

# BAL HARBOUR

- V I L L A G E -

OFFICE OF THE VILLAGE MANAGER

LETTER TO COUNCIL

NO. 082-2024

To: Mayor Jeffrey P. Freimark and Members of the Village Council  
From: Jorge M. Gonzalez, Village Manager   
Date: May 28, 2024  
Subject: Bal Harbour Shops - Amended Complaint

The purpose of this LTC is to share with you that on Friday, May 24, 2024, the Village received the Amended Complaint from the Bal Harbour Shops regarding their pending application (attached).

The BHS have abandoned their earlier mandamus claim, but have asserted nine Declaratory Action counts, including several directed to the Village Ordinances affecting their application.

I met with our team and outside legal this morning to discuss the amended complaint and develop appropriate next steps.

Should you have any questions or require additional information, please feel free to contact me.

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 2024-001246-CA06

BAL HARBOUR SHOPS, LLC, a Delaware  
limited liability company,

Plaintiff,

vs.

BAL HARBOUR VILLAGE, a Florida  
municipal corporation,

Defendant.

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### **AMENDED COMPLAINT**

Plaintiff, Bal Harbour Shops, LLC, a Delaware limited liability company (“BHS” or “Plaintiff”), by and through undersigned counsel, sues Defendant, the Village of Bal Harbour, a Florida municipal corporation (“Village” or “Defendant”), and states as follows:

### **INTRODUCTION**

1. BHS’ initial Complaint asked this Court to require the Village to adhere to both the letter and the spirit of Florida’s “Live Local Act” by processing and approving an application filed under the Act by BHS (the “Application”) to bring affordable housing to a municipality which has been historically exclusionary and restrictive in its housing practices. After the Complaint was filed, the Village pursued an alternative strategy to prevent the Application from being approved, amending its existing ordinances to render BHS’ compliant Application non-compliant, and in doing so effectively acknowledging that it had no choice but to approve the Application. These actions by the Village, coupled with the Florida Legislature’s most recent amendment of the Live

Local Act – not coincidentally, to prevent this type of municipal mischief and statutory nullification – require the filing of this Amended Complaint.

2. To remedy the Village’s unlawful actions, BHS brings nine counts in this Amended Complaint, comprised of the following: one count for declaratory relief asking this Court to confirm that, other than for height, density, and FAR, the land development regulations applicable to BHS’ Live Local Act development are found in the RM-5 multifamily residential District and not the mixed-use Ocean Front District (Count I); one count for declaratory relief asking this Court to find that a recently-enacted zoning ordinance applicable to development in the mixed-use Ocean Front District does not apply to the Application under the Live Local Act and the Village Code (Count II); two counts for declaratory relief asking this Court to find that two Village ordinances enacted after the Application was submitted and which impose approval requirements upon Live Local Act projects which go beyond the requirements of the Act are preempted by the Live Local Act (Counts III, IX); three counts for declaratory relief asking this Court to find that three new ordinances passed by the Village after the passage of the Live Local Act which do not state they are to apply retroactively and which the Village promulgated in a targeted effort to interfere with proper Live Local Act development do not apply retroactively to the Application (Counts IV, V, and VI); one count for declaratory relief asking this Court to find that a 2017 development agreement entered into as part of a separate site plan approval between BHS and the Village and which specifically provides that BHS has the right to enjoy the benefit of any future legislative changes applicable to the subject property cannot be used by the Village to thwart BHS’ separate Application under the Live Local Act (Count VII); and one count asking this Court to find that a recently-enacted ordinance which grants the Village unlimited unilateral discretion to create new

requirements applicable to Live Local Act applications which go beyond the requirements of the Act is void for granting the Village arbitrary and unfettered discretion (Count VIII).

### **PARTIES, JURISDICTION, AND VENUE**

3. Plaintiff Bal Harbour Shops, LLC is a Delaware limited liability company with its principal place of business located in Miami-Dade County, Florida. Plaintiff owns Bal Harbour Shops, an internationally recognized luxury lifestyle and fashion shopping destination, located at 9700 Collins Avenue (the “BHS Property”) in Bal Harbour Village.

4. Defendant Bal Harbour Village is a municipal corporation organized under Florida law and is located in Miami-Dade County.

5. This Court has jurisdiction over this matter pursuant to (i) Section 26.012 of the Florida Statutes; (ii) Chapter 86 of the Florida Statute; and (iii) Article V, Section 5(b), Florida Constitution.

6. Venue is appropriate in Miami-Dade County pursuant to Section 47.011 of the Florida Statutes because the Village and the BHS Property are located in this County.

7. All conditions precedent to the filing of this action have occurred, have been performed by Plaintiff or have otherwise been fulfilled, or their performance has been excused or waived by the acts and/or omissions of the Defendant.

8. Plaintiff has retained the services of undersigned counsel for the purpose of bringing and maintaining this action and has obligated itself to pay a reasonable fee for legal services and the costs of bringing this action.

## **BACKGROUND FACTS**

### **A. History of the Shops and the Village's Commercial Zoning District**

9. In 1957, Stanley Whitman (who was also one of the incorporators of the Village in 1946) completed the purchase of 16 acres in the Village, which at the time were occupied by World War II army barracks that had been converted to apartment homes.

10. At the time of his purchase, the BHS Property was planned for a gas station and grocery store; however, in 1965 Stanley Whitman had the vision to develop Florida's first exclusive, high-fashion shopping center, Bal Harbour Shops (the "Shops").

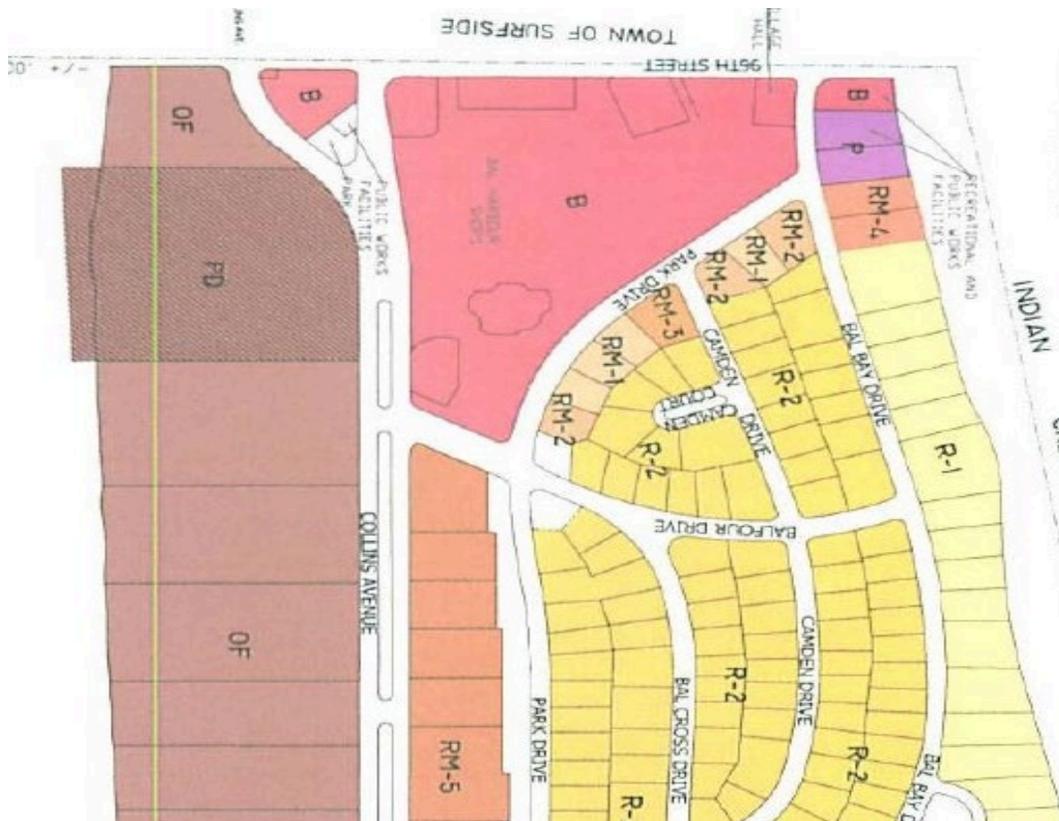
11. Since then, the Whitman family, through the continued development and ownership of the Shops, has created and managed an internationally recognized luxury and retail destination that has become the commercial center of the Village and helped establish the Village as an extraordinary place to live and work.

12. Significant to this action, the Shops are located within the Village's only commercial zoning district, the Business District.

13. In fact, the Shops encompasses almost the entire Business District and includes a variety of permitted uses, including but not limited to: financial institutions, art galleries, municipal buildings, offices, sundry shops, retail, and restaurants.

14. Adjacent to the Business District, and directly across the street from the Shops (as shown in the image directly below this paragraph), is the Village's only high-rise, high-density mixed-use district, the "Ocean Front District," which extends the entire length of the Village's eastern boundary on the Atlantic Ocean. According to the Village Zoning Code, the permitted uses within the Ocean Front District include: multiple-family dwellings or apartment buildings; hotels;

and convenience commercial uses in hotels, which “may include any of the uses listed as permitted or conditional uses in the Village’s B Business District[.]” See § 21-293, Village Code.



15. Because the Ocean Front District authorizes hotel and commercial uses, it is not exclusively zoned for multifamily residential development.

16. The Village Code also provides for a planned development option in the Ocean Front District which allows “the Village Council to approve a rezoning to a PD Planned Development district applicable to their properties” so long as the project is mixed-use. See § 21-299, Village Code.

17. The Village has a long history of approving luxury, high-rise condominiums and hotel structures. The ultra-luxurious, 475-room Americana Hotel opened in 1956, and numerous high-rise luxury towers reaching at least twenty stories followed suit, including: Balmoral (completed in 1977), Palace at Bal Harbour (completed in 1994), Majestic Tower (completed in

1998), Bellini Bal Harbour (completed in 2005), St. Regis Bal Harbour (completed in 2012), Oceana (completed in 2016), and Rivage (approved in 2022).

18. The luxury-designated Ocean Front District is completely built out with little to no remaining capacity for additional high-rise development.

19. There are five zoning districts in the Village specifically designated for multifamily development in the Village, the “RM Districts.”

20. The RM Districts provide the Village’s “land development regulations for multifamily developments” as that term is used in Section 163.04151(7)(d), Fla. Stat.

21. The RM Districts are multifamily or single-family and are also completely built out with little to no remaining development capacity.

22. Based on the Village regulations limiting residential development to primarily single-family and luxury, high-rise development on the ocean, and the demand for high-end residential uses, the RM Districts do not provide and are not suitable for redevelopment with affordable or work-force housing.

23. The Business District is the only Village zoning district that qualifies for affordable housing development under the Live Local Act. In other words, the Application presents the only prospect for affordable housing development within the Village.

24. Prior to April 2024, the Village’s Code did not provide any affordable housing incentives or guidelines.

25. Upon information and belief, at no point since its inception has the Village ever attempted to promote affordable housing.

26. To the contrary, there has been a legacy of exclusionary zoning and housing practices in the Village that go beyond a mere aversion to affordable housing. *See Florida Club*

*Drops Barriers in Face of Discrimination Suit*, NY Times, Dec. 12, 1982, <https://www.nytimes.com/1982/12/12/us/florida-club-drops-barriers-in-face-of-discrimination-suit.html> (“The Bal Harbour Club has dropped a 36-year-old policy barring Jews and blacks from this exclusive seaside community, a practice that brought on a \$10 million discrimination suit.”); Marc Nathanson, *Armed with a New Ordinance, a Small Town in Florida Fights Back Against Hate*, ABC News, May 31, 2019, <https://abcnews.go.com/US/armed-ordinance-small-town-florida-fights-back-hate/story?id=63079013> (“Until 1968, deed restrictions kept Jews and blacks from owning property in the seaside village of Bal Harbour[.]”).

27. While these express discriminatory policies would uniformly be viewed as unlawful and appalling today, their remnants continue to shape the exclusivity of the Village,<sup>1</sup> with some residents of the Village viewing the addition of affordable housing as antithetical to the Village’s identity as an exclusive and luxurious community and something that needs to be protected against at any and all costs.

## **B. The Expansion and the Development Agreement**

28. In 2017, after more than 50 years without any significant expansion and in the face of a rapidly changing retail marketplace, BHS sought to expand the Shops and submitted an application for site plan approval, which was approved pursuant to Resolution 2017-1077 (the “2017 Site Plan”).

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<sup>1</sup> See <https://www.zillow.com/home-values/3509/bal-harbour-fl/> (showing \$1,804,283 as the average value of a home within the Village, i.e. 325% higher than the average value of a home in the City of Miami); <https://www.zillow.com/rental-manager/market-trends/bal-harbour-fl/> (showing the median rent in the Village at \$8,500, i.e. 166% higher than median rent in the City of Miami) <https://worldpopulationreview.com/us-cities/bal-harbour-fl-population> (listing the racial composition of the Village as of the 2020 Census as 81.03% White, with only 1.75% being Black or African American).

29. As part of the 2017 Site Plan approval, the Village required BHS to enter into a "Development Agreement" which was approved by Village Resolution 2017-1077 (the "DA"). The DA is also authorized and governed by the Florida Local Government Development Agreement Act, Sec 163.3220 through 163.3243 (the "FLGDAA").

30. The DA incorporated and was based on the Conditions of Approval for the 2017 Site Plan. When the DA was amended in 2018, an amended Site Plan (the "2018 Site Plan") was also approved and incorporated into the DA. The 2017 Site Plan, as amended by the 2018 Site Plan, now governs current development of the property (collectively, the "DA Site Plan").

31. The DA is tied to a specific project, implemented through a separately approved, but incorporated site plan. Pursuant to Section 163.3233(1), Florida Statutes, the ordinances and policies in effect when the DA was adopted govern the BHS Property for so long as the Village cannot apply later-adopted ordinances or policies to frustrate the completion of the Project, as defined in Sections 1 and 5 of the DA.

32. Under the DA, BHS expressly reserved the right to develop additional density, intensity and height on the BHS Property if subsequently enacted laws and regulations permitted additional development capacity. (§ 34.2, DA). In other words, the DA provided BHS the right to enjoy the benefit of any future legislative changes applicable to the BHS Property.

33. In exchange for the Village's approval of the project as described and as authorized in the DA Site Plan and the ability to exercise BHS' right to develop its property, the Village required, as an express condition of its approval, the following "contributions" and tax benefits and fees to the Village, totaling over \$122 million in Village benefits (Ex. F, DA):

<b>Land and Improvements:</b>	<b>Value</b>
Fairfield Property	\$16,000,000.00
SunTrust Land Only	\$12,750,000.00
Perpetual Easement on Shops Sidewalks	\$3,607,000.00
New Village Hall w/ Parking	\$15,600,000.00
Pedestrian Area Beautification	\$9,375,000.00
Waterfront Park	\$3,500,000.00
Art in Public Places	\$1,000,000.00
Traffic, Gate, LPR Improvements	\$155,000.00
Total:	\$61,987,000.00
<b>Rents, Taxes and Fees:</b>	
Present Value of Increased Resort Tax	\$13,501,000.00
Present Value of SunTrust Rent	\$12,608,000.00
Present Value of Increased Business Tax	\$9,238,000.00
Present Value of Multimodal Fund Contributions	\$8,710,000.00
Present Value of Increased Ad Valorem Tax	\$8,656,000.00
Present Value of Police Department Free Rent	\$4,216,000.00
Present Value of Off Duty Police Fees	\$3,889,000.00
Total	\$60,818,000.00
<b>TOTAL COMBINED ECONOMIC BENEFITS</b>	<b>\$122,805,000.00</b>

34. The mitigation exacted by the Village in the DA far exceeded the reasonable or expected impacts of the proposed expansion on public infrastructure or facilities. Even though the exactions were not related to development impacts to the Village or to Village-owned or operated public facilities, BHS was forced to agree to the Village’s unreasonable and disproportionate demands because that was the only way the Village would approve the 2017 expansion.

35. The Village has already received most and will receive all of the land and improvement “contributions” and economic benefits.

36. The DA was further amended in 2021 to extend time frames and also to require BHS to immediately transfer the site for a future Village Hall to the Village and to pay the Village

over \$18,000,000.00 for the future construction of the Village Hall. The DA, the 2018 DA Amendment, and the 2021 DA Amendment are attached hereto as **Composite Exhibit A**.

37. BHS has at all times complied with the terms of the DA and has conducted itself in good faith with respect to its terms. BHS intends to continue to comply with the terms of the DA and has diligently pursued and developed the DA Site Plan.<sup>2</sup>

38. In 2021, BHS continued its efforts to develop the BHS Property by providing the Village with hotel options. At the time, a feasible hotel required an amendment to a Village Charter provision that limited the Shops' maximum height to 56 feet (that Charter provision was initiated and approved by Village residents in 2006 to restrict development on the BHS Property through height restrictions).

39. At the election held on January 26, 2021, the residents rejected BHS' referendum by a vote of nearly 90%, reflecting a clear bias against any further development in the Village.

### **C. NIMBYism and Florida's Legislative Response—The Live Local Act**

40. As the Supreme Court of Florida acknowledged in *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 472 (Fla. 1993), it is well known that zoning at the local level can be subject to political influence and "neighborhoodism" which has the effect of seeking to preserve the *status quo* of a community and avoid changes to its existing land use regulations. Richard Babcock, an eminent land use attorney who decried this fact, also aptly noted that "no one likes single-family zones except the people who live there."<sup>3</sup> This trend is so common

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<sup>2</sup> In 2018, the Shops sought minor amendments to the 2017 Site Plan to address parking and circulation, which were approved under Resolution 2018-1202. The DA was also amended under Resolution 2018-1201.

<sup>3</sup> See Deborah M. Rosenthal, *Breaking the Stranglehold of Single-Family Zoning: Strategies and First Steps Toward Modernizing Local Codes*, *Planning & Environmental Law*, 2013, 65:2, 9-11, DOI: [10.1080/15480755.2013.766507](https://doi.org/10.1080/15480755.2013.766507).

that an entire vocabulary has emerged to describe this tendency of local residents who oppose all uses which are not single-family uses and elected officials fearful of such uses – NIMBY (Not In My Back Yard) and NIMTOO (Not in My Term Of Office).

41. NIMBYism in Florida has been most prevalent with respect to its opposition to multi-family and/or affordable housing. Throughout Miami-Dade County, and throughout the State of Florida, applications for multi-family uses have been vehemently opposed by local residents and local elected officials have often accommodated their opposition.<sup>4</sup>

42. While opposition to multi-family residential uses has continued, the stock of affordable housing in Florida has dropped considerably, creating a social crisis in the state. In 2022, the nation’s top housing official declared Miami as the “epicenter of the housing affordability crises in this country.”<sup>5</sup> As of November 2023, Miami remained the least affordable housing market in the United States, with an average family needing to spend 81.96% of their income on mortgage payments and property taxes.<sup>6</sup> In May of 2024, Miami Homes for All reported that Miami-Dade County needs 90,000 affordable and workforce units just to meet current demand.

43. The Florida Legislature has taken action to resolve this issue through various legislative acts which limit the temptation of local governments and their elected officials to ignore property rights and succumb to the “will of the people.” For example, in 2023 the Legislature

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<sup>4</sup> See Andres Viglucci and Raisa Habersham, *A new law is supposed to boost affordable housing. South Florida cities are furious*, Miami Herald, August 23, 2023, <https://www.miamiherald.com/news/business/real-estate-news/article278059857.html>

<sup>5</sup> See Douglas Hanks, *Biden’s Housing Chief Calls Miami the ‘Epicenter of the Housing Crisis in This Country’*, Miami Herald, June 29, 2022, <https://www.miamiherald.com/news/local/community/miami-dade/article262956308.html>.

<sup>6</sup> See RealtyHop Housing Affordability Index: November 2023, <https://www.realtyhop.com/blog/affordability-index-november-2023>.

enacted Senate Bill 718 to ensure that voters no longer had the ability to limit development through local referenda. *See* §163.3167, Fla. Stat. (2023) (“An initiative or referendum process in regard to any land development regulation is prohibited.”).

44. With this background, in March 2023, Governor DeSantis signed into law the “Live Local Act” – comprehensive, statewide legislation designed to increase the availability of affordable housing for Florida’s workforce. The Act seeks to spur additional development of housing by increasing funding, providing new tax exemptions and, relevant here, preempting certain local land development regulations.

45. Specifically, a significant component of the Act is to preempt local land development regulations that would otherwise prevent affordable housing from being developed on property zoned for industrial, commercial, or mixed-uses.

46. The Live Local Act recognizes a fundamental economic truth: that affordable housing must be subsidized in some manner. In its preemption of local government regulations, the Live Local Act "subsidizes" the provision of affordable housing by the grant of additional height and density to qualifying developments in commercial, industrial, and mixed-use zoning districts.

47. In a press release following the Act being signed into law, Florida Senate President Kathleen Passidomo was quoted as stating:

The Live Local plan is the product of discussions with stakeholders over many years. With their advice and input, we are tackling this complex issue from all angles . . . providing new avenues for solutions in zoning, encouraging more mixed-use developments in latent commercial areas, and enhancing public access to information about expedited permitting and public property that may be suitable for workforce housing.<sup>7</sup>

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<sup>7</sup> *See* <https://www.flsenate.gov/Media/PressRelease/Show/4460>.

48. Qualifying projects under the Act bypass significant local zoning obstacles. Specifically, in exchange for a developer's agreement to restrict at least 40% of a project's units as "affordable" (i.e. to households with incomes at or below 120% of the area median income) for a period of at least 30 years, the Live Local Act provides that a local government: (i) **Must** authorize multi-family and mixed-use residential (where at least 65% of the total square footage is used for residential purposes) in any area zoned for commercial, industrial (with limited exclusions), or mixed-use; (ii) **May not** limit density of a development below the highest residential density permitted in the jurisdiction; (iii) **May not** restrict the height below the highest height permitted for either commercial or residential development within the jurisdiction within one mile of the proposed development or three stories, whichever is higher; (iv) **May not** require zoning or land use changes, special exceptions or conditional use approvals, variances, or comprehensive plan amendments to obtain the height, density or use benefits provided for under the Act; and (v) **Must** administratively approve a proposed project if the zoning code and comprehensive plan provisions applicable to multifamily development are met.

49. The Live Local Act requires that eligible projects be approved administratively "if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use." § 166.04151(7)(d), Fla. Stat.

50. Accordingly, Florida state law prohibits a municipality from enacting regulations that apply different standards to: (i) development applications under the Live Local Act, and (ii) applications for multifamily development in areas zoned for such use. *See id.*

51. To be sure, the Village had ample notice of and opportunity to act in anticipation of the Live Local Act, but failed to take any action to facilitate the Act's implementation.

52. In April 2023, members of the Village Council received a detailed memorandum from the Village Attorney explaining the Live Local Act. That memorandum specifically advised that administrative approval of Live Local Act applications must be made where the application "(1) satisfies the local government's land development regulations for multifamily development in areas zoned for such use; and (2) is otherwise consistent with the comprehensive plan with the exception of height, density, and land use."

53. This Village memorandum further advised that "[t]he Act does not describe what the administrative approval process entails, but it can be inferred that it means, at a minimum, that the local governing body does not hold a hearing to approve the development. Contrary local approval processes and provisions are preempted by the Act."

54. On July 3, the Florida Government Finance Officers Association sent a "Notice to Bal Harbour Village" that the Live Local Act became effective on July 1, 2023 and reminded the Village of "the impact this new legislation has on zoning, land use control and tax exemptions," as well as additional administrative requirements.

55. Thereafter, the Live Local Act continued to be a frequent topic of discussion in internal Village correspondence. In November 2023, the Village Attorney advised that the Business District could be used for a Live Local application.

56. Rather than adopt the required notices and administrative procedures to implement the LLA, unbeknownst to BHS, the Village and other municipalities collaborated to strategize on defensive ordinances and "reasons not to allow Live Local projects in the specified zoning

districts,” as stated in a November 9, 2023 presentation by the Village’s counsel to the Miami-Dade League of Cities’ City Attorneys Committee.

57. On May 16, 2024, Governor DeSantis signed into law Senate Bill 328, known as the Live Local Act “Glitch Bill,” which provides additional incentives for the development of affordable housing and clarifies and extends the preemptions imposed under the 2023 LLA. The Glitch Bill, codified as Chapter 2024-128, is retroactive with respect to pending applications, while also allowing a developer the option to expressly choose to proceed under the 2023 provisions.

58. Recognizing that certain local governments were intending to utilize floor area ratio (FAR)<sup>8</sup> regulations to thwart the LLA’s intent, the Glitch Bill confirms that that local governments cannot restrict FAR below 150% of the highest currently allowed FAR under the local government’s regulations.

#### **D. The Live Local Application**

59. In direct reliance upon the Live Local Act, and in an effort to address the Village’s workforce housing needs (including the needs of the 2,000+ people anticipated to be employed by the Shops and its tenants upon the conclusion of the retail expansion currently underway), BHS retained world-renowned architecture firm Skidmore, Owings & Merrill (“SOM”) to design a unique work/live opportunity in the Village’s only commercial district, the Business District.

60. BHS sought to reinforce the iconic image of the Shops and, combined with a hotel on the BHS Property, transform the Bal Harbour Shops into a proper village center, designed and built with an aesthetic quality and attention to detail consistent with those manifested at the Shops.

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<sup>8</sup> Floor area ratio, or “FAR,” is a measurement of a building’s total useable floor area in relation to the size of the parcel on which the building sits.

61. SOM designed the proposed multifamily development in compliance with the Live Local Act and, where applicable, the Village's zoning ordinances.

62. The result is a mixed-use development encompassing 528 high-end residential units, at least 40% of which will be affordable workforce housing and 60% of which will be luxury market-rate housing; a 70-room upscale hotel; and additional retail space.

63. On January 9, 2024, the Shops filed the Application with the Village seeking administrative site plan approval pursuant to the Live Local Act (and specifically Section 166.04151(7) of the Florida Statutes).

64. On January 10, 2024, BHS submitted an administrative site plan application form at the Village's request, at which point no further applications were required for the Village to approve the Application.

65. The BHS Property qualifies for multifamily residential development under the Act because the BHS Property is located within the Village's only commercially zoned district, the Business District, and at least 40 percent of the residential units will be "affordable." § 166.04151(7)(a), Fla. Stat. ("A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004.").

66. As provided for under the Live Local Act and the Glitch Bill, the project's height and density are consistent with the highest height within one mile, the greatest density allowed in the Village (which is found in the Village's Ocean Front District), and is within 150% of the highest currently allowed FAR under the Village Code. *See* §§ 166.04151(7)(c-d), Fla. Stat.; §§ 21-285, 21-293, Village Code.

67. The Ocean Front District, which is located directly across Collins Avenue, provides for a generous 300-foot maximum height that extends the entire eastern border of the Village between Collins Avenue and the Atlantic Ocean.

68. Because the BHS Property is located in the Business District (and is on the opposite side of Collins Avenue from the Ocean Front District), it is subject to different land development regulations than the Ocean Front District. Nevertheless, the Ocean Front District places the proposed development in context and compatible with existing development in the Village, as demonstrated by a rendering of the project shown below, with the existing Ocean Front high rises shown on the Atlantic Ocean:



69. Because the Ocean Front District authorizes hotel and commercial uses, it is not a multifamily residential district as referenced in Sec. 166.04151(7)(d), Florida Statutes. Accordingly, the applicable land development regulations (including those relating to setbacks and parking issues) for multifamily development for purposes of Section 166.04151(7)(d), Florida Statutes, are derived from the RM-5 (multifamily residential) District.

70. The residential community is designed to complement the Shops' existing retail uses and capture a segment of the Village's workforce as permanent residents (including Village employees and first responders) in a dynamic and high-quality "live, work, and play" environment that will serve as the foundation for the continued success of the Village.

**E. Instead of Administratively Processing the Application, the Village Holds a Public Meeting**

71. Instead of properly reviewing the Application for administrative approval (as it is required to do under the Live Local Act), the Village leadership published comments pre-judging the Application, creating their own exemptions, constraints, and limitations found nowhere in the text of the Act, and communicating their position to a Building Official who is required by law to make decisions free of political influence.

72. While the Council expressed shock when BHS filed the Application, it appears that any surprise was due mainly to the fact that Village Council members did not keep themselves apprised of the information its own lawyers and administrators had been providing to them since April 2023.

73. Mayor Freimark, in a classic example of attempted nullification of the law, went on record with a statement contrary to the plain language of the Act: "I question whether it's really the intent of the legislation to impose the Live Local Act on a barrier island where you are limited with challenges from sea level rise, climate change, and flooding."<sup>9</sup> The Act does not create an exemption for barrier islands.

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<sup>9</sup> <https://www.bizjournals.com/southflorida/news/2024/01/11/mayor-concerned-about-bal-harbour-shops-plans.html>.

74. Next, the Village Council placed on their January 16, 2024 agenda a Resolution “authorizing the Village Manager to expend resources to take all necessary steps to protect the Village in response to the Bal Harbour Shops’ 2024 submission to further expand its project.”

75. The Staff Memo concluded that additional funds were needed to “take whatever steps are necessary to ensure that the Village’s quality of life is protected.” The Staff Memo and Resolution make clear that the Village leadership considers the construction of workforce housing in the Village as anathema to its “quality of life,” and a risk to: (i) their “standing as a unique and elegant community,” (ii) their “role as a luxury destination,” and (iii) “the safety and security of our residents and neighborhood.”

76. During the January 16<sup>th</sup> meeting, the Village Mayor also expressed “anger” at BHS for submitting a Live Local Application, calling it a “shame” and a “perversion” of the Live Local Act, and a “circumvention of an executed development agreement that will cause significant damage to our community.”

77. Also, during the January 16<sup>th</sup> meeting, the Village Council unanimously voted to approve funds to hire lobbyists and lawyers to fight the Application.

78. The on-the-record statements made by the Village’s elected officials and charter officers established the Village’s intent to violate its substantive and procedural obligations under the Live Local Act by any means available.

**F. The Village’s Escalating Efforts to Stifle Development under the Live Local Act**

79. The Village has acted on its Resolution to employ any and all measures available to hinder BHS’ development of affordable housing in the Village. Since the January 16<sup>th</sup> Village Council meeting, the Village has engaged in a two-pronged delay-and-obstruct campaign whereby it has simultaneously refused to approve the pending Application, and rushed to implement several

new ordinances for the transparent purpose of interfering with the development of the BHS Property under the Live Local Act.

80. At the direction of the Village Council, the Village Attorney circulated a draft “moratorium ordinance” that would have illegally halted all consideration of the Application. That effort was apparently abandoned after BHS filed the instant suit, but other measures—less extreme on their face but to the same effect—have been pursued with vigor.

81. On February 7, 2024, the Village sent BHS a letter (the “First RAI”) informing it that the Village deemed the Application “incomplete” for a number of pretextual reasons, and that based on this determination, the Village would not comply with its obligation under the Live Local Act, as amended, to administratively process and approve BHS’ compliant Application.

82. In the First RAI, the Village correctly observed that the Application was submitted pursuant to the Live Local Act, but still falsely contended that the Application needs to comply with land development regulations, including setbacks and parking regulations, not applicable to applications for multifamily development in areas zoned for such use. These purported requirements conflict with and are preempted by the Live Local Act, and the supplemental information requested by the Village has no bearing on its obligation under the Act to administratively process and approve the Application.

83. By way of example, the First RAI purports to require BHS to prepare and submit a number of studies/analyses regarding the potential impacts of the proposed development on parking, public school population, public safety, flooding, and shadows as express conditions of finding that the Application is complete, or to even begin substantively reviewing the Application for approval. None of these studies are expressly required by the Village Code, the Comprehensive Plan, or the Live Local Act, nor do they bear any relationship to the Village’s statutory obligation

to administratively process and approve the Application in accordance with the requirements of the Live Local Act.

84. While BHS agreed in good faith to provide the Village with certain supplemental information requested in the First RAI, it urged the Village to re-consider and to administratively process and approve the Application as required by the Live Local Act. But the Village persisted in its failure to follow the law and its refusal to provide any reasonable justification for its invented supplemental requirements.

85. Less than two weeks later, at the February 20<sup>th</sup> Village Council meeting, the Council proposed several ordinances specifically and intentionally designed to render BHS' Live Local Application out of compliance and to make it impossible for BHS to propose a viable Live Local Application. The ultimate intended effect of these actions is to prevent BHS from ever developing affordable housing in the Village pursuant to the Live Local Act.

86. The ordinances at issue in this action are: Ordinance No. 2024-659 (the "Poor Doors Ordinance"), which is attached hereto and incorporated herein as **Exhibit B**; Ordinance No. 2024-658 (the "OF Zoning Ordinance"), which is attached hereto and incorporated herein as **Exhibit C**; and Ordinance No. 2024-657 (the "General Zoning Ordinance"), which is attached hereto and incorporated herein as **Exhibit D** (collectively, the "LLA Ordinances").

87. The OF Zoning Ordinance was amended between its original introduction and its adoption by the Village Council in an attempt to specifically address (and thwart) the Glitch Bill by reducing the highest currently allowed FAR under the local government's regulations.

88. The Poor Doors Ordinance purports to impose several requirements upon Live Local Act projects which directly conflict with the Act.

89. Specifically, the Poor Doors Ordinance: adds new statutory use restrictions applicable only to Live Local Act projects; imposes setback and FAR requirements to Live Local Act applications not otherwise applicable to applications for multifamily development in areas zoned for such use; applies regulations from the mixed-use Ocean Front District to Live Local Act projects; requires additional and burdensome approvals from the local government for Live Local Act projects; and invents other new requirements for Live Local Act projects not contained in or contemplated by the Act. These provisions apply specifically to the Business District, the only district in the Village that can support a Live Local Application.

90. The Poor Doors Ordinance purports to exclusively apply the Ocean Front District setback, parking, and FAR regulations to the Business District (but only for Live Local Act Applications), notwithstanding that the Ocean Front District authorizes hotel and commercial uses and is thus not a multifamily residential district as referenced in Sec. 166.04151(7)(d), Florida Statutes.

91. The Poor Doors Ordinance also imposes standards on Live Local Applications that are directly intended to prevent any development from being practically and financially feasible.

92. In an online explanation of the Poor Doors Ordinance, the Village “links” to the Application, libelously states that BHS’ attempt to provide workforce affordable housing demonstrates “how opportunistic developers can bend laws like Live Local to create segregated housing that clusters affordable housing units in the most undesirable area of the development, removing them from basic amenities such as entrances, elevators, parking and common spaces[.]”

and suggests that the Poor Doors Ordinance is part of the Village’s efforts to restrict BHS’ development of affordable housing under the Live Local Act.<sup>10</sup>

93. The OF Zoning Ordinance introduces new restrictions applicable to development in the Ocean Front District, restrictions which the Village contends apply to the Application.

94. Among other changes to the existing Code, the OF Zoning Ordinance purports to reduce the maximum available FAR in the Ocean Front District from 2.8 to 1.3, further limits the availability of applicable FAR bonuses, and adds more onerous FAR, height, and parking restrictions, all of which are intended solely to prevent the Application from being approved.

95. Finally, the General Zoning Ordinance purports to require that applications requiring administrative approval under the Village Code be “executed and sworn to by the Owners of at least 80 percent of the Property described in the application, by Tenants with the Owner’s Written, sworn-to consent, or by duly authorized agents[.]”

96. The General Zoning Ordinance also adds new and onerous parking standards for all new multifamily residential developments, including a dramatic increase in the number of parking spaces required, which are intended solely to prevent the Application from being approved.

97. The OF Zoning Ordinance and the General Zoning Ordinance took effect on March 5, 2024.

98. The Poor Doors Ordinance took effect on April 9, 2024.

99. Even though the Application predates the LLA Ordinances, the Village has maintained that it can and will apply each of these Ordinances to the Application.

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<sup>10</sup> See <https://balharbourfl.gov/ordinance-ensuring-dignified-and-respectful-housing-banning-poor-Doors/>. Far from having a “poor door,” BHS’s SOM-designed luxury building has one entrance for all residents.

100. On April 3, 2024, BHS received the Village’s second completeness review letter (the “Second RAI”), wherein the Village again refused to comply with its obligation under the Live Local Act to administratively process and approve the Application, or to abandon its pretextual determination that the Application remained incomplete pending BHS’ submission of supplemental information not required under the Village Code or the Live Local Act.

101. The Village’s stated basis in the Second RAI for its refusal to comply with its obligations under the Live Local Act and for its new request for supplemental information from BHS was that “Section 21-322(b) [of the Village Code] further provides that the application shall be in a form prescribed by the Village Manager or designee. Therefore, the materials requested in our February 7, 2024, correspondence remain outstanding, in order to finalize our ‘Completeness Review.’” In other words, the Village’s position is that Section 21-322(b) empowers the Village Manager unlimited, unilateral discretion to determine the form of and requirements for any site development plan application, including any application under the Live Local Act.

102. Once again, BHS agreed to work with the Village to provide yet another round of supplemental information, but insisted the Village was acting illegally and should immediately proceed with the approval process for the Application. But the Village remained steadfast in its improper course of action.

103. On May 13, 2024, BHS received the Village’s third completeness review letter (the “Third RAI”) (together with the First RAI and the Second RAI, the “RAIs”), wherein the Village stated that it would continue to refuse to comply with the Live Local Act, and once again deemed the Application incomplete pending BHS’ satisfaction of yet more of the Village’s invented requirements for approval.

104. In the Third RAI, the Village reiterated its view that it has unlimited discretion to require BHS to provide *any* information it unilaterally decides it wants as a condition of approving the Application because “per Village Code Section 21-322 the Village Manager or their designee determines what information and documentation are required for a Site Development Plan application – administrative or normal ARB / VC approvals.” The Village thus contends that it has the power to indefinitely (if not permanently) defy the mandates of the Live Local Act by refusing to even review the Application for compliance until BHS satisfies each and every of the Village’s growing list of invented requirements.

105. The Third RAI also incorrectly states that the DA applies to and governs all development activity at the BHS Property for 30 years, regardless of whether that development relates to the DA Site Plan or was provided for in the DA. This contention conflicts with both the Live Local Act and the plain language of Section 34.2 of the DA, which provides BHS with the right to enjoy the benefit of any future legislative changes applicable to the BHS Property.

106. In sum, through the RAIs, the Village: demands BHS demonstrate compliance with newly adopted ordinances, even though those ordinances are not retroactive and cannot be applied retroactively; purports to require provision of studies and compliance with standards that are not established or otherwise required by any ordinance or statute; asserts that pursuant to prior and newly adopted ordinances, the Village Manager can demand any plans or studies they want as express conditions of approval for any requested development even where those conditions conflict with statutory law; and contends that the Application is controlled and prohibited by the DA.

107. In light of the Village’s continued failure to follow the letter of the Live Local Act and its own Code, BHS now brings this action to protect its rights thereunder.

**COUNT I – DECLARATORY RELIEF—RM-5 STANDARDS APPLY TO THE APPLICATION**

108. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

109. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

110. BHS seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

111. Declaratory relief is necessary, justified, and timely in that the Village is attempting to unlawfully apply standards for setbacks, FAR, and other issues not applicable to applications for multifamily development in areas zoned for such use to the Application instead of the land development regulations applicable to multifamily residential development, the RM-5 District standards (the “RM-5 Standards”).

112. Florida state law prohibits a municipality from enacting regulations that apply different standards to: (i) development applications under the Live Local Act, and (ii) applications for multifamily development in areas zoned for such use. *See* § 166.04151(7)(d), Fla. Stat.

113. The Application, and the BHS Property, qualify for multifamily residential development under the Act. The Live Local Act requires the Village to approve the Application.

114. Pursuant to the Live Local Act, the land development regulations applicable to applications for multifamily development in areas zoned for such use and which should apply to the Application are the RM-5 Standards.

115. The Village disputes that the RM-5 Standards apply to the Application, and asserts that under the Poor Doors Ordinance, the Application is subject to restrictive setback standards applicable only to Live Local Act projects and other standards applicable to the mixed-use Ocean Front District.

116. BHS disputes that the Village can implement new setback standards applicable only to Live Local Act projects. BHS further maintains that, because the Ocean Front District is not an area zoned for multifamily residential development under Section 166.04151(7)(d), Florida Statutes, the Live Local Act prohibits the Village's imposition of the OF standards to the Application.

117. The Village disputes BHS' assertions relating to the Live Local Act and the Code set forth in paragraphs 113, 114, and 116.

118. All necessary elements for the seeking of declaratory relief have been satisfied.

119. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the RM-5 Standards apply to the Application.

120. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

121. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

122. The antagonistic and adverse interests relative to this controversy are all before this Court.

123. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the proper standards to be applied to the Application.

124. Accordingly, Plaintiff requests that the Court enter a declaration that the RM-5 Standards apply to the Application.

**COUNT II – DECLARATORY RELIEF—OF ZONING ORDINANCE DOES NOT  
APPLY TO THE APPLICATION**

125. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

126. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

127. BHS seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

128. Declaratory relief is necessary, justified, and timely in that the Village is attempting to apply recently enacted standards for the Ocean Front District to the Application instead of the standards for applications for multifamily development in areas zoned for such use.

129. Florida state law prohibits a municipality from enacting regulations that apply different standards to: (i) development applications under the Live Local Act, and (ii) applications for multifamily development in areas zoned for such use. *See* § 166.04151(7)(d), Fla. Stat.

130. The Application, and the BHS Property, qualify for multifamily residential development under the Act.

131. The Village has stated that it will subject the Application to the standards contained in the OF Zoning Ordinance.

132. BHS disputes the Village's flawed application of the Live Local Act and the Village Code. BHS maintains that the OF Zoning Ordinance does not apply to the Application because the BHS Property is not located in the Ocean Front District and because the Ocean Front District is not an area zoned for multifamily residential development under Section 166.04151(7)(d), Florida Statutes, and thus cannot apply to the Application as to these issues under the Live Local Act.

133. The Village disputes BHS' assertions relating to the Live Local Act and the Village Code in paragraph 132.

134. All necessary elements for the seeking of declaratory relief have been satisfied.

135. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the OF Zoning Ordinance does not apply to the Application.

136. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

137. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

138. The antagonistic and adverse interests relative to this controversy are all before this Court.

139. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the applicability of the OF Zoning Ordinance to the Application.

140. Accordingly, Plaintiff requests that the Court enter a declaration that the OF Zoning Ordinances does not apply to the Application.

**COUNT III – DECLARATORY RELIEF—POOR DOORS ORDINANCE**  
**PREEMPTED BY LIVE LOCAL ACT AND THE GLITCH BILL**

141. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

142. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

143. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

144. Declaratory relief is necessary, justified, and timely because the Poor Doors Ordinance purports to impose upon Live Local Act projects several requirements which directly conflict with, and are thus preempted by, the Act, and because the Village is attempting to enforce these unlawful requirements against BHS' compliant Application.

145. Section 166.021, Florida Statutes provides municipalities with limited authority to enact legislation concerning subject matters upon which the Florida Legislature may act. A critical limitation on these powers is that municipalities may not enact legislation pertaining to “[a]ny

subject preempted to state or county government by the constitution or by general law[.]” § 166.021(3)(c), Fla. Stat.

146. Under Florida law, preemption occurs either through a specific legislative statement of preemptive intent, or when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme. *See D’Agostino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017).

147. Florida state law prohibits a municipality from enacting regulations that apply different standards to: (i) development applications under the Live Local Act, and (ii) applications for multifamily development in areas zoned for such use. *See* § 166.04151(7)(d), Fla. Stat.

148. In other words, the Live Local Act preempts all ordinances with respect to applicable applications and requires an application under the Act to comply only with the land development regulations applicable to applications for multifamily development in areas zoned for such use.

149. The Application, and the BHS Property, qualify for multifamily residential development under the Act.

150. Because the Poor Doors Ordinance would subject the Application to land development regulations beyond those applicable to applications for multifamily development in areas zoned for such use (including LLA-specific and mixed-use statutory use restrictions, setback requirements, FAR definition, and site approval processes), the Ordinance clearly conflicts with and is preempted by the legislative scheme put in place by the state through the Live Local Act and the Glitch Bill.

151. The Village disputes BHS' assertions relating to the Live Local Act, the Glitch Bill, and the local ordinances set forth in paragraphs 148 and 150, and intends to apply the Poor Doors Ordinance to the Application.

152. All necessary elements for the seeking of declaratory relief have been satisfied.

153. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the Live Local Act preempts the Poor Doors Ordinance.

154. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

155. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

156. The antagonistic and adverse interests relative to this controversy are all before this Court.

157. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the enforceability of the Poor Doors Ordinance.

