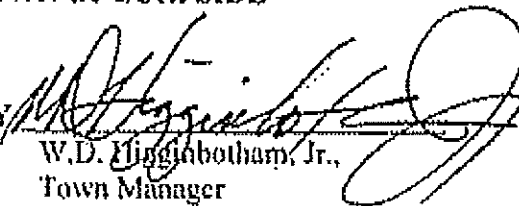
this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

**13.8 WAIVER OF JURY TRIAL: THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION BETWEEN THE PARTIES HEREUNDER.**

IN WITNESS OF THE FOREGOING, the Town has caused this Agreement to be signed by its Town Manager, attested by the Town Clerk with the corporate seal of the Town of Surfside, and the Contractor has executed this Agreement effective as of the date set forth above in Section Seven.

TOWN OF SURFSIDE

BY:   
Beatris Arguelles, Town Clerk

BY:   
W.D. Higginbotham, Jr.,  
Town Manager

APPROVED AS TO LEGAL SUFFICIENCY:


BY:   
Stephen H. Cypen, Town Attorney

LIMOUSINES OF SOUTH FLORIDA, INC. :

ATTEST:

Print Name: Mark Levitt

Title: President

By:   
Mark Levitt, President



## EXHIBIT "B"

### FIRST AMENDMENT TO BAL HARBOUR VILLAGE AGREEMENT FOR MUNICIPAL BUS SERVICES

THIS FIRST AMENDMENT (this "First Amendment") is made and entered into this \_\_\_\_ day of December, 2009, by and between Bal Harbour Village, Florida, a Florida municipal corporation, hereinafter referred to as "Village" and LIMOUSINES OF SOUTH FLORIDA, INC., a Florida corporation, hereinafter referred to as "Contractor".

#### WITNESSETH

WHEREAS, this First Amendment shall serve to amend that certain Bal Harbour Village Agreement for Municipal Bus Services attached as Exhibit "A", dated June 15, 2004, by and between the Village and the Contractor.

IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH IN THIS FIRST AMENDMENT, THE AGREEMENT, IS HEREBY AMENDED, AS FOLLOWS:

1. Extension of Term. Section Six, Term and Time of Performance, is hereby deleted in its entirety and replaced with the following<sup>1</sup>:

#### "SECTION SIX. TERM AND TIME OF PERFORMANCE

The term of this Agreement shall begin on July 1, 2004 and shall remain in effect until June 30, ~~2007~~ 2010, unless sooner terminated as provided in Section Seven. The Village may, but is under no obligation to extend or renew, this Agreement after its expiration."

2. Amendment of Payment. The first sentence of Section Eleven, Payment, is hereby amended and replaced with the following:

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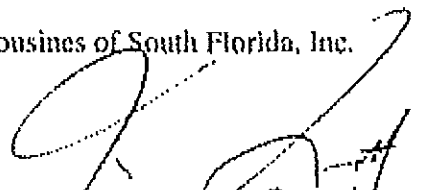
<sup>1</sup> Additions to existing Agreement are indicated by underlining; deletions from existing Agreement are shown by ~~strikethrough~~.

"In return for satisfactory performance of Bus Services provided by Contractor as specified in this Agreement, the Village agrees to pay contractor the following rates per hour of bus operation:


Year One.....\$30.25 per hour  
Year Two.....\$30.25 per hour  
Year Three.....\$31.25 per hour  
\$30.25 per hour and beginning January 1, 2010 \$32.25 per hour"

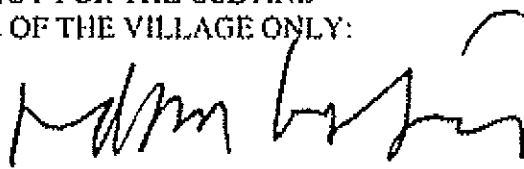
3. Effect Upon Agreement. Except as specifically provided herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this First Amendment to Agreement upon its terms and conditions above stated on the day and year first above written.

Limousines of South Florida, Inc.  
By:   
Mark L. H. President

BAL HARBOUR VILLAGE  
By:   
Alfred J. Treppeda Village Manager

ATTEST:  
  
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE ONLY:  
  
Village Attorney