MEMORANDUM

TO: Lyle Sclair, Executive Director, Bayside Village Business Improvement

District

FROM: Alston & Bird LLP

DATE: June 26, 2015

RE: Valet Parking

You have asked us to consider whether it would be possible to create a valet parking service along Bell Boulevard in Bayside, New York, which would operate for the benefit of local businesses and the greater community (the "Service"). The Bayside Village Business Improvement District ("Bayside BID") would operate the Service. It has not been determined whether the Service would operate from a single location or multiple locations. We have reviewed examples of valet parking services in New York State, as well as statutory and common law holdings regarding the liability concerns of such a service. In our view, the Bayside BID is likely able to create and operate the Service, but would assume certain liabilities for the cars it parks pursuant to the Service. We would think that the Bayside Bid would be able to minimize this risk by obtaining proper insurance.

In addition, please find the requested fact sheets attached to this memo that provide guidance for both businesses and landlords regarding leasing parking lots.

Valet Parking Statutes

Bayside BID is likely able to create its own valet parking system, but would likely assume liability for the cars that it parks. Currently, there is no New York state statute that prevents anyone from creating a valet parking system, regardless of whether the cars are parked in a parking garage or on residential streets. The only statutes that we found that limit the ability to valet park in residential areas are laws that create resident parking areas, which require cars to have parking permits (see the Yonkers Raceway area of Yonkers – NY CLS Veh & Tr § 1640-e). A similar valet program has been instituted by restaurant owners in the Washington Heights/Inwood neighborhoods of Manhattan (http://www.nydailynews.com/new-york/uptown/uptown-restaurants-valet-parking-practices-drive-residents-crazy-article-1.1844337). Finally, we note that it is illegal to force patrons to use a valet parking service.

Liability

It is likely that the Bayside BID would undertake responsibility as a bailee under traditional property law. As this would be a bailment for mutual benefit, the Bayside BID would need to take "reasonable care" of the vehicles that it parks. In addition, the Bayside BID would be held liable under a negligence standard for damage that happens

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to a vehicle under its control. That being said, we note that were any damage to happen to a vehicle, the onus would be on the bailor (patron) to prove the damage was a result of the Bayside BID's negligence (which is often difficult to prove). In addition, the Bayside BID would not be responsible for any personal property left in the vehicle in the absence of notice to the Bayside BID (see *Liggett v. Glen Oaks Club, Inc.*, Misc, 28 NYS 2d 84).

Risks

The potential problem that we see with the BID creating this system is establishing some sort of protection for the vehicles once they are parked on residential streets. A car being stolen may not meet the negligence standard to find the BID liable (see *Vetland v. FX Enters*, 25 Misc. 3d 1208(A)), but it could still put the BID in a questionable legal situation. One potential way to avoid liability could be to have the BID help local businesses set up a valet service, as opposed to running one itself. Another way to mitigate the risk is to purchase insurance.

Insurance

According to the National Parking Association, valet operators should purchase insurance to cover general liability, garage keeper's liability, and workers' compensation. It is typical for operators to carry coverage of a minimum of \$5 million of general liability and \$1 million in garage keeper's liability. General liability protection covers any injury to a person or their property that is caused by a valet attendant, including direct injuries caused by the driver striking a pedestrian. Garage keeper's protection covers any damage to any vehicle in the parking lot that is under the care of the valet company. Policies can be tailored specifically to on-street (off-premises) parking as well.

Valet parking insurance does not cover everything, rather, it only covers what is within the responsibility of the valet company or property owner. Generally, vehicle vandalization or theft, after the car has been properly parked and locked, is not covered by insurance (and will not be the responsibility of the valet). Weather-related damage is also not usually covered. Finally, theft of the contents of the vehicle (discussed earlier) is not covered by insurance, and should be made clear to the patrons.

Business Fact Sheet

This fact sheet provides questions that business owners should consider before planning to lease a parking lot.

Insurance/Liability Issues

There are potential liability issues that are raised in leasing a parking lot, much the same as leasing any other commercial space. The standard for liability is negligence, both for personal injury and for property damage. As such, it is recommended to get insurance both to cover general liability, as well as property damage insurance. General liability insurance will cover personal injury or death of patrons who are injured while in the parking lot. Property damage insurance will cover damage to the vehicles that are parked in the parking lot. It may also be beneficial to purchase an insurance policy against damage from fire, vandalism, or malicious mischief.

Questions for Insurance Brokers

- What is the minimum amount of liability per occurrence payments?
- To what extent does property damage insurance cover?
- What is your deductible?
- Can I combine this with my valet parking insurance?
- Is there overlap in coverage between my valet parking insurance and this insurance?
- Can I keep the same policy that the owner of the lot has?

Questions for Attorneys

- To what extent does the insurance policy protect me from lawsuit?
- What constitutes negligence in the parking lot?
- Is it my responsibility to fix damage to the parking lot?
- To what extent am I responsible for the actions of my employees?

Landlord Fact Sheet

This fact sheet provides questions that landlords should consider before planning to lease their parking lot.

Insurance/Liability Issues

In choosing to lease the property, the landlord will relinquish must of his responsibility and thus liability issues to the tenant. That being said, there are still some potential liability issues that the landlord should be aware of. In a typical lease, the landlord will remain responsible for fixing any damage that occurs to the parking lot. Failure to do so that results in injury could lead to the landlord being held liable for said injuries or property damage. Further, the landlord should be sure to receive indemnification from the tenant for any damage or injuries that occur in the lot as a result of tenant's business and use. The landlord should be advised to retain insurance that protects the premises as a whole from weather-related damage or acts of God as well.

Questions for Insurance Brokers

- Can my tenant be added to my current policy?
- Is insurance available for general negligence claims?

Questions for Attorneys

- How do I get an indemnification clause from my tenant?
- How thoroughly do I need to vet my tenant and his business?
- Can I be held liable for any actions of my tenant?
- How do I verify that my tenant has the required insurance?