158. Accordingly, Plaintiff requests that the Court enter a declaration that the Live Local Act preempts the Poor Doors Ordinance.

**COUNT IV – DECLARATORY RELIEF—POOR DOORS ORDINANCE  
CANNOT BE APPLIED RETROACTIVELY TO THE APPLICATION**

159. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

160. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights,

status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

161. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

162. Declaratory relief is necessary, justified, and timely in that the Village is attempting to retroactively apply the Poor Doors Ordinance to the Application, thus impairing, and creating new obligations upon the exercise of, BHS' vested rights under the Live Local Act, the Glitch Bill, and the Village Code.

163. The Florida Supreme Court has adopted a two-pronged analysis for determining when a statute, ordinance, or regulation may be retroactively applied: first, the court must determine where the legislature expressed a clear intent that the legislation was intended to apply retroactively, and second, the court must determine whether applying the legislation retroactively would be unconstitutional. *See Fla. Ins. Guar. Ass'n. v. Devon Neighborhood Ass'n.*, 67 So. 3d 187, 194 (Fla. 2011).

164. A proposed statute, ordinance, or regulation will not be applied retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.” *See State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

165. This rule applies “even where the Legislature has expressly stated that a statute will have retroactive application[.]” *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010).

166. The Application predates the Poor Doors Ordinance.

167. Nothing in the Poor Doors Ordinance states that it is to apply retroactively.

168. Notwithstanding the lack of any stated intent for retroactive application in the ordinance, on March 11, 2024, the Village informed BHS that it intends to retroactively apply the Poor Doors Ordinance to the Application.

169. BHS maintains that the Poor Doors Ordinance should not be applied retroactively to the Application because there is no intent for retroactive application stated in the ordinance.

170. BHS further maintains that even if any stated intent for retroactive application existed in the ordinance (which it does not), the Poor Doors Ordinance could still not be applied retroactively to the Application, because such application would be an impairment of BHS' rights under the Live Local Act, the Glitch Bill, and the Village Code, and would create new obligations upon BHS which did not exist when it exercised its rights under the Live Local Act and filed its compliant Application.

171. Specifically, upon filing its completed Application, BHS had a vested right under the Live Local Act for that application to be approved because BHS complied with the then-existing land development regulations applicable to multifamily residential development. The Poor Doors Ordinance interferes with this vested right.

172. Moreover, the Poor Doors Ordinance creates new obligations applicable to the Application which were not in existence at the time the completed Application was submitted.

173. The Village disputes BHS' assertions set forth in paragraphs 169-172, and intends to retroactively apply the Poor Doors Ordinance to the Application.

174. All necessary elements for the seeking of declaratory relief have been satisfied.

175. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the Poor Doors Ordinance does not apply retroactively to the Application.

176. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

177. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

178. The antagonistic and adverse interests relative to this controversy are all before this Court.

179. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the lack of retroactive application of the Poor Doors Ordinance.

180. Accordingly, Plaintiff requests that the Court enter a declaration that the Poor Doors Ordinance does not apply retroactively to the Application.

**COUNT V – DECLARATORY RELIEF—OF ZONING ORDINANCE CANNOT  
BE APPLIED RETROACTIVELY TO THE APPLICATION**

181. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Court.

182. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

183. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

184. Declaratory relief is necessary, justified, and timely in that the Village is attempting to retroactively apply the OF Zoning Ordinance to the Application, thus impairing, and creating new obligations upon the exercise of, BHS' vested rights under the Live Local Act, the Glitch Bill, and the Village Code.

185. The Application predates the OF Zoning Ordinance.

186. Nothing in the OF Zoning Ordinance states that it is to apply retroactively.

187. Notwithstanding the lack of any stated intent for retroactive application in the ordinance, on March 11, 2024, the Village informed BHS that it intends to retroactively apply the OF Zoning Ordinance to the Application.

188. BHS maintains that the OF Zoning Ordinance should not be applied retroactively to the Application because there is no intent for retroactive application stated in the ordinance.

189. BHS further maintains that even if any stated intent for retroactive application existed in the ordinance (which it does not), the OF Zoning Ordinance could still not be applied retroactively to the Application, because such application would be an impairment of BHS' vested rights under the Live Local Act, the Glitch Bill, and the Village Code, and would create new obligations upon BHS in its exercise of its rights.

190. Specifically, upon filing its completed Application, BHS had a vested right under the Live Local Act for that application to be approved in accordance with the regulations in the then-existing Village Code. The OF Zoning Ordinance interferes with this vested right.

191. Moreover, the OF Zoning Ordinance creates new obligations applicable to the Application which were not in existence at the time the completed application was submitted.

192. The Village disputes BHS' assertions set forth in paragraphs 188-191, and intends to retroactively apply the OF Zoning Ordinance to the Application.

193. All necessary elements for the seeking of declaratory relief have been satisfied.

194. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the OF Zoning Ordinance does not apply retroactively to the Application.

195. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

196. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

197. The antagonistic and adverse interests relative to this controversy are all before this Court.

198. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the lack of retroactive application of the OF Zoning Ordinance.

199. Accordingly, Plaintiff requests that the Court enter a declaration that the OF Zoning Ordinance does not apply retroactively to the Application.

**COUNT VI – DECLARATORY RELIEF—GENERAL ZONING ORDINANCE  
CANNOT BE APPLIED RETROACTIVELY TO THE APPLICATION**

200. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

201. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights,

status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

202. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

203. Declaratory relief is necessary, justified, and timely in that the Village is attempting to retroactively apply the General Zoning Ordinance to the Application, thus impairing, and creating new obligations upon the exercise of, BHS' vested rights under the Live Local Act, the Glitch Bill, and the Village Code.

204. The Application predates the General Zoning Ordinance.

205. Nothing in the General Zoning Ordinance states that it is to apply retroactively.

206. Notwithstanding the lack of any stated intent for retroactive application in the ordinance, on March 11, 2024, the Village informed BHS that it intends to retroactively apply the General Zoning Ordinance to the Application.

207. BHS maintains that the General Zoning Ordinance should not be applied retroactively to the Application because there is no intent for retroactive application stated in the ordinance.

208. BHS further maintains that even if any stated intent for retroactive application existed in the ordinance (which it does not), the General Zoning Ordinance could still not be applied retroactively to the Application, because such application would be an impairment of BHS' vested rights under the Live Local Act, the Glitch Bill, and the Village Code, and would create new obligations upon BHS in its exercise of its rights.

209. Specifically, upon filing its completed Application, BHS had a vested right under the Live Local Act for that application to be approved in accordance with the regulations in the then-existing Village Code.

210. Moreover, the General Zoning Ordinance impairs BHS' vested rights under its deeds and leases, grants additional rights to BHS' lessees, and otherwise alters the established relationships between BHS and its lessees. These changes likewise create new obligations upon BHS' exercise of its vested rights.

211. The Village disputes BHS' assertions set forth in paragraphs 207-210, and intends to retroactively apply the General Zoning Ordinance to the Application.

212. All necessary elements for the seeking of declaratory relief have been satisfied.

213. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the General Zoning Ordinance does not apply retroactively to the Application.

214. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

215. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

216. The antagonistic and adverse interests relative to this controversy are all before this Court.

217. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the lack of retroactive application of the General Zoning Ordinance.

218. Accordingly, Plaintiff requests that the Court enter a declaration that the General Zoning Ordinance does not apply retroactively to the Application.

**COUNT VII – DECLARATORY RELIEF—DEVELOPMENT AGREEMENT  
DOES NOT APPLY TO LIVE LOCAL ACT APPLICATION**

219. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

220. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

221. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the DA.

222. Declaratory relief is necessary, justified, and timely in that the Village is refusing to comply with its obligation to administratively process and approve BHS' compliant Live Local Act Application based on its contention that the Development Agreement applies to and governs the Application. This interpretation would prevent BHS from exercising its rights under the Live Local Act and the Glitch Bill.

223. The DA applies to the specific project described in Section 5 of the DA, and not to any different or later project to be developed on the Property.

224. The Application describes and includes a totally different project than the DA.

225. The Live Local Act requires that eligible projects be approved administratively “if the development satisfies the municipality’s land development regulations for multifamily

developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use.” § 166.04151(7)(d), Fla. Stat. There are no exceptions to this requirement, and the Village cannot impose a requirement that the existing DA be amended or a new DA be entered as a basis for avoiding administrative approval of the Application.

226. The Village incorrectly asserts that the DA controls the Application and must be amended by the Village Council in order for BHS to proceed with the Application.

227. The practical effect of the Village’s position is to deny BHS the right to have the Application reviewed, considered, and administratively approved.

228. BHS maintains that the DA does not apply to the Application, and that there is no basis for the Village’s pretextual and unlawful refusal to approve the Application, whether based upon the DA or otherwise.

229. The Village disputes BHS’ assertions set forth in paragraph 228, and refuses to move off its wrongful contention that the DA applies to the Application.

230. All necessary elements for the seeking of declaratory relief have been satisfied.

231. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the DA does not apply to nor govern the Application.

232. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

233. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

234. The antagonistic and adverse interests relative to this controversy are all before this Court.

235. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the lack of application of the DA to the Application.

236. Accordingly, Plaintiff requests that the Court enter a declaration that the Application is not the Project described in the DA, and that the DA does not apply to nor govern the Application.

**COUNT VIII – DECLARATORY RELIEF—SECTION 21-322 OF THE  
VILLAGE CODE IS VOID FOR DELEGATING UNFETTERED DISCRETION  
TO THE VILLAGE AND ITS AGENTS**

237. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Count.

238. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

239. Plaintiff seeks a declaration of its rights under the Village Code.

240. Declaratory relief is necessary, justified, and timely in that the Village is attempting to leverage the unfettered discretion afforded to it under Section 21-322 of the Village Code to interfere with BHS’ rights under the Live Local Act and the Glitch Bill.

241. “An ordinance whereby the city council delegates to itself the arbitrary and unfettered authority to decide where and how a particular structure shall be built or where located

without at the same time setting up reasonable standards which would be applicable alike to all property owners similarly conditioned, cannot be permitted to stand as a valid municipal enactment.” *North Bay Village v. Blackwell*, 88 So. 2d 524, 526 (Fla. 1956); *Sears, Roebuck & Co. v. Forbes/Cohen Florida Prop., L.P.*, 223 So. 3d 292, 301 (Fla. 4th DCA 2017).

242. Authority granted by an ordinance is arbitrary and unfettered such that the ordinance should be invalidated when the words of the ordinance “could be construed to allow all manner of latitude in the grant of a permit in one case and the denial of a permit in a similar one, and would give every opportunity for the exercise of the power with partiality.” *Drexel v. Miami Beach*, 64 So. 2d 317, 319 (Fla. 1953); *Effie, Inc. v. City of Ocala*, 438 So. 2d 506, 509 (Fla. 5th DCA 1983).

243. A number of provisions within Section 21-322 of the Village Code, both prior to and following its amendment to address the Live Local Ordinances, purport to grant the Village (or its Manager or other agent(s)) arbitrary and unfettered discretion requiring that section’s voiding.

244. Non-exhaustively, the pre-amendment Section 21-322 granted the Village arbitrary and unfettered discretion in the following ways:

- a. Section 21-322(b) delegated the Village Manager unfettered discretion to demand “any additional supporting information” for a site plan application, and provided that any such application “shall be in a form prescribed by the Village Manager or designee,” without any definition or limitation of the term “form”;
- b. Section 21-322(c)(1) authorized the Village Manager to impose a wide range of conditions on the application without any limitation or requirement that the conditions be related to addressing or mitigating adverse impacts of the application;

- c. Section 21-322(d) granted the Architectural Review Board unfettered discretion by providing criteria for application approval which lack any reasonable standards or limitations; and
- d. Section 21-322(f) granted the Village Council unfettered discretion to deny an application if the Council found “any adverse impacts” without defining that term or providing any limitation.

245. Non-exhaustively, the post-amendment Section 21-322 grants the Village arbitrary and unfettered discretion by requiring the Village Manager to consider criteria from Section 21-322(d) which lack any reasonable standards or limitations, and by requiring applications to comply with these same criteria.

246. BHS maintains that Section 21-322 grants the Village arbitrary and unfettered discretion, and should thus be voided.

247. The Village disputes BHS’ assertions relating to the invalidity of Section 21-322 detailed in paragraphs 243-246, and continues to rely on the improper discretion granted to it by that section to obstruct the approval of the Application.

248. All necessary elements for the seeking of declaratory relief have been satisfied.

249. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that Section 21-322 is void.

250. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

251. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

252. The antagonistic and adverse interests relative to this controversy are all before this Court.

253. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the validity of Section 21-322.

254. Accordingly, Plaintiff requests that the Court enter a declaration that Section 21-322 provides the Village arbitrary and unfettered discretion, and is thus void.

**COUNT IX – DECLARATORY RELIEF—SECTION 21-322 OF THE VILLAGE  
CODE PREEMPTED BY LIVE LOCAL ACT AND THE GLITCH BILL**

255. The allegations set forth in paragraphs 1 through 107 are hereby incorporated into this Court.

256. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes. Under Section 86.021 of the Florida Statutes and well settled Florida law, any person whose rights, status, or other equitable or legal relations are affected by a statute, municipal ordinance, or contract may have determined any question of construction or validity arising under such statute, ordinance, or contract, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

257. Plaintiff seeks a declaration of its rights under the Live Local Act, the Glitch Bill, and the Village Code.

258. Declaratory relief is necessary, justified, and timely because the Village is relying upon the discretion apparently afforded to it under Section 21-322 to create supplemental requirements for development applications under the Live Local Act which are not contained in, and indeed conflict with, the Act. To the extent Section 21-322 provides the Village with the unlimited discretion it purports to have, this ordinance would directly conflict with, and thus be preempted by, the Live Local Act.

259. Section 166.021, Florida Statutes provides municipalities with limited authority to enact legislation concerning subject matters upon which the Florida Legislature may act. A critical limitation on these powers is that municipalities may not enact legislation pertaining to “[a]ny subject preempted to state or county government by the constitution or by general law[.]” § 166.021(3)(c), Fla. Stat.

260. Under Florida law, preemption occurs either through a specific legislative statement of preemptive intent, or when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme. *See D’Agostino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017).

261. Florida state law prohibits a municipality from enacting regulations that apply different standards to: (i) development applications under the Live Local Act, and (ii) applications for multifamily development in areas zoned for such use. *See* § 166.04151(7)(d), Fla. Stat.

262. In other words, the Live Local Act preempts all ordinances with respect to applicable applications and requires an application under the Act to comply only with the land development regulations applicable to applications for multifamily development in areas zoned for such use.

263. The Application, and the BHS Property, qualify for multifamily residential development under the Act.

264. Because the Village purports that Section 21-322 grants it discretion to subject otherwise compliant applications for development of affordable housing under the Live Local Act to standards and regulations not contained in the Act (including by requiring proposed development agreements be submitted with all Live Local Applications), the Ordinance clearly

conflicts with and is preempted by the legislative scheme put in place by the state through the Live Local Act and the Glitch Bill.

265. The Village disputes BHS' assertions relating to the Live Local Act, the Glitch Bill, and the local ordinances set forth in paragraphs 262 and 264, and intends to use the discretion purportedly afforded to it under Section 21-322 to apply standards having no basis in any ordinance or relation to the requirements of the Live Local Act to the Application.

266. All necessary elements for the seeking of declaratory relief have been satisfied.

267. Plaintiff is legally entitled to seek declaratory relief through this action. Plaintiff has a *bona fide*, actual, and present practical need for a declaration by this Court that the Live Local Act preempts Section 21-322.

268. There is a presently ascertainable set of facts and present controversy for this Court to resolve.

269. Plaintiff and Defendant have antagonistic and adverse interests in the subject matter of this controversy.

270. The antagonistic and adverse interests relative to this controversy are all before this Court.

271. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights relating to the Village's continued obstruction of the application under the guise of the purported discretion afforded to the Village under Section 21-322.

272. Accordingly, Plaintiff requests that the Court enter a declaration that the Live Local Act preempts any requirements the Village is attempting to apply for approval of the Application under Section 21-322 which go beyond the requirements imposed by the Live Local Act, including specifically the requirement of a proposed development agreement.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in their favor and against Defendant and enter declarations as stated in paragraphs 124, 140, 158, 180, 199, 218, 236, 254, and 272, and enter all such relief that it deems equitable and just, including but not limited to, the award of costs as permitted by Florida law. Plaintiff hereby reserves any and all rights it possesses now or in the future to pursue claims, challenges, damages, or other remedies provided pursuant to local, or state law.

**Reservation of Rights Under Federal Law**

BHS fully reserves all rights created by federal law to address the impermissible conduct set forth herein, and by filing this action does not seek to waive any of these rights.

Dated: May 24, 2024

Respectfully Submitted,

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# **Composite Exhibit “A”**

This instrument prepared by:  
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Folio Numbers:  
12-2226-006-0020  
12-2226-006-0060  
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12-2226-002-2343  
12-2226-002-1440  
12-2226-032-0010

**DEVELOPMENT AGREEMENT**

between

**BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership**

and

**BAL HARBOUR VILLAGE, a Florida municipal corporation**

dated July 27<sup>th</sup>, 2017

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## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") dated \_\_\_\_\_ is between BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership ("Owner") and BAL HARBOUR VILLAGE, a Florida municipal corporation ("Village").

### RECITALS:

Owner is the owner of the real property located in Bal Harbour Village, Miami-Dade County, Florida, and more particularly described in Exhibit A to this Agreement ("Existing Shops Property"). The Existing Shops Property is improved with a high-end shopping center known as Bal Harbour Shops ("Shops").

Owner is also the owner of the real property located in Bal Harbour Village, Miami-Dade County, Florida, which was formerly the site of the Church by the Sea, and which is more particularly described in Exhibit B to this Agreement ("Church Site"). Owner wishes to incorporate the Church Site as part of the Shops.

BHS-FM, LLC, a Florida limited liability company owned and controlled by Owner, is the owner of the real property located in Bal Harbour Village, Miami Dade County, Florida, and more particularly described in Exhibit C to this Agreement ("Fairfield Property"). The Fairfield Property is a vacant, unimproved parcel.

Bal Harbour Shops Tract A, LLC, a Florida limited liability company owned and controlled by Owner, is the owner of the real property located in Bal Harbour Village, Miami Dade County, Florida, and more particularly described in Exhibit D to this Agreement ("SunTrust Property"). The SunTrust Property is improved with an office building.

BHS-FM, LLC and Bal Harbour Shops Tract A, LLC are each an "Owner Subsidiary."

The Existing Shops Property and the Church Site, are collectively the "Shops Property."

Owner has submitted a major site plan application to the Village for approval to expand the Shops in accordance with Section 21 of the Village's Code of Ordinances ("Village Code"). The proposed expansion of the Shops, including modifications to the existing Shops facilities, is referred to as the "Project."

Pursuant to Section 21-322 of the Village Code, Village requires Owner to enter into this Agreement in order to mitigate any potential impacts that the proposed Project may have on the Village.

This Agreement is a Development Agreement pursuant to the "Florida Local Government Development Agreement Act," Florida Statutes Sections 163.3220-163.3243.

In consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Owner hereby mutually covenant and agree as follows:

**AGREEMENT:**

1. **Recitals.** The recitals set forth above are true and correct and are hereby made a part of this Agreement.
2. **Exhibits.** The following exhibits (each, an "Exhibit") are attached to and made a part of this Agreement:
  - 2.1. **Exhibit A – Legal Description of Existing Shops Property**
  - 2.2. **Exhibit B – Legal Description of Church Site**
  - 2.3. **Exhibit C – Legal Description of Fairfield Property**
  - 2.4. **Exhibit D – Legal Description of SunTrust Property**
  - 2.5. **Exhibit E – Sketch Showing Locations of Buildings**
  - 2.6. **Exhibit F – Value of Owner Contributions**
  - 2.7. **Exhibit G – Second Modification of Police Department Lease**
  - 2.8. **Exhibit H – Bal Harbour Village Resolution No. 2017-1077**
  - 2.9. **Exhibit I – Major Site Plan approved by Bal Harbour Village Resolution No. 2017-1077**
  - 2.10. **Exhibit J – Fairfield Property Title Exceptions**
  - 2.11. **Exhibit K – SunTrust Property Title Exceptions**
  - 2.12. **Exhibit L – Public Use Areas**
  - 2.13. **Exhibit M – Project Encroachments**
  - 2.14. **Exhibit N – Grant of Park Drive Utility Easement**
3. **Defined Terms.** Terms used in this Agreement are defined in the section or subsection where the term first appears. The following defined terms are used throughout this Agreement.
  - 3.1. **Attorneys' Fees.** All reasonable attorneys' fees, expenses, and costs incurred by a party in connection with any matter arising under this Agreement, including, without limitation, paralegal fees, in-house attorneys' fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings.
  - 3.2. **Building Department.** The Bal Harbour Village Building Department.
  - 3.3. **Business Day.** Any day that Bal Harbour Village Hall is open for business.
  - 3.4. **CO.** A certificate of occupancy issued or to be issued by the Village.

- 3.5. **Development Approvals.** The Development Approvals referenced in Section 7 of this Agreement.
- 3.6. **Effective Date.** The date this Agreement has been signed by Owner and Village.
- 3.7. **Expansion GFA.** The GFA being added to the Shops.
- 3.8. **FDOT.** The Florida Department of Transportation.
- 3.9. **Final Approval Date.** The date upon which all of the Development Approvals become final and non-appealable.
- 3.10. **Final CO.** The date upon which the CO is issued for the last permit outstanding for the Project.
- 3.11. **Final TCO.** The date upon which the TCO is issued for the last of buildings F,G, H and Z as shown on Exhibit E.
- 3.12. **Force Majeure.** Any strike, lockout, act of God, inability to obtain labor or materials due to governmental restrictions, riot, war, act of terrorism, hurricane, flood, declaration of a state of emergency under Florida Statute Section 252.363 affecting the geographic area of Bal Harbour, or similar cause beyond the reasonable control of a party.
- 3.13. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other approval issued by a Governmental Authority, including any Development Approval.
- 3.14. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 3.15. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
- 3.16. **Gross Floor Area (GFA).** Gross Floor Area, as defined in the Bal Harbour Zoning Code.
- 3.17. **Public Records.** The Public Records of Miami-Dade County, Florida.
- 3.18. **Reasonable.** With respect to conduct under this agreement, the efforts that a reasonable person in the position of the applicable party would use to engage in that conduct effectively.
- 3.19. **Substantial Completion.** Completion (of construction or of any other task) sufficient to achieve the essential purpose of the task.
- 3.20. **Substantial Compliance.** Compliance with the substantial or essential requirements of something (such as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not fully met.

- 3.21. **TCO.** A temporary certificate of occupancy issued or to be issued by the Village.
  - 3.22. **Village Manager.** The Village Manager of Bal Harbour or his or her duly authorized designee.
4. **Owner's Representation.** Owner hereby represents that it is the sole owner and holder of fee simple title to all parcels of land that are the subject of the major site plan application submitted by Owner to the Village for approval to expand the Shops in accordance with Section 21 of the Village's Code of Ordinances. There is no other property owner or other party (including mortgagees, lienors, or tenants) whose joinder or consent to the site plan application or to this Agreement is legally required.
5. **Description of the Project.** The Project includes the following components:
  - 5.1. **Shops Expansion.** Expansion and enhancement of the Shops with the addition of up to 350,000 square feet of GFA, so that the Shops will include a total of up to 860,000 square feet of GFA. The expansion may include an expanded Neiman Marcus, a new Barney's, additional in-line boutique retail space, additional restaurants, and additional parking. The Project includes the incorporation of the Church Site into the Shops, and will result in a floor area ratio not to exceed 1.22. Building heights will be in accordance with the zoning of the Bal Harbour B Business District.
  - 5.2. **Traffic Improvements.** New access points to the Shops from Collins Avenue and improved circulation on Collins Avenue and 96th Street; traffic and roadway improvements to both Collins Avenue and 96th Street; and improvements to the public rights-of-way around the Shops, including the sidewalks, landscaping and other associated improvements.
  - 5.3. **Parking Improvements.** The Project will include a minimum of 2,400 permanent parking spaces above and below grade in order to achieve a parking ratio of not less than 3.1 spaces per 1,000 square feet of 90% of the GFA, and no less than 385 additional flex parking spaces.
6. **Summary of Owner Contributions.** Owner agrees to make the following contributions (collectively, "Contributions") to the Village. The value of these Contributions is set forth in Exhibit F. Each of these Contributions is addressed in detail in other sections of this Agreement.
  - 6.1. **New Village Hall.** Construction and delivery to the Village of a new municipal center ("New Village Hall") on the Fairfield Property.
  - 6.2. **New Village Hall Parking Garage.** Construction and delivery to the Village of an underground parking structure to be located under portions of one or more of the following: (i) the Fairfield Property, (ii) the Shops Property, and (iii) Bal Cross Drive ("NVH Garage").
  - 6.3. **Conveyance of SunTrust Property.** Conveyance to the Village of the SunTrust Property, including assignment to Village of all leases of the SunTrust Parcel.

- 6.4. **Infrastructure and Beautification Improvements.** Construction and installation of infrastructure and beautification improvements on public property and on portions of the Shops property adjacent to public property at a cost of approximately \$9.375 million, as shown on the Bal Harbour Shops Enhancement Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated January 9, 2017, as same may be amended during the Village approval process.
- 6.5. **Waterfront Park.** Contribution to the Village of (i) the sum of \$3.5 million to be used by the Village for construction of a waterfront park on property owned by the Village ("Waterfront Park"), and (ii) preparation and delivery to the Village of a site plan for the Waterfront Park.
- 6.6. **Art in Public Places Contribution.** A contribution of \$1 million to the Village to be used for the installation of art in public places.
- 6.7. **Modification of Police Department Lease in Bal Harbour Shops.** Within three Business Days after the Final Approval Date, Owner and the Village will execute and deliver a Second Modification of Police Department Lease in the form attached as Exhibit G. The Second Modification provides for an extension of the existing lease of space in the Shops to the Village Police Department at no cost to Village for rent, CAM, or any other charges, until 90 days after conveyance of the New Village Hall to the Village.
7. **Development Approvals.** The development of the Project will require the following reviews and approvals (collectively, "Development Approvals"). The date upon which the last of the Development Approvals become final and non-appealable will be referred to as the "Final Approval Date."
  - 7.1. **ARB Review.** Advisory review by the Village's Architectural Review Board of Owner's major site plan application for the Project in accordance with Section 21-322(d) of the Village Code.
  - 7.2. **Comprehensive Plan Amendment for Church Site.** A small scale map amendment to the Village's comprehensive plan in connection with the change in use of the Church Site.
  - 7.3. **LPA Recommendation.** Recommendation by the Local Planning Agency ("LPA") on the comprehensive plan amendments and the text amendments.
  - 7.4. **Major Site Plan Approval.** Approval of the major site plan and the related Development Agreement for the Shops Expansion.
  - 7.5. **Text Amendments.** Approval by the Village Council of text amendments to the Village Code to allow for the development of the Project.
8. **Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.** The parties acknowledge that the Village will be required to adopt amendments to its Comprehensive Plan based on its Evaluation and Appraisal Report ("EAR"), and file those EAR-based amendments with the Florida Department of Economic Opportunity prior to issuance of any building permits for the Project. The Village agrees to schedule the EAR-

based amendments for a hearing within a reasonable period of time following the adoption of the Development Approvals. The parties are not aware of any impediments to the adoption of the amendments to the Village's Comprehensive Plan within a reasonable period of time. The parties do not consider site preparation and construction of a boundary wall on the Existing Shops Property consistent with the Village Code and existing Comprehensive Plan to be affected by this paragraph.

9. **New Village Hall.** Owner agrees to cause (i) the design and construction of New Village Hall on the Fairfield Property, and (ii) the conveyance of the Fairfield Property and the New Village Hall to the Village as expeditiously as possible in accordance with the following terms and conditions:

9.1. **New Village Hall Timeline.**

9.1.1. **Preliminary Design.** Upon issuance of a building permit for the final building of the Project to be permitted, Owner will send notice to Village that Village has 24 months to deliver construction plans for New Village Hall. Village will work with either Zyscovich Architects, which is the Owner's architect, or with an architect selected by Village and to be paid for by Owner, to develop design and construction plans within the 24-month period. After issuance of the building permit for the final building of the Project, Owner will provide to the Village one or more sets of renderings for the proposed design and appearance of New Village Hall. The Village will hold up to five public meetings to discuss the proposed design and appearance of New Village Hall. The Village Council will review and approve the preliminary design of New Village Hall in its proprietary capacity prior to the processing of the design plans in accordance with the Village's standard regulatory process.

9.1.2. **Construction Plans.** Once the design of New Village Hall has been approved through the Village's regulatory process, Owner will prepare the construction plans and specifications for the approved design and submit them to the Village Manager for preliminary review and approval. The Village Manager will provide comments within 10 Business Days after receipt of the New Village Hall plans. Owner will revise the plans and specifications to address the Village Manager's comments. Thereafter, Owner will comply with the Village's standard regulatory process for approval of the construction plans and specifications.

9.1.3. **Design and Construction Standards.** Owner will design and construct New Village Hall as a sustainable building meeting the standards of the Florida Green Building Council or similar standards. New Village Hall must be rated to withstand a Category 5 hurricane, and must be designed, planned and constructed as Class A office space.

- 9.1.4. **Preliminary Prep Work.** Owner will make a reasonable effort to prepare the underground portions of the New Village Hall site and the NVH Garage site for construction at the same time that the Owner prepares the underground portion of the Shop's proposed north parking garage shown on Exhibit E.
- 9.1.5. **Use of Fairfield Property for Staging.** Owner may use the Fairfield Property for the staging of Project construction prior to the commencement of construction of New Village Hall.
- 9.1.6. **Commencement of Construction.** If the Village timely approves the design of New Village Hall and issues the building permit for New Village Hall, the Owner will commence construction of New Village Hall upon the issuance of tenant TCOs for 85% of the square footage available for lease in buildings F, G, H and Z (as shown on Exhibit E), but no later than eight years after issuance of the first building permit for any portion of the Project. The date that construction of New Village Hall commences will be the "NVH Commencement Date."
- 9.1.7. **Duration of Construction.** Owner will complete construction of New Village Hall no later than 30 months after the NVH Commencement Date, subject to extension due to Village change orders as described in Section 9.6.2. If, however, the design of New Village Hall causes the estimated construction time to be longer than 30 months, as determined by the average timeframe of construction bids received by Owner, then the parties will reasonably determine whether to extend the construction time period, or modify the design of New Village Hall, or both. Owner acknowledges that the timely commencement and completion of New Village Hall is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.
- 9.1.8. **Failure to Timely Complete New Village Hall.** If Owner has not obtained a TCO for New Village Hall within 30 months after the NVH Commencement Date, the Village may, at its option, make a claim under the payment and performance bond for the construction of New Village Hall, provided that the Village first sends Owner written notice that Village intends to make a claim under the payment and performance bond if the TCO has not been obtained within 90 days Owner's receipt of the notice. In addition, if the TCO for New Village Hall is not issued within 30 months of the NVH Commencement Date, Owner shall assign to Village the liquidated damages set forth in the construction contract for New Village Hall, as required in Section 9.3.
- 9.2. **Cost of New Village Hall.** Owner will be responsible for all costs and expenses for the design and construction of New Village Hall, up to the "Owner's NVH Cost" defined below.

- 9.2.1. Owner's New Village Hall Cost.** Owner and Village agreed in February 2016 that the cost of New Village Hall would be \$9.6 million. The \$9.6 million cost was based on a construction cost of \$281.00 per square foot, and a building square footage of 34,164. Because the timing for the construction of New Village Hall has changed, Owner and Village agree that the cost of New Village Hall will be the 2016 estimated cost of \$9.6 million, as increased (but not decreased) by the percentage change in RS Means Building Construction Cost Data for Commercial Office New Construction in Miami as shown on the RS Means website between the first quarter of 2016 and the most current quarter information available at the time Owner submits the construction plans for New Village Hall ("RS Means Percentage Increase"). The estimated \$9.6 million cost of New Village Hall, as increased by the RS Means Percentage Increase, is the "Owner's NVH Cost." The 2016 per square foot cost and square footage of New Village Hall contained in this paragraph are included only to show how the \$9.6 million 2016 cost was calculated and are not to be used in determining either the cost per square foot cost or square footage of New Village Hall at the time the increase to the \$9.6 million dollar 2016 cost of New Village Hall is calculated. If RS Means no longer provides the information necessary to calculate the increased cost of New Village Hall at the time the building permit for the final building of the Project is issued, Village and Owner shall jointly agree upon an alternative index.
- 9.2.2. Items Included in Owner's NVH Cost.** The Owner's NVH Cost will include the following hard and soft costs only: architect and engineering fees incurred after the Final Approval Date; mobilization costs; construction costs; furniture, fixtures and equipment costs; landscaping and site improvement costs; and the cost of the Village Representative (defined below). Owner will keep the Village informed of any changes in the cost of New Village Hall.
- 9.2.3. Items Not Included in Owner's New Village Hall Cost.** The Owner's NVH Cost will not include any application fees, permitting fees, legal fees, accounting fees, financing fees, overhead or any other fees or charges. The Village will be responsible for the application and permitting fees for New Village Hall.
- 9.2.4. Finalization of New Village Hall Cost.** If at the time Owner is ready to sign a construction contract with a general contractor ("NVH Contractor") for New Village Hall ("NVH Construction Contract"), the actual cost of New Village Hall is higher than the Owner's NVH Cost, Owner will cause the NVH Contractor to propose value engineering alternatives to lower the cost of New Village Hall to the Owner's NVH Cost. If the Village Manager does not wish to accept the value engineering alternatives proposed by the NVH Contractor, the Village Manager will have a period of 60 days after receipt

of the value engineering alternatives to schedule a Village Council meeting for adoption of a resolution whereby the Village either agrees to pay the excess cost of New Village Hall or authorizes changes to the New Village Hall construction plans to reduce the cost of New Village Hall to Owner's NVH Cost.

- 9.2.5. **NVH Cost and Construction Information.** During the period of construction of New Village Hall, Owner will keep the Village Manager informed of all construction and cost-related issues. Owner will promptly provide Village with copies of all requisitions, change orders, and any other documentation affecting the cost of New Village Hall.
- 9.2.6. **Reduction in New Village Hall Cost.** If the construction of New Village Hall costs less than Owner's NVH Cost, Owner will pay the excess funds (i.e., the difference between the Owner's NVH Cost and the actual construction cost of New Village Hall) to the Village at the time of the transfer of New Village Hall to the Village. Village may use the excess funds for any purpose desired by the Village.
- 9.3. **Construction Contract for New Village Hall.** Prior to issuance of a building permit for the construction of New Village Hall, Owner will submit to the Village Manager for the Village Manager's review and approval a copy of the NVH Construction Contract. The Village Manager will not unreasonably withhold or delay his approval of the NVH Construction Contract as long as it provides for the construction of New Village Hall as a Class A office building; provides appropriate assignable construction warranties; provides for the assignment of delay damages to the Village; and establishes construction standards, guidelines, and procedures appropriate for the construction of a public building abutting a major public right-of-way. The Village Manager will review and either approve or request changes to the NVH Construction Contract within 10 Business Days after receipt. Owner shall cooperate with the Village Manager in order to address any reasonable changes to the NVH Construction Contract requested by the Village Manager.
- 9.4. **Construction of Improvements.** Owner will ensure that the construction of New Village Hall is performed in a good and workmanlike manner, in accordance with all Governmental Requirements and the NVH Construction Contract.
- 9.5. **Village Representative.** The Village will designate a representative for the construction of New Village Hall ("Village Representative"), who may, during normal business hours, visit, inspect, and appraise the construction of New Village Hall and any materials, contracts, records, plans, specifications and shop drawings relating to New Village Hall, whether kept at Owner's offices or at the construction site or elsewhere. Owner agrees to notify the Village Representative of meetings among Owner, Owner's representative, the general contractor, any subcontractors, or any subset of this group, and the Village Representative will be

entitled to attend such meetings. Owner agrees to cooperate with the Village Representative, and to make available to the Village Representative, upon request by the Village, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.

**9.6. Change Orders.**

**9.6.1. Village-initiated Change Orders.** Village will have the right to request changes to the design or construction of New Village Hall and the NVH Garage by submitting a change order to Owner. All change orders must be in writing. Owner will submit Village's change order to the NVH Contractor to obtain a cost for the change order and the amount of additional construction time, if any, required as a result of the change order. Owner will notify Village of the cost and additional time required to implement the change order. If Village elects to proceed with the change order, (i) Village will be responsible for the additional cost resulting from the change order to the extent that it increases the cost of New Village Hall to more than the Owner's NVH Cost, and (ii) the deadline for the completion of New Village Hall may be extended by the additional time required to implement the change order, if agreed to by the parties.

**9.6.2. Owner-initiated Change Orders.** The Village Manager's written approval will be required for any change order other than those requested or initiated by the Village. Village Manager's approval of Owner's change orders will not be unreasonably withheld or delayed, but such change orders shall not increase the cost of New Village Hall to the Village or extend the time for completion of New Village Hall.

**9.7. Resolution of New Village Hall Design and Construction Disputes.**

**9.7.1. Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to the design and/or construction of New Village Hall, the parties will use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, Owner and Village agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**9.7.2. Mediation.** If the parties are unable to negotiate a resolution of their dispute within a period of five Business Days, then, upon notice by either party to the other, the parties agree to try in good faith to settle the dispute through an expedited mediation process administered by a mediator agreed upon by both parties before resorting to litigation. If a party fails to respond to a written request for mediation within three Business Days after service or fails to participate in any scheduled

mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute.

9.7.3. **Litigation.** If the mediation does not result in settlement of the dispute within five Business Days after the initial mediation conference, or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to the design and/or construction of New Village Hall, or this contract shall be settled through court proceedings.

9.7.4. **Time is of the Essence.** Village and Owner agree that time is of the essence for all decisions regarding the design and construction of New Village Hall. The parties agree to avoid costly and unnecessary delays related to any dispute, and agree that any dispute resolution process regarding New Village Hall will be conducted on an expedited basis.

**10. New Village Hall Garage.**

10.1. **Timing of New Village Hall Garage.** Owner will construct the NVH Garage at the same time as it constructs New Village Hall. Owner acknowledges that the timely commencement and completion of the NVH Garage at the same as New Village Hall is constructed and completed is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.

10.2. **NVH Garage Cost.** Owner will be responsible for all of the costs and expenses for the design and construction of the NVH Garage. The NVH Garage will consist of approximately 40,000 square feet of underground parking, containing a minimum of 85 spaces. Owner anticipates that the cost of the NVH Garage will be \$6 million; however, Owner will be responsible for all costs of constructing the NVH Garage other than those resulting from change orders requested by the Village.

10.3. **Cost Savings on NVH Garage.** If Owner is able to complete construction of the NVH Garage with 85 spaces for less than \$6 million, Owner will be entitled to the benefit of any cost savings in the construction of the NVH Garage.

10.4. **Excess Parking Spaces in NVH Garage.** In the event that the NVH Garage and the Shops North Garage are connected to each other and more than 85 parking spaces are constructed in NVH Garage, Owner may utilize the excess spaces and count them as part of the Shops' required parking spaces.

10.5. **Temporary Parking.** During the period of time between the issuance of a building permit for the construction of the Waterfront Park by the Village and the conveyance of the NVH Garage to the Village, Owner agrees to provide 40 parking spaces in the Shops parking garage then in operation for use by Village employees free of charge.

**11. Conveyance of Fairfield Property, New Village Hall, and NVH Garage.**

- 11.1. **Timing of Conveyance.** Owner will cause the Owner Subsidiary to convey the Fairfield Property and New Village Hall to the Village within 10 Business Days after issuance of the TCO for New Village Hall. If a TCO has been issued for the NVH Garage prior to or at the same time the TCO is issued for New Village Hall, Owner will convey the NVH Garage to the Village at the same time as the Fairfield Property and New Village Hall are conveyed. If the NVH Garage does not have a TCO at the time the TCO is issued for New Village Hall, Owner will convey the NVH Garage within 10 Business Day after the TCO has been issued for NVH Garage, subject to all other provisions of Section 11. The Owner Subsidiary will convey good and marketable title to the Fairfield Property, New Village Hall, and the NVH Garage to the Village by special warranty deed, free and clear of any encumbrances other than those set forth in Exhibit J. Village agrees that the Fairfield Property will be used for municipal purposes only.
- 11.2. **Title Commitment.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property and any other property upon which NVH Garage has been constructed, Owner will provide Village with a title commitment ("Title Commitment") for an owner's title insurance policy ("Title Policy") to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village's title to the Fairfield Property, New Village Hall, and the NVH Garage in an amount equal to the sum of (i) \$10 million for the Fairfield Property, (ii) the value of any additional land upon which the NVH Garage is located, as reasonably determined by Owner, and (iii) the final cost of New Village Hall and the NVH Garage.
- 11.3. **Due Diligence.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property and any other property upon which NVH Garage has been constructed, Owner will provide Village with all of the due diligence materials for the Fairfield Property and any additional NVH Garage property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment ("ESA") certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for either the Fairfield Property or for any additional NVH Garage Property, or both, show evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.
- 11.4. **Closing Deliveries.** At the closing on the conveyance, Owner or Owner Subsidiary will do the following:
- 11.4.1. Assign to the Village all construction warranties;
  - 11.4.2. Deliver to the Village complete sets of the as-built plans and specifications for New Village Hall and the NVH Garage in both paper and electronic formats;

- 11.4.3. Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of New Village Hall and NVH Garage; and
    - 11.4.4. Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment.
    - 11.4.5. Pay all closing costs (except for Village's Attorneys' Fees) in connection with the conveyance of the Fairfield Property, New Village Hall, and the NVH Garage, including the cost of the Title Policy.
  - 11.5. **Cross Easements for Ingress, Egress and Access.** In the event that the NVH Garage and the Shops North Garage are connected to each other, at the time of the conveyance of the Fairfield Property to the Village, Owner and Village will enter into a cross easement agreement between the NVH Garage and the Shops North Garage.
12. **Conveyance of SunTrust Property.**
  - 12.1. **Timing of Conveyance.** Upon completion of permit-ready construction drawings for the Waterfront Park, the Owner will cause the Owner Subsidiary to convey to the Village good and marketable title to the SunTrust Property by special warranty deed, free and clear of all encumbrances other than those set forth on Exhibit K. Village agrees that upon the termination or expiration of the SunTrust Lease, the SunTrust Property will be used for municipal purposes only.
  - 12.2. **Title Commitment.** Not less than 90 days prior to the conveyance to the Village of the SunTrust Property, Owner will provide Village with a title commitment ("Title Commitment") for an owner's title insurance policy ("Title Policy") to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village's title to the SunTrust Property in the amount of \$12,750,000.00.
  - 12.3. **Due Diligence.** Not less than 90 days prior to the conveyance to the Village of the SunTrust Property, Owner will provide Village with all of the due diligence materials for the SunTrust Property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment ("ESA") certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for the SunTrust Property shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.
  - 12.4. **Maintenance of SunTrust Property.** Owner will enforce the provisions for the SunTrust Lease regarding the maintenance of all improvements on the SunTrust Property in the condition existing on the Effective Date.

- 12.5. **SunTrust Lease.** Owner will not allow or agree to any modifications of the lease encumbering the SunTrust Property ("SunTrust Lease") between the Effective Date and conveyance of the SunTrust Property to Village unless such modifications are approved in writing by the Village Manager.
- 12.6. **Closing Deliveries.** At the closing on the conveyance of the SunTrust Property, Owner will cause the Owner Subsidiary to do the following:
  - 12.6.1. Assign to the Village all leases and rents due under the SunTrust Lease, with rents to be prorated between Owner Subsidiary and Village as of the closing date;
  - 12.6.2. Deliver to Village an estoppel certificate in a form reasonably acceptable to the Village, signed by the tenant under the SunTrust Lease.
  - 12.6.3. Transfer all security deposits to Village;
  - 12.6.4. To the extent that there are any service contracts or maintenance agreements in effect for the SunTrust Property to which the Owner Subsidiary is a party, Owner will cause the Owner Subsidiary to assign to the Village such service contracts and maintenance agreements acceptable to Village (with Owner Subsidiary to terminate or cancel any such contracts or agreements not assigned to the Village);
  - 12.6.5. Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of the SunTrust Property;
  - 12.6.6. Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment; and
  - 12.6.7. Pay all closing costs in connection with the conveyance of the SunTrust Property (other than the Village's Attorneys' Fees), including the cost of the Title Policy.
13. **Waterfront Park Contribution and Site Plan.**
  - 13.1. **Contribution.** Within 90 days after the Final Approval Date, Owner will pay to Village the sum of \$3.5 million by wire transfer to the Village's account ("Waterfront Park Contribution") to be used by the Village to construct the Waterfront Park.
  - 13.2. **Site Plan.** Upon request by the Village, Owner, at Owner's expense, shall cause Zyscovich Architects or an architect designated by Village and to be paid for by Owner ("Architect") to develop a site plan for the Waterfront Park. The site plan will include elevations, landscaping, colors, and materials. The Architect shall attend the following public meetings pertaining to the design of a site plan for the Waterfront Park:

- 13.2.1. An initial workshop where three design options for Waterfront Park are presented, feedback is received from the public, and a preferred design is identified;
    - 13.2.2. A second workshop where the architect presents a site plan for the preferred design, and feedback is received from the community and the Village Council;
    - 13.2.3. A final workshop for public review and comment on the site plan;
    - 13.2.4. An Architectural Review Board meeting where the site plan will be reviewed; and
    - 13.2.5. A Village Council meeting where the final version of site plan is presented to the Council for approval.
  - 13.3. **Construction of Waterfront Park.** Village will be responsible for paying for and performing the construction of Waterfront Park.
14. **Parking Surcharge.** Owner will impose a \$1.00 parking surcharge ("Parking Surcharge") on each parking transaction at the Shops; (i.e., each parking ticket issued to a visitor entering the Shops parking garage). The Parking Surcharge will only be applicable to BHS customers and public users of the garage. It is expressly understood that the Parking Surcharge will not be applicable to Owner and its family members, employees of Owner, tenants of the Shops, employees of tenants of the Shops, or tickets validated or otherwise waived by either the Owner's executive offices or the Church. The Parking Surcharge amount is a fixed rate and cannot be unilaterally modified by the Village.
- 14.1. **Payment of Parking Surcharge to Village.** The Parking Surcharge will be implemented within 30 days after the issuance of the TCO for the new parking garage structure fronting 96<sup>th</sup> Street. The Village will use the Parking Surcharge funds for parking and multimodal mobility initiatives or any other municipal purposes, at the Village's discretion. The Village will at all times have the right to review the Owner's parking reports to verify the amount of the Parking Surcharge being remitted to the Village. The Parking Surcharge records provided by the Owner will be reviewed by an independent auditor and will be handled in a manner similar to the handling of Resort Tax payments by the Village. The Parking Surcharge will survive the expiration or earlier termination of this Agreement as long as any portion of the Shops Property continues to be used for commercial uses. Prior to the final approval of this Agreement at a second public hearing, Owner and Village will negotiate the terms of an instrument to be executed and recorded within ten days after the Final Approval Date imposing the Parking Surcharge on the Shops Property.
  - 14.2. **Owner Retention of Portion of Parking Surcharge.** Owner may retain up to 50% of each quarterly payment of the Parking Surcharge due Village to offset the Owner's cost of constructing the parking provided for New Village Hall (whether on the Fairfield Property or in the NVH Garage) up to the actual cost of the parking

spaces provided, but not to exceed \$6 million, after which 100% of the Parking Surcharge will be paid to the Village.

15. **Traffic Improvements.** Owner must fully fund and implement all of the traffic improvements described in the traffic study prepared by Fandrei Consulting, Inc., last updated January 2017 (collectively, "Traffic Improvements"), including but not limited to the Traffic Improvements listed in Sections 15.1 through 15.4 below, in order to improve ingress and egress to and from the Shops, and to provide improved traffic flow for through-traffic on Collins Avenue, Harding Avenue, and 96th Street. The Traffic Improvements will be constructed during the time designated for each Traffic Improvement identified below. The construction of the Traffic Improvements is subject to the approval of other Governmental Authorities, and Owner will be responsible for the cost of any additional studies and improvements that may be required by other Governmental Authorities. The Village agrees to provide any reasonable consents or documentation required by other Governmental Authorities to implement the Traffic Improvements, but no changes may be made to the Traffic Improvements without the prior approval of the Village Manager, which approval will not be unreasonably withheld or delayed. If the Village Manager finds that any requested changes to the Traffic Improvements negatively modify the Level of Service approved by Fandrei Consulting, Inc. and the Corradino Group ("Approved LOS"), Village Council approval of the changes will be required. If the Village Manager finds that the requested changes do not negatively modify the Approved LOS, the changes will be handled administratively.
  - 15.1. **Realignment of Collins Avenue.** As one of the initial elements of Phase One of the Project, Owner (with assistance from the Village) will work with FDOT to seek approval to reconfigure the southbound lanes on Collins Avenue from Founder's Circle through the 96th Street intersection in order to ensure a continuous and uninterrupted flow of traffic. Upon approval by FDOT, Owner will undertake the reconfiguration at Owner's expense and in accordance with FDOT requirements.
  - 15.2. **First Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a TCO for the new parking garage on the Existing Shops Property:
    - 15.2.1. **AIA Crosswalk.** Construction and installation of an interim two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("A1A"), in the location where a crosswalk currently exists.
    - 15.2.2. **Collins / Harding Signal Removal.** Removal of the existing mid-block pedestrian signal on Collins Avenue and Harding Avenue north of 96<sup>th</sup> Street after completion of the two-stage pedestrian crosswalk on A1A.
    - 15.2.3. **Loading Area and Service Driveway.** Construction of a new loading area and service driveway for the Shops on 96<sup>th</sup> Street at Byron Avenue to handle truck traffic.

- 15.3. Second Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of the Final TCO.
- 15.3.1. Signalized Driveway at North End of Shops.** Construction of a new signalized driveway at the north end of the Shops to handle the traffic that currently uses the driveways on Collins Avenue and Harding Avenue, in order to eliminate backups from the driveways that interfere with traffic flow on Collins Avenue.
  - 15.3.2. Premium Valet Parking Entry.** Conversion of the existing driveway on Collins Avenue and Harding Avenue into an "Entry Only" driveway for premium valet parking.
  - 15.3.3. Premium Valet Parking Exit.** Conversion of the secondary driveway adjacent to the pedestrian crossing signal immediately north of 96<sup>th</sup> Street to an "Exit Only" driveway for premium valet parking.
  - 15.3.4. AIA Crosswalk.** Construction and installation of an enhanced two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("A1A"), in the location where a crosswalk currently exists.
  - 15.3.5. Retiming of Traffic Signals.** After completion of the new driveway at the north end of the Shops and the new service driveway on 96<sup>th</sup> Street, development of new traffic signal coordination plans to optimize signal operations, taking into account the improved signal spacing and other changes to the street network.
- 15.4. During All Phases.** Ongoing monitoring of traffic changes during the development of the Project, and development and implementation of interim signal retiming plans throughout all of the Phases to address the changes in traffic flow that will occur during the development of the Project.
- 15.5. Additional Traffic Improvements after Project Completion.** The parties acknowledge that the Owner is not required to provide any additional traffic mitigation for the Project other than as set forth in the foregoing subsections regarding the Traffic Improvements. Owner agrees to fund and implement the following additional traffic improvements ("Additional Traffic Improvements") prior to issuance of the Final TCO. In the event that other Governmental Authorities will not approve the Additional Traffic Improvements, the Owner will be released from any further responsibility related to the Additional Traffic Improvements.
- 15.5.1. Harding Avenue / 96<sup>th</sup> Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the signals controlling the eastbound and westbound traffic. This improvement will allow signal operation to respond more effectively to variations in eastbound traffic. Signal

time not needed by the east/west traffic on 96<sup>th</sup> Street can be transferred to Harding Avenue to reduce southbound delays and stops.

- 15.5.2. **Collins Avenue / 96<sup>th</sup> Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the eastbound movement, and if possible, provide a connection to the eastbound loops at Harding Avenue. This improvement will allow the intersection to work in concert with the signal at the Harding Avenue / 96<sup>th</sup> Street intersection, and to transfer unused green signal time from 96<sup>th</sup> Street to northbound Collins Avenue.
  - 15.5.3. **96<sup>th</sup> Street at 500 Block.** Addition of a two-stage pedestrian crossing to provide a safer crossing of 96<sup>th</sup> Street by pedestrians and to reduce delays to traffic on 96<sup>th</sup> Street.
16. **Infrastructure Improvements.** Owner will be responsible for the cost of installing, connecting, or relocating and reconnecting, any water, sewer and stormwater improvements required in order to facilitate the development of, and meet any capacity requirements for, the Project, New Village Hall, and the NVH Garage.
  17. **Collins Plaza Public Space.**
    - 17.1. **Design of Collins Plaza.** Owner is redesigning the existing surface parking area of the Existing Shops Property located on Collins Avenue ("Collins Plaza") with a pedestrian walkway and valet parking facilities. In order to prevent cars from inadvertently entering the pedestrian area of Collins Plaza, Owner shall install a landscape buffer to set off the pedestrian walkway from the valet areas and travel lanes. The landscape buffer may include planting areas, fountains or other physical barriers approved by the Village.
    - 17.2. **Use by Owner.** Upon receipt of the Final TCO, Owner agrees to use Collins Plaza on a periodic basis as determined by Owner for appropriate commercial uses such as retail, food, and beverage sales, which uses are compatible with the operation of the Shops. Owner will have the right to terminate its use of Collins Plaza after consultation with the Village if Owner reasonably believes its use of Collins Plaza to be unsuccessful.
    - 17.3. **Use of Collins Plaza by Village.** Upon receipt of the Final TCO, the Village will have the right to use all of Collins Plaza (including the parking spaces) up to six times per calendar year for special events, at no cost to Village, on dates and at times mutually agreed upon by the parties. Village agrees that the Village's special events will not take place during peak periods of demand for parking. If Owner reasonably determines that Village's use of Collins Plaza is detrimental to the operation of the Shops, Owner shall notify Village in writing, and Village shall have a period of five days after receipt of the written notice to modify its use of Collins Plaza. If Village fails to modify its use of Collins Plaza to a use which, in Owner's

reasonable opinion, is not detrimental to the Shops, Owner will have the right to terminate Village's use of Collins Plaza upon five days' written notice to Village.

**18. Public Improvements.**

**18.1. Art in Public Places.** Owner agrees to contribute the sum of \$1 million ("Art Contribution") to the Village to be used solely for the temporary or permanent installation of works of art on public property. Within 30 days after the issuance of the first building permit for any portion of the Project, Owner will deliver to Village a check in the amount of \$500,000.00, constituting one-half of the Art Contribution. If after the Final Approval Date, Owner installs new artwork in the Project which is visible to or easily accessible by the public, Owner will receive a credit against the Art Contribution in an amount of up to \$500,000.00 based on the value of the artwork installed by Owner. The Village encourages Owner to install artwork that is integrated into the design of the Project. Upon issuance of the Final CO, Owner will pay any outstanding balance of the Art Contribution to the Village.

**18.2. Residential Gate.** Owner agrees to pay for (i) the redesign of the residential gate entry on Bal Bay Drive near the Village Hall Property into a two-way entrance, and (ii) the replacement of the existing gate with a new residential gate (collectively, "Gate Work"). Owner will not be required to spend more than \$30,000.00 for the Gate Work. No land owned by Owner will be used for the redesign of the entrance. The Village will be responsible for obtaining all approvals required for Gate Work. Owner agrees to complete the Gate Work within six months after the Village obtains the necessary approvals for the Gate Work. If the Village has not obtained the necessary approvals by the date of the Final CO, the Owner will be released from its obligations regarding the Gate Work.

**19. Public Use Areas.**

**19.1. Sidewalks.** As part of the Shops Expansion, Owner will be widening and improving certain sidewalks on the Shops Property along 96<sup>th</sup> Street and Collins Avenue, as well as portions of the publicly dedicated rights-of way along 96<sup>th</sup> Street and Collins Avenue. The portions of the Shops Property and the public property to be widened and improved are shown on Exhibit L ("Public Use Areas").

**19.2. Encroachments.** As part of the Shops Expansion, Owner will be constructing parking spaces, fountain areas, paved driveways, and other Project improvements shown on Exhibit M ("Project Encroachments"), some of which may encroach on the public rights of way.

**19.3. Easement, Encroachment, and Maintenance Agreement.** Prior to final approval of this Agreement at a second public hearing, Owner and Village will negotiate the terms of an agreement ("Easement, Encroachment, and Maintenance Agreement") to be recorded within ten days after the Final Approval Date. The Easement, Encroachment and Maintenance Agreement will be a covenant running with the land which will (i) survive the termination or expiration of this

Agreement; (ii) be reasonably satisfactory to Village in form and content; and (iii) include the following:

- 19.3.1. **Grant of Easement.** Grant by Owner to Village of a perpetual, non-exclusive easement allowing the public to use the Public Use Areas that are located upon the Shops Property;
  - 19.3.2. **License for Encroachments.** Grant by Village to Owner of an irrevocable, non-exclusive license permitting the encroachment onto 96 Street or Collins Avenue of the Project Encroachments;
  - 19.3.3. **Maintenance Obligation.** A covenant by Owner to maintain the Public Use Areas and Project Encroachments in perpetuity at Owner's expense (in clean and safe condition, and in keeping with the maintenance standards of the Shops) and to repair, and replace, as needed, all Public Use Areas and Project Encroachments; and
  - 19.3.4. **Landscaping along Park Drive Wall.** A covenant by the Owner to install landscaping along the Park Drive side of the wall to be constructed on the Shops Property and to maintain the landscaping in perpetuity.
- 19.4. **Pedestrian Access during Construction.**
- 19.4.1. **Collins Avenue.** Owner shall maintain safe pedestrian access along Collins Avenue throughout the construction of the Project. Intermittent closures of pedestrian access on Collins Avenue will be permitted, subject to the Village Manager's reasonable approval.
  - 19.4.2. **96<sup>th</sup> Street.** Owner may partially close pedestrian access to the sidewalk on 96<sup>th</sup> Street during construction as long as Owner provides a safe and reasonable alternative acceptable to the Village Manager and the Florida Department of Transportation.
- 19.5. **Park Drive.** Owner hereby agrees to grant to Village a utility easement in the form attached as Exhibit N over, across, upon, and under Owner's underlying fee simple interest in the portion of Park Drive abutting the Shops Property up to the centerline of Park Drive. Owner will execute and deliver the utility easement to the Village within 10 days after the Final Approval Date, Within 90 days after the Final Approval Date, BHS shall execute a waiver of any claim of ownership it may have to Park Drive in a form reasonably satisfactory to Village.
20. **Public Safety.**
- 20.1. **Safety During Construction.** Owner recognizes that during the period of construction of the Project, activities at the Shops Property will generate a need for additional public safety services and personnel to protect the health, safety and welfare of Village residents. Throughout the construction of the Project, Owner will pay for off-duty Bal Harbour police officers to be posted at each construction site entrance and exit during the hours that construction is taking

place. The Village Manager may, in his reasonable discretion, require additional police coverage for the Project at Owner's expense.

- 20.2. **Off-Duty Police Services.** From the date of issuance of the first permit for any portion of the Project until issuance of the Final CO, Owner will be required to pay to the Village an annual "Off-Duty Police Fee" in an amount equal to the cost of 4,500 hours of off-duty police service at the rate then being charged by the Village for off-duty police service. Owner will pay the Off-Duty Police Fee in advance in quarterly installments, with the first installment due on the first day of the calendar quarter (January, April, July, or October) following the date of issuance of the first permit for any portion of the Project. After completion of the Project, the Off-Duty Police Fee will be reduced to the cost of 3,500 hours of off-duty police service. If the Shops' operating hours change in the future, the number of hours used to calculate the Off-Duty Police Fee will be adjusted accordingly. Owner and the Village Manager will mutually agree upon an appropriate schedule for the off-duty police officers to be present on the Shops Property. If Owner requests off-duty police officers for Shops events or construction during a year, the services requested will be counted as part of the 4,500 hours (3,500 hours after issuance of the Final CO) paid for by Owner. The Off-Duty Police Fee will not apply to either (i) the police services required under Section 20.1, or (ii) off-duty police services requested by tenants of the Shops. The Owner's obligation to pay the Off-Duty Police Fee will survive the expiration or termination of this Agreement. Prior to the final approval of this Agreement at a second public hearing, Owner and Village will negotiate and finalize the terms of an instrument to be executed and recorded within 10 days after the Final Approval Date imposing on the Shops Property the obligation to pay the Off-Duty Police Fee in perpetuity as long as any portion of the Shops Property is used for commercial purposes.
- 20.3. **Construction Staging and Parking.** Prior to the issuance of a building permit for the first principal structure of the Project, Owner will submit a construction staging plan and a plan for maintenance of traffic to the Village Manager for approval. The proposed maintenance of traffic plan will require the Owner to take all reasonable actions necessary to minimize disruption of traffic along Collins Avenue and 96<sup>th</sup> Street during construction, and will require coordination with the Village in advance of any construction activities likely to impact traffic along those thoroughfares. Owner agrees that the staging of construction and the parking of all construction vehicles and equipment, including cranes and dumpsters, will occur entirely within the Shops Property and the Fairfield Property. Construction traffic between the Shops Property and the Fairfield Property will traverse Bal Cross Drive, if possible, and not enter the Collins Avenue right-of-way. All construction traffic must be managed to ensure pedestrian safety at all times. Owner shall maintain Bal Cross Drive in as clean and safe a condition as reasonably possible until the Fairfield Property is conveyed to the Village.
- 20.4. **LPR Cameras.** Owner agrees to donate to the Village two license plate recognition cameras ("LPR Cameras") at a cost not to exceed \$25,000.00, and to grant to the

Village a perpetual easement for the installation, maintenance, repair and replacement of the LPR Cameras. The easement will allow the LPR Cameras to be installed in locations acceptable to Village and Owner, including on buildings which will not be impacted by the installation, on light poles, and upon other facilities located on the Shops Property. Village agrees that the LPR Camera will be used only to monitor traffic on Collins Avenue and 96th Street, and will not record the license plates of Shops patrons on the Shops Property. The Village agrees to indemnify Owner against any action brought against Owner as a result of the LPR Cameras, subject to the limitations of liability set forth in Section 768.28 of the Florida Statutes.

20.5. **Noise Meters.** Prior to issuance of the first permit for any portion of the Project, Owner shall provide to Village, at Owner's expense, two noise meters, one to be installed at a fixed location and the other a portable meter. The noise meters shall be a brand and model reasonably satisfactory to the Owner and the Village Manager. Owner shall install the Village's fixed noise meter at Owner's expense in a location on Park Drive to be designated by Village. Village will be responsible for calibrating the noise meters, but Owner will be responsible for maintaining, repairing and replacing the noise meters at Owner's expense until the conveyance of the Fairfield Property to the Village.

21. **Building Department Fees and Services.**

21.1. **Payments in Lieu of Building Permit Fees.** In lieu of paying the Village's standard fees for building permits for the Project, Owner agrees to pay Village a contribution in lieu of permit fees in the amount of \$2.5 million\* ("Voluntary Contribution") in five equal installments, according to the following schedule:

First Payment of \$500,000*	Due at time of submittal of the first permit application for construction.
Second Payment of \$500,000*	Due prior to issuance of the first building permit for construction
Third Payment of \$500,000*	Due on one-year anniversary of Second Payment.
Fourth Payment of \$500,000*	Due on two-year anniversary of Second Payment
Fifth Payment of \$500,000*	Due prior to issuance of Final TCO for entire Project
*NOTE: All amounts set forth in Section 21.1 and in this table are estimates subject to adjustment as set forth in Section 21.1.1.	

- 21.1.1. Voluntary Contribution Based on Estimated Construction Cost.** The Voluntary Contribution and payments set forth in Section 21.1 are estimates only. Prior to the issuance of the first building permit for construction, Owner will provide the Village with a copy of the construction contract for the Project or other documentation acceptable to Village showing the anticipated cost of the Project. The amounts of the second through fifth payments will be adjusted based on that cost so that the total of the five payments equals two percent of the anticipated Project hard costs up to the first \$1.0 million, and one percent of the anticipated Project hard costs after the first \$1.0 million.
- 21.1.2. Items not included in Voluntary Contribution.** The calculation of the Voluntary Contribution payments under this provision does not include any of the following: (i) the value of any permits required for New Village Hall; (ii) the value of any permits for work done by tenants of the Shops, which must be applied for and paid for by tenants; or (iii) the amount of any charges collected by the Village on behalf of other Governmental Authorities, which charges must be remitted to Village by Owner.
- 21.1.3. True-up of Voluntary Contribution.** Thirty days prior to the issuance of the Final TCO, Owner will provide Village with an updated calculation of the actual Project construction cost (including the cost of the NVH Garage). Any required adjustment of the Voluntary Contribution based on the Owner's actual construction costs will be paid by Owner or refunded by Village, whichever is applicable.
- 21.2. Expedited Plan Review and Inspections.** In consideration for Owner's payment of the Voluntary Contribution, Village agrees that from and after the first submittal of an application for a building permit for the Project, Village will initiate plan review and schedule on-site inspection services as quickly as possible. The Village agrees to use best efforts to maintain adequate staff in the Building Department to promptly provide Building Department services. Village's agreement to review plans and perform inspections does not obligate the Village to approve any plans or inspections. Owner understands and agrees that throughout the term of this Agreement, any official inspector for the Village, or a duly authorized agent of the Village, will have the right and privilege at any time during normal business hours to enter upon and investigate the use of the Shops Property to determine whether the Shops Property complies with applicable Governmental Requirements.
- 21.3. Use of Private Provider.** Owner will at all times have the right to hire a private provider under Section 553.791 of the Florida Statutes.
- 22. Security for Owner's Obligations.** In order to guarantee the performance of the Owner's obligations under this Agreement, Owner hereby agrees to (i) place in escrow with Weiss Serota Helfman Cole & Bierman, P.L. ("Village Attorney") the special warranty deeds for

the conveyance of the Fairfield Property and the SunTrust Property and an assignment of the SunTrust Lease; and (ii) deliver to the Village the payment and performance bonds described in this Section 22.

**22.1. Escrow of Deeds.** Prior to the execution of this Agreement by the Village, Owner shall deliver to the Village Attorney special warranty deeds conveying the Fairfield Property and the SunTrust Property to the Village (collectively, the "Deeds"). The Deeds must be reasonably satisfactory in form and substance to the Village Attorney. The Deeds will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement to be entered into by Owner, each Owner Subsidiary, Village, and Village Attorney prior to the execution of this Agreement by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of this Agreement by the Village.

**22.2. Payment and Performance Bonds.** Owner, at its sole cost and expense, shall obtain and deliver to the Village two separate payment and performance bonds (each, a "Bond"). Each Bond must be reasonably acceptable to the Village in form and content; must be rated A+ or better, and must be written by a reputable surety licensed to write bonds in the State of Florida.

**22.2.1. Bond Securing Completion of Project.** If the Owner is required by its lender to obtain a Bond in connection with its financing of the Project, then, if the lender permits, Owner will use reasonable efforts to make the Village a third obligee under the Bond, subordinate in all respects to the Owner's Lender.

**22.2.2. Bond for Construction of New Village Hall And NVH Garage.** Prior to the issuance of a building permit for New Village Hall, Owner will cause the NVH Contractor to obtain a Bond to secure the completion of construction of New Village Hall and the NVH Garage, with the Village named as the second obligee.

**23. Taxes.**

**23.1. Minimum Ad Valorem Taxes.** Owner guarantees that the municipal portion of annual ad valorem taxes paid by the Owner and tenants of the Shops during the construction of the Project will be no less than the amount that results from the resolution of the pending challenge regarding the amount due in the 2016 tax year (currently estimated at \$384,000.00) (the "2016 Municipal Tax Payment"). Owner agrees to pay to the Village on December 1 of each year a sum equal to the 2016 Municipal Tax Payment less the municipal portion of the ad valorem tax bills for the Project due on March 31 of the same year (including tenants' tax bills). Owner's obligation under this paragraph will terminate upon Final CO.

**23.2. Minimum Resort Taxes.** Owner guarantees that during the construction of the Project, the aggregate annual amount of Bal Harbour Resort Tax payments generated by the tenants of the Shops will be a minimum of \$880,000.00. Owner

agrees to pay to the Village by October 31 of each year a sum equal to \$880,000.00 less the total actual Resort Tax payments from the Project for the preceding fiscal year ending September 30. Owner's obligation under this paragraph will terminate upon Final CO.

24. **Transfer Fee.** Subject to the provisions below, Owner will pay Village a one-time fee ("Transfer Fee") equal to 1% of the gross sale price of the Bal Harbour Shops upon a "Transfer" (as defined below) of all or substantially all of the Shops Property that closes after the Final Approval Date. The Transfer Fee will be calculated as follows:
- 24.1. **Definition of Transfer.** Each of the following events will be considered a "Transfer" for purposes of this Agreement.
- 24.1.1. **Sale of Fee Simple Interest.** A sale or lease in excess of 50 years of Owner's fee simple interest in 50% or more of the Shops Property.
- 24.1.2. **Sale of Controlling Interest of Owner.** A sale of the Controlling Interest in Owner. For purposes of this Agreement, the "Controlling Interest" in Owner is the ownership of (i) more than 50% of the voting rights of the general partners or (ii) more than 50% of the general partnership interests in the Owner entity. On the Effective Date, the general partners of Owner are Stanley F. Whitman, as Trustee of the SFW Revocable Trust, Randall A. Whitman, and Matthew Whitman Lazenby. Owner shall notify Village of any change in the Controlling Interest of Owner which would trigger the Transfer Fee within 10 days after the change occurs, until the expiration or termination of Owner's obligation to pay the Transfer Fee.
- 24.2. **Calculation of Transfer Fee.** If the closing of the Transfer occurs after the Final Approval Date, the Transfer Fee will be assessed only upon the first to occur of the following Transfers:
- 24.2.1. **Prior to Building Permits for 50% of the GFA.** If a Transfer occurs prior to the issuance of building permits for 50% of the Expansion GFA, 100% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.2. **Prior to Building Permits for All of the GFA.** If a Transfer occurs prior to the issuance of building permits for 100% of the Expansion GFA, 90% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.3. **Prior to Final TCO.** If a Transfer occurs prior to the Final TCO, 75% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.

- 24.2.4. **Prior to Fifth Anniversary of the Final TCO.** If a Transfer occurs prior to the fifth anniversary of the Final TCO for the Project, 50% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
- 24.2.5. **More than Five Years After Final TCO.** No Transfer Fee will be due in connection with any Transfer that takes place more than five years after issuance of the Final TCO.
- 24.3. **Events Not Constituting a Transfer.** The following events will not be considered a Transfer under this Agreement, and no Transfer Fee will be assessed upon these events:
  - 24.3.1. **Transfers of Entity Interests.** One or more Transfers to unrelated third parties which in the aggregate total less than 50% of the interests in Bal Harbour Shops, LLLP;
  - 24.3.2. **Mortgages.** The grant of a mortgage or security interest to a third party ("Secured Party") encumbering all or a portion of the Shops Property, the Project, or the Owner entity;
  - 24.3.3. **Deed in Lieu.** A transfer of all or a portion of the Shops Property, the Project, or the Owner entity to a Secured Party, bankruptcy trustee, or receiver, by deed in lieu of foreclosure; or a transfer to a purchaser at a foreclosure or similar sale;
  - 24.3.4. **Transfers by Secured Party.** A transfer by a Secured Party to any third party;
  - 24.3.5. **Family Transfers.** Transfers to any of the descendants or relatives (including by marriage or adoption) of Stanley F. Whitman, Dudley Whitman, or William Whitman;
  - 24.3.6. **Transfers for Estate Planning.** Transfers made for estate or estate tax planning purposes;
  - 24.3.7. **Transfers to Affiliates.** Transfers to any parent, subsidiary or other entity affiliated with Bal Harbour Shops, LLLP or any of its present or permitted future owners; or
  - 24.3.8. **Eminent Domain.** Any conveyance to a Governmental Authority pursuant to a taking in eminent domain or in settlement of such taking.
- 24.4. **Notice of Transfer.** Owner shall provide Village with written notice of a contemplated Transfer at least 10 days prior to the closing date of the Transfer.
- 25. **"Look Back" Reporting and Mitigation.**

- 25.1. **First Look Back Reports.** Twelve months after tenant TCOs have been issued for 75% of the GFA of Buildings F,G, H and Z, Owner will pay for and provide to the Village reports prepared by consultants approved by the Village Manager regarding traffic, parking, acoustical matters, loading docks, and public safety at the Project (collectively, "First Look Back Reports").
  - 25.2. **First Look Back Mitigation.** If any of the First Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Owner will provide mitigation ("First Look Back Mitigation") in accordance with the recommendations of Owner's consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the First Look Back Mitigation within 30 days after issuance of the First Look Back Reports. Upon Village's review and acceptance of the proposal, Village and Owner will enter into an agreement setting forth the terms and conditions for the performance of the First Look Back Mitigation by Owner. One year following the completion of the First Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the First Look Back Mitigation has resolved any of the items identified by the First Look Back Reports.
  - 25.3. **Second Look Back Reports.** Three years after the date of the First Lookback Reports, Owner will provide a second set of reports to the Village regarding traffic, parking, acoustical matters, loading dock issues, and public safety (collectively, "Second Look Back Reports").
  - 25.4. **Second Look Back Mitigation Required.** If any of the Second Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to traffic, parking, acoustics, loading, or public safety caused directly and solely by the Project, Owner will provide additional mitigation ("Second Look Back Mitigation") in accordance with the recommendations of Owner's consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the Second Look Back Mitigation within 30 days after issuance of the Second Look Back Reports. Upon Village's review and acceptance of the proposal, Village and Owner will enter into an amendment to this Agreement setting forth the terms and conditions for the performance of the Second Look Back Mitigation by Owner. One year following the completion of the Second Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the Second Look Back Mitigation has resolved any of the items identified by the Second Look Back Reports.
26. **Indemnification.**
- 26.1. **Owner's Obligation to Indemnify.** Owner shall defend, indemnify and save harmless the Village, its council members, officers, employees, agents, and contractors (only when acting in their respective official capacities) (collectively, the "Village Indemnified Parties"), from and against all liabilities, actions, obligations, damages, penalties, claims, costs, charges and expenses, including,

without limitation, Attorneys' Fees (including those resulting from the enforcement of the foregoing indemnification), arising from, or which may be imposed upon, incurred by or asserted against one or more Village Indemnified Parties by a third party, by reason of any one or more of the following:

- 26.1.1. **Approvals.** Any approvals granted by Village in connection with the Project, and any challenges to such approvals;
- 26.1.2. **Work on Village Property.** Any work or activity performed by Owner or any authorized employee, agent or representative of Owner performing work or rendering services on behalf of Owner on or about any property owned or controlled by the Village;
- 26.1.3. **Negligence.** Any act, omission or negligence of Owner or any or any authorized employee, agent or representative of Owner;
- 26.1.4. **Damage to Third Parties.** Any accident, injury or damage whatsoever caused to any person or to the property of any person occurring in, on or about the Shops Property, which is the result of the act, omission or negligence of Owner or any authorized employee, agent or representative of Owner;
- 26.1.5. **Failure to Perform.** Any failure on the part of Owner or any or any authorized employee, agent or representative of Owner to observe or perform any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement to be observed or performed by Owner or by any authorized employee, agent or representative of Owner, including compliance with any Governmental Requirements applicable to the Project;
- 26.1.6. **Material Breach.** Any material breach of this Agreement by the Owner or any or any authorized employee, agent or representative of Owner.
- 26.2. **Legal Action.** If any action or proceeding is brought against a Village Indemnified Party by reason of any claim arising out of a matter set forth in this Section 26, then upon written notice from Village, Owner shall, at Owner's sole cost and expense, resist or defend such action or proceeding with counsel and litigation strategy designated or approved by Village.
- 26.3. **Limitation.** The indemnification set forth in Section 26 will not apply to any damages resulting solely from the negligence or willful misconduct of a Village Indemnified Party.
- 26.4. **Survival.** The provisions of Section 26 and the subsections thereunder will survive the termination of this Agreement.

27. **Insurance.** Prior to commencing any work on any property owned by the Village, Owner will obtain a policy of Commercial General Liability Insurance naming the Village as an Additional Insured, written on a carrier licensed to do business in Florida with an AM Best rating of A- or better. Coverage must include, at a minimum: (i) Premises Operations, (ii) Products and Completed Operations, (iii) Blanket Contractual Liability, (iv) Personal Injury Liability, and (v) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 Per Occurrence General Aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
- 27.1. **Evidence of Insurance.** Owner must provide satisfactory evidence of the required insurance to Village. Satisfactory evidence of insurance is either: (i) a certificate of insurance; or (ii) a certified copy of the actual insurance policy.
- 27.2. **Cancellations and Renewals.** If obtainable, all insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 45 days notification to the Owner and the Village, and a minimum of 10 days notification for non-payment of premium. Owner will provide Village a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice for non-payment of premium.
28. **Default, Opportunity to Cure, and Remedies.**
- 28.1. **Defaults Generally.** Subject to notice and opportunity to cure as set forth in Sections 28.1 and 28.2, if either Owner or Village fails to fulfill any obligation or covenant set forth in this Agreement, the other party will be entitled to exercise any or all remedies available under this Agreement, or at law or in equity. Owner and Village expressly acknowledge and agree that the right of specific performance will be available to both parties to enforce obligations under this Agreement, along with all other legal and equitable rights and remedies.
- 28.2. **Defaults by Owner.** If Owner fails to fulfill any obligation or covenant set forth in this Agreement, Village shall provide written notice to the Owner specifying the Owner's failure, and Owner will have (i) a period of 30 days after receipt of the notice to cure or correct a non-monetary failure; and (ii) a period of ten days to cure a monetary default. If the Owner's failure to fulfill any non-monetary obligation or covenant is capable of cure but cannot reasonably be cured within the 30-day period, then Owner will have an additional reasonable period of time as determined by Village within which to cure the failure, but only if (i) Owner commences to cure the failure within the initial 30-day period and thereafter continues to diligently perform all actions necessary to cure the default; and (ii) Owner continues to comply with all other obligations and covenants of this Agreement.
- 28.3. **Defaults by Village.** If Village fails to fulfill any obligation or covenant set forth in this Agreement, Owner shall provide written notice to the Village specifying the

Village's failure, and Village will have a period of 30 days after receipt of the notice to cure or correct the failure. If the Village's failure to fulfill any obligation or covenant is capable of cure but cannot reasonably be cured within the 30-day period, then Village will have an additional reasonable period of time within which to cure the failure, but only if (i) Village commences to cure the failure within the initial 30-day period and thereafter continues to diligently perform all actions necessary to cure the default; and (ii) Village continues to comply with all other obligations and covenants of this Agreement.

29. **Notices.** All notices, demands, requests and other communications required under the Agreement must be given in writing and may be delivered by (i) hand delivery, with a receipt issued by the party making such delivery; (ii) certified mail, return receipt requested, or (iii) a nationally recognized overnight delivery service which provides delivery confirmation. Notice will be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Agreement may be sent by facsimile or electronic mail provided that the facsimile or electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

- 29.1. **Notice to Owner.** Notice to Owner under this Agreement must be sent to:

Bal Harbour Shops, LLLP  
9700 Collins Avenue  
Bal Harbour, Florida 33154  
Attention: Matthew Whitman Lazenby  
Telephone: 305 403 9200  
Email: mwl@whitmanfamilydevelopment.com

and

Whitman Family Development  
420 Lincoln Road, Suite 320  
Miami Beach, Florida 33139  
Attention: Matthew Whitman Lazenby  
Telephone: 305 403 9200  
Email: mwl@whitmanfamilydevelopment.com

With a copy to:

Shubin and Bass  
46 SW 1st Street  
3rd Floor  
Miami, FL 33130  
Attention: John Shubin and Amy Huber  
Telephone: 305 381 6060  
Facsimile: 305 381 9457  
Email: jshubin@shubinbass.com; ahuber@shubinbass.com

and

Katz Barron  
2699 South Bayshore Drive, Seventh Floor  
Miami, Florida 33133  
Attention: Howard L. Friedberg and Michael D. Katz  
Telephone: 305 856 2444  
Facsimile: 305 285 9227  
Email: hlf@katzbarron.com and mdk@katzbarron.com

**29.2. Notice to Village.** Notice to the Village under the Agreement must be sent to:

Bal Harbour Village  
655 96th Street  
Bal Harbour, FL 33154  
Attn: Village Manager and Village Clerk  
Telephone: 305 866 4644  
Email: jgonzalez@balharbourfl.gov and ddanie@balharbourfl.gov

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, Florida 33301  
Attention: Susan L. Trevarthen  
Telephone: 954 763 4242  
Facsimile: 954 764 7770  
Email: strevarthen@wsh-law.com

- 30. Multiple Ownership of Shops Property.** This Agreement is a covenant running with the land. In the event that any portion of the Shops Property is conveyed to a third party, so that there are multiple owners of the Shops Property, each of the additional or

subsequent owners, mortgagees, and other successors in interest in and to any portion of the Shops Property will be bound by the terms and provisions of this Agreement.

31. **Term of Agreement.** The provisions of this Agreement will become effective upon the Effective Date. This Agreement will remain in effect for a period of 30 years after the Agreement is recorded in the Public Records.
32. **Enforcement of Agreement.** The Village and the Owner, and their respective successors or assigns, will have the right to enforce the provisions of this Agreement. Enforcement may be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages or both. The Village may also enforce the provisions of this Agreement through civil enforcement proceedings pursuant to Article V of the Village Code.
33. **Authorization to Withhold Permits and Inspections.** If Owner fails to make any of the Contributions required by this Agreement, or fails to fulfill any other of its obligations under this Agreement, the Village will send Owner written notice of the obligations past due. Ten days after providing the written notice to Owner, the Village, in addition to any other remedies available, is hereby authorized (i) to withhold any further permits requested by Owner for the Project, (ii) to refuse to make inspections or grant any approvals requested by Owner for the Project, and (iii) to withhold Issuance of the Final CC, until such time as the Owner makes all of the required Contributions and fulfills all of its obligations under this Agreement. The provisions of this Section will not be construed to permit any refusal or delay by the Village to process permits, inspections or approvals requested by tenants of the Shops.
34. **Development Rights.** For purposes of this Section, "Existing Zoning" means the zoning in effect on the Effective Date of this Agreement, which specifically includes the text amendments approved in connection with the approval of the Project, but which excludes the Village's sign regulations.
  - 34.1. **Permitted Development Uses, Building Intensities and Heights.**
    - 34.1.1. As of the Effective Date, and pursuant to the Development Approvals, the Intensity proposed for the Project is consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan.
    - 34.1.2. As of the Effective Date and pursuant to the Development Approvals the uses proposed for the Project are consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan Comprehensive Plan.
    - 34.1.3. As of the Effective Date and pursuant to the Development Approvals, the heights proposed for the Project are consistent with the intensities permitted by the Existing Zoning and are consistent with the Village's adopted Comprehensive Plan.

**34.2. Reservation of Development Rights.**

**34.2.1.** For the term of this Agreement, the Village agrees that it shall permit the development of the Project in accordance with the Existing Zoning, the Village's adopted Comprehensive Plan, the Development Approvals and this Agreement.

**34.2.2.** Nothing contained in this Agreement prohibits an increase or decrease in the density or intensity of development permitted in the Project, or reallocation of density or intensity within the Project, in a manner consistent with (i) the Existing Zoning and/or the Village's adopted Comprehensive Plan, (ii) any change in regulations subsequently requested or initiated by Owner and approved by the Village in accordance with applicable Governmental Requirements or (iii) any change in regulations subsequently enacted by the Village that is applicable by its terms to the Shops.

**34.2.3.** The expiration or termination of this Agreement shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by Owner or its successors or assigns to continue development of the Property in conformity with all prior and subsequent development permits or development orders granted by the Village.

**35. Miscellaneous Provisions.**

**35.1. Adjustment of Deadlines.** Any deadlines for performance by either Owner or Village set forth in this Agreement may be adjusted by mutual agreement of the parties. Changes to deadlines must be confirmed in a writing signed by both parties, and the Village Manager is authorized to sign on behalf of the Village. The Village Manager, in his sole discretion, may bring proposed changes to deadlines to the Village Council for approval. If the Village Manager or the Village Council is willing to adjust any deadline set forth in this Agreement, either the Village Manager or the Village Council shall determine the procedure for adopting the deadline adjustment, and either the Village Manager or the Village Council may require a formal amendment to this Agreement adopting the changed deadlines, which amendment will require two public hearings in accordance with Section 163. 3225, Florida Statutes.

**35.2. Amendments.** The provisions of this Agreement may be amended or modified from time to time by a recorded instrument executed by the then owners of the Shops Property and the Village.

**35.3. Attorneys' Fees.** In the event that either party to the Agreement institutes legal proceedings in connection with the Agreement, the prevailing party will be entitled to recover its Attorneys' Fees.

- 35.4. **Authority.** Owner represents that it has full right, power and authority to enter into the Agreement and to perform its obligations and agreements hereunder, and that the person or persons executing the Agreement on behalf of Owner are duly authorized to do so.
- 35.5. **Compliance with Governmental Requirements.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.
- 35.6. **Conditions of Resolution No. 2017-1077; Site Plan.** The conditions set forth in Village Resolution No. 2017-1077, a copy of which is attached as Exhibit H, and the Major Site Plan attached as Exhibit I, are hereby incorporated into and made a part of this Agreement.
- 35.7. **Construction of Agreement.** The provisions of this Agreement will not be construed more strictly against one party or the other. In construing this Agreement, the singular will include the plural, the plural will include the singular, and reference to any gender will include every other gender.
- 35.8. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
- 35.9. **Entire Agreement.** This Agreement and the Exhibits constitute the sole agreement of the parties with respect to its subject matter. Any prior written or oral agreements, promises, negotiations, representations or communications not expressly set forth in the Agreement are of no force or effect.
- 35.10. **Force Majeure.** If any performance by either party under this Agreement is delayed by a Force Majeure, the deadline for the performance (and any other deadlines dependent on such performance) will be extended for the period of time that performance is delayed by the Force Majeure.
- 35.11. **Governing Law.** This Agreement shall be construed in accordance with, and governed by the laws of, the State of Florida.
- 35.12. **Recording.** Owner, acting on behalf of the Village, shall record this Agreement in the Public Records at Owner's expense within 14 days after the Effective Date. Owner shall provide a copy of the recorded Agreement to Village within 10 days after recording.
- 35.13. **Sections and Subsections.** Cross-references to a specific section of this Agreement will include all subsections of the Section.
- 35.14. **Severability.** Invalidation of any covenant contained in this Agreement by judgment of a court will in no way affect any other provisions of this Agreement, all of which will remain in full force and effect.

**35.15. Successors and Assigns.** The provisions of the Agreement are binding upon the Owner and its successors and assigns, and inure to the benefit of Village. Nothing contained in this Agreement is intended to be a dedication, conveyance or grant to the public in general or to any person or entity unless expressly stated.

- 36. Waiver of Jury Trial.** Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to (a) this Agreement, including any exhibits, or schedules attached to this Agreement; (b) any other document or instrument now or hereafter executed and delivered in connection with this Agreement; or (c) the transactions contemplated by this Agreement. This waiver shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, Village and Owner have executed this Agreement on the dates set forth below their respective signatures.

**[SIGNATURE BLOCKS ON FOLLOWING PAGES]**

Witnesses:

Signature

*A. Huber*

Print name:

*Amy E. Huber*

Signature:

*I. N. Massey*

Print name:

*I. N. Massey*

OWNER:

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

By

*M. Whitman Lazenby*

Matthew Whitman Lazenby, General Partner

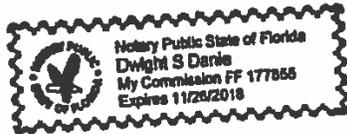
Date:

*7/27/17*

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on July 27, 2017, by Matthew Whitman Lazenby, as the General Partner of Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, who is [] personally known to me or [ ] has produced a valid driver's license as identification.

NOTARY SEAL



*D. S. Darke*

Notary Public, State of Florida

Print name:

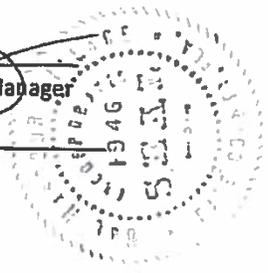
*Dwight S. Darke*

My commission expires:

*11/26/18*

Witnesses:  
Signature: A E Huber  
Print name: Amy E Huber  
Signature: Gail D. Serota  
Print name: Gail D Serota

VILLAGE:  
**BAL HARBOUR VILLAGE**  
By: Jorge M. Gonzalez Village Manager  
Date: 7/27/17



ATTEST:  
D S Danie  
Dwight Danie, Village Clerk

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE VILLAGE ONLY**

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney  
Suzanne S. Stewart

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on July 27 2017, by Jorge M. Gonzalez, as Village Manager of Bal Harbour Village, a Florida municipal corporation, on behalf of the Village. He is personally known to me.

NOTARY SEAL



D S Danie  
Notary Public, State of Florida  
Print name: Dwight S Danie  
My commission expires: 11/26/18

**Exhibit A**

**Legal Description of Existing Shops Property**

**All of the BUSINESS SECTION OF BAL HARBOUR, according to the plat thereof, as recorded in Plat Book 60, at Page 39, of the Public Records of Miami-Dade County, Florida, except for Area Nos. 3 and 4 thereof.**

**Exhibit B**

**Legal Description of Church Site**

**THE COMMUNITY CHURCH PARCEL**

**ORIGINAL COMMUNITY CHURCH TRACT**

THAT PORTION OF TRACT "D" AS SHOWN ON THE PLAT OF THE "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK 44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, OF WHICH THE FOLLOWING IS THE METES AND BOUNDS DESCRIPTION:

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 2 AS SHOWN ON A PLAT ENTITLED "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK 44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, RUN SOUTHEASTERLY ACROSS PARK DRIVE, ALONG THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED SOUTHERLY, A DISTANCE OF 63.64 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY OF TRACT "D" AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 370 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

FROM SAID POINT OF BEGINNING RUN SOUTHWESTERLY ALONG A LINE NORMAL TO THE SAID WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 130 FEET TO A POINT; THENCE RUN SOUTHEASTERLY ALONG A LINE PARALLEL TO THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 150.25 FEET TO A POINT ON A LINE WHICH IS PARALLEL TO AND 20 FEET DISTANT NORTHERLY FROM THE NORTHERLY LINE OF 96TH STREET AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE RUN EASTERLY ALONG A LINE PARALLEL TO AND 20 FEET NORTHERLY OF THE NORTH LINE OF SAID 96TH STREET, A DISTANCE OF 109.99 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE DEFLECTING TO THE LEFT; THENCE RUN ALONG THE ARC OF SAID CIRCULAR CURVE DEFLECTING TO THE LEFT AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 110°35'25", A RADIUS OF 20 FEET AND A TANGENT DISTANCE OF 28.88 FEET, A DISTANCE OF 38.60 FEET TO A POINT; THENCE RUN NORTHWESTERLY ALONG A LINE TANGENT TO THE ABOVE MENTIONED CIRCULAR CURVE ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 170.22 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED.

**AND**

**ADDITIONAL COMMUNITY CHURCH TRACT**

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 2, AS SHOWN ON A PLAT ENTITLED "RESIDENTIAL SECTION OF BAL HARBOUR" RECORDED IN PLAT BOOK 44, AT PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, RUN SOUTHEASTERLY ACROSS PARK DRIVE, ALONG THE WESTERLY LINE OF CAMDEN DRIVE EXTENDED SOUTHERLY, A DISTANCE OF

63.64 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY OF TRACT "D" AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID CAMDEN DRIVE EXTENDED, A DISTANCE OF 370 FEET TO A POINT; THENCE RUN SOUTHWESTERLY ALONG A LINE DEFLECTING 90° TO THE RIGHT, NORMAL TO THE SAID WESTERLY LINE OF CAMDEN DRIVE EXTENDED, A DISTANCE OF 130 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED, SAID POINT BEING THE NORTHWESTERLY CORNER OF THE ORIGINAL COMMUNITY CHURCH PROPERTY; THENCE CONTINUE SOUTHWESTERLY ALONG THE LAST MENTIONED COURSE EXTENDED 26 FEET TO A POINT; THENCE RUN SOUTHEASTERLY ALONG A LINE DEFLECTING 90° TO THE LEFT, PARALLEL TO AND 26 FEET DISTANT SOUTHWESTERLY FROM THE ORIGINAL COMMUNITY CHURCH PROPERTY, A DISTANCE OF 140.485 FEET TO A POINT ON A LINE WHICH IS PARALLEL TO AND 20 FEET DISTANT NORTHERLY FROM THE NORTHERLY LINE OF 96TH STREET AS SHOWN ON THE ABOVE MENTIONED RECORDED PLAT; THENCE RUN EASTERLY ALONG A LINE DEFLECTING 69°24'35" TO THE LEFT, SAID LINE BEING PARALLEL TO AND 20 FEET NORTHERLY FROM THE NORTH LINE OF SAID 96TH STREET, A DISTANCE OF 27.774 FEET TO A POINT, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THE ORIGINAL COMMUNITY CHURCH PROPERTY; THENCE RUN NORTHWESTERLY ALONG A LINE DEFLECTING 110°35'25" TO THE LEFT, SAID LINE BEING THE SOUTHWESTERLY LINE OF THE ORIGINAL COMMUNITY CHURCH PROPERTY, A DISTANCE OF 150.25 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED.

**Exhibit C**

**Legal Description of Fairfield Parcel**

**All of Lot 1, Block 7, of RESIDENTIAL SECTION OF BAL HARBOUR, according to the plat thereof, as recorded in Plat Book 44, Page 98, of the Public Records of Miami-Dade County, Florida.**

**Exhibit D**

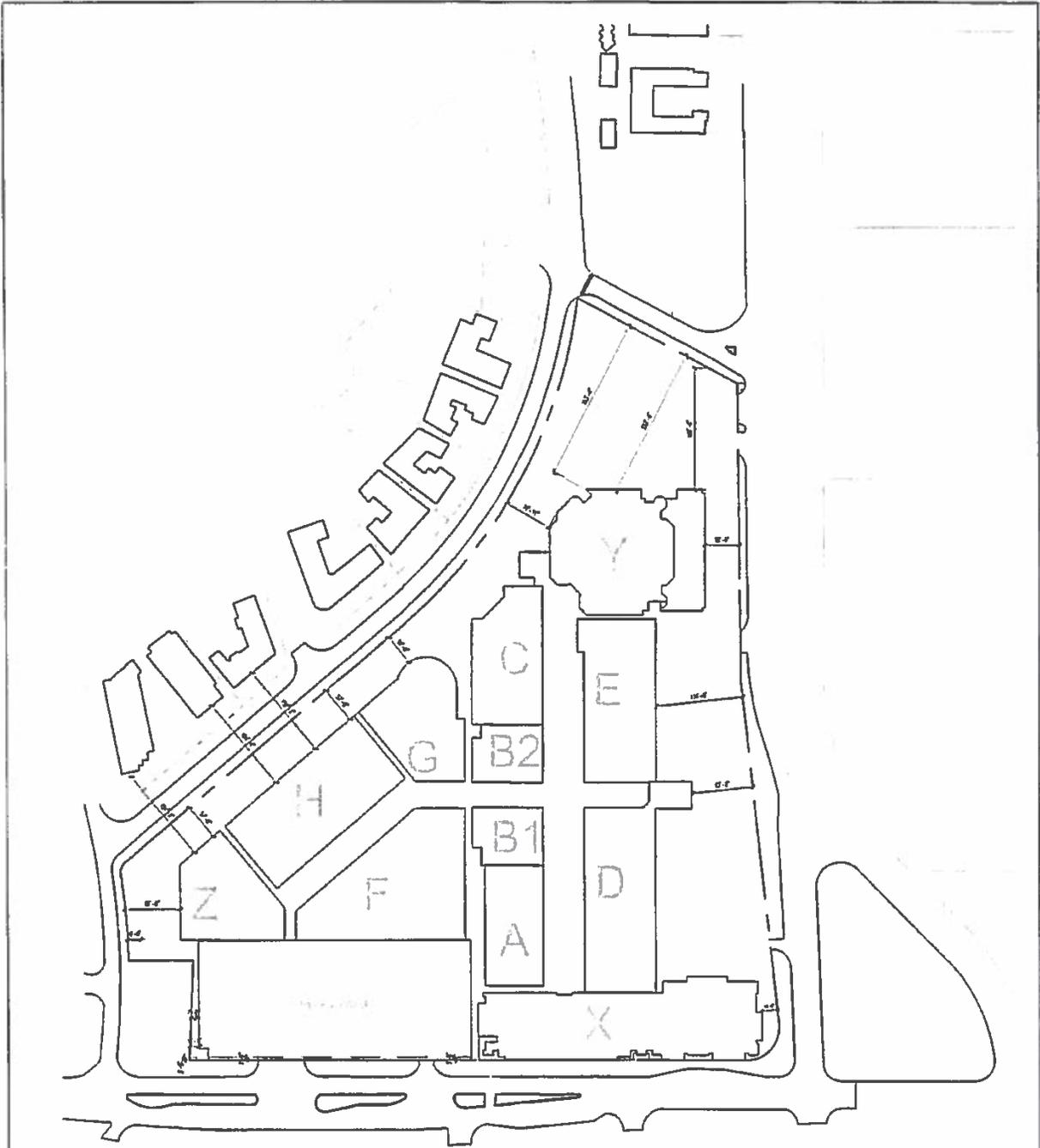
**Legal Description of SunTrust Property**

**All of Tract A, SUN PLAT, according to the plat thereof, recorded in Plat Book 134, Page 67, Public Records of Miami-Dade County, Florida, together with all appurtenances thereto.**

**Exhibit E**

**Sketch Showing Locations of Buildings F, G, H and Z**

**(see following page)**



**Exhibit E - Building Locations**

**1120-Bal Harbour Shops**

Scale = 1" = 200'-0"

July 20, 2017

No copies, reproductions, photocopies, or electronic versions of any portions of these drawings in whole or in part be made without the express written permission of Zyscovich Architects. All drawings indicated in these drawings are property of Zyscovich Architects. All copyright reserved © 2017

**ZYSCOVICH  
ARCHITECTS**

100 14 Biscayne Blvd. 27th Fl.  
Miami, FL 33132-2254  
1 305 372 5222 | 1 305 577 4321

• info@zyscovich.com  
• www.zyscovich.com

**Exhibit F**

**Value of Owner's Contributions**

<b>Land</b>	<b>Value</b>
Fairfield Property	\$16,000,000.00
SunTrust Land Only	\$12,750,000.00
Perpetual Easement on Shops Sidewalks	\$3,607,000.00
<b>Improvements</b>	
New Village Hall w/ Parking	\$15,600,000.00
Pedestrian Area Beautification	\$9,375,000.00
Waterfront Park	\$3,500,000.00
Art in Public Places	\$1,000,000.00
Traffic, Gate, LPR Improvements	\$155,000.00
<b>Rents, Taxes and Fees</b>	
Present Value of Increased Resort Tax	\$13,501,000.00
Present Value of SunTrust Rent	\$12,608,000.00
Present Value of Increased Business Tax	\$9,238,000.00
Present Value of Multimodal Fund Contributions	\$8,710,000.00
Present Value of Increased Ad Valorem Tax	\$8,656,000.00
Present Value of Police Department Free Rent	\$4,216,000.00
Present Value of Off Duty Police Fees	\$3,889,000.00
<b>TOTAL OF ECONOMIC BENEFITS</b>	<b>\$122,805,000.00</b>

**NOTE: Amounts calculated and provided by Owner.**

**Exhibit G**

**Second Modification of Police Department Lease**

**(see following pages)**

**SECOND MODIFICATION OF LEASE**

THIS SECOND MODIFICATION OF LEASE AGREEMENT ("Second Modification") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017 ("Second Modification Date"), by and between BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership ("Landlord"), whose address is 420 Lincoln Road, Suite 320, Miami Beach, Florida 33139, and BAL HARBOUR VILLAGE, a municipality ("Tenant"), whose address is Bal Harbour Village Hall, 655 - 96th Street, Bal Harbour, Florida 33154, Attn: Jorge M. Gonzalez, Village Manager.

**WITNESSETH:**

WHEREAS, Landlord and Tenant are landlord and tenant, respectively, pursuant to that certain Lease dated June 1, 2009, as amended by a Modification of Lease dated March 7, 2017 (collectively, the "Lease") respecting Space No. 280, containing approximately 2,554 square feet of gross leasable area ("Demised Premises"), located in Bal Harbour Shops ("Fashion Center"), Bal Harbour, Florida; and

WHEREAS, the Lease expires by its terms at 11:59 p.m. on March 31, 2018 (the "Expiration Date"), and there is no Security Deposit under the Lease; and

WHEREAS, the parties hereto have agreed to further modify the Lease, subject to and in accordance with the following terms and conditions.

NOW, THEREFORE, for and in consideration of the sum of TEN (\$10.00) DOLLARS, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **RECITALS:** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **EXTENSION OF TERM:** The term of the Lease is hereby extended until the date that Landlord conveys to Tenant the Fairfield Property and the New Village Hall as described in the Development Agreement between Landlord and Tenant dated \_\_\_\_\_ (the "Extended Expiration Date"). The period from and including the day after the Expiration Date to and including the Extended Expiration Date shall be the "Extended Term". The Extended Term shall be upon the same terms and conditions set forth in the Lease, except as modified by this Modification, and there shall be no re-imposition of Landlord's Work, allowances, or rent concessions, if any of the same were provided in the Lease.

3. **ELIMINATION OF RENT AND COMMON AREA CHARGE:** Beginning on the Second Modification Date, there shall be no Minimum Rent or Common Area Charge due from Tenant under this Lease.

4. **TRANSPONDERS:** Landlord hereby agrees to provide to Tenant during the term of the Lease (including all Extended Terms) at no additional charge a number of transponders consistent with the past practices between Landlord and Tenant in order to afford Tenant's police department and designated representatives with free 24-hour access to the parking garages serving

the Demised Premises..

5. **RATIFICATION:** Except as hereby modified, all of the provisions of the Lease are hereby ratified by the parties thereto and confirmed and shall be and remain in full force and effect, and the same are enforceable in accordance with their terms. All terms defined in the Lease used in this Second Modification shall have the meanings ascribed to them in the Lease, unless the context clearly otherwise requires.

6. **MISCELLANEOUS:** (i) Time is of the essence; (ii) this Modification may be signed in separate counterparts and delivered electronically, each of which, when taken together, shall constitute one and the same instrument; (iii) the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns; (iv) except as set forth in this Second Modification, the Lease has not been modified and constitutes the entire understanding between and among the parties in respect to the subject matter hereof; and (v) Tenant hereby covenants, represents and warrants to Landlord that (a) Tenant owns and holds the Tenant's interest in the Lease, as well as all leasehold improvements, furniture, fixtures and equipment, and personalty, and the same are free and clear of all liens, claims and encumbrances of whatsoever kind and nature, and Tenant has paid all personal property and other taxes currently due relating to the same and to the Demised Premises and the Lease, (b) since the Date of Lease, there has been no event which may constitute a "Transfer" under Section 11.9 of the Lease, (c) the person executing this Modification on behalf of Tenant has full right, power and authority so to do, and the same constitutes the legal, valid and binding obligations of Tenant fully enforceable in accordance with the terms hereof, (d) there are no unfulfilled Landlord repairs or other obligations under the Lease, (e) no broker is entitled to a commission arising out of this Modification, and (f) the parties agree that the Lease, as modified by this Modification, shall be governed by Chapter 83, Florida Statutes.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, as of the date first above written.

**WITNESSES:**

\_\_\_\_\_  
[Sign & Print]

\_\_\_\_\_  
[Sign & Print]

\_\_\_\_\_  
[Sign & Print]

\_\_\_\_\_  
[Sign & Print]

**LANDLORD:**

**BAL HARBOUR SHOPS, LLLP,**  
a Florida limited liability limited partnership

By: \_\_\_\_\_  
Print Name: Matthew Whitman Lazenby  
Its: General Partner

**TENANT:**

**BAL HARBOUR VILLAGE,**  
a municipality

By: \_\_\_\_\_  
Jorge M. Gonzalez, Village Manager

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE VILLAGE ONLY**

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney

\_\_\_\_\_

**Exhibit H**

**Resolution No. 2017-1077**

**(see following pages)**

**RESOLUTION NO. 2017-1077**

**A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA  
APPROVING A MAJOR SITE PLAN FOR THE EXPANSION  
OF THE BAL HARBOUR SHOPS, GENERALLY LOCATED  
AT THE NORTHWEST CORNER OF 96<sup>TH</sup> STREET AND  
COLLINS AVENUE; AND PROVIDING FOR CONFLICTS,  
CONDITIONS AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 21-322 of the Bal Harbour Village (“Village”) Code of Ordinances (“Code”), Bal Harbour Shops, LLLP (the “Applicant”) has applied for Major Site Plan approval for the expansion of the Bal Harbour Shops (“Shops”) (the “Application”) on property generally located at the northwest corner of 96<sup>th</sup> Street and Collins Avenue and on a vacant parcel previously occupied by Church By The Sea (the “Church Site”) (collectively, the “Expanded Shops Property”); and

**WHEREAS**, the Applicant proposes to redevelop and expand the Shops (the “Shops Expansion”) in a manner that incorporates the Church Site; and

**WHEREAS**, approval of the Shops Expansion requires approval of this Major Site Plan and a related Development Agreement between the Village and the Applicant (the “Development Agreement”), in which the Applicant proposes to satisfy the mitigation required by Village Code Sections 21-322(f) and (h) by providing the Village with title to the properties adjacent to the Shops known as the Fairfield Property and the Suntrust Property, by constructing another Village Hall or other municipal facility on the Fairfield Property, and by improving Village recreational property, among other public benefits; and

**WHEREAS**, the Applicant concurrently sought and has obtained several development approvals from the Village for the Property, including a Comprehensive Plan Future Land Use

Map Amendment for the Church Site from Institutional to Commercial (the "Small Scale FLUM Amendment") and changes to the text of the Village Code (the "Related Approvals"); and

**WHEREAS**, the Village has considered the Development Agreement at two public hearings, in compliance with Section 163.3225 of the Florida Local Government Development Agreement Act; and

**WHEREAS**, the Village Council conducted a duly noticed public hearing on the Application in accordance with Sections 21-52 and 21-322(f) of the Code;

**WHEREAS**, pursuant to Section 21-322(d), the Architectural Review Board has reviewed the Application and recommended to approve with conditions; and

**WHEREAS**, the Village Council finds that the Major Site Plan and related Development Agreement are consistent with Village's Comprehensive Plan and land development regulations, and that approval of the Application is in the best interest and welfare of the residents of the Village to approve the Major Site Plan and Development Agreement between the Village and the Applicant; and

**WHEREAS**, the Village Council finds and intends that this Resolution shall not be interpreted to prevent the issuance of permits to the existing Shops or tenants of the Shops that are authorized by the existing Comprehensive Plan and Code of Ordinances.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

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

**Section 2.** **Findings.** THIS MATTER came before the Village Council of Bal Harbour Village, Florida, on May 16, 2017. The Village Council having considered the public testimony, Bal Harbour Resolution 2017-1077

evidence in the record, advisory recommendations of the Architectural Review Board and staff, and the testimony of the Applicant, finds that the site plan and intended uses, as conditioned herein:

- (1) Are designed and scaled to be compatible with and avoid depreciation of Adjacent properties and to minimize adverse impacts to Adjacent Development and the surrounding neighborhood by virtue of the proposal's nature, location, design, Building mass, intensity of use, or mitigation measures; and
- (2) Will not create excessive noise, traffic, illumination or other adverse impacts; and
- (3) Provide for safe, efficient, convenient and harmonious groupings of Structures, uses and facilities and for appropriate relationship of space inside and outside of Buildings to intended uses and to structural and architectural features within the site; and
- (4) Uphold the basic intent and purpose of zoning and other land use regulations, observing the spirit of the regulations and assuring public safety and welfare, without tending to create a fire or other equally or more dangerous hazard or provoke the excessive overcrowding or concentration of people or population.

**Section 3. Approval.** The request to approve the Application for Major Site Plan for the Shops Expansion (2017-001) is hereby approved as shown on the plans submitted with the Application, subject to those modifications may be required by the Building Official for the issuance of building permits.

**Section 4. Conditions.** The APPROVAL granted herein is subject to the following conditions:

**General Conditions**

1. The conditions of approval for this project are binding on the applicant, the property owners, tenants, operators, and all successors in interest and assigns.
2. Major modifications to the plans submitted and approved as part of the application, as determined by the Village Manager or designee pursuant to Section 21-322(f) of the Village Code, may require the applicant to return to the Council for approval.
3. All new encroachments along the Collins Avenue and 96th Street right-of-way shall receive FDOT approval prior to the issuance of any building permit that includes such encroachments.

FDOT approval of roadway and driveway connections shall be obtained prior to construction, and the Village shall be included in the consideration of any FDOT variance requests. The Village reserves the right to reconsider its approval if there are substantial modifications by FDOT.

4. All elevations, including the elevations facing Collins Avenue and 96th Street, shall be in substantial compliance with the plans approved by the Council.

5. All driveways shall comply with the requirements of the Village Code.

6. All landscaping shall comply with Chapter 18A of Miami-Dade County Code, and all Village requirements.

7. All building signage shall undergo a separate approval and permit process and shall comply with all Code requirements in effect at the time of approval.

8. Only those encroachments depicted on Exhibit M are allowed. Additional structures shall not be placed on public rights of way, and sight triangles shall be maintained, with no landscaping or barrier over 30 inches in height, unless otherwise approved by the Village Manager

9. The display windows along 96th Street shall be maintained with merchandise or representations thereof at all times and shall not be used as billboards for general advertising purposes.

10. The effectiveness of the approval of the Master Site Plan and Development Agreement is contingent on the effectiveness of the small-scale comprehensive plan map amendment, which cannot occur until the Village adopts its EAR-based comprehensive plan amendments as required by state law. Site preparation activities and the boundary wall along Park Avenue that are consistent with the existing Comprehensive Plan can proceed prior to the comprehensive plan amendment becoming effective.

#### **Construction Conditions**

1. Prior to the issuance of a building permit for each phase of construction, a Method of Transportation (MOT) shall be submitted to the Village Manager or designee for review and approval prior to FDOT review and the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site including a detailed explanation of how deliveries will be conducted during the various phases of construction.

2. For the entire duration that the Fairfield Manor site is used as a staging or construction site, the property will be kept in orderly condition, free of litter, debris or other nuisances. The property

shall be entirely enclosed by a sturdy wood (or appropriate alternate material) fence and screened by a hedge or other vegetation so as to minimize the visibility of the site.

**Landscape/Buffer Conditions**

1. Prior to the issuance of a building permit, the applicant shall submit a revised landscape plan to the Village Manager or designee for approval. This condition shall not apply to the issuance of permits to renovate the existing shopping center and or tenants of the center.

2. The design of the 20' tall buffer wall along Park Drive shall be submitted to the Village Manager or designee for review and recommendation, which shall not be unreasonably withheld, and to the Village Council for approval, of its design, quality, appearance and compatibility with neighboring properties prior to the issuance of a building permit, and shall be entirely landscaped so that it is not visible from Park Drive to the maximum extent possible. The landscaping shall be maintained by the applicant.

3. The construction of the 20' tall buffer wall along Park Drive shall be constructed as one of the initial elements of Phase 1 of the project.

4. The applicant shall continue to refine the design of the rooftop parking deck. Additional landscaping areas and shade trees or a variety of plantings shall be provided, along with the possibility of adding architectural shade structures to add visual interest from the adjacent properties that may have a view of this parking area.

5. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, so long as such screens do not interfere with the operation of such equipment, in a manner to be reviewed and approved by staff.

6. The new parking structure façade along 96th street shall be designed in such a manner to minimize the structure's exterior appearance as a parking garage and to minimize any light pollution or noise that may emanate from the structure or vehicles that will be parked in the structure.

**Traffic Flow Conditions**

1. The applicant shall work with the Village staff to explore the redesign of the main entrance from Collins Avenue to accomplish an angle of entry as close to 90 degrees as possible.

2. The applicant shall work with Village staff to ensure that the redesign of the medians along Collins Avenue do not negatively affect the egress and ingress from the proposed new Village Hall site.

3. The applicant shall redesign, in a manner to be approved by staff, the proposed new North Driveway ticket/pay booths moving them as far into the site near the curve as possible for the purpose of adding additional vehicular queuing, so long as it does not adversely affect vehicle circulation. Alternatively, the applicant may consider removing the pay booths entirely and using alternative methods for paid parking (pay by plate, flat rates, etc.).

4. Because the plans indicate that the Collins Plaza parking area will be valet-only, the applicant shall remove the parking ticket dispensers from the secondary (valet only) entrance from Collins Avenue. The applicant shall also remove the parking pay booths from the secondary (valet only) exit to Collins Avenue.

5. A vehicular and exterior pedestrian way-finding signage plan shall be provided.

6. The one-way westbound driveway from Barneys/Building Z to the north shall be redesigned to become a two-way drive.

7. The applicant shall work with the Village staff to explore improvements to the valet pick-up and drop-off design at the Barneys/Building Z entrance to minimize congestion and provide safer access.

8. The applicant shall work with the Village staff to explore the redesign of the valet pick-up on the main driveway next to Neiman Marcus and provide a dedicated pick-up area to improve safety.

#### **Pedestrian/Public Realm Conditions**

1. The applicant shall remove 10 parking spaces and trees in planters located adjacent to the pedestrian-only central walkway of the Collins Plaza in order to create a pedestrian promenade of a consistent width (at least 60 feet wide) connecting from the sidewalk along Collins Avenue to the Porte Cochere entrance to the Shops.

2. The applicant shall work with the Village staff to establish a pedestrian access from 96th Street directly from the street on the Shops' property into the site, along the western end of the project, that minimizes pedestrian conflicts with vehicular traffic.

3. Applicant and Village will work to provide a better pedestrian experience along Collins Avenue fronting the proposed expansion to Neiman Marcus. Topics to be explored may include but are not limited to: the sidewalk should be expanded, the valet-only street should be minimized to enhance pedestrian access, and the paving treatment should be modified to reinforce pedestrian access similar to the plaza areas.

4. The applicant shall develop and install adequate pedestrian safety devices (i.e. stamped crosswalks, pedestrian activated traffic light control devices, lighting and signage) along the main entrances to the Shops at the new northern entrance from Collins Avenue and the new southern entrance to the main parking structure from 96th street to ensure safe and easy use by pedestrians.

5. The North/South service corridors along the Collins-facing facades of the existing mall buildings on either side of the Collins Avenue valet pick-up shall be studied, and aesthetic improvements or landscaping or both may be incorporated into the plans.

#### **Loading and Service Areas**

1. Fully enclosed air conditioned trash room(s) that are sufficiently sized to handle the trash load for all restaurants on site shall be required located in a manner to be approved by Village Manager or designee, which shall not be unreasonably withheld. Doors shall remain closed and secured when not in active use.

2. Trash dumpster covers shall be closed at all times except when in active use.

3. Delivery trucks shall not be allowed to idle unnecessarily in the loading areas.

4. The delivery area fronting 96th Street shall have a gate, designed in a manner consistent with the overall architecture of the façade and shall remain closed except during actual reasonable delivery periods.

5. Delivery and trash trucks shall only be permitted to park in the designated loading areas.

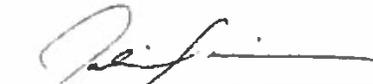
6. With the exception of deliveries to Neiman Marcus, Barney's and food establishments, deliveries from the Collins Avenue entrance shall take place only between 8:30am and 5:00pm. These restrictions shall not apply to the 96th Street delivery entrance.

7. Prior to the issuance of a building permit, the applicant shall provide Village staff, for review and approval, a drawing showing the proposed routes / locations for all delivery vehicles both during construction and during the operation of the expanded project.

**Section 5. Violation of Conditions.** Failure to adhere to the terms and conditions of this Resolution shall be considered a violation of the Village Code and persons found violating the conditions shall be subject to the penalties prescribed by the Village Code, including but not limited to, the revocation of any of the approval(s) granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Village Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the Village at any time upon a determination that the Applicant is not in compliance with the Village Code or the conditions of this Approval.

**Section 6. Effective Date of Resolution.** This Resolution shall become effective upon the effective date of the Small Scale FLUM Amendment. If the Small Scale FLUM Amendment is timely challenged, then the Master Site Plan approval may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted Small Scale FLUM Amendment is in compliance.

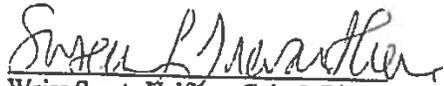
PASSED AND ADOPTED this 16th day of May, 2017.

  
\_\_\_\_\_  
Gabriel Groisman, Mayor

ATTEST:

  
  
\_\_\_\_\_  
Dwight S. Danie, Village Clerk

Approved as to Form and Sufficiency For Use and  
Reliance of Bal Harbour Village Only



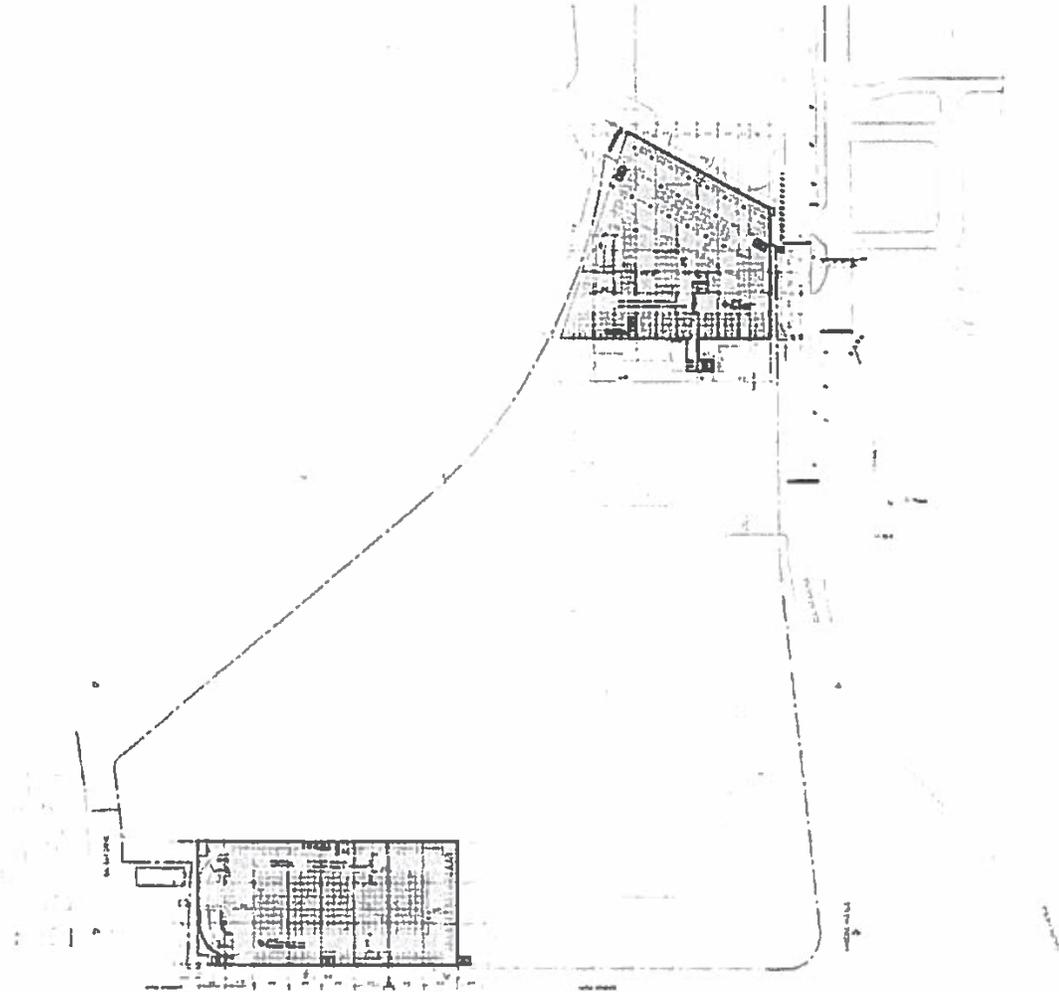
Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

**Exhibit I**

**Major Site Plan approved by Bal Harbour Village Resolution No. 2017-1077**

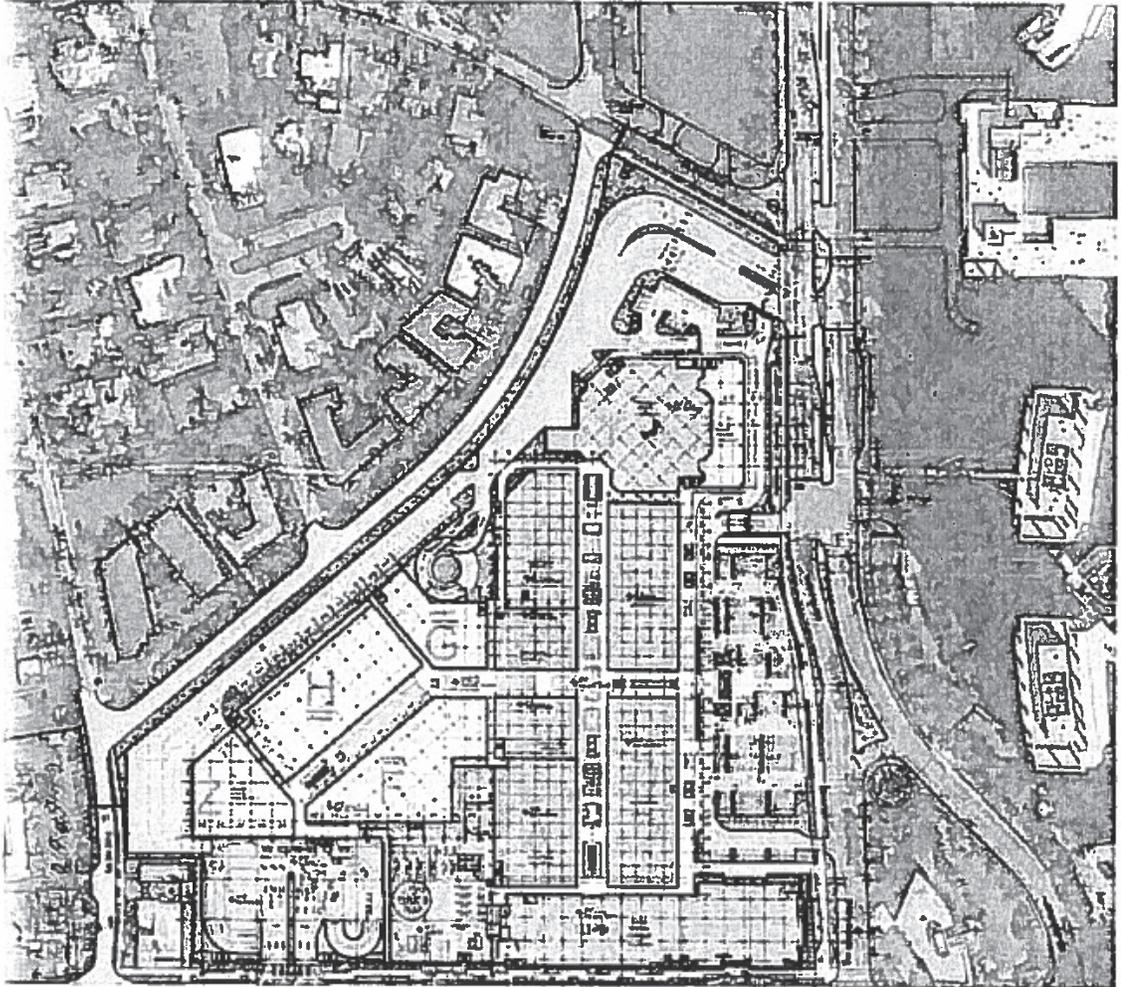
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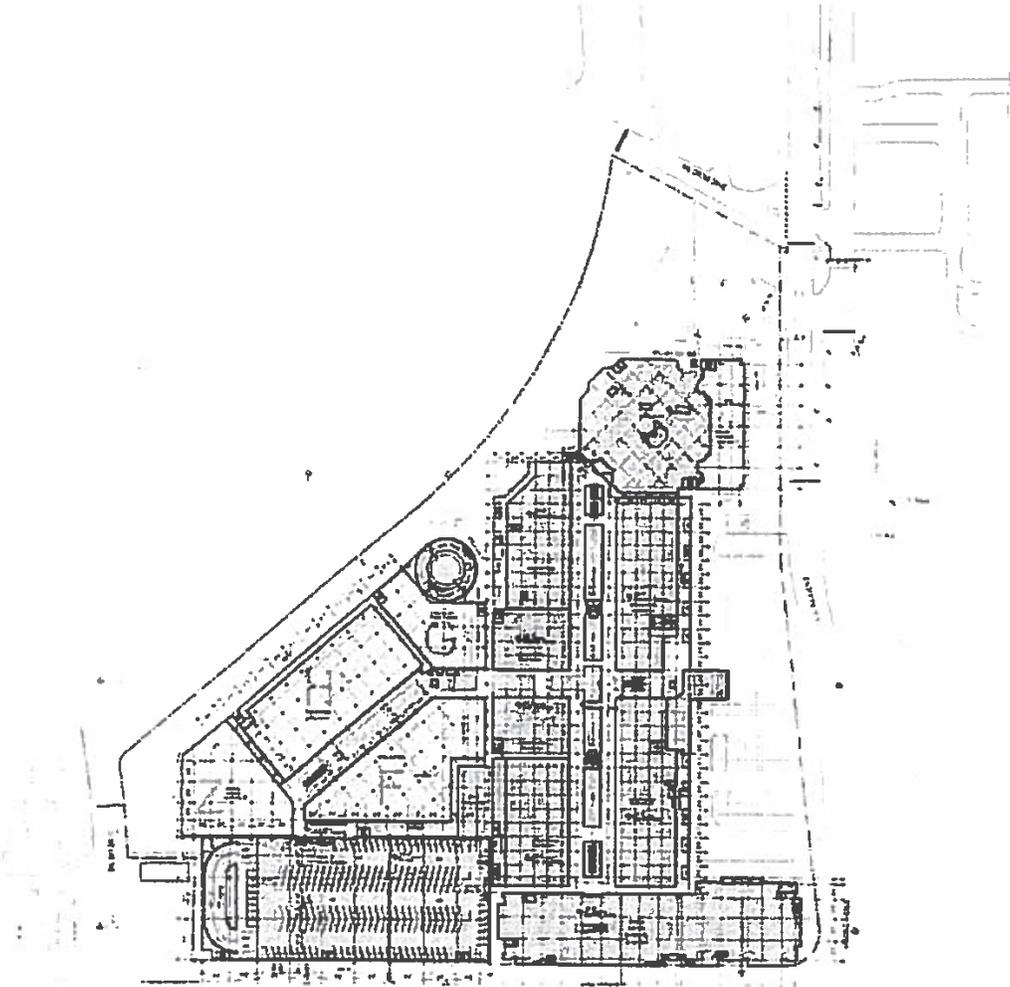


**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**



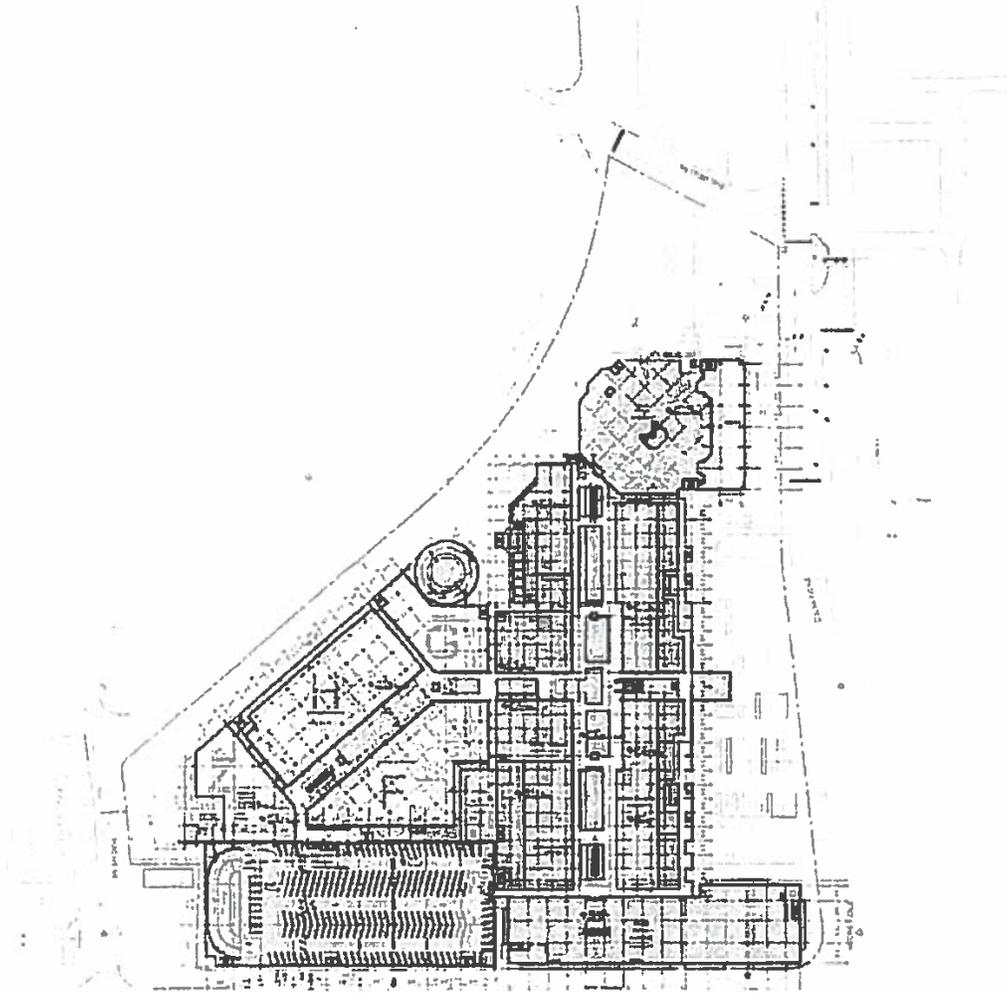


**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**



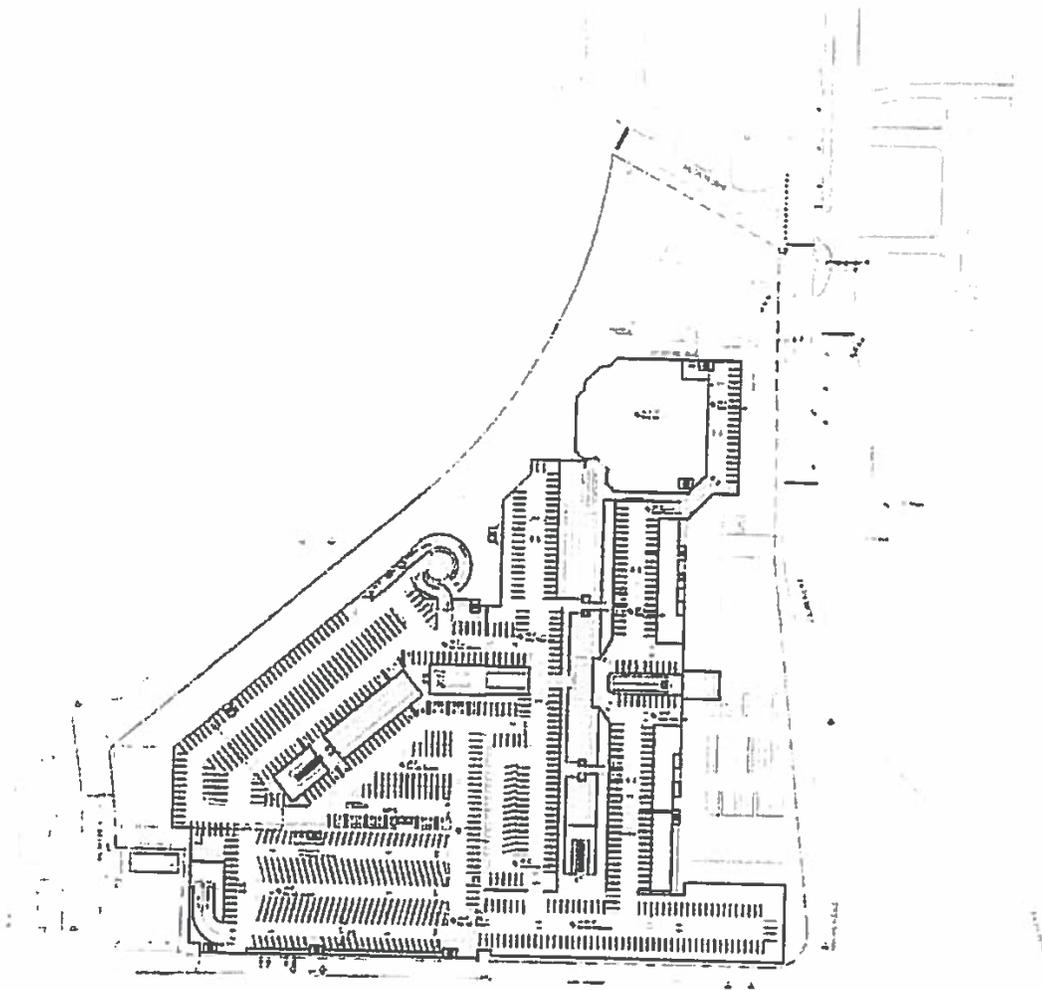
**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**

<p><b>EXHIBIT I</b></p> <p><small>NO PARTS OF THIS PLAN SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM ZYSCOVICH ARCHITECTS. ALL RIGHTS RESERVED © 2017</small></p>	<p><b>Bal Harbour Shops</b></p>	<p>Bal Harbour, FL</p>	<p><b>ZYSCOVICH</b>          ARCHITECTS</p> <p><small>201708, 201709, 201710          Project No. 1002-1704          P. 045-278-0134          F. 305-531-6000</small></p> <p><small>© Zyscovich Architects          www.zyscovich.com</small></p>
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**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**

<p><b>EXHIBIT I</b></p> <p><i>(to correct, amend, modify, supplement or otherwise revise the text of any exhibit of this exhibit or to make any other change to the exhibit without permission of the Board of Architects. All exhibits indicated in these drawings are the property of Zyscovich Architects. All rights reserved © 2017)</i></p>	<p><b>Bal Harbour Shops</b></p>	<p><b>Bal Harbour, FL</b></p> <p><b>ZYSCOVICH</b></p> <p>10100 BAYVIEW BLVD, SUITE 1000        MIAMI, FL 33154        305.574.1000        www.zyscovich.com</p>	<p><b>July 20, 2017</b></p> <p><b>Zyscovich &amp; Associates</b>        www.zyscovich.com</p>
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**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**

**EXHIBIT I - Major Site Plan**  
 All copies of this document are hereby approved for the purpose of these plans and in accordance with the terms and conditions of the contract between the undersigned and the City of Bal Harbour. All copies of these plans and drawings are the property of Zyscovich Architects, Inc. and shall remain the property of Zyscovich Architects, Inc. Copyright © 2017.

**Bal Harbour Shop**

Bal Harbour, FL

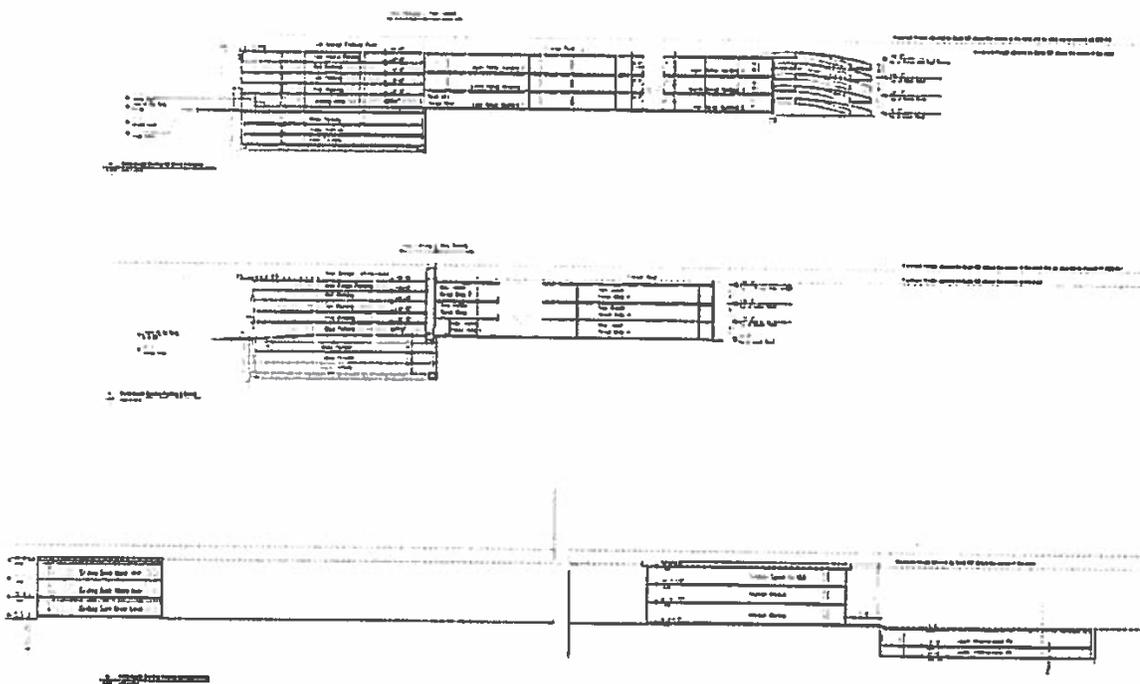
July 20, 2017

**ZYSCOVICH**  
 ARCHITECTS

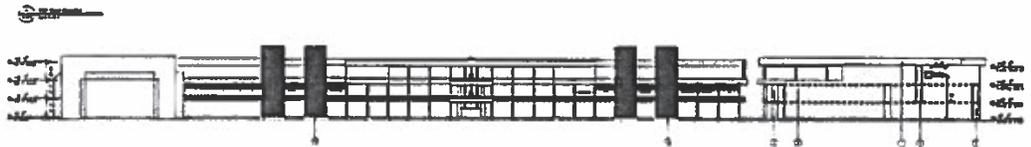
10516 Biscayne Blvd, Suite 200  
 Miami, FL 33146  
 Tel: 305.556.1111  
 Fax: 305.556.1112

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 www.zyscovich.com





**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**

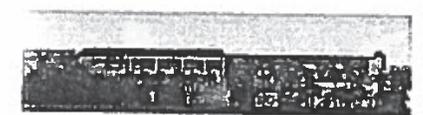
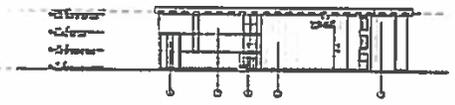
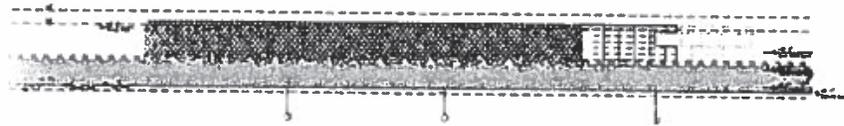


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## Exhibit I - Major Site Plan

### Approved by Bal Harbour Village Resolution No. 2017-1077

<p style="font-size: small; margin: 0;">All notes, specifications, conditions or electronic revisions of any portion of these drawings in whole or in part to be made through the written permission of Zyscovich Architects. All drawings indicated in these drawings are property of Zyscovich Architects. All copyrights reserved to 2017.</p>		<p style="font-size: x-small; margin: 0;">Bal Harbour, FL</p>	<p style="font-size: x-small; margin: 0;">July 20, 2017</p>
<p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p>	<p style="font-weight: bold; font-size: small; margin: 0;">ZYSKOVICH</p> <p style="font-size: x-small; margin: 0;">ARCHITECTS</p>	<p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p>	<p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p> <p style="font-size: x-small; margin: 0;">12511A - 0000164 - 0000</p>



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9	NEW SIGN WITH LIGHTING
10	NEW SIGN WITH LIGHTING AND SIGN

## Exhibit I - Major Site Plan Approved by Bal Harbour Village Resolution No. 2017-1077

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Bal Harbour Shops

Bal Harbour, FL

July 20, 2017

ZYSCOVICH  
ARCHITECTS

2341 E. BAYVIEW BLVD. #200  
MIAMI, FL 33133  
305.775.1100  
305.775.4418

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www.balharbour.com

**Exhibit J**

**Fairfield Property Title Exceptions**

1. Taxes and assessments for 2017 and subsequent years.
2. Building, zoning and subdivision laws, ordinances, state and federal regulations;
3. Covenants, conditions, restrictions and declarations filed in the public real estate records;
4. Matters which would be shown on a survey.
5. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land;
6. Development Agreement between the Village of Bal Harbour, Florida, and Bal Harbour Shops, LLLP, recorded in Official Records Book \_\_\_\_, Page \_\_\_\_.
7. Grant of Utility Easement from Bal Harbour Shops, LLLP in favor of the Village of Bal Harbour, Florida, recorded in Official Records Book \_\_\_\_, Page \_\_\_\_.
8. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of RESIDENTIAL SECTION OF BAL HARBOUR, as recorded in Plat Book 44, at Page 98.
9. Easements as set forth in Section 14 of that certain Warranty Deed recorded in Deed Book 3430, Page 298, as affected by Assignment and Assumption recorded in Deed Book 4022, page 153; Resolution and Declaration of Amendments to Covenants and Restrictions for the Residential Section of Bal Harbour recorded in Official Records Book 11640, page 137; Resolution and Declaration Concerning the Covenants and Restrictions for the Residential Section of Bal Harbour recorded in Official Records Book 11672, Page 267; Resolution and Declaration Concerning the Covenants and Restrictions for the Residential Section of Bal Harbour recorded in Official Records Book 11686, Page 931; and Assignment and Confirmation of Assignment recorded in Official Records Book 15377, Page 3530.
10. Easements granted to Bal Harbour Village by instrument recorded in Official Records Book 17643, Page 1593.
11. Reservation of easement for ingress, egress, access and subsurface construction by Grantor and Grantor's affiliates and their respective agents, employees and contractors, and their successors and assigns, under, over, and across the portion of Bal Cross Drive abutting the Property.

**NOTE:** All recording references are to the Public Records of Miami-Dade County, Florida.

Exhibit K

**SunTrust Property Title Exceptions**

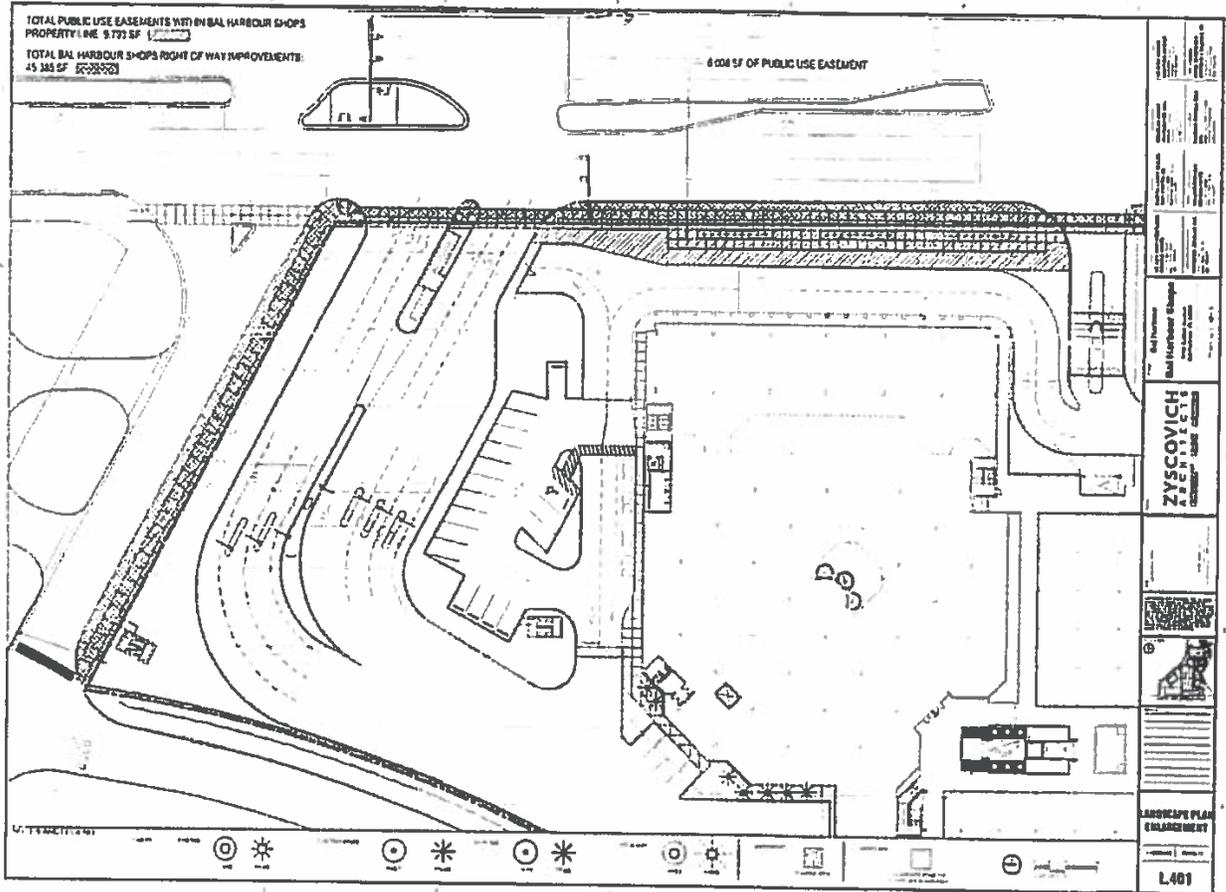
1. Taxes and assessments for 2017 and subsequent years.
2. Building, zoning and subdivision laws, ordinances, state and federal regulations;
3. Covenants, conditions, restrictions and declarations filed in the public real estate records;
4. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land;
5. Development Agreement between the Village of Bal Harbour, Florida, and Bal Harbour Shops, LLLP, recorded in Official Records Book \_\_\_, Page \_\_\_;
6. Restrictions, dedications, conditions, reservations, easements and other matters shown on the Plat of SUN PLAT, as recorded in Plat Book 134, Page 67, of the Public Records of Miami-Dade County, Florida.
7. Terms, conditions, and easements as contained in that Utility Easement, Bill of Sale and Agreement made by and between SunTrust Bank, and Bal Harbour Village, recorded April 4, 2000 in Official Records Book 19053, Page 4236, of the Public Records of Miami-Dade County, Florida.
8. Terms and conditions as contained in that Lease Agreement and Master Agreement Regarding Leases made by and between Inland American St Florida Portfolio, L.L.C., as landlord, and SunTrust Bank, as tenant, as referenced by that Memorandum of Lease Agreement, including but not limited to, the right of first refusal to purchase property held by tenant, recorded December 26, 2007 in Official Records Book 26127, Page 2494, of the Public Records of Miami Dade County, Florida.
9. Grant of Easement in favor of American Traffic Solutions, Inc., recorded March 15, 2010 in Official Records Book 27214, Page 575, re-recorded August 12, 2010 in Official Records Book 27386, Page 1773, all of the Public Records of Miami-Dade County, Florida.
10. Any lien or claim of lien for services, labor or materials which may take priority over the estate or interest insured by reason of that certain Notice of Commencement dated September 11, 2012 and recorded September 12, 2012 in Official Records Book 28268, Page 3434, of the Public Records of Miami-Dade County, Florida.
11. Survey prepared by South Florida Land Surveyors/ Inc., dated November 19, 2012 under Job No. 07-1497B shows the following:
  - a. Sign crosses over property line;
  - b. F.P.L. pad crosses over property line;
  - c. Brick pavers cross over property line;
  - d. Concrete, stone and asphalt sidewalk cross over property line;
  - e. Concrete pad crosses over property line;

- f. Electric service crosses over property line;
- g. Asphalt pavement crosses over property line;
- h. Asphalt pavement, concrete curb, concrete pavement, C.B.S. building and overhead canopy encroach into 10 foot utility easement;
- i. Asphalt pavement, concrete curb, concrete pavement, C.B.S. building, overhead canopy and concrete steps encroach into water main easement;
- j. Sign, concrete curb, asphalt pavement, concrete pavement and overhead canopy encroach into 20 foot utility and access easement; and
- k. Concrete stone and asphalt sidewalk, concrete slab, concrete curb and concrete pavement encroach into 6 foot utility easement;
- l. C. B.S. Building encroaches on 10 foot Utility Easement on North Side.
- m. C.B.S. Building encroaches on Water Main Easement on North Side.

All recording references to the Public Records of Miami-Dade County, Florida.

**Exhibit L**  
**Public Use Areas**  
**(see following pages)**





TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS PROPERTY LINE 9,723 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS: 45,385 SF

6,008 SF OF PUBLIC USE EASEMENT

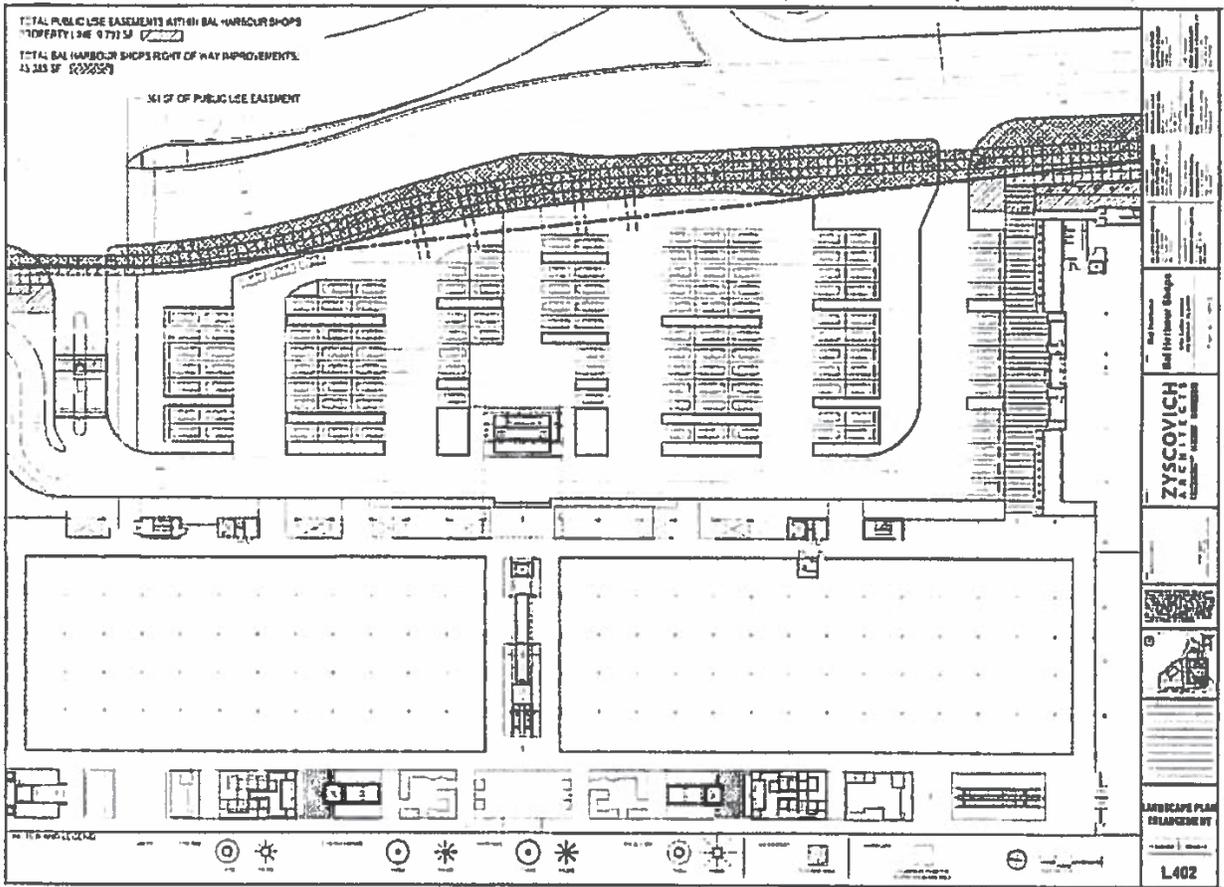
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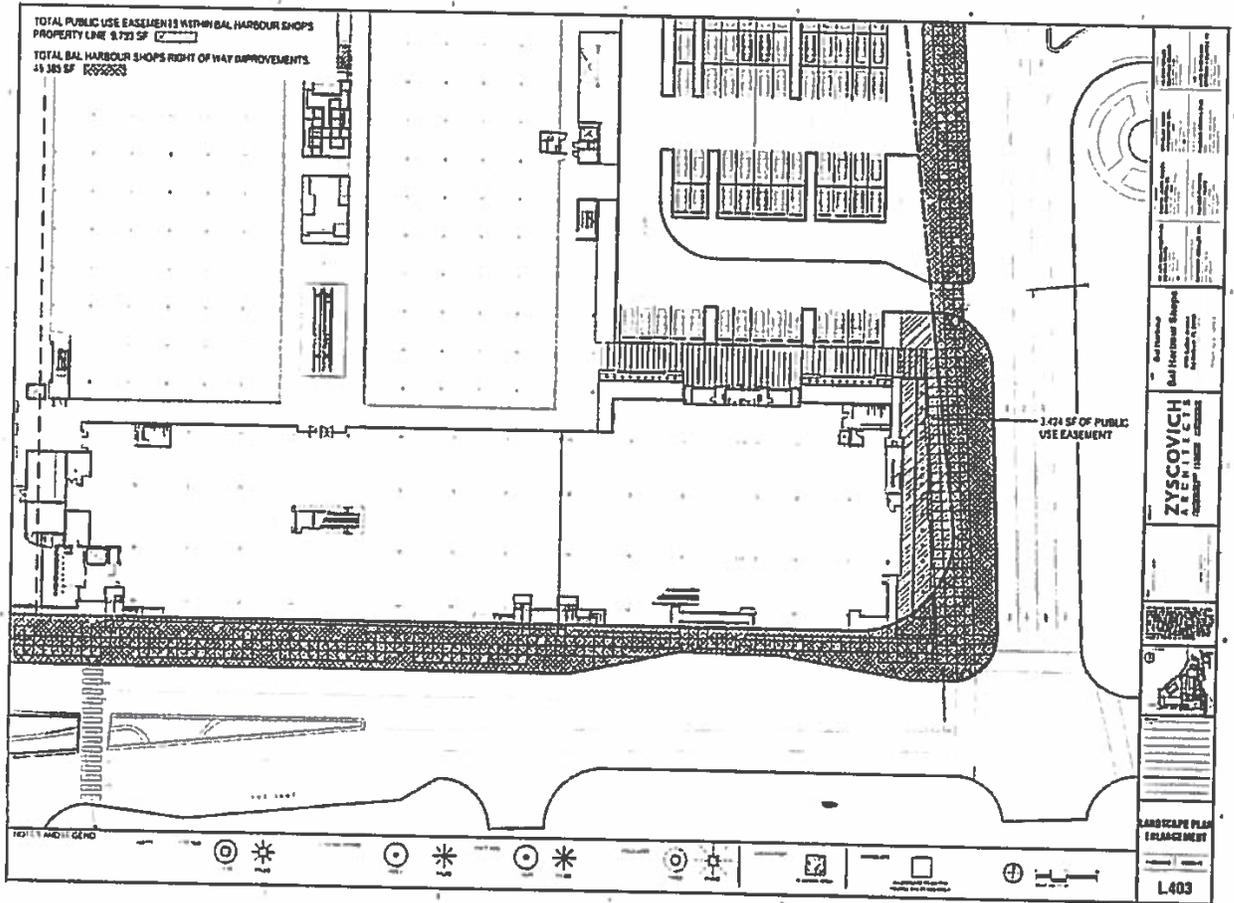
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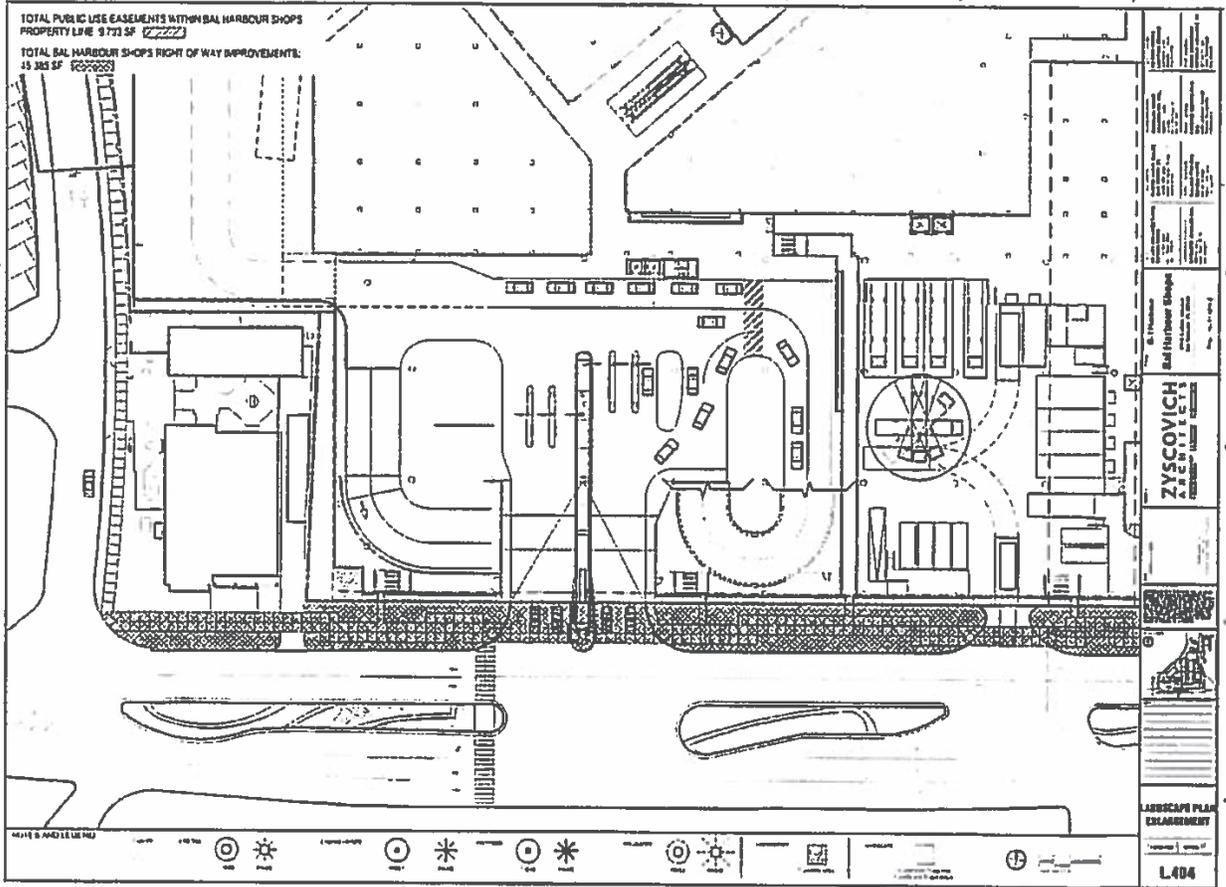
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 1000 WEST 15TH AVENUE  
 SUITE 100  
 DENVER, CO 80202  
 (303) 733-1111  
 WWW.ZYSCOVICHARCHITECTS.COM

LANDSCAPE PLAN  
 ENLARGEMENT

L.401





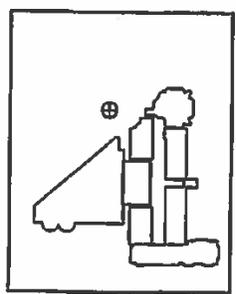


**Exhibit M**  
**Project Encroachments**  
**(see following pages)**

# EXISTING ENCROACHMENTS

Encroachment Diagram 1

— ■ — PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    SURVEY



**1120-Bal Harbour Shops**

1"=30'

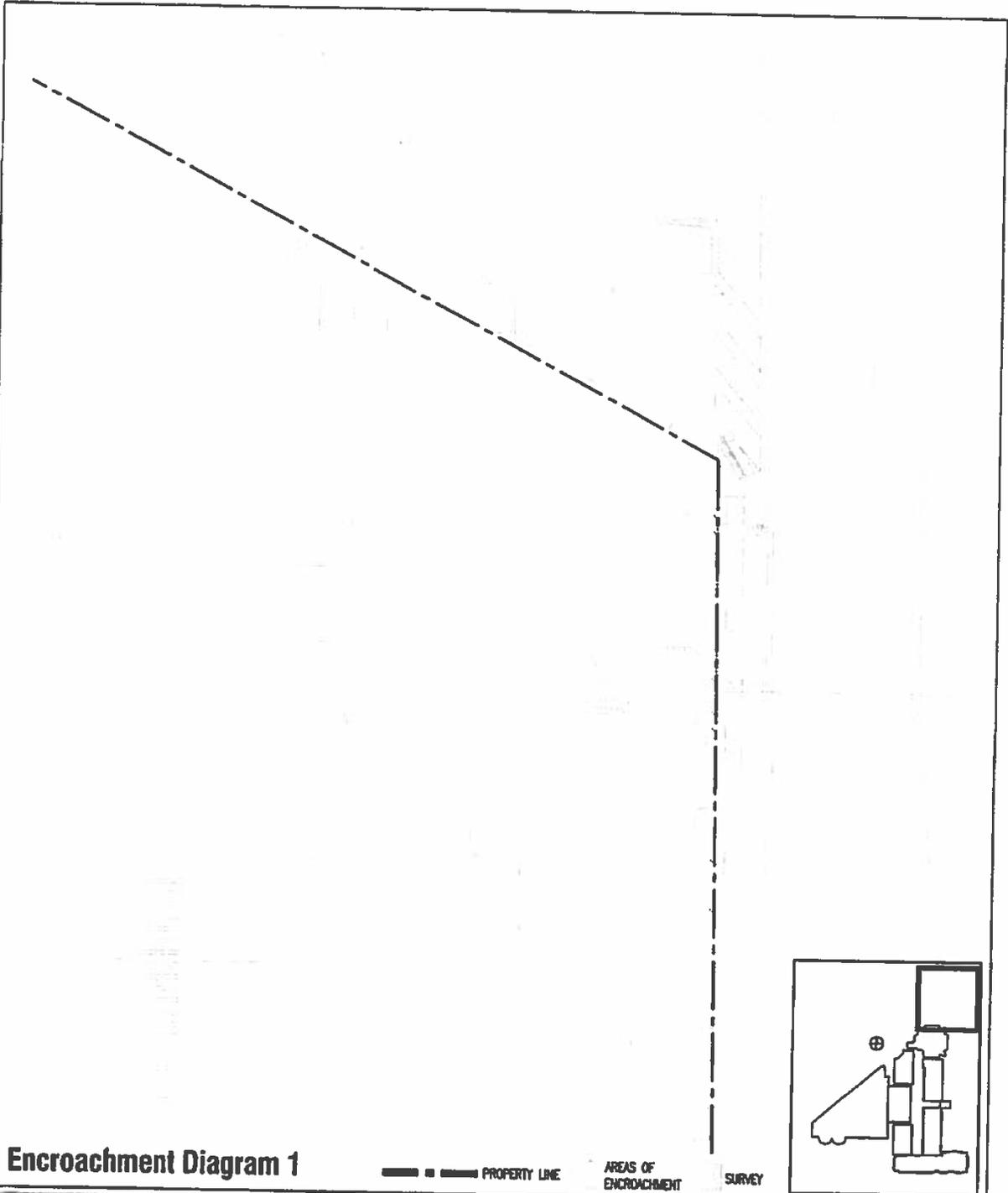
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**Encroachment Diagram 1**

**1120-Bal Harbour Shops**

1"=30'

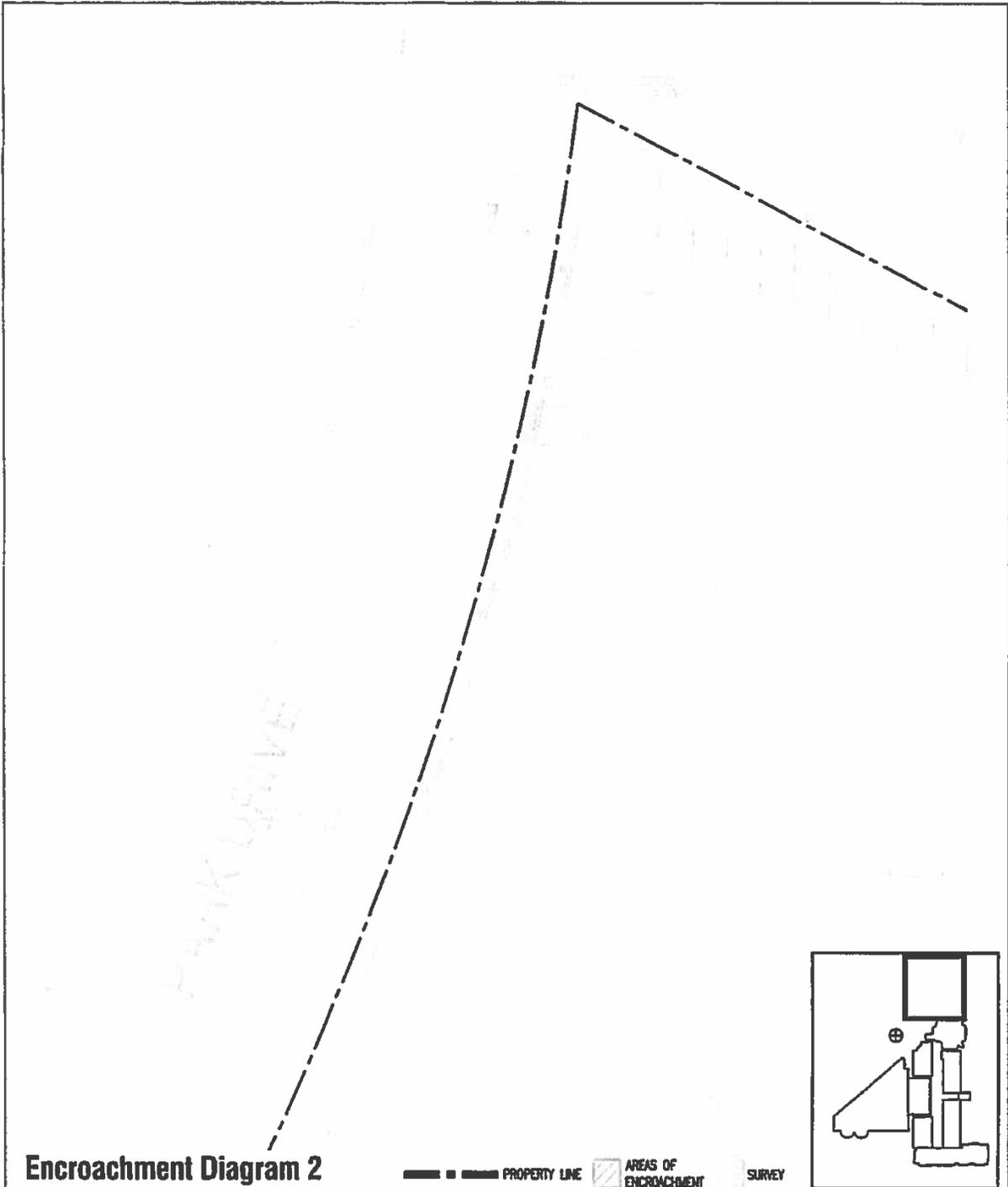
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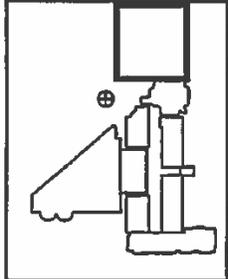
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w www.zyscovich.com



**Encroachment Diagram 2**

**PROPERTY LINE**

**AREAS OF ENCROACHMENT**
**SURVEY**



**1120-Bal Harbour Shops**

**1"=30'**

**May 9, 2017**

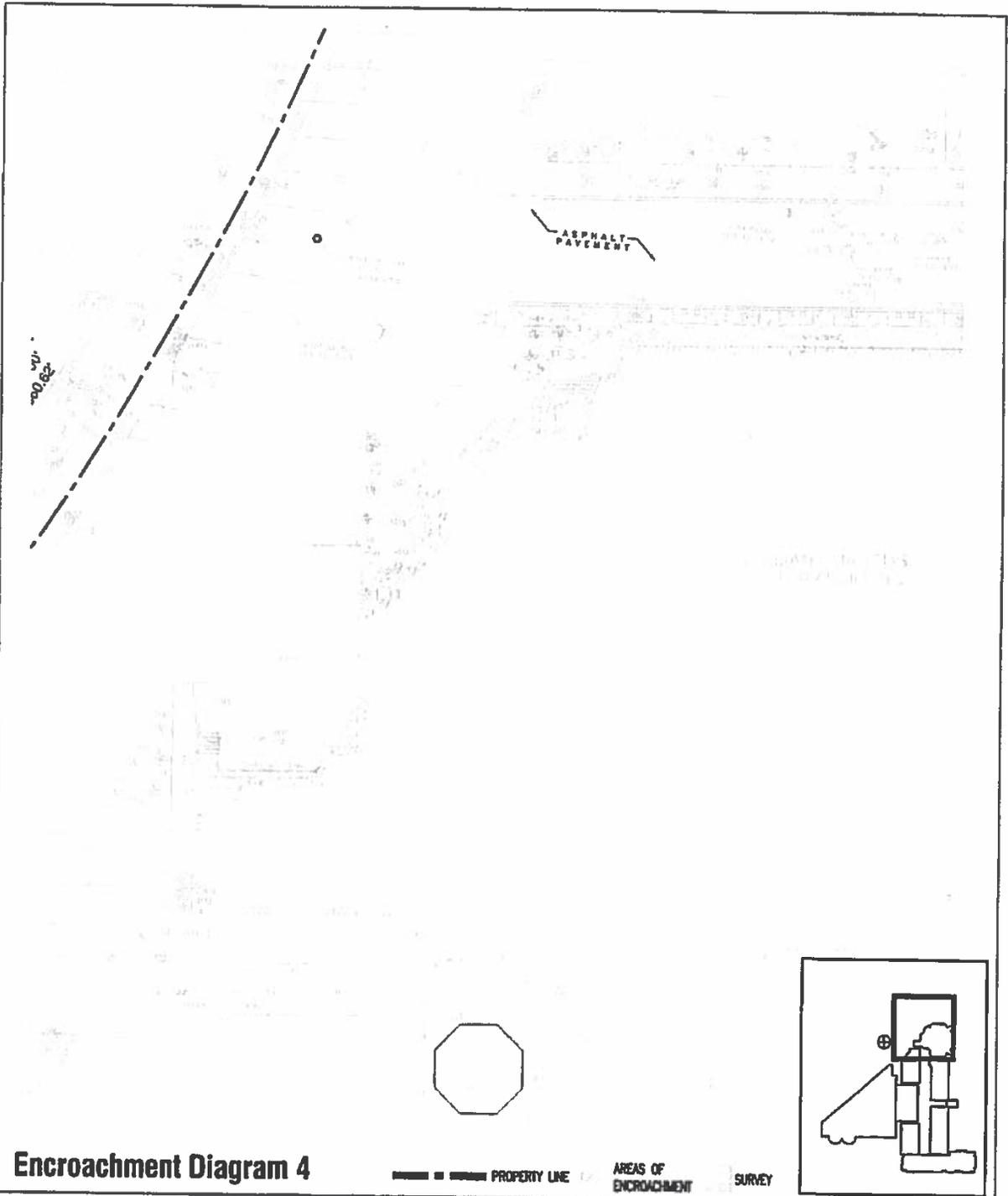
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**Encroachment Diagram 4**

**1120-Bal Harbour Shops**

1"=30'

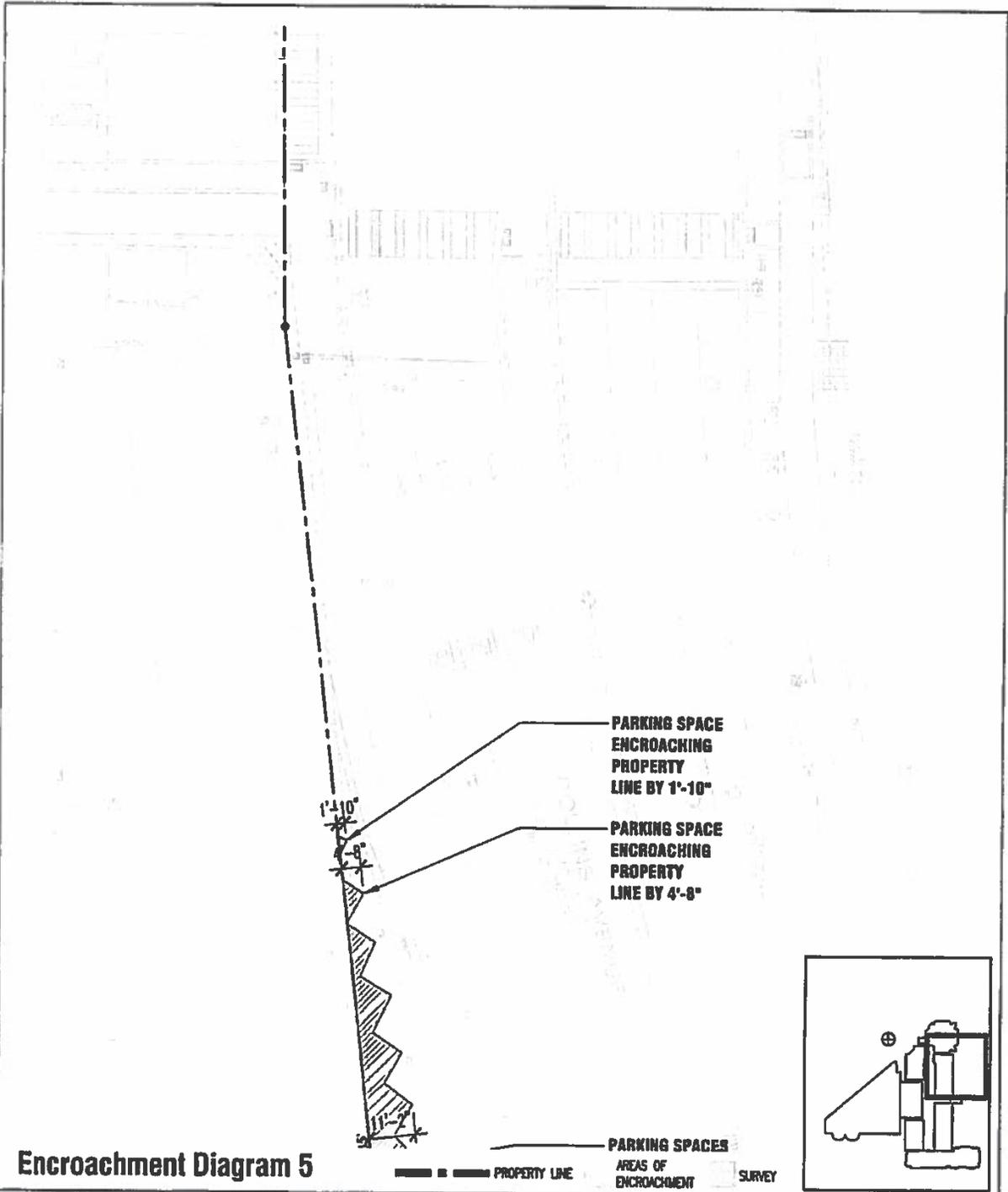
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**Encroachment Diagram 5**

**1120-Bal Harbour Shops**

1"=30'

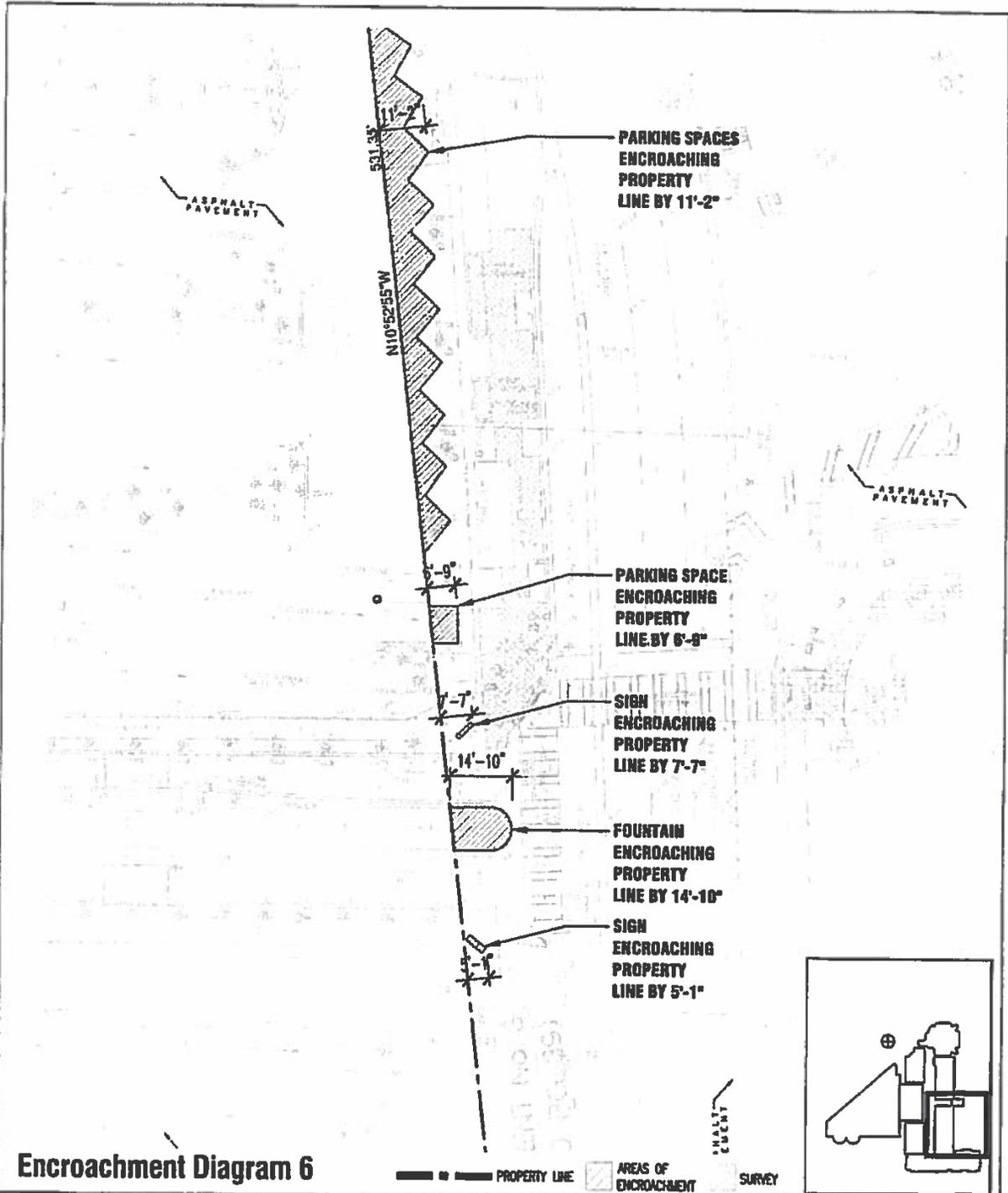
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**Encroachment Diagram 6**

**1120-Bal Harbour Shops**

1"=30'

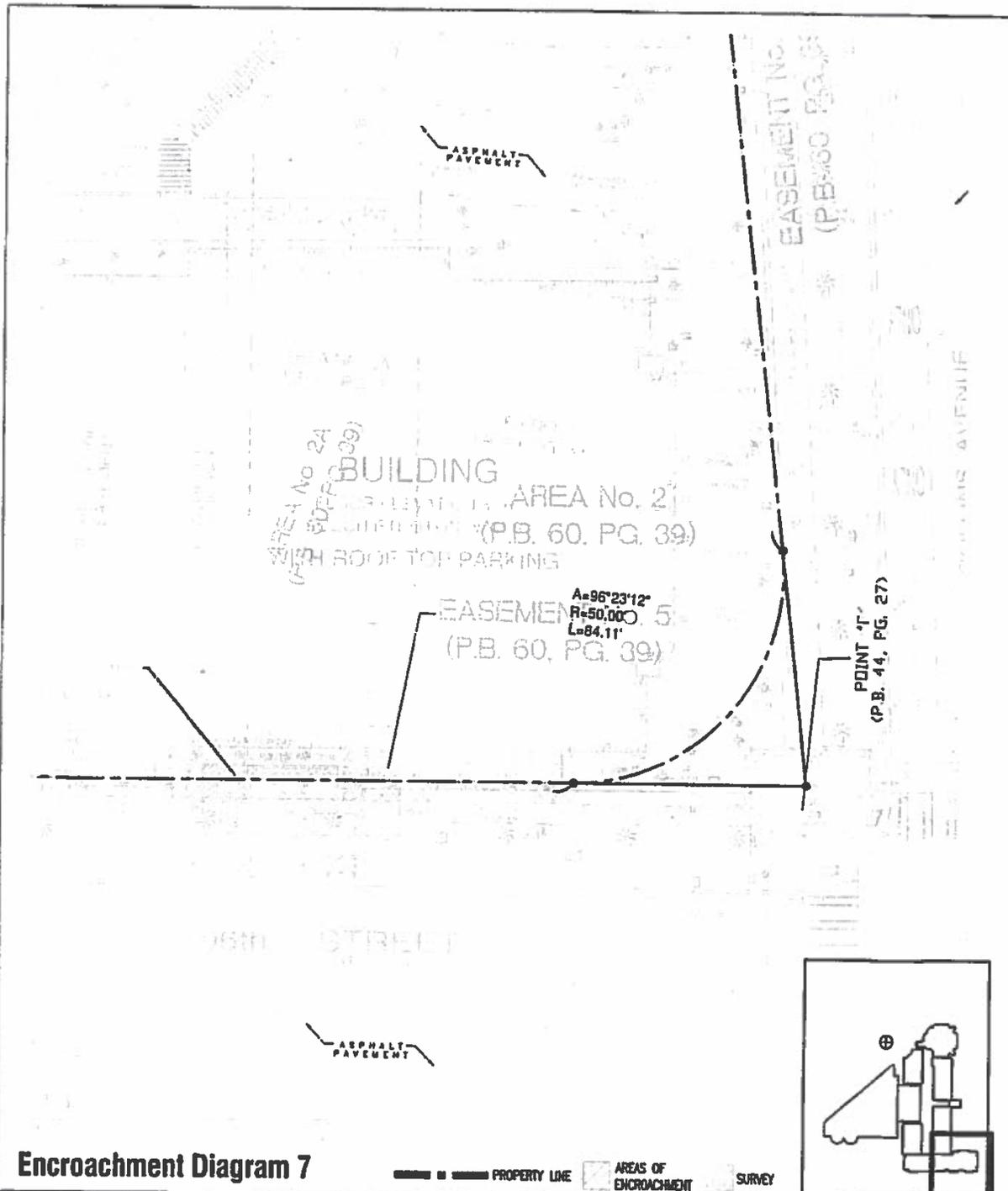
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**Encroachment Diagram 7**

**1120-Bal Harbour Shops**

1"=30'

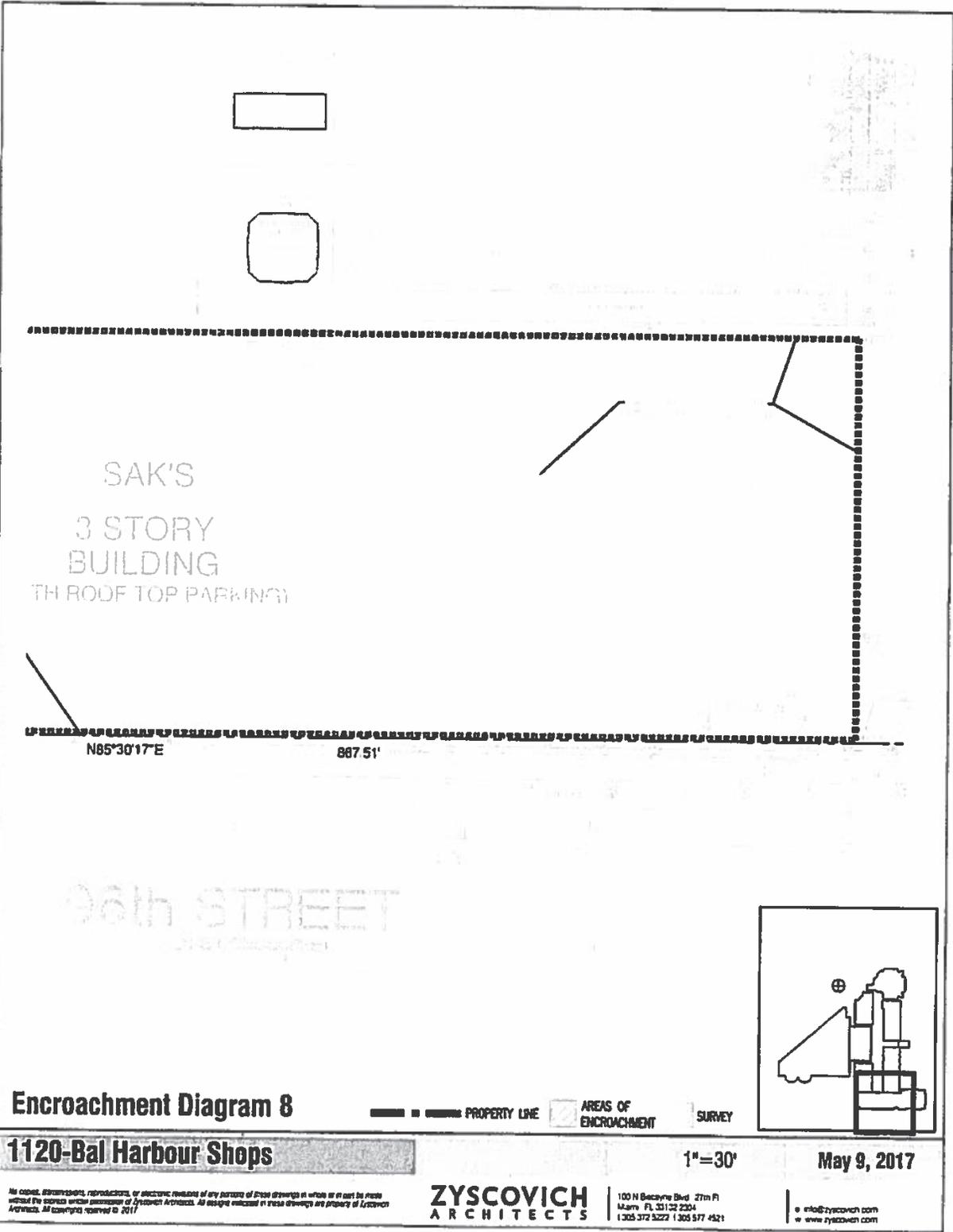
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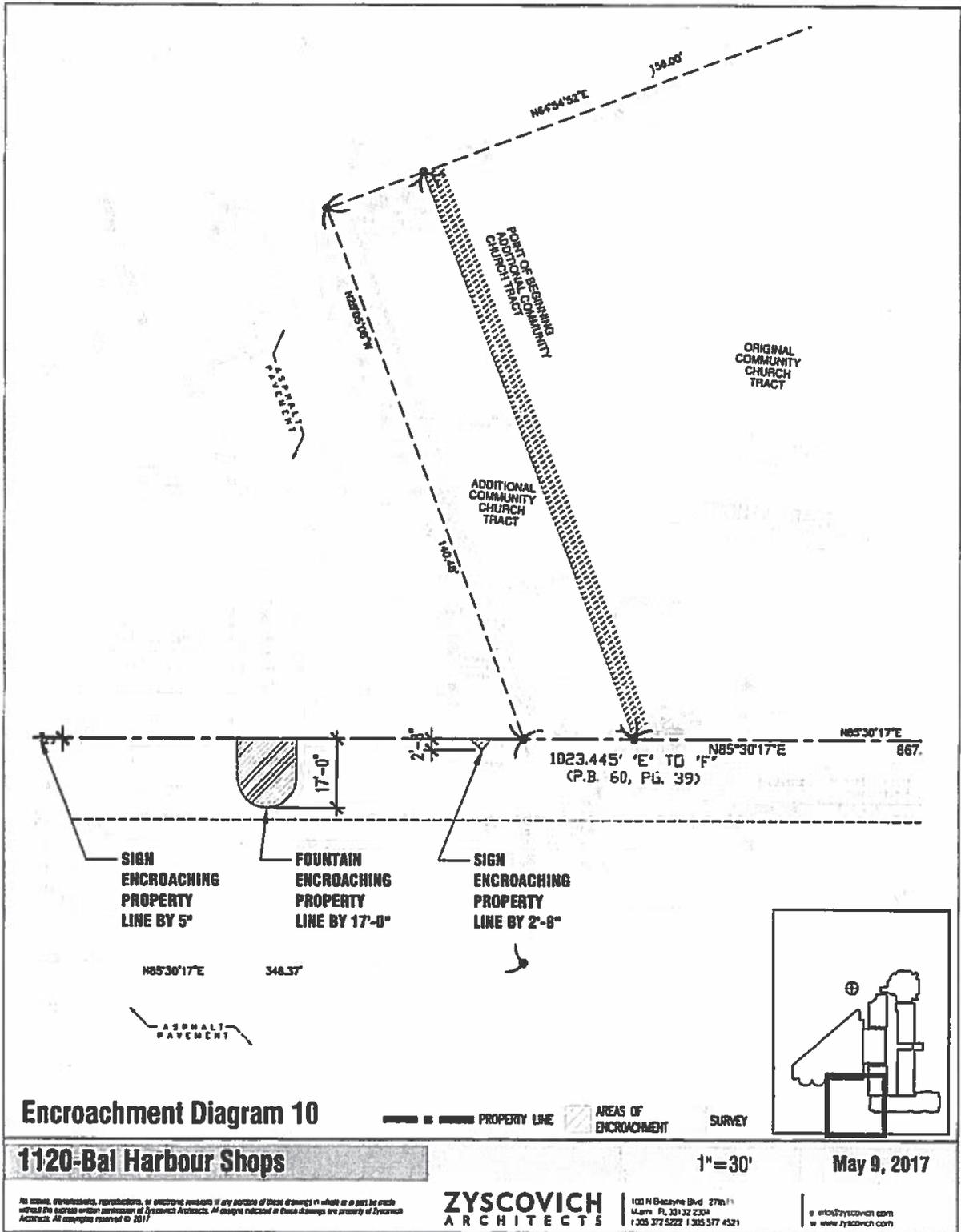
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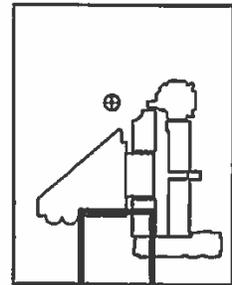
**Encroachment Diagram 10**

**1120-Bal Harbour Shops**

**1"=30'**

**May 9, 2017**

PROPERTY LINE      AREAS OF ENCROACHMENT      SURVEY

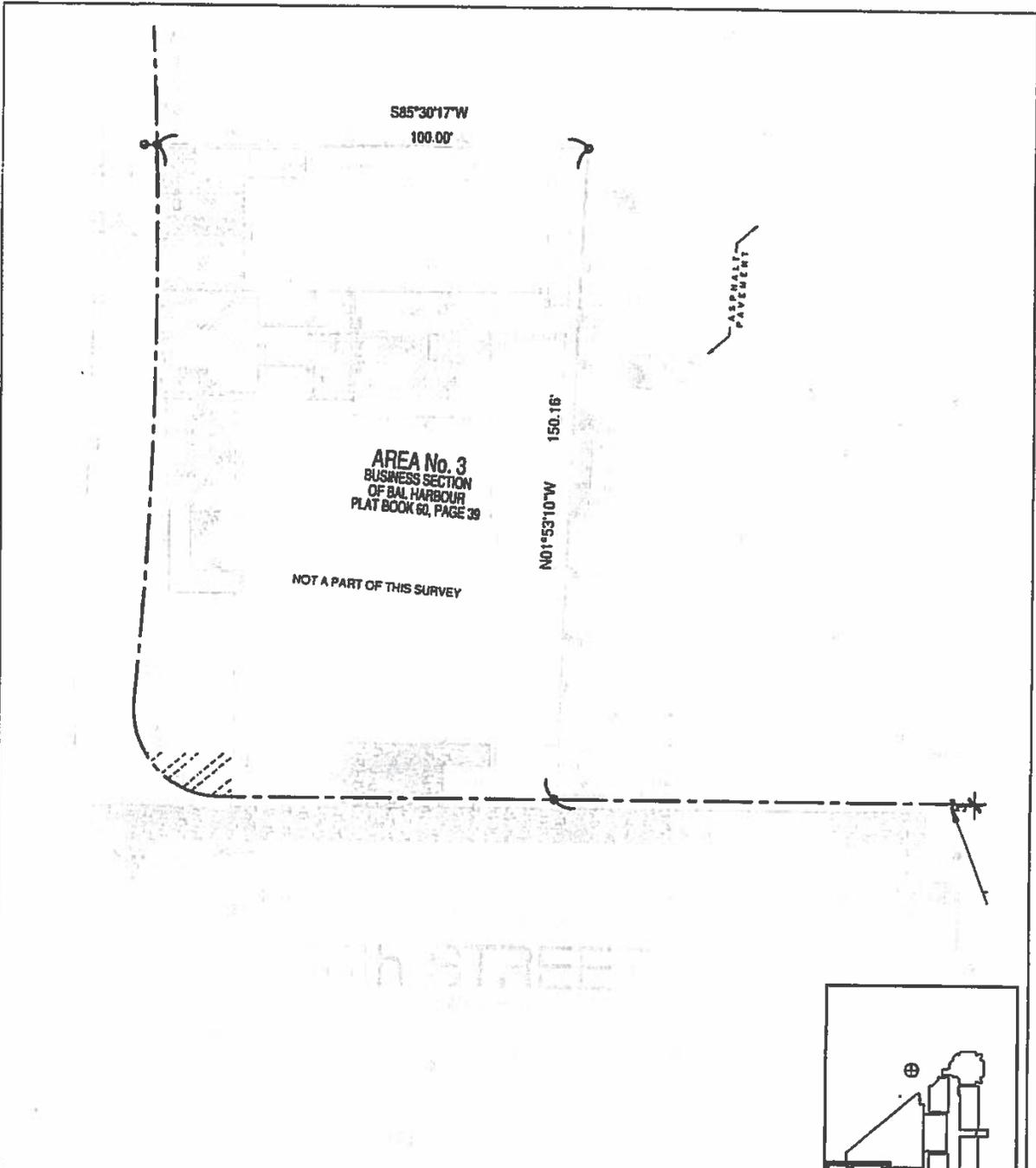


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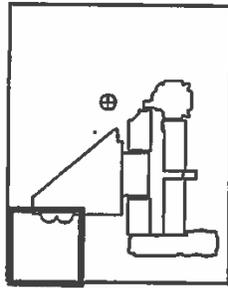
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**Encroachment Diagram 11**

PROPERTY LINE     
  AREAS OF ENCROACHMENT     
 SURVEY



**1120-Bal Harbour Shops**

1" = 30'

May 9, 2017

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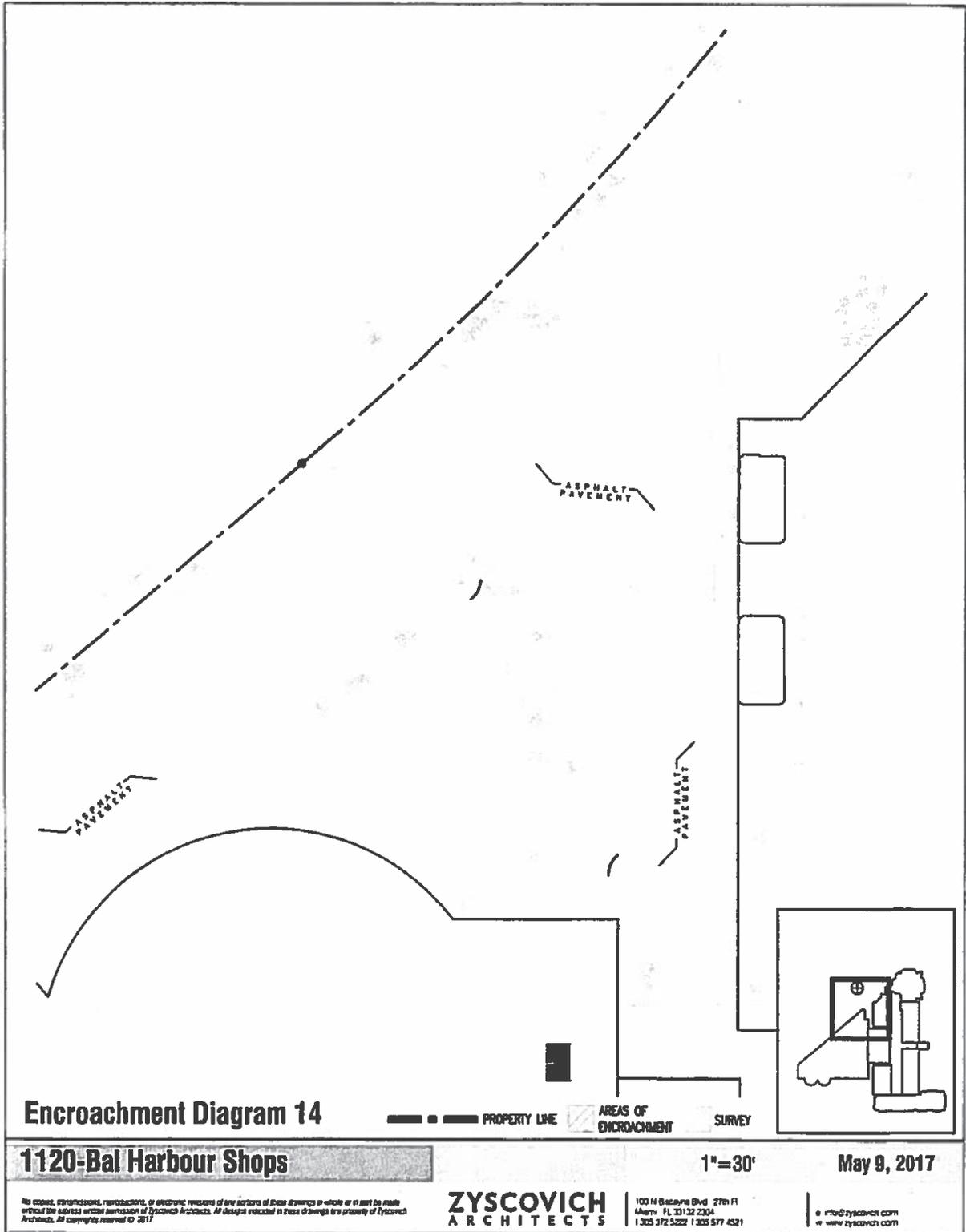
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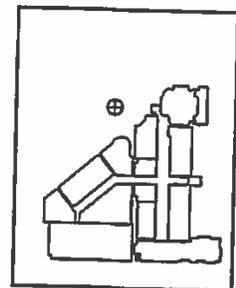






# PROPOSED ENCROACHMENTS

PROPERTY LINE AREAS OF ENCROACHMENT SURVEY



**1120-Bal Harbour Shops**

1"=30'

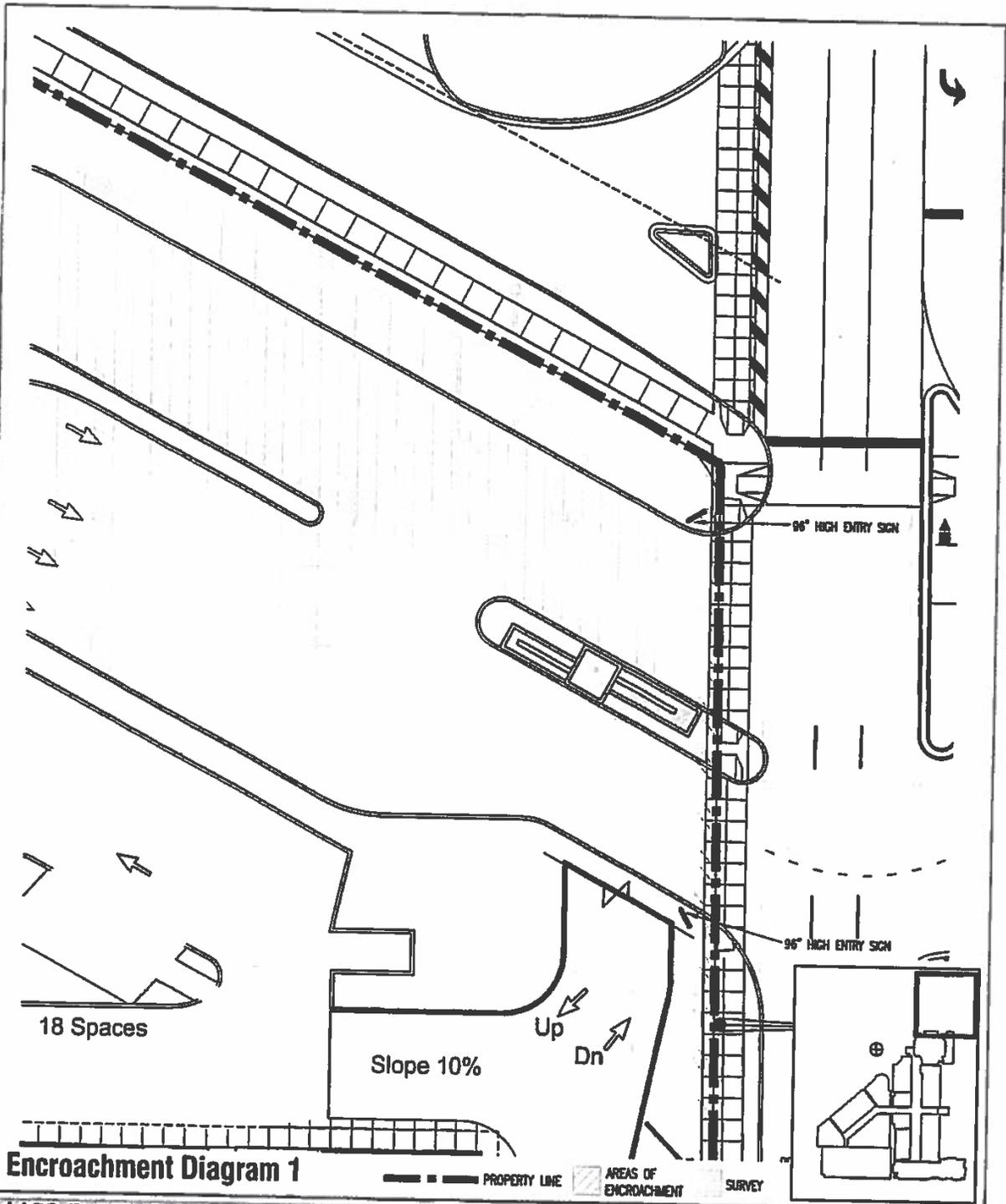
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**1120-Bal Harbour Shops**

1"=30'

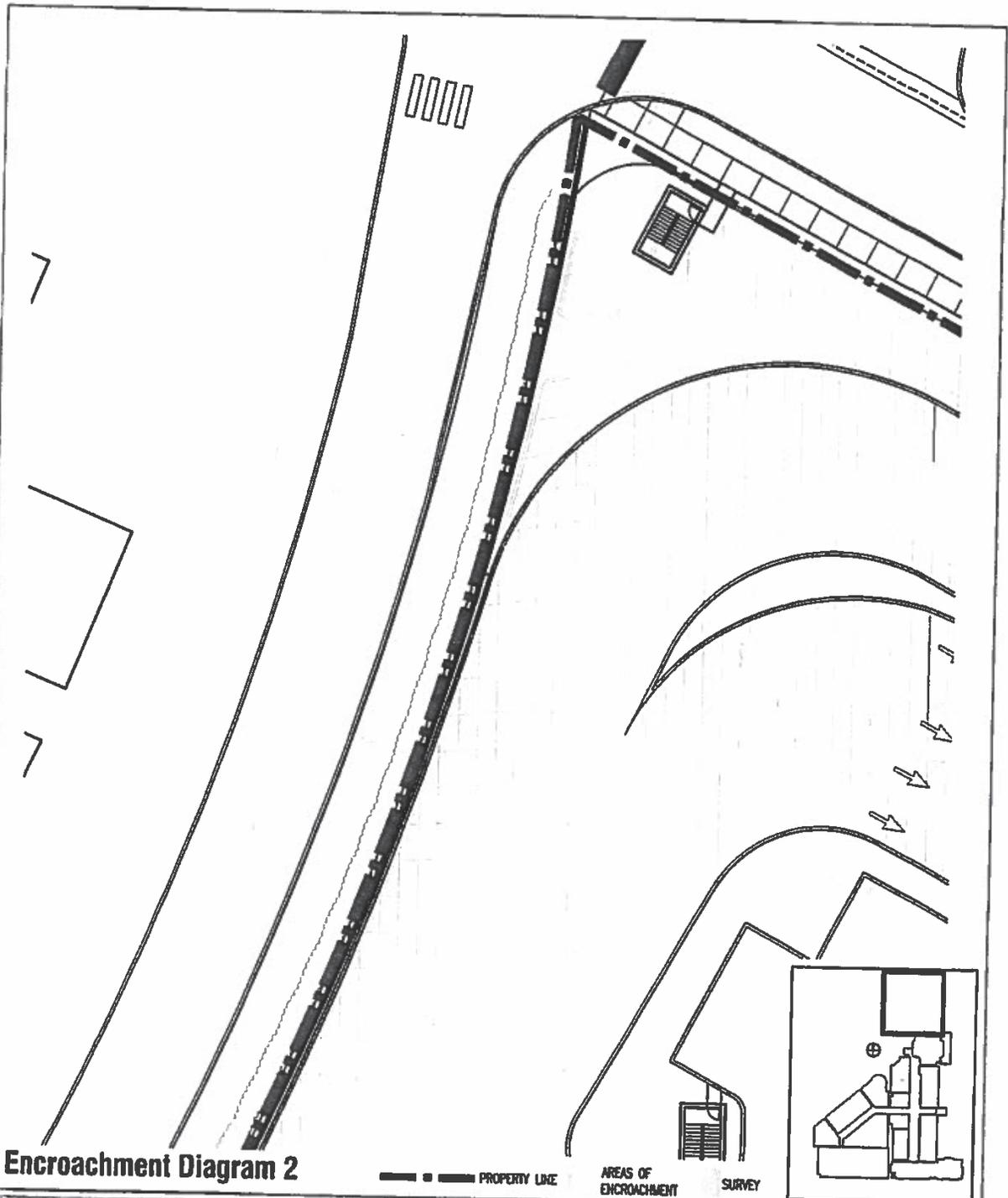
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**Encroachment Diagram 2**

**1120-Bal Harbour Shops**

1"=30'

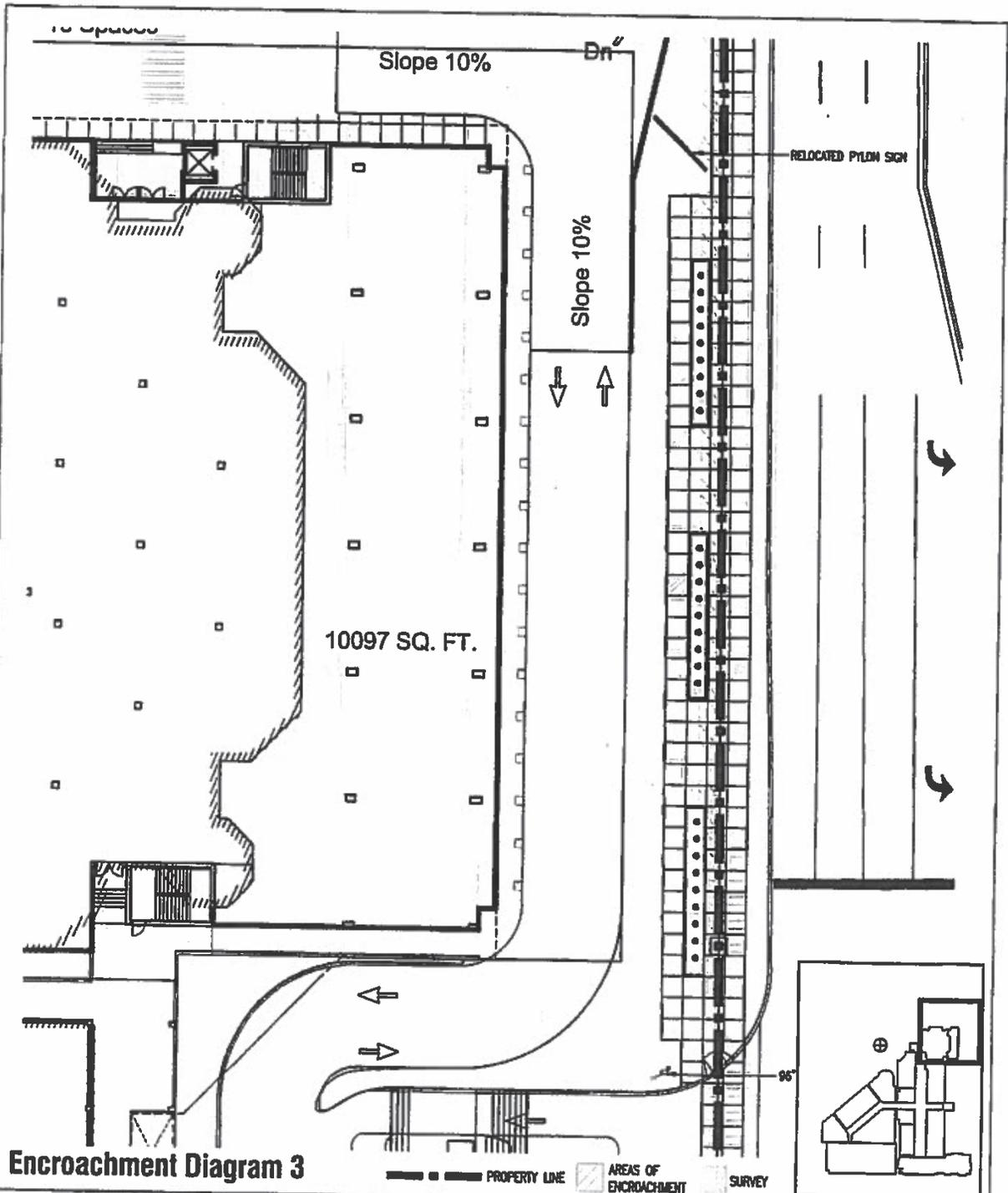
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**Encroachment Diagram 3**

**1120-Bal Harbour Shops**

1"=30'

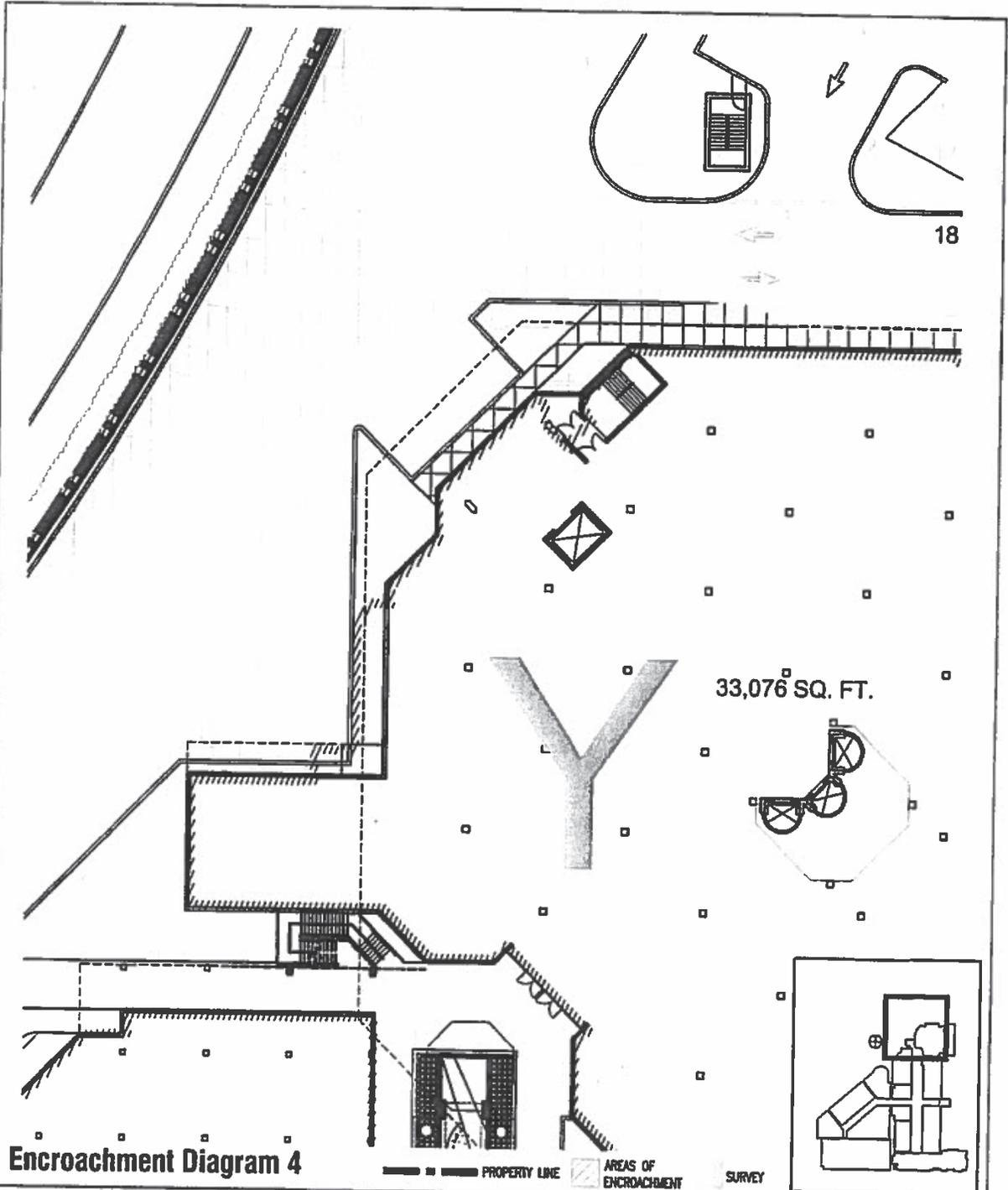
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**Encroachment Diagram 4**

**1120-Bal Harbour Shops**

1"=30'

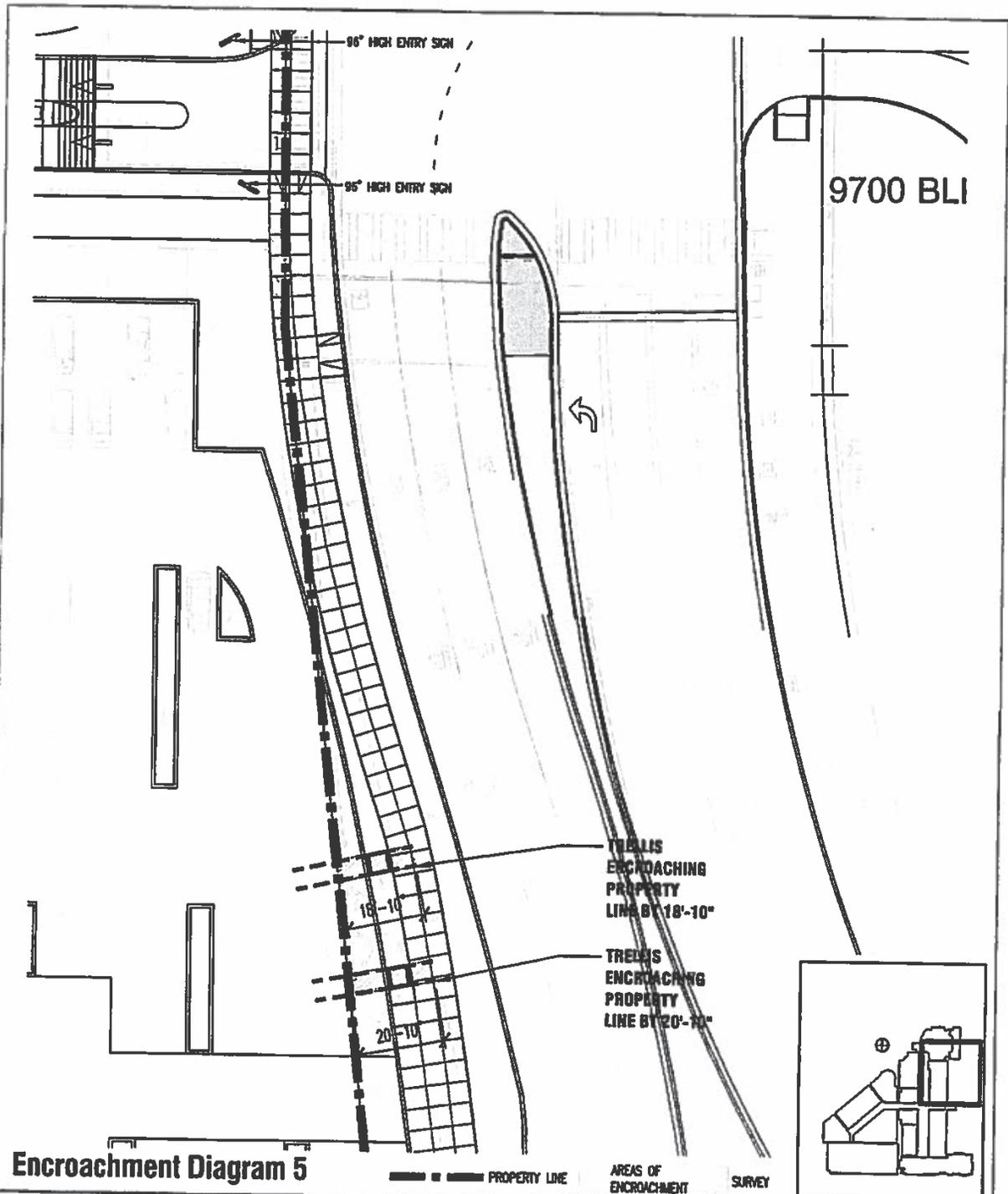
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**1120-Bal Harbour Shops**

1"=30'

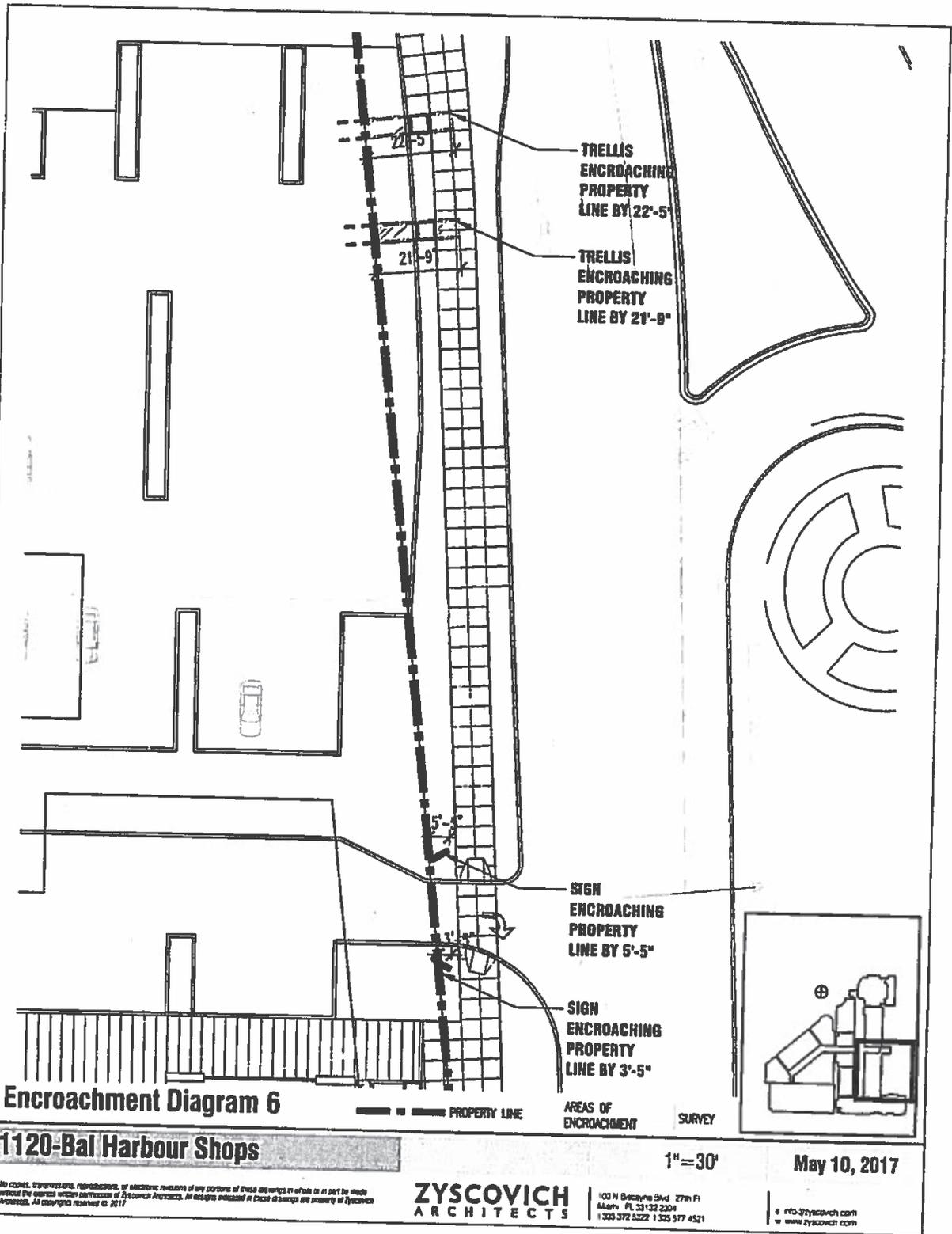
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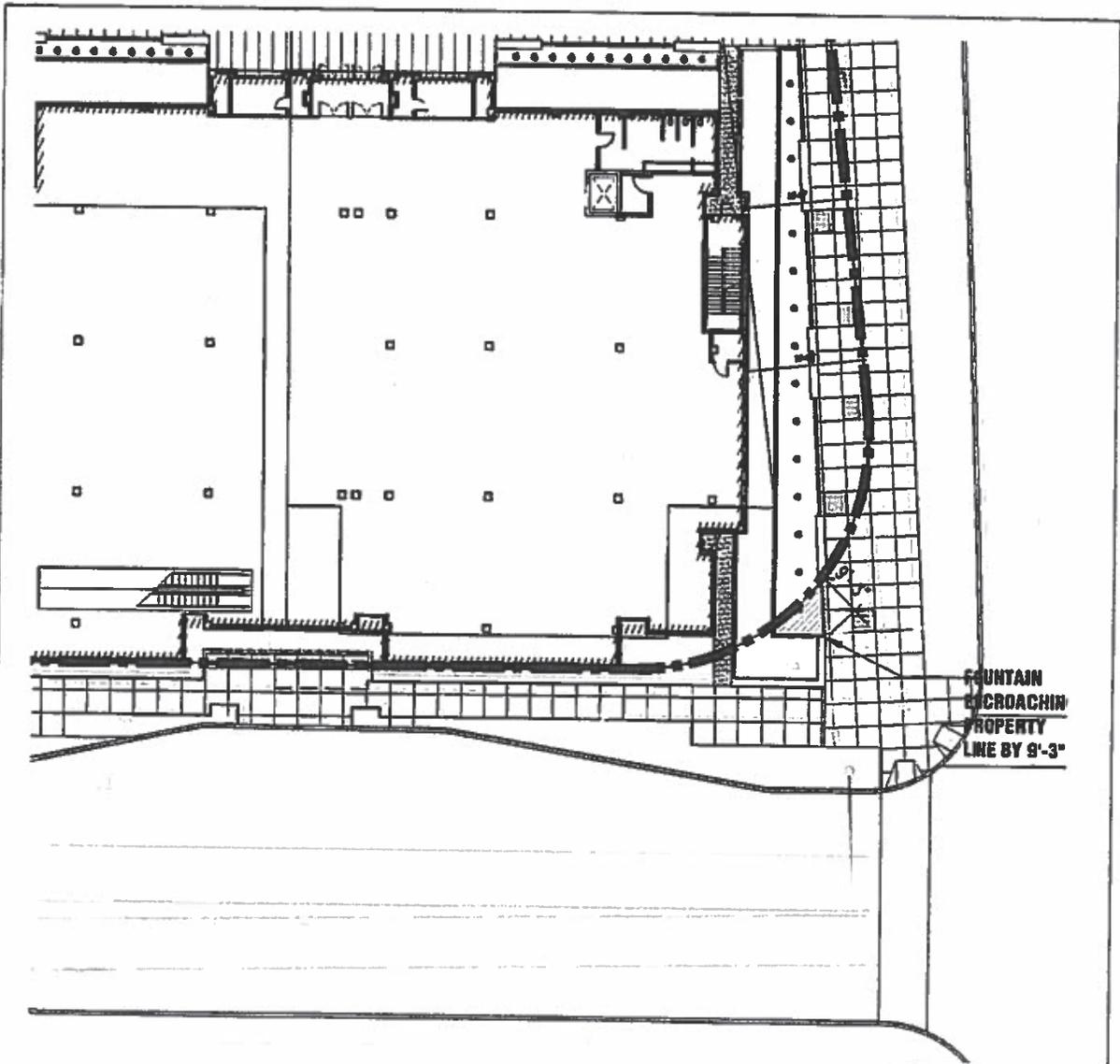
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FOUNTAIN  
ENCROACHING  
PROPERTY  
LINE BY 9'-3"

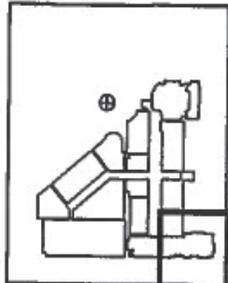
**Encroachment Diagram 7**

**1120-Bal Harbour Shops**

— — — — — PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    SURVEY

1"=30'

May 10, 2017

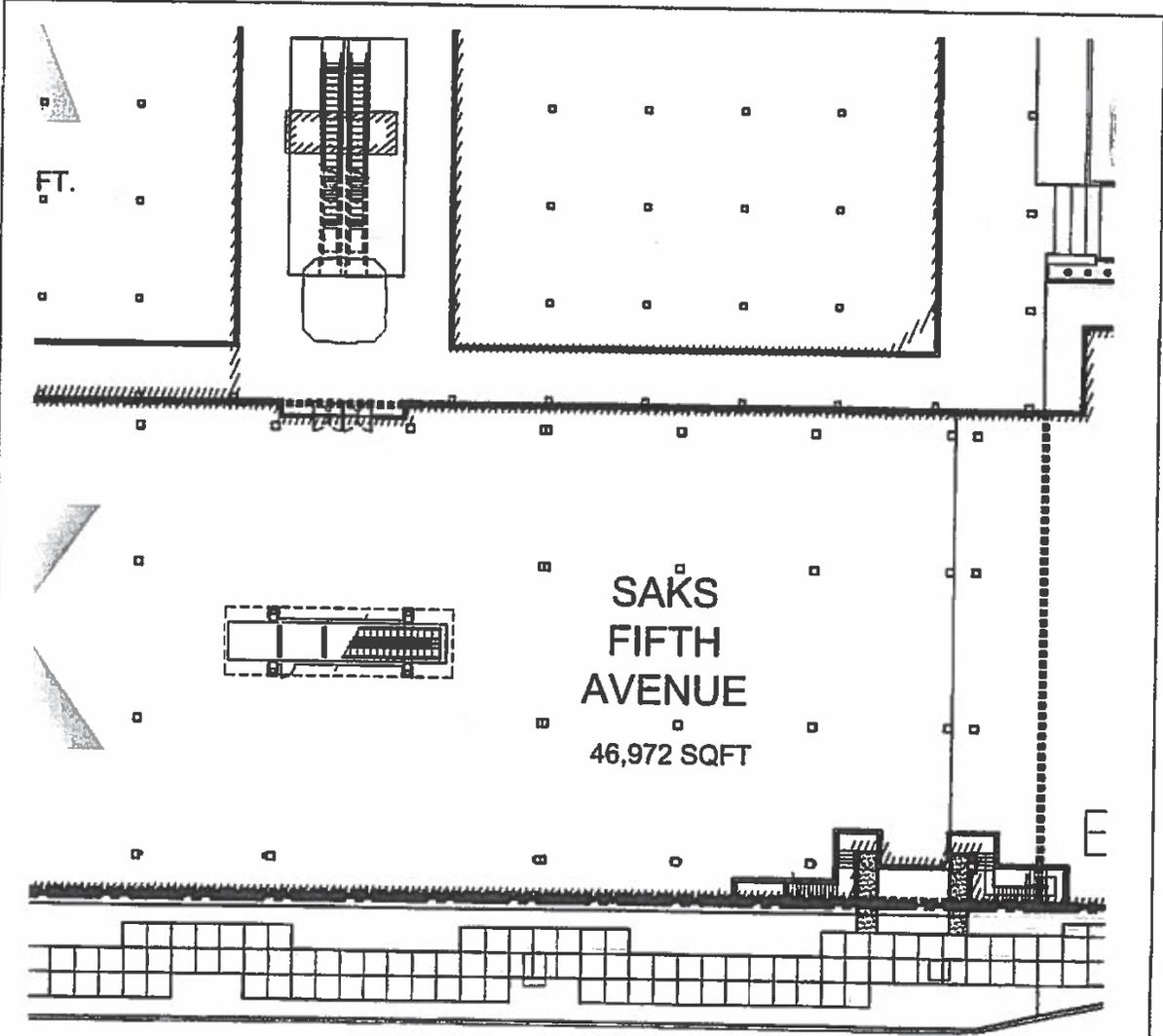


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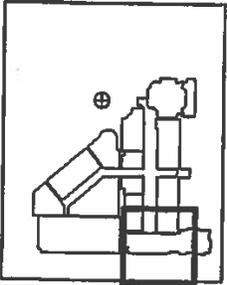
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**Encroachment Diagram 8**

**1120-Bal Harbour Shops**



1"=30'

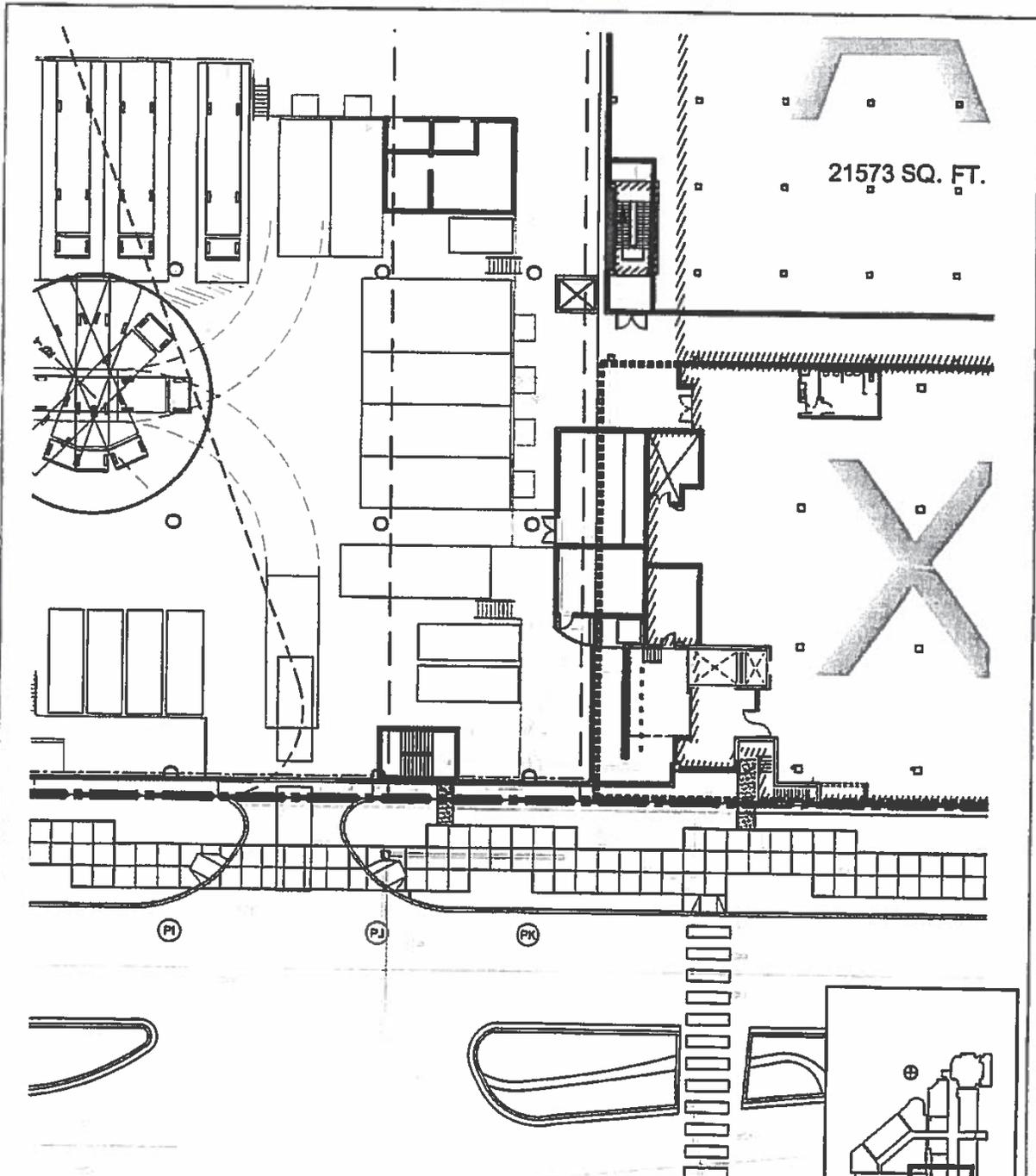
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21573 SQ. FT.

**Encroachment Diagram 9**

**1120-Bal Harbour Shops**

— — — — — PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    SURVEY

1"=30'

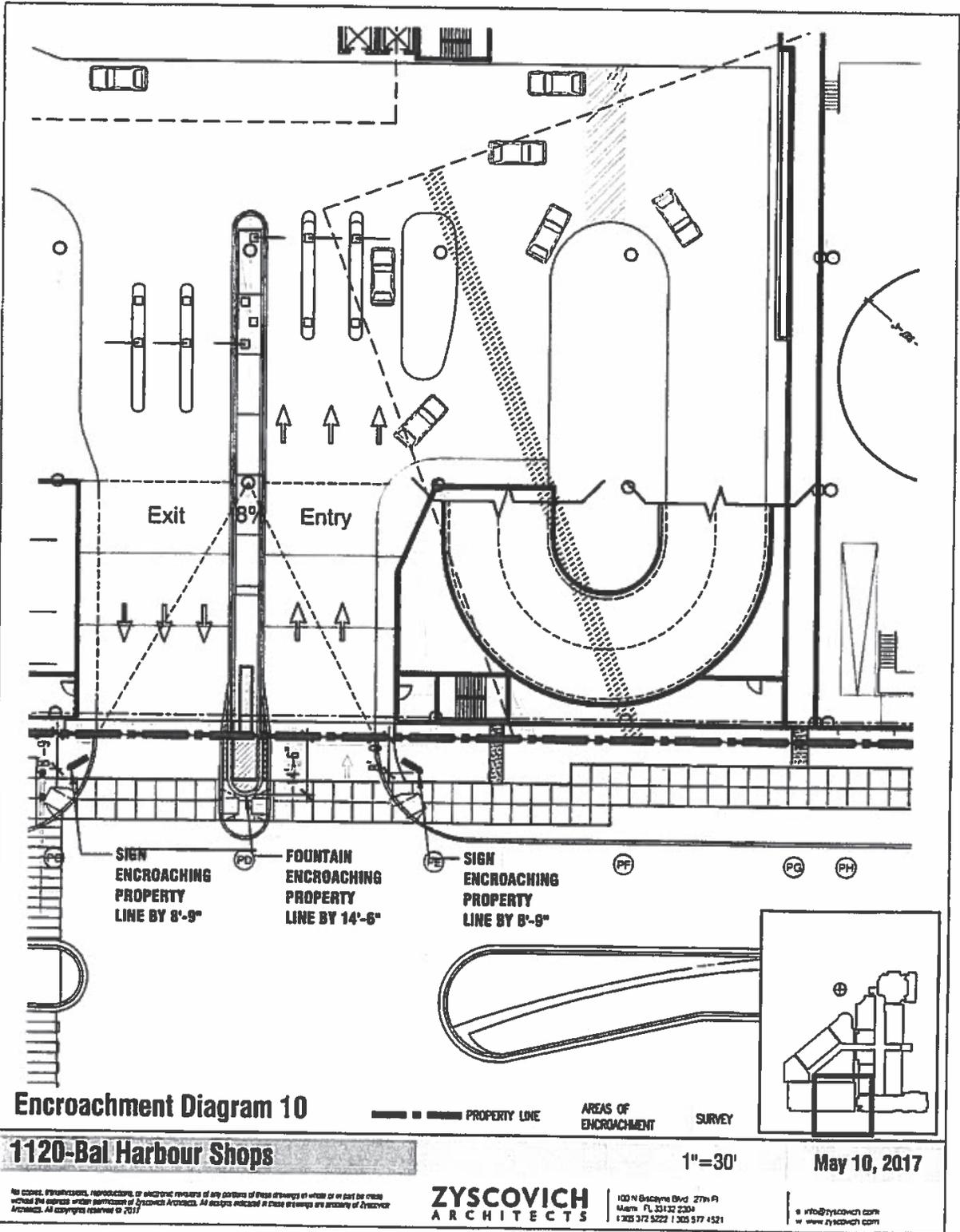
May 10, 2017

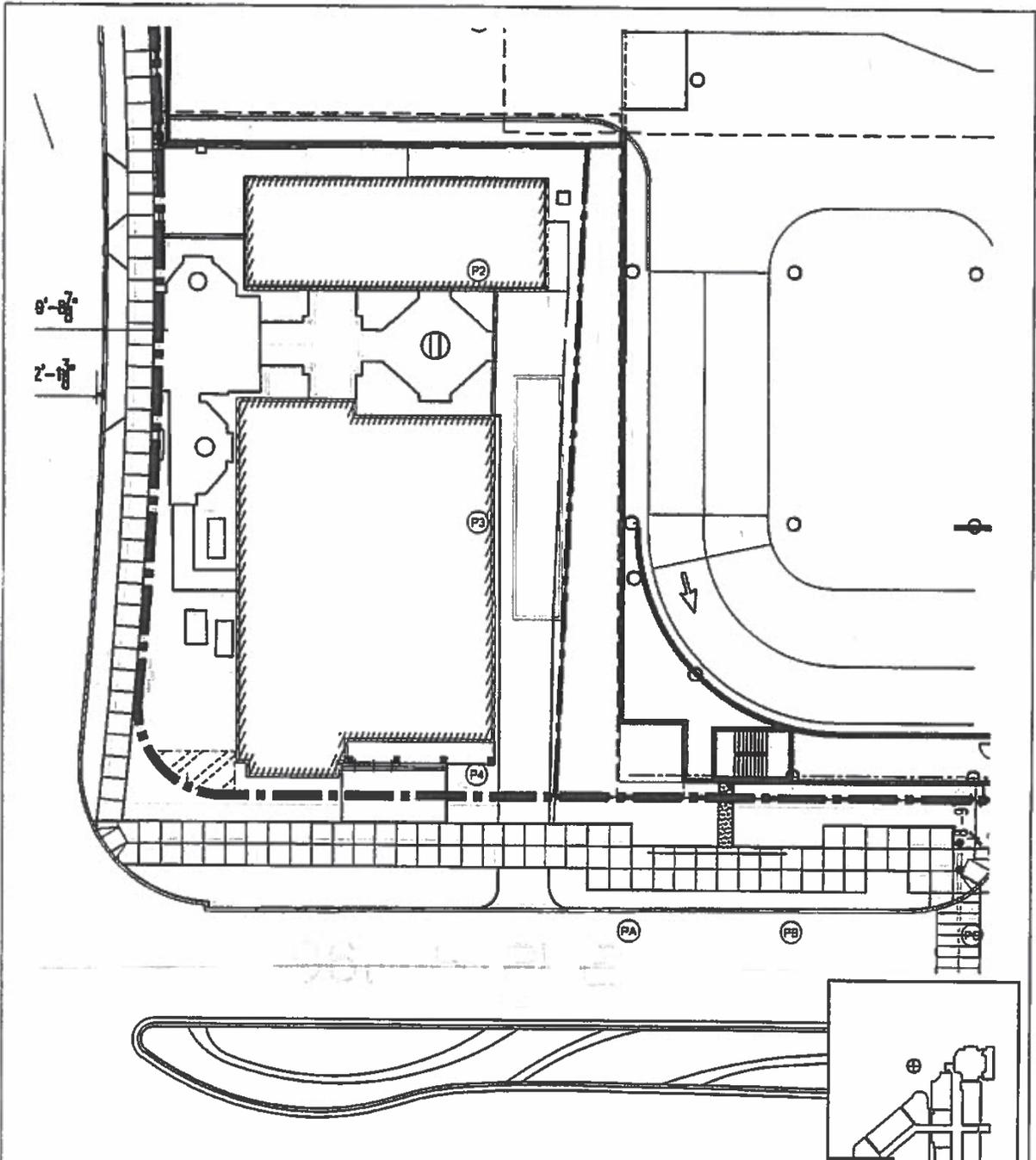
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**Encroachment Diagram 11**

PROPERTY LINE     
 AREAS OF ENCROACHMENT     
 SURVEY

**1120-Bal Harbour Shops**

1"=30'

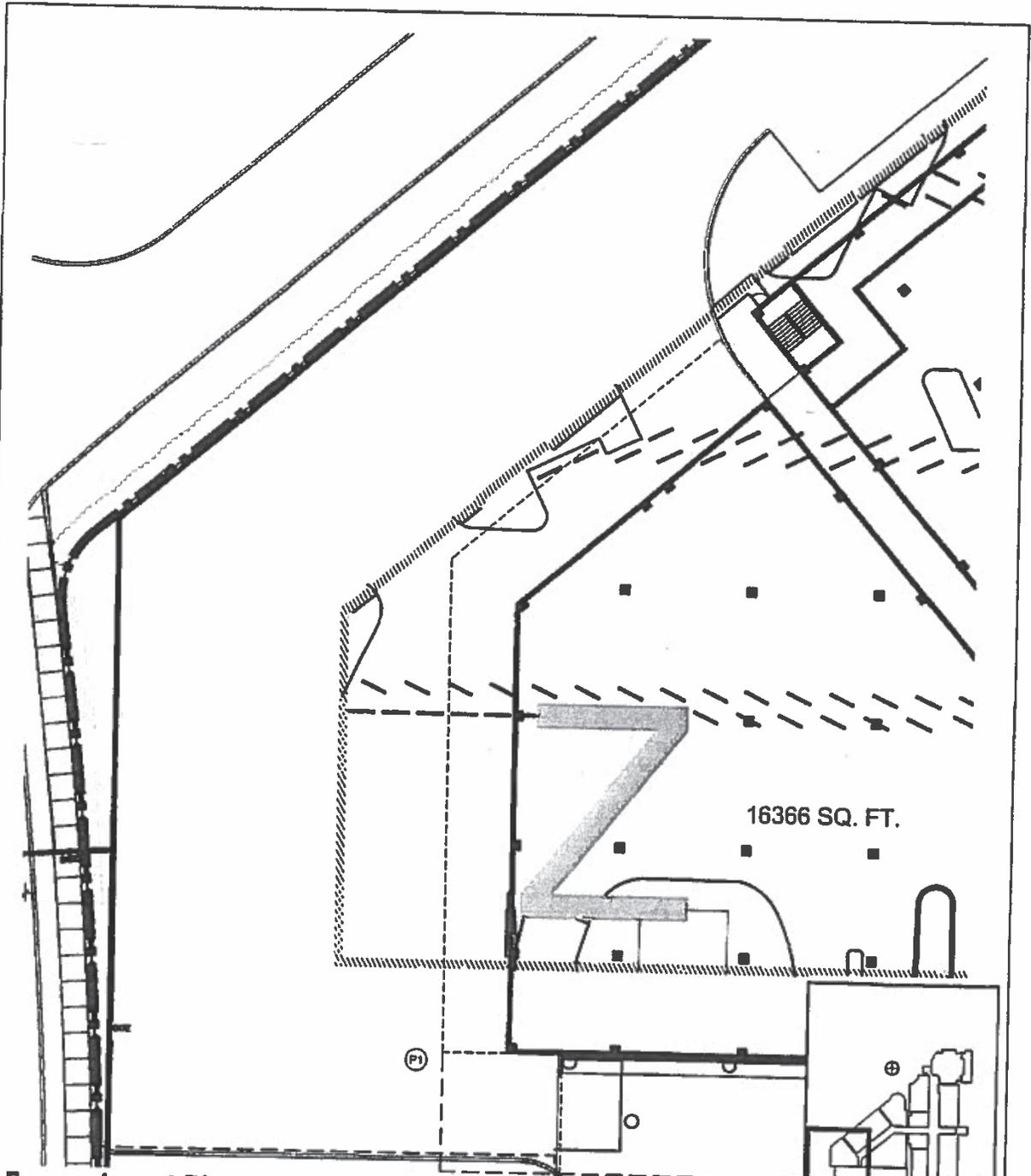
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**Encroachment Diagram 12**

**1120-Bal Harbour Shops**

— — — — — PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    SURVEY

1"=30'

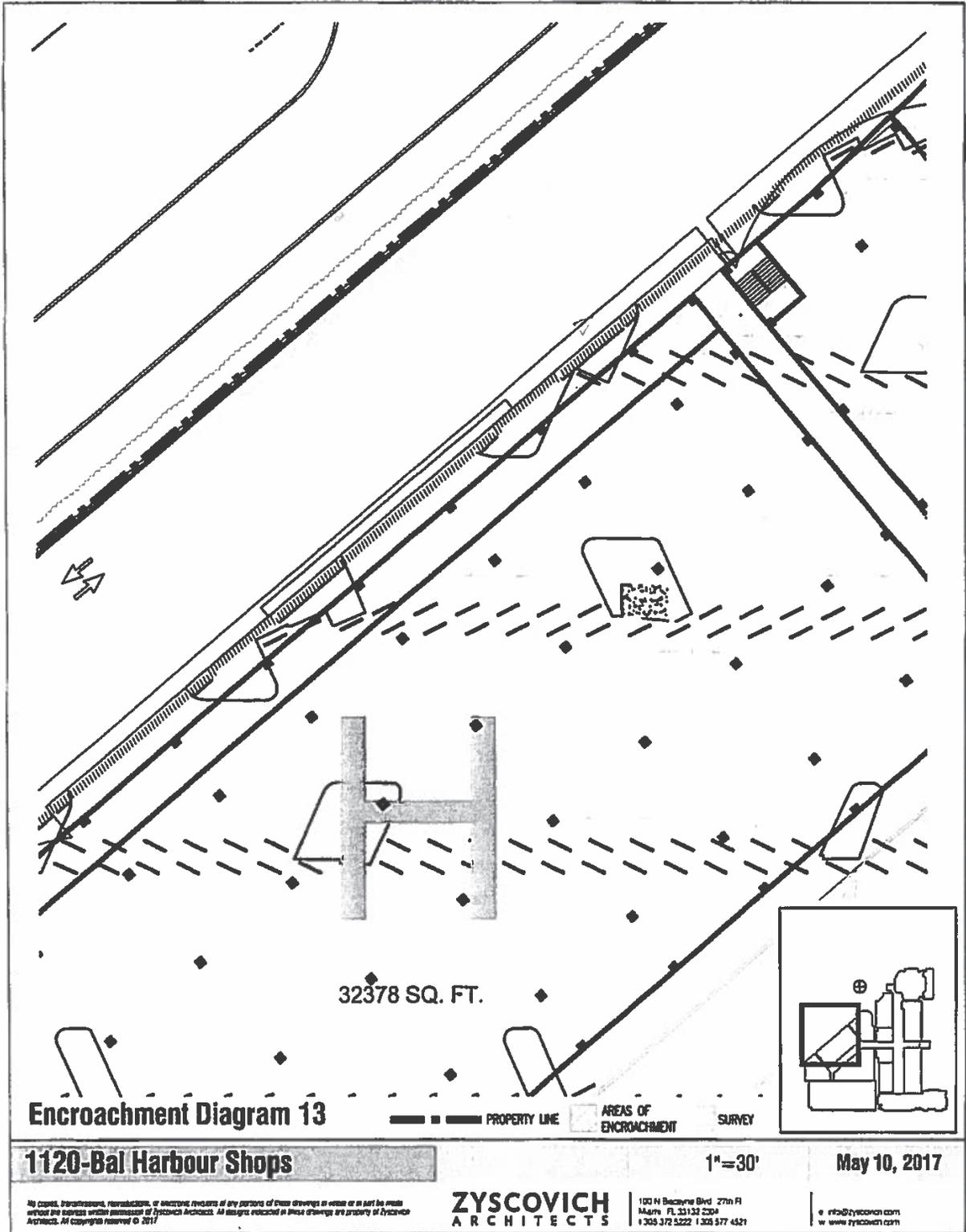
May 10, 2017

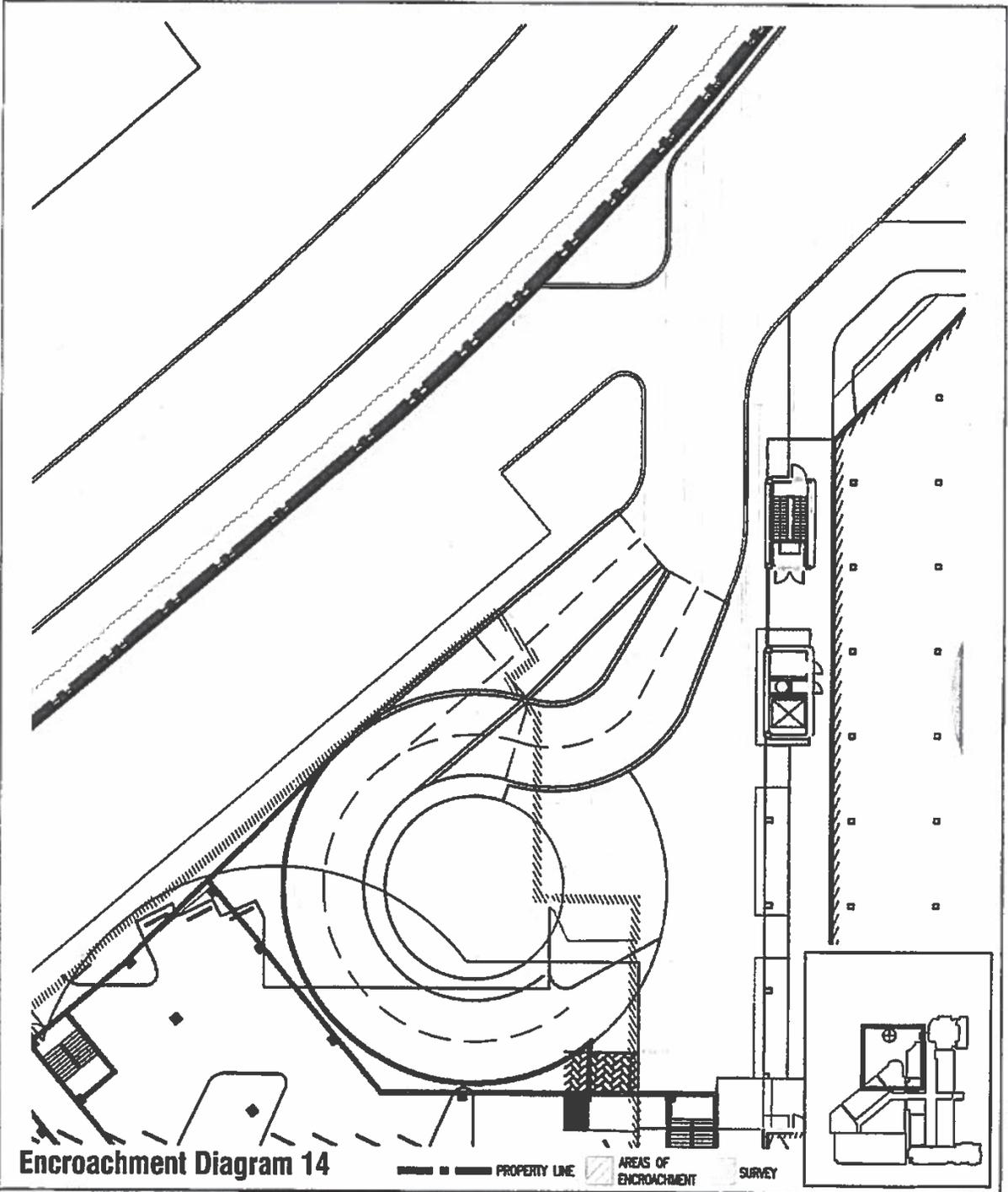
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**1120-Bal Harbour Shops**

1"=30'

May 10, 2017

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**ZYSCOVICH**  
ARCHITECTS

1101 N. Bayshore Blvd. 27th Fl.  
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1 305 372 5222 | 305 377 4521

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• www.zyscovich.com

**Exhibit N**

**Park Drive Utility Easement**

**(see following pages)**

This instrument prepared by:

Gail D. Serota, Esq.  
Weiss Serota Helfman Cole & Bierman P.L  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134  
Telephone: 305.854.0800

Folio Number 12-2226-006-0060

#### GRANT OF UTILITY EASEMENT

THIS GRANT OF EASEMENT dated \_\_\_\_\_, 2017, is made by BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership ("Grantor ") in favor of BAL HARBOUR VILLAGE, a Florida municipal corporation ("Village").

#### RECITALS

Grantor is the owner and holder of the underlying fee title to certain real property located in Bal Harbour Village, Miami-Dade County, Florida, and more particularly described in Exhibit A attached to and made a part of this Grant of Easement ("Easement Parcels").

The Easement Parcels are comprised of (i) the east one-half of a portion of Bal Bay Drive, (ii) the east one-half of a portion of Park Drive, and (iii) the south one-half of a portion of Bal Cross Drive (the "Bal Cross Drive South Parcel"), all as shown on the Plat of RESIDENTIAL SECTION OF BAL HARBOUR, recorded in Plat Book 44, Page 98, Public Records of Miami-Dade County, Florida.

Village wishes to acquire a perpetual utility easement over, across, under and through the Easement Parcels for the construction, installation, maintenance, repair, removal and replacement of water, sewer and stormwater facilities (collectively, "Utility Facilities").

BHS-FM, LLC, a Florida limited liability company ("North Owner") owned and controlled by Grantor, is the owner and holder of the underlying fee title to the real property described in Exhibit B attached to and made a part of this Grant of Easement (the "Bal Cross Drive North Parcel").

#### AGREEMENT

For Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged by Grantor, Grantor hereby grants to Village, without representation, recourse or warranty, and subject to all matters of record, a perpetual non-exclusive utility

easement ("Utility Easement") over, across, under and through the Easement Parcels for the construction, installation, maintenance, repair, removal and replacement of Utility Facilities.

Village, by acceptance of this Utility Easement, acknowledges that the location of the Utility Easement under the Bal Cross Drive South Parcel may be affected by Grantor's construction of an underground parking garage under the Bal Cross Drive South Parcel. By acceptance of the Utility Easement, Village agrees to relocate a portion of the Utility Facilities and the Utility Easement to the Bal Cross Drive North Parcel to the extent reasonably necessary to avoid interference with Grantor's construction of the underground parking garage, provided that the Grantor obtains and delivers to the Village a Grant of Utility Easement from the owner of the Bal Cross Drive North Parcel in substantially the form of this Grant of Utility Easement.

This Grant of Easement will be binding on and inure to the benefit of Grantor and Village, and their successors and assigns.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

This Grant of Utility Easement has been executed by the Grantor on the date set forth on the first page of this Agreement.

**Witnesses:**

Signature \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

**GRANTOR:**

**BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership**

By: \_\_\_\_\_  
**Matthew Whitman Lazenby, General Partner**

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on July \_\_\_\_, 2017, by Matthew Whitman Lazenby, as the General Partner of Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, who is [ ] personally known to me or [ ] has produced a valid driver's license as identification.

NOTARY SEAL

\_\_\_\_\_  
Notary Public, State of Florida

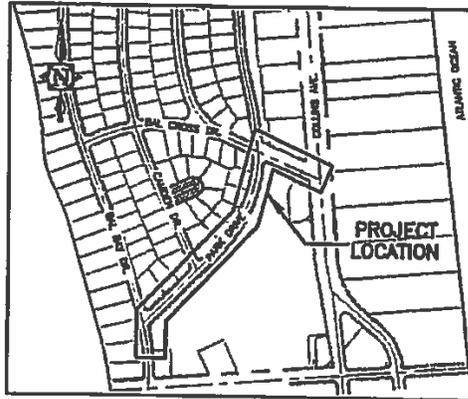
Print name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Exhibit A**  
**Sketch and Legal Description of Easement Parcels**  
**(see following pages)**

**LOCATION MAP**

SCALE: N.T.S.



**DESCRIPTION:**

THAT PORTION OF BAL BAY DRIVE, PARK DRIVE AND BAL CROSS DRIVE AS SHOWN ON THE BUSINESS SECTION OF BAL HARBOUR, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 60, PAGE 39 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF AREA No.3, AS SHOWN ON SAID BUSINESS SECTION OF BAL HARBOUR;

THENCE SOUTH 84°12'36" WEST ALONG A LINE RADIAL TO THE NEXT DESCRIBED CURVE, A DISTANCE OF 25.00 FEET TO A POINT ON THE ARC OF SAID CURVE (CONCAVE WESTERLY) HAVING A RADIUS OF 1077.67 FEET AND A CENTRAL ANGLE OF 0726°32";

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 139.98 FEET TO THE BEGINNING OF A COMPOUND CURVE (CONCAVE WESTERLY) HAVING A RADIUS OF 3490.00 FEET AND A CENTRAL ANGLE OF 00°19'34";

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 19.87 FEET;

THENCE NORTH 45°26'17" EAST, A DISTANCE OF 582.84 FEET TO THE BEGINNING OF A TANGENT CURVE (CONCAVE NORTHWESTERLY) HAVING A RADIUS OF 766.00 FEET AND A CENTRAL ANGLE OF 45°37'00";

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 609.86 FEET;

THENCE NORTH 66°36'53" WEST, A DISTANCE OF 5.46 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE (CONCAVE WESTERLY) FROM WHOSE RADIUS POINT BEARS NORTH 88°39'26" EAST AND HAVING A RADIUS OF 761.00 FEET AND A CENTRAL ANGLE OF 01°14'23";

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 16.48 FEET;

THENCE SOUTH 66°36'53" EAST, A DISTANCE OF 310.48 FEET TO THE WEST LINE OF COLLINS AVENUE (SR A-1-A);

DESCRIPTION CONTINUED ON SHEET 2

THIS IS NOT A SURVEY

PREPARED FOR:

VILLAGE OF BAL HARBOUR

**CRAIG A. SMITH & ASSOCIATES**

7777 GLADES ROAD, SUITE 410  
BOCA RATON, FLORIDA 33434  
(561)791-9280  
CERT. NO. LB0003110



SKETCH & DESCRIPTION	MM	05/12/17	N/A	ROK
REVISION	DWN	DATE	FB/PG	CKD
BAL HARBOUR SHOPS EASEMENT DESCRIPTION VILLAGE OF BAL HARBOUR, DADE COUNTY, FL				
PROJECT NUMBER: 17-1146-0691				
FILE NAME: 10-1146-BH-SHOPS-EASEM.dwg				
SHEET 1 OF 8				

I:\cadd\p17\17-1146-0691-BH-SHOPS-EASEMENT.dwg 5/16/2017 10:06:40 AM





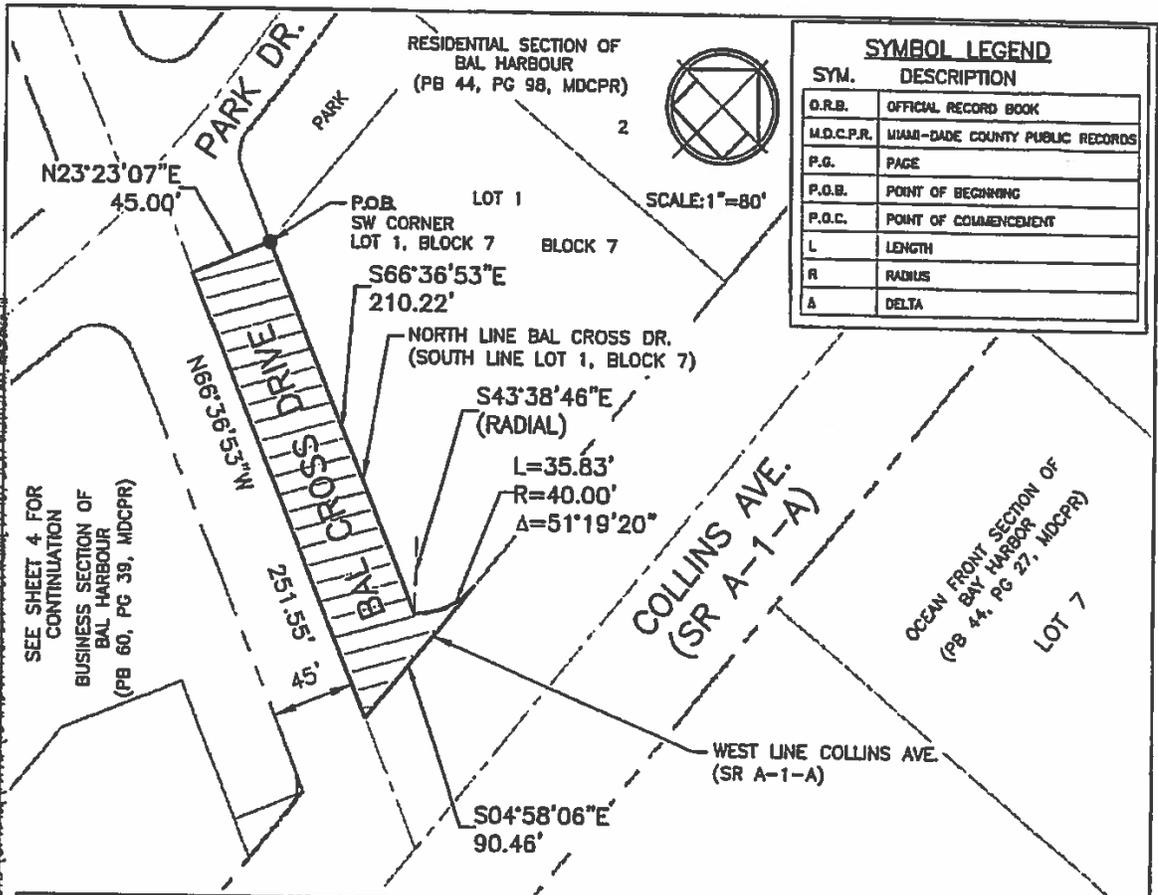




**Exhibit B**

**Sketch and Legal Description of Bal Cross Drive North Parcel  
(see following pages)**





SYMBOL LEGEND	
SYM.	DESCRIPTION
O.R.B.	OFFICIAL RECORD BOOK
M.D.C.P.R.	MIAMI-DADE COUNTY PUBLIC RECORDS
P.G.	PAGE
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
L	LENGTH
R	RADIUS
Δ	DELTA

**SURVEYOR'S NOTES:**

1. REPRODUCTIONS OF THIS DOCUMENT ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.
2. BEARINGS SHOWN HEREON ARE RELATIVE TO THE NORTH RIGHT OF WAY LINE OF BAL CROSS DRIVE, RESIDENTIAL SECTION OF BAL HARBOUR, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 44, PAGE 98, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. (SHOWN TO BEAR S 66°36'53" E)
3. NO SEARCH OF THE PUBLIC RECORDS WAS PERFORMED BY THIS FIRM IN THE MAKING OF THIS SURVEY. THERE MAY EXIST EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, ETC., WHICH APPEAR IN THE PUBLIC RECORDS, OR THAT ARE BASED ON UNDOCUMENTED AND/OR UNRECORDED AGREEMENTS, WHICH AFFECT THIS SURVEY.

THIS IS NOT A SURVEY

SKETCH & DESCRIPTION	MM	03/12/17	N/A	ROM
REVISION	DWN	DATE	FB/PG	CKD

**CRAIG A. SMITH & ASSOCIATES**  
 7777 GLADES ROAD, SUITE 410  
 BOCA RATON, FLORIDA 33434  
 (561)791-9280  
 CERT. NO. LB0003110

**FAIRFIELD MANOR CO-OP  
 EASEMENT DESCRIPTION  
 VILLAGE OF BAL HARBOUR, DADE COUNTY, FL**  
 PROJECT NUMBER: 17-1146-0691  
 FILE NAME: 10-1146-BH-FAIRFIELD-EASEM.dwg | SHEET 2 OF 2

C:\Users\csmith\OneDrive\Documents\17-1146-0691-FAIRFIELD-EASEMENT\17-1146-0691-FAIRFIELD-EASEMENT.dwg, 5/16/2017 9:28:21 AM, 17.1146.0691.EASEMENT.dwg





CFN 2018R0779529  
 OR BK 31269 Pgs 4587-4701 (115Pgs)  
 RECORDED 12/27/2018 15:33:42  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by:  
 Susan L. Trevarthen, Esq.  
 Gail D. Serota, Esq.  
 Weiss Serota Helfman Cole & Bierman, P.L.  
 2525 Ponce de Leon Boulevard, Suite 700  
 Coral Gables, Florida 33134

Folio Numbers:  
 12-2226-006-0020  
 12-2226-006-0060  
 12-2226-006-0061  
 12-2226-006-0070  
 12-2226-002-2343  
 12-2226-002-1440  
 12-2226-032-0010

**FIRST AMENDMENT TO BAL HARBOUR SHOPS DEVELOPMENT AGREEMENT**

This First Amendment to Development Agreement (“**First Amendment**”) dated December 20, 2018 is between **BAL HARBOUR SHOPS, LLLP**, a Florida limited liability limited partnership (“**Owner**”) and **BAL HARBOUR VILLAGE**, a Florida municipal corporation (“**Village**”).

**RECITALS**

On May 16, 2017, the Village Council adopted Resolution No. 2017-1076, approving a Development Agreement between the Owner and the Village the (“**2017 Agreement**”), and Resolution No. 2017-1077, approving a major site plan for the expansion of Bal Harbour Shops (the “**2017 Site Plan**”). The purpose of the Original Development Agreement was to mitigate any potential impacts from the proposed expansion of Bal Harbour Shops described in the 2017 Site Plan.

The Owner is now seeking to amend the 2017 Site Plan, and has submitted an application for a site plan amendment (the “**2018 Site Plan Amendment**”).

Owner and Village wish to amend the 2017 Agreement in order to address the impact of certain changes to the proposed expansion of Bal Harbour Shops (the “**Project**”) contemplated by the 2018 Site Plan Amendment.

This First Amendment makes changes to the 2017 Agreement which address the future development of the Project. It does not delete any provisions from the 2017 Agreement which reflect events that have already occurred.

The sections of the First Amendment have been numbered to correspond to the section numbering in the 2017 Agreement. In amended sections and subsections, deletions are shown by ~~strikethroughs~~, and additions are in **bold and underlined**.

This First Amendment is intended as an amendment to a development agreement pursuant to Section 163.3237 of the Florida Local Government Development Agreement Act, Florida Statutes Sections 163.3220-163.3243.

In consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Owner hereby mutually covenant and agree as follows:

**AGREEMENT:**

1. **Recitals.** The recitals set forth above are true and correct and are hereby made a part of this Agreement.
2. **Exhibits.** The following exhibits either replace exhibits to the 2017 Agreement or are added to the 2017 Agreement.
  - 2.5. **Revised Exhibit E – Revised Sketch Showing Locations of Buildings** (replaces **Exhibit E** to the 2017 Agreement).
  - 2.12. **Revised Exhibit L – Revised Public Use Areas** (replaces **Exhibit L** to the 2017 Agreement).
  - 2.13. **Revised Exhibit M – Revised Project Encroachments** (replaces **Exhibit M** to the 2017 Agreement).
  - 2.15. **Exhibit O – Bal Harbour Village Resolution No. 2018-1202.**
  - 2.16. **Exhibit P - Site Plan Amendment approved by Bal Harbour Village Resolution No. 2018-1202.**
  - 2.17. **Exhibit Q – Existing Police Department Lease**
  - 2.18. **Exhibit R – Village Hall Sidewalks.**
  - 2.19. **Exhibit S – Alternative Northern Entrance.**
3. **Revisions to Defined Terms.** Terms used in this First Amendment which are defined in the 2017 Agreement will have the meanings set forth in the 2017 Agreement, except for the following terms, which are revised as follows:
  - 3.1. **Final CO.** The date upon which the CO is issued for the last building permit outstanding for the Project **first two floors of Buildings F, G, H, and Z as shown on Revised Exhibit E.**

- 3.2. **Final TCO.** The date upon which the TCO is issued for the first two floors of the last of Buildings F,G, H and Z to be constructed.

**Additional Defined Terms.** The following defined terms are used in this First Amendment.

**3.23 2017 Agreement.** The Development Agreement between the Owner and the Village dated July 27, 2017, approved by Resolution R2017-1076, and recorded on July 28, 2018, in Official Records Book 30632, at Page 3661, of the Public Records.

**3.24. First Amendment.** The First Amendment to the 2017 Agreement.

**3.25. First Amendment Effective Date.** The date the First Amendment has been signed by Owner and Village.

**3.26. Agreement.** Collectively, the 2017 Agreement and the First Amendment.

**3.27. 2018 Site Plan Amendment.** Collectively, amendments to the 2017 Site Plan approved by the Village by Resolution No. 2017-1077 by Resolution No. 2018-1202.

**3.28. 2018 Text Amendments.** Collectively, the amendments to (i) Article V Off-Street Parking Facilities of Chapter 21 Zoning, and (ii) Section 21-320(a) of Division 11 "B" Business District of Chapter 21 Zoning, in the Village Code of Ordinances.

**3.29 New Village Hall.** The Village municipal center to be constructed by Owner in accordance with the Agreement.

**3.30. NVH Garage.** The parking garage for New Village Hall to be constructed by Owner in accordance with the Agreement.

**3.31 Rendition Date.** The date upon which all of the following have occurred: (i) the Village Council has adopted the 2018 Site Plan Amendment, the 2018 Text Amendments, and the First Amendment; (ii) the ordinances adopting the 2018 Text Amendments and the resolutions adopting the 2018 Site Plan Amendment and the First Amendment have been duly signed and attested; (iii) the First Amendment and any exhibits to the First Amendment requiring signature have been duly signed by the respective parties; and (iv) the Village Clerk has filed the aforementioned ordinances and resolutions in the public records of the Village.

**3.32. 96<sup>th</sup> Street Garage.** The new parking garage to be constructed by Owner on the 96<sup>th</sup> Street side of the Project.

4. **Owner's Representations.** No changes.
5. **Description of the Project.** Section 5.3 of the 2017 Agreement is amended to read as follows, and Section 5.4 is added.
- 5.3. **Parking Improvements.** The Project is required to have parking ratio of not less than 2.1 permanent spaces per 1,000 square feet of 90% of the GFA and a flex

parking ratio of not less than 2.9 spaces per 1,000 square feet of 90% of the GFA; however, the Project will include a minimum of 2,400 permanent parking spaces above and below grade in order to **may** achieve a parking ratio of not less than ~~3.1~~ **1.8 permanent** spaces per 1,000 square feet of 90% of the GFA, and no less than ~~385 additional flex parking spaces~~ and a flex parking ratio of not less than **2.3 spaces per 1,000 square feet of 90% of the GFA if the requirements of Section 21-385(g)(1)c. of the Village Code are met as follows: The permanent parking ratio may be reduced below 2.1 but no lower than 1.8 permanent parking spaces, and the flex parking ratio may be reduced below 2.9 but no lower than 2.3 flex parking spaces, upon presentation to the Village Manager of a professionally acceptable parking report by a parking expert demonstrating that over the immediate prior twenty-four consecutive months, parking utilization in the facility remained below the proposed reductions in the permanent and flex parking ratios 85 percent of the time. The analysis of the permanent parking ratio shall exclude peak season (peak season is defined as November 1 to April 1, excluding the week of Thanksgiving, December 16 to January 2, and the week of Art Basel).**

**5.4. Phased Development.** The development of the Project may occur in phases.

**6. Summary of Owner Contributions.** The following subsections of Section 6 – Summary of Owner Contributions, are amended to read as follows:

**6.2 New Village Hall Parking Garage.** Construction and delivery to the Village of an underground parking structure to be located under ~~portions of one or more of the following: (i) the Fairfield Property, (ii) the Shops Property, and (iii) Bal Cross Drive (“NVH Garage”).~~

**6.4. Infrastructure and Beautification Improvements.** Construction and installation of infrastructure and beautification improvements on public property and on portions of the Shops property adjacent to public property at a cost of approximately \$9.375 million, as shown on the Bal Harbour Shops Enhancement Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated January 9, 2017, as same may be amended during the Village approval process, or as alternatively shown on the Bal Harbour Shops Plans prepared by Zyscovich Architects, Project No. 1120BHSE, dated September 13, 2018.

**6.7 Modification of Police Department Lease in Bal Harbour Shops.** Within three Business Days after the ~~Final Approval~~ Rendition Date, Owner and the Village will execute and deliver a Second Modification of Police Department Lease in the form attached as Exhibit G. The Second Modification provides for an extension of the existing lease of space in the Shops to the Village Police Department at no cost to Village for rent, CAM, or any other charges, until 90 days after conveyance of the New Village Hall to the Village. If the Rendition Date has occurred but the Final

Approval Date has not occurred by January 15, 2023 or (i) the Development Approvals have not become final and non-appealable by January 15, 2023; (ii) Owner provides written notice to the Village that it is not going to develop the Project at any time in the future; (iii) Owner withdraws any building permit applications submitted for the Project, (iv) Owner files an irrevocable waiver of the 2017 and 2018 Site Plan Approvals, as amended, and (v) the Development Agreement is terminated by Owner as to any future obligations to be performed (items (i) through (v) being the Termination Conditions), then the Second Modification of Police Department Lease will become null and void however the existing lease as amended by the First Modification of Police Department Lease attached hereto as Exhibit "Q" will remain in effect until March 31, 2028.

7. **Development Approvals.** The following subsections are added to Section 7 of the 2017 Agreement.

7.6 2017 Minor Modifications to Site Plan. Letter dated December 12, 2017 approving minor modification to the Site Plan.

7.7 ARB Review of 2018 Site Plan Application. Advisory review by the Village's Architectural Review Board of Owner's 2018 minor site plan application for the Project in accordance with Section 21-322(d) of the Village Code.

7.8 2018 Site Plan Approval. Approval of the 2018 Minor Site Plan Amendment and the related First Amendment to the Original Agreement.

7.9 2018 Text Amendments. Approval of the 2018 Text Amendments in connection with the 2018 Site Plan Approval.

8. **Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.** No change

9. **New Village Hall.** Section 9 of the 2017 Agreement, regarding New Village Hall, is replaced in its entirety as follows. (*Note: because of the extensive changes, strikethroughs and underlining have been omitted for readability*).

9. **New Village Hall.** Owner agrees to cause (i) the design and construction of New Village Hall and NVH Garage on the Fairfield Property, and (ii) the conveyance of the Fairfield Property, New Village Hall, and the NVH Garage to the Village as expeditiously as possible in accordance with the following terms and conditions:

9.1. **New Village Hall Timeline.**

- 9.1.1. **Preliminary Design.** The Village will have six months from the Final Approval Date (the "NVH Design Period") to deliver to the Owner

design plans and renderings for New Village Hall and the NVH Garage (the design plans and renderings for New Village Hall and the NVH Garage are collectively the "NVH Design Plans"). The Village may work with Zyscovich Architects, which is the Owner's architect, or with an architect selected by Village, to develop the NVH Design Plans during the NVH Design Period. Whether the Village works with Zyscovich or another architect, the cost of the NVH Design Plans will be paid for by Owner (only after Final Approval Date). Within three months after the end of the NVH Design Period, the Village will hold up to five public meetings to review and discuss the NVH Design Plans, and the Village Council will review and approve the NVH Design Plans in its proprietary capacity. The Village's failure to complete either (i) the NVH Design Plans during the NVH Design Period, or (ii) Village Council review and approval of the NVH Design Plans, within three months after the NVH Design Period, will not be a default under this Agreement. Instead, any of the remaining deadlines for the construction and completion of New Village Hall will be extended for the same period of time as any extension of the NVH Design Period and/or the review and approval period for Village Council approval of the NVH Design Plans.

9.1.2. **Construction Plans.** Once the NVH Design Plans have been approved by the Village Council in its proprietary capacity, and through the Village's regulatory process, Owner will have a period of 18 months to prepare the construction plans and specifications for the approved design (collectively, the "NVH Construction Plans") and submit them to the Village Manager for preliminary review and approval. The Village Manager will provide comments to the NVH Construction Plans within 10 Business Days after receipt of the NVH Construction Plans. Owner will revise the NVH Construction Plans to address the Village Manager's comments. Thereafter, Owner will comply with the Village's standard regulatory process for approval of the NVH Construction Plans.

9.1.3. **Design and Construction Standards.** Owner will design and construct New Village Hall as a sustainable building meeting the standards of the Florida Green Building Council or similar standards. New Village Hall must be rated to withstand a Category 5 hurricane, and must be designed, planned and constructed as Class A office space.

- 9.1.4. **Use of Fairfield Property for Staging.** Owner may continue using the Fairfield Property for the staging of Project construction after conveyance of the Fairfield Property to the Village, upon provision of a hold harmless agreement, in a form acceptable to the Village, protecting the Village from liability for its staging activities.
- 9.1.5. **Commencement of Construction.** Owner will commence construction of New Village Hall and the NVH Garage (i) after Village approval of the NVH Construction Plans and issuance of a building permit for New Village Hall; and (ii) within 120 days after issuance by the Village of a certificate of completion for the demolition of the Owner's existing parking garage, but this subpart (ii) will occur no later than 30 months after commencement of construction by Owner of the 96th Street Garage, subject to extensions as provided for in 9.1.1. The date that construction of New Village Hall or the NVH Garage commences will be the "NVH Commencement Date."
- 9.1.6. **Duration of Construction.** Owner will complete construction of New Village Hall and the NVH Garage no later than 30 months after the NVH Commencement Date, subject to extension due to Village change orders as described in Section 9.6.2. If, however, the design of New Village Hall or the NVH Garage causes the estimated construction time to be longer than 30 months, as determined by the average timeframe of construction bids received by Owner, then the parties will reasonably determine whether to extend the construction time period, or modify the design of New Village Hall and/ or the NVH Garage, or both. Owner acknowledges that the timely commencement and completion of New Village Hall and the NVH Garage is of the utmost importance to the Village, and is a significant inducement for the Village to enter into this Agreement.
- 9.1.7. **Failure to Timely Complete New Village Hall.** If Owner has not obtained a TCO for New Village Hall within 30 months after the NVH Commencement Date, the Village may, at its option, make a claim under the payment and performance bond for the construction of New Village Hall, provided that the Village first sends Owner written notice that Village intends to make a claim under the payment and performance bond if the TCO has not been obtained within 90 days Owner's receipt of the notice. In addition, if the TCO for New Village Hall is not issued within 30 months of the NVH Commencement Date, Owner shall assign to Village the liquidated

damages set forth in the construction contract for New Village Hall, as required in Section 9.3.

9.2. **Cost of New Village Hall.** Owner will be responsible for all costs and expenses for the design and construction of New Village Hall, up to the "Owner's NVH Cost" defined below.

9.2.1. **Owner's New Village Hall Cost.** Owner and Village agreed in February 2016 that the cost of New Village Hall would be \$9.6 million. The \$9.6 million cost was based on a construction cost of \$281.00 per square foot, and a building square footage of 34,164. Because the timing for the construction of New Village Hall has changed, Owner and Village agree that the cost of New Village Hall will be the 2016 estimated cost of \$9.6 million, as increased (but not decreased) by the percentage change in RS Means Building Construction Cost Data for Commercial Office New Construction in Miami as shown on the RS Means website between the first quarter of 2016 and the most current quarter information available at the time Owner submits the NVH Construction Plans to the Village for issuance of a building permit ("RS Means Percentage Increase"). The estimated \$9.6 million cost of New Village Hall, as increased by the RS Means Percentage Increase, is the "Owner's NVH Cost." The 2016 per square foot cost and square footage of New Village Hall contained in this paragraph are included only to show how the \$9.6 million 2016 cost was calculated and are not to be used in determining either the cost per square foot cost or square footage of New Village Hall at the time the increase to the \$9.6 million 2016 cost of New Village Hall is calculated. If RS Means no longer provides the information necessary to calculate the increased cost of New Village Hall at the time the NVH Construction Plans are submitted to the Village for permitting, Village and Owner shall jointly agree upon an alternative index.

9.2.2. **Items Included in Owner's NVH Cost.** The Owner's NVH Cost will include the following hard and soft costs only: architect and engineering fees incurred after the Final Approval Date; mobilization costs; construction costs; furniture, fixtures and equipment costs; landscaping and site improvement costs; and the cost of the Village Representative (defined below). Owner will keep the Village informed of any changes in the cost of New Village Hall.

9.2.3. **Items Not Included in Owner's New Village Hall Cost.** The Owner's NVH Cost will not include any application fees, permitting fees,

legal fees, accounting fees, financing fees, overhead or any other fees or charges. The Owner's NVH Cost will not include the costs of constructing the sidewalks abutting New Village Hall. However, the Owner will be responsible for paying the cost of such sidewalks as shown on Exhibit R. The Village will be responsible for the application and permitting fees for New Village Hall.

- 9.2.4. **Finalization of New Village Hall Cost.** If at the time Owner is ready to sign a construction contract with a general contractor ("NVH Contractor") for New Village Hall and the NVH Garage ("NVH Construction Contract"), the actual cost of New Village Hall is higher than the Owner's NVH Cost, Owner will cause the NVH Contractor to propose value engineering alternatives to lower the cost of New Village Hall to the Owner's NVH Cost. If the Village Manager does not wish to accept the value engineering alternatives proposed by the NVH Contractor, the Village Manager will have a period of 60 days after receipt of the value engineering alternatives to schedule a Village Council meeting for adoption of a resolution whereby the Village either agrees to pay the excess cost of New Village Hall or authorizes changes to the New Village Hall construction plans to reduce the cost of New Village Hall to Owner's NVH Cost.
- 9.2.5. **NVH Cost and Construction Information.** During the period of construction of New Village Hall, Owner will keep the Village Manager informed of all construction and cost-related issues. Owner will promptly provide Village with copies of all requisitions, change orders, and any other documentation affecting the cost of New Village Hall.
- 9.2.6. **Reduction in New Village Hall Cost.** If the construction of New Village Hall costs less than Owner's NVH Cost, Owner will pay the excess funds (i.e., the difference between the Owner's NVH Cost and the actual construction cost of New Village Hall) to the Village at the time of the transfer of New Village Hall to the Village. Village may use the excess funds for any purpose desired by the Village.
- 9.3. **Construction Contract for New Village Hall and the NVH Garage.** Prior to issuance of a building permit for the construction of New Village Hall and/or the NVH Garage, Owner will submit to the Village Manager for the Village Manager's review and approval a copy of the NVH Construction Contract. The Village Manager will not unreasonably withhold or delay his approval of the NVH Construction Contract as long as it provides for the construction of New Village Hall as a Class A office building; provides

appropriate assignable construction warranties; provides for the assignment of delay damages to the Village; and establishes construction standards, guidelines, and procedures appropriate for the construction of a public building abutting a major public right-of-way. The Village Manager will review and either approve or request changes to the NVH Construction Contract within 10 Business Days after receipt. Owner shall cooperate with the Village Manager in order to address any reasonable changes to the NVH Construction Contract requested by the Village Manager.

- 9.4. **Construction of Improvements.** Owner will ensure that the construction of New Village Hall and the NVH Garage is performed in a good and workmanlike manner, in accordance with all Governmental Requirements and the NVH Construction Contract.
- 9.5. **Village Representative.** The Village will designate a representative for the construction of New Village Hall and the NVH Garage ("Village Representative"), who may, during normal business hours, visit, inspect, and appraise the construction of New Village Hall, the NVH Garage, and any materials, contracts, records, plans, specifications and shop drawings relating to New Village Hall or the NVH Garage, whether kept at Owner's offices or at the construction site or elsewhere. Owner agrees to notify the Village Representative of meetings among Owner, Owner's representative, the general contractor, any subcontractors, or any subset of this group, and the Village Representative will be entitled to attend such meetings. Owner agrees to cooperate with the Village Representative, and to make available to the Village Representative, upon request by the Village, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction.
- 9.6. **Change Orders.**
  - 9.6.1. **Village-initiated Change Orders.** Village will have the right to request changes to the design or construction of New Village Hall and the NVH Garage by submitting a change order to Owner. All change orders must be in writing. Owner will submit Village's change order to the NVH Contractor to obtain a cost for the change order and the amount of additional construction time, if any, required as a result of the change order. Owner will notify Village of the cost and additional time required to implement the change order. If Village elects to proceed with the change order, (i) Village will be responsible for the additional cost resulting from the change order to the extent that it increases the cost of New Village Hall to more than the Owner's NVH Cost, and (ii) the deadline for the

completion of New Village Hall and the NVH Garage will be extended by the additional time required to implement the change order.

9.6.2. **Owner-initiated Change Orders.** The Village Manager's written approval will be required for any change order other than those requested or initiated by the Village. Village Manager's approval of Owner's change orders will not be unreasonably withheld or delayed, but such change orders shall not increase the cost of New Village Hall to the Village or extend the time for completion of New Village Hall or the NVH Garage.

9.7. **Resolution of New Village Hall and NVH Garage Design and Construction Disputes.**

9.7.1. **Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to the design and/or construction of New Village Hall and/or the NVH Garage, the parties will use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, Owner and Village agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

9.7.2. **Mediation.** If the parties are unable to negotiate a resolution of their dispute within a period of five Business Days, then, upon notice by either party to the other, the parties agree to try in good faith to settle the dispute through an expedited mediation process administered by a mediator agreed upon by both parties before resorting to litigation. If a party fails to respond to a written request for mediation within three Business Days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute.

9.7.3. **Litigation.** If the mediation does not result in settlement of the dispute within five Business Days after the initial mediation conference, or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to the design and/or construction of New Village Hall, or this contract shall be settled through court proceedings.

9.7.4. **Time is of the Essence.** Village and Owner agree that time is of the essence for all decisions regarding the design and construction of

New Village Hall and the NVH Garage. The parties agree to avoid costly and unnecessary delays related to any dispute, and agree that any dispute resolution process regarding New Village Hall will be conducted on an expedited basis.

10. **New Village Hall Garage.** In Section 10 of the 2017 Agreement, regarding the NVH Garage, subsection 10.4 regarding Excess Parking Spaces in NVH Garage is deleted in its entirety, and subsection 10.5 is renumbered as 10.4 and revised as follows:

**10.510.4.** **Temporary Parking.** During the period of time between the issuance of a building permit for the construction of the Waterfront Park by the Village and the conveyance of the NVH Garage to the Village, Owner agrees to provide 40 parking spaces **free of charge** in the Shops parking garage then in operation for use by Village employees ~~free of charge~~ **who currently park on the Waterfront Park site.**

11. **Conveyance of Fairfield Property, New Village Hall, and NVH Garage.** In Section 11 of the 2017 Agreement, regarding the Conveyance of Fairfield Property, New Village Hall and NVH Garage, subsections 11.2, and 11.3, and 11.5 are amended as follows, and subsection 11.6 is added:

11.2 **Title Commitment.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property ~~and any other property upon which NVH Garage has been constructed~~, Owner will provide Village with a title commitment (“**Title Commitment**”) for an owner’s title insurance policy (“**Title Policy**”) to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village’s title to the Fairfield Property, New Village Hall, and the NVH Garage in an amount equal to the sum of (i) \$10 million for the Fairfield Property, ~~(ii) the value of any additional land upon which the NVH Garage is located, as reasonably determined by the Owner,~~ and ~~(iii)~~(ii) the final cost of New Village Hall and the NVH Garage.

11.3. **Due Diligence.** Not less than 90 days prior to the conveyance to the Village of the Fairfield Property ~~and any other property upon which NVH Garage has been constructed~~, Owner will provide Village with all of the due diligence materials for the Fairfield Property ~~and any additional NVH Garage property~~ that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment (“**ESA**”) certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for ~~either~~ the Fairfield Property ~~or for any additional NVH Garage Property, or both,~~ **shows** evidence of any environmental contamination, Owner or the Owner ~~Subsidiary~~ will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.

- 11.5 Cross Easements for Ingress, Egress, and Access.** In the event that the NVH Garage and the Shops North Garage are connected to each other, at the time of the conveyance of the Fairfield Property to the Village, Owner and Village will enter into a cross easement agreement between the NVH Garage and the Shops North Garage. Easement for Ingress, Egress, and Access to and from the Fairfield Property. At the time of conveyance of the Fairfield Property to the Village, Owner will execute and record an easement agreement granting to the Village and to the public a non-exclusive right of ingress, egress and access to and from the Fairfield Property through the Owner's property south of the centerline of Bal Cross Drive as shown on Exhibit S so long as the Fairfield Property is used for municipal purposes.
- 11.6 Post-Closing Access Agreement for Staging.** Prior to the conveyance of the Fairfield Property to the Village, the Village and Owner will enter into an agreement which will include the following terms:
- 11.6.1 A grant to Owner of a temporary right of access to certain portions of the Fairfield Property for staging (parking, storage, etc.) until completion of the Project, provided that such access by Owner does not unreasonably interfere with the use or operation of New Village Hall or the NVH Garage, or present any unreasonable risk of injury or damage to persons or property;**
- 11.6.2 Confirmation of Owner's obligation, upon termination of this Post-Closing Access Agreement for Staging, to remove all construction materials and debris from the Fairfield Property, and to complete installation of all landscaping of the Fairfield Property in accordance with the site plan for New Village Hall within a specified period of time;**
- 11.6.3 Owner's agreement to maintain liability insurance in amounts satisfactory to Village to insure against any all claims arising out of Owner's use of the Fairfield Property after it has been conveyed to the Village, and naming Village as an additional insured; and**
- 11.6.4 Indemnification by Owner of the Village, its council members, officers, employees, agents, and contractors (only when acting in their respective official capacities) (collectively, the "Village Indemnified Parties"), from and against all liabilities, actions, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, Attorneys' Fees (including those resulting from the enforcement of the foregoing indemnification), arising from, or which may be imposed upon, incurred by or asserted against one or more Village Indemnified Parties by a third party, by reason of any work or activity performed by Owner or any authorized**

employee, agent or representative of Owner performing work or rendering services on behalf of Owner on or about the Fairfield Property after it has been conveyed to the Village.

12. **Conveyance of SunTrust Property.** Section 12 of the 2017 Agreement regarding the conveyance of the SunTrust Property is amended in its entirety to read as follows:

12. **Conveyance of SunTrust Property.**

12.1. **Timing of Conveyance.** ~~Upon completion of permit-ready construction drawings for~~ If the Waterfront Park Final Approval Date occurs by January 15, 2020, the Owner will cause the Owner Subsidiary to convey to the Village good and marketable title to the SunTrust Property by special warranty deed, free and clear of all encumbrances other than those set forth on Exhibit K. Village agrees that upon the termination or expiration of the existing lease of the SunTrust Property (the "SunTrust Lease"), the SunTrust Property will be used for municipal purposes only.

12.2. **Title Commitment.** ~~Not less than 90 days prior to the conveyance to the Village of the SunTrust Property,~~ Payment of SunTrust Property Rents. If the Rendition Date has occurred but the Final Approval Date has not occurred all of the Development Approvals have not become final and non-appealable by January 15, 2020, Owner will pay or cause the Owner Subsidiary to pay to the Village an amount equal to the rents received under the SunTrust Lease (net of all taxes, including sales taxes and income taxes, imposed on Owner and/or Owner subsidiary or any of their constituents, as reasonably determined by Owner as may be subsequently adjusted or determined, arising out of such rents such net rents being the "SunTrust Net Rent"), with such obligation to become effective as of January 15, 2020, and remain in effect until the conveyance of the SunTrust Property to the Village. The Shops shall take all reasonable efforts to collect rent from SunTrust and, failing to collect, take all other commercially reasonable actions to enforce collection. If, however, (i) the Development Approvals have not become final and non-appealable by January 15, 2023; (ii) Owner provides written notice to the Village that it is not going to develop the Project at any time in the future; (iii) Owner withdraws any building permit applications submitted for the Project, (iv) Owner files an irrevocable waiver of the 2017 and 2018 Site Plan Approvals, as amended, and (v) the Development Agreement is terminated by Owner as to any future obligations to be performed (items (i) through (v) being the Termination Conditions), then the obligation to pay the Village the SunTrust Net Rent will terminate, and no conveyance of the SunTrust Property will occur. The obligation to pay the rents due

under the SunTrust Lease will be in a form reasonably acceptable to the Village Attorney. Additionally, Owner will use commercially reasonable methods to include with such payment an estoppel certificate signed by the tenant of the SunTrust Property stating the amount of rents due under the SunTrust Lease, the rent payment dates, and whether there are any uncured events of default on the part of either the tenant or the landlord under the SunTrust Lease.

- 12.3 Title Commitment.** If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020, Owner will provide Village with a title commitment ("Title Commitment") for an owner's title insurance policy ("Title Policy") to be issued by a title insurance company and title agent designated by Owner and acceptable to Village, insuring the Village's title to the SunTrust Property in the amount of \$12,750,000.00.
- 12.4. Due Diligence.** If all of the Development Approvals have become final and non-appealable by January 15, 2020, then on or before February 15, 2020, Owner will provide Village with all of the due diligence materials for the SunTrust Property that would be required by a prudent purchaser of commercial real estate, including but not limited to, a Phase I environmental site assessment ("ESA") certified to the Village; a Phase II ESA if recommended by the Phase I ESA; and a current survey showing all improvements certified to the Village. If the ESA for the SunTrust Property shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable Governmental Requirements.
- 12.5 Maintenance of SunTrust Property.** Prior to any conveyance of the SunTrust Property, Owner will enforce the provisions of the SunTrust Lease regarding the maintenance of all improvements on the SunTrust Property in the condition existing on the Effective Date.
- 12.6. SunTrust Lease.** Owner will not allow or agree to any modifications of the lease encumbering the SunTrust Property ("**SunTrust Lease**") between the Effective Date and the outside date for any conveyance of the SunTrust Property to Village unless such modifications are approved in writing by the Village Manager.
- 12.7. Closing Deliveries.** The closing on the conveyance of the SunTrust Property will occur within 90 days after the delivery to the Village of the Title Commitment and the due diligence materials. At the closing on the conveyance of the SunTrust Property, Owner will cause the Owner Subsidiary to do the following:

- 12.7.1.** Assign to the Village the SunTrust Lease and all rents due under the SunTrust Lease;
- 12.7.2.** Deliver to Village an estoppel certificate in a form reasonably acceptable to the Village, signed by the tenant under the SunTrust Lease.
- 12.7.3** Transfer all security deposits under the SunTrust Lease to the Village;
- 12.7.4** To the extent that there are any service contracts or maintenance agreements in effect for the SunTrust Property to which the Owner Subsidiary is a party, Owner will cause the Owner Subsidiary to assign to the Village such service contracts and maintenance agreements acceptable to Village (with Owner Subsidiary to terminate or cancel any such contracts or agreements not assigned to the Village);
- 12.7.5** Deliver to the Village all construction manuals, keys, codes, and other documents and information required in connection with the use and operation of the SunTrust Property;
- 12.7.6** Execute, deliver and record all closing documents required by this Agreement and by the Title Commitment; and
- 12.7.7** Pay all closing costs in connection with the conveyance of the SunTrust Property (other than the Village's Attorneys' Fees), including the cost of the Title Policy.

13. **Waterfront Park Contribution and Site Plan.** Subsections 13.3 and 13.4 are added to Section 13 of the 2017 Agreement, and subsection 13.4 is renumbered as 13.5.

**13.3 Waterfront Park Construction Plans. Within 30 days after the First Amendment Effective Date, the Village will request the Owner, at Owner's expense, to cause the construction plans for the Waterfront Park (the "Park Construction Plans") to be prepared by Zyscovich Architects ("Zyscovich") or by an architect designated by Village at Owner's expense. Owner will contract with the designated architect to prepare the Park Construction Plans, and Village will manage the designated architect's completion of the Park Construction Plans. Owner will deduct the cost of the Park Construction Plans, in an amount not to exceed \$1,000,000.00 from the Waterfront Park Contribution. In the event that the Development Approvals do not become Final, Owner is not obligated to pay the remaining balance of the Waterfront Park Contribution.**

**13.4 Assignment of Park Construction Plans.** Owner shall immediately deliver the completed Park Construction Plans to the Village, along with an assignment from Owner and Zyscovich (or other architect designated by the Village) of all of their respective rights, title and interest in the Park Construction Plans. The assignment will include a provision granting to the Village the right to use the Park Construction Plans in whatever manner the Village wishes. In the event that Owner elects not to complete the Project in accordance with Section 12.2 and the Park Construction Plans are not complete, then Owner shall deliver the Park Construction Plans to the Village upon request.

**13.5 Construction of Waterfront Park.** Village will be responsible for paying for and performing the construction of Waterfront Park.

14. **Parking Surcharge.** Sections 14.1 and 14.2 are amended as follows:

**14.1. Payment of Parking Surcharge to Village.** The Parking Surcharge will be implemented within 30 days after the issuance of the TCO for the ~~new parking garage structure fronting 96<sup>th</sup> Street~~ **Garage**. The Village will use the Parking Surcharge funds for parking and multimodal mobility initiatives or any other municipal purposes, at the Village's discretion. The Village will at all times have the right to review the Owner's parking reports to verify the amount of the Parking Surcharge being remitted to the Village. The Parking Surcharge records provided by the Owner will be reviewed by an independent auditor and will be handled in a manner similar to the handling of Resort Tax payments by the Village. The Parking Surcharge will survive the expiration or earlier termination of this Agreement as long as any portion of the Shops Property continues to be used for commercial uses. **If the Owner ceases to charge customers and public users for parking, the Owner will no longer be required to collect the Parking Surcharge or remit Parking Surcharge payments to the Village. If, however, the Owner resumes charging for parking after ceasing to charge for parking, the obligation to collect and pay the Parking Surcharge will be reinstated.** ~~Prior to the final approval of this Agreement at a second public hearing,~~ Owner and Village will negotiate the terms of an instrument **regarding the Parking Surcharge and Police Fee. The Agreement Regarding Parking Surcharge and Police Fee will be executed by the parties and recorded by the Owner** within ten days after the Final Approval Date ~~imposing the Parking Surcharge on the Shops Property.~~

**14.2. Owner Retention of Portion of Parking Surcharge.** Owner may retain up to 50% of each quarterly payment of the Parking Surcharge due Village to offset the Owner's cost of constructing the ~~parking provided for New Village Hall (whether on the Fairfield Property or in the NVH Garage)~~ **up to the actual cost of the parking spaces provided, but not to exceed underground portion of the NVH Garage up to a maximum amount of \$6 million,** after which 100% of the Parking Surcharge will be paid to the Village.

15. **Traffic Improvements.** Subsections 15.1 through 15.5 of the 2017 Agreement are amended in as follows:

15.1. **Realignment of Collins Avenue.** As one of the initial elements of ~~Phase One~~ **the first phase** of the Project, Owner (with assistance from the Village) will work with FDOT to seek approval to reconfigure the southbound lanes on Collins Avenue from Founder's Circle through the 96th Street intersection in order to ensure a continuous and uninterrupted flow of traffic. Upon approval by FDOT, Owner will undertake the reconfiguration at Owner's expense and in accordance with FDOT requirements.

15.2. **First Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of a TCO for the ~~new parking garage on the Existing Shops Property~~ **96<sup>th</sup> Street Garage**:

15.2.1. **Interim Configuration of AIA Crosswalk.** Construction and installation of an interim **enhanced** two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("A1A"), in the location where a crosswalk currently exists. **The Interim Configuration shall include the two-stage pedestrian crosswalk and any of the final equipment which can be reasonably installed to prepare for the Final Configuration.**

15.2.2. **Collins / Harding Signal Removal.** Removal of the existing mid-block pedestrian signal on Collins Avenue and Harding Avenue north of 96<sup>th</sup> Street after completion of the two-stage pedestrian crosswalk on A1A.

15.2.3. **Loading Area and Service Driveway.** Construction of a new loading area and service driveway for the Shops on 96<sup>th</sup> Street at Byron Avenue to handle truck traffic.

**15.2.4. Interim Configuration of Signalized Driveway at North End of Shops.** **Construction of a new signalized driveway at the north end of the Shops to handle the traffic that currently uses the driveways on Collins Avenue and Harding Avenue, in order to eliminate backups from the driveways that interfere with traffic flow on Collins Avenue. Interim Configuration shall include right of way improvements and an interim entrance configuration to accommodate construction.**

**15.3. Second Set of Traffic Improvements.** The following Traffic Improvements will be completed prior to the issuance of the Final TCO.

**15.3.1 Final Configuration of AIA Crosswalk.** Construction and installation of an **interim enhanced two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("A1A"), at the location defined by the proposed**

Collins/Harding Avenue Realignment and approved by FDOT. The Final Configuration is anticipated to incorporate the necessary changes of the proposed Collins/Harding Avenue Realignment at 96<sup>th</sup> Street.

**15.3.2. Final Configuration of Signalized Driveway at North End of Shops.**

Construction of a new signalized driveway at the north end of the Shops to handle the traffic that currently uses the driveways on Collins Avenue and Harding Avenue, in order to eliminate backups from the driveways that interfere with traffic flow on Collins Avenue. **Final Configuration shall include final right of way improvements and final entrance configuration.**

**15.4 Third Set of Traffic Improvements. The following Traffic Improvements will be completed prior to the issuance of Certificate of Completion for Collins Plaza.**

**15.4.1. Premium Valet Parking Entry.** Conversion of the existing driveway on Collins Avenue and Harding Avenue into an "Entry Only" driveway for premium valet parking.

**15.4.2. Premium Valet Parking Exit.** Conversion of the secondary driveway adjacent to the pedestrian crossing signal immediately north of 96<sup>th</sup> Street to an "Exit Only" driveway for premium valet parking.

~~**15.3.4. AIA Crosswalk.** Construction and installation of an enhanced two-stage pedestrian crosswalk in the 9700 Block of State Road A1A ("A1A"), in the location where a crosswalk currently exists.~~

**15.4.3. Final Retiming of Traffic Signals.** After completion of the new driveway at the north end of the Shops and the new service driveway on 96<sup>th</sup> Street, development of new traffic signal coordination plans to optimize signal operations, taking into account the improved signal spacing and other changes to the street network.

**15.5. During All Phases.** ~~Ongoing monitoring of traffic changes during~~ **Monitoring and Signal Retiming. Throughout** the development of the Project, ~~and development~~ **Owner will monitor traffic changes** and ~~implementation of develop and implement~~ interim signal retiming plans ~~throughout all of the Phases~~ to address the changes in traffic flow that **will may** occur. ~~during the development of the Project.~~

**15.6. Additional Traffic Improvements after Project Completion.** The parties acknowledge that the Owner is not required to provide any additional traffic mitigation for the Project other than as set forth in the foregoing subsections regarding the Traffic Improvements. Owner agrees to fund and implement the following additional traffic improvements ("**Additional Traffic Improvements**") prior to issuance of the Final TCO. In the event that other Governmental

Authorities will not approve the Additional Traffic Improvements, the Owner will be released from any further responsibility related to the Additional Traffic Improvements.

**15.6.1.** **Harding Avenue / 96<sup>th</sup> Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the signals controlling the eastbound and westbound traffic. This improvement will allow signal operation to respond more effectively to variations in eastbound traffic. Signal time not needed by the east/west traffic on 96<sup>th</sup> Street can be transferred to Harding Avenue to reduce southbound delays and stops.

**15.6.2.** **Collins Avenue / 96<sup>th</sup> Street Intersection.** Installation of sensor loops and pedestrian pushbuttons to the eastbound movement, and if possible, provide a connection to the eastbound loops at Harding Avenue. This improvement will allow the intersection to work in concert with the signal at the Harding Avenue / 96<sup>th</sup> Street intersection, and to transfer unused green signal time from 96<sup>th</sup> Street to northbound Collins Avenue.

**15.6.3.** **96<sup>th</sup> Street at 500 Block.** Addition of a two-stage pedestrian crossing to provide a safer crossing of 96<sup>th</sup> Street by pedestrians and to reduce delays to traffic on 96<sup>th</sup> Street.

16. **Infrastructure Improvements.** Section 16 of the 2017 Agreement is amended to read as follows:

16. **Infrastructure Improvements.** Owner will be responsible for the cost of installing, connecting, or relocating and reconnecting, ~~any water, sewer and stormwater improvements~~ **and all public and private utilities** required in order **solely** to facilitate the development of, and meet any capacity requirements for, the Project, New Village Hall, and the NVH Garage. **Public and private utilities include but are not limited to: water distribution, wastewater removal (sewer), stormwater drainage, electricity, gas, and telecommunications (telephone, cable, internet, etc.).**

17. **Collins Plaza Public Space.** Subsection 17.2 and the first sentence of subsection 17.3 are amended to read as follows:

~~17.21~~ **Use by Owner.** Upon receipt **issuance** of the Final TCO, Owner agrees to use Collins Plaza on a periodic basis as determined by Owner for appropriate commercial uses such as retail, food, and beverage sales, **or for non-commercial uses such as temporary artwork installations, farmers markets, or special events,** which uses are compatible with the operation of the Shops. Owner will

have the right to terminate its use of Collins Plaza after consultation with the Village if Owner reasonably believes its use of Collins Plaza to be unsuccessful.

17.23. **Use of Collins Plaza by Village.** Upon receipt-issuance of the Final TCO, the Village will have the right to use all of Collins Plaza (including the parking spaces) up to six times per calendar year for special events, at no cost to Village, on dates and at times mutually agreed upon by the parties.

18. **Residential Gate.** The following sentence is added to the end of subsection 18.2:

If the Village elects to perform the Gate Work as part of the development of the Waterfront Park, the Owner will reimburse the Village for the Village's cost of the Gate Work up to \$30,000.00.

19. **Public Use Areas.** The first sentence of subsection 19.3. is amended to read as follows:

19.3. **Easement, Encroachment, and Maintenance Agreement.** Within 60 days following~~Prior to final~~ approval of this Agreement the First Amendment at a second public hearing, Owner and Village will ~~negotiate~~review and revise, if necessary, the terms of ~~an~~ the previously negotiated agreement ("Easement, Encroachment, and Maintenance Agreement") to be recorded within ten days after the Final Approval Date.

20. **Public Safety.** Subsection 20.2 and the first sentence of subsection 20.4 are amended to read as follows:

20.2. **Off-Duty Police Services.** From the date of issuance of the first permit for any portion of the Project until issuance of the Final CO, Owner will be required to pay to the Village an annual "Off-Duty Police Fee" in an amount equal to the cost of 4,500 hours of off-duty police service at the rate then being charged by the Village for off-duty police service. The Off-Duty Police Fee will not be more than 10% higher than the rate then being charged by the City of Miami Beach. The current rate being charged by the Village is \$60.00 per hour. Owner will pay the Off-Duty Police Fee in advance in quarterly installments, with the first installment due on the first day of the calendar quarter (January, April, July, or October) following the date of issuance of the first permit for any portion of the Project. After completion of the Project, the Off-Duty Police Fee will be reduced to the cost of 3,500 hours of off-duty police service. If the Shops' operating hours change in the future, the number of hours used to calculate the Off-Duty Police Fee will be adjusted accordingly. Owner and the Village Manager will mutually agree upon an appropriate schedule for the off-duty police officers to be present on the Shops Property. If Owner requests off-duty police officers for Shops events or construction during a year, the services requested will be counted as part of the

4,500 hours (3,500 hours after issuance of the Final CO) paid for by Owner. The Off-Duty Police Fee will not apply to either (i) the police services required under Section 20.1, or (ii) off-duty police services requested by tenants of the Shops. The Owner's obligation to pay the Off-Duty Police Fee will survive the expiration or termination of this Agreement. ~~Prior to the final approval of at a second public hearing,~~ Owner and Village will negotiate the terms of an agreement regarding the Parking Surcharge and Police Fee. The Agreement Regarding Parking Surcharge and Police Fee will be executed by the parties and recorded by Owner within 10 days after the Final Approval Date and will impose on the Shops Property the obligation to pay the Off-Duty Police Fee in perpetuity as long as any portion of the Shops Property is used for commercial purposes.

20.4 **LPR Cameras.** Within three Business Days after the Rendition Date, Owner will (i) ~~Owner agrees to donate to the Village an amount of money sufficient to purchase~~ two license plate recognition cameras ("LPR Cameras") ~~at a cost not to exceed \$25,000.00, and (ii) grant to the Village a perpetual easement for the installation, maintenance, repair and replacement of the LPR Cameras.~~

21. **Building Department Fees and Services.** Section 21 is amended in its entirety as follows:

21. **Building Department Fees and Services.**

21.1. **Payments in Lieu of Building Permit Fees.** In lieu of paying the Village's standard fees for building permits for the Project, Owner agrees to pay Village ~~a contribution in lieu of permit fees in the amount of \$2.5 million\* (~~the following voluntary contributions (each, a "Voluntary Contribution") in five equal installments, according to the following schedule:~~~~

21.1.1. **Payments in Lieu of Permit Fees for First Phase of Project. For all portions of the Project other than the third levels of Buildings D, E, F, G and H, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees in the amount of \$2.5 million\* in five equal installments, according to the following schedule:**

First Payment of \$500,000*	Due at time of submittal of the first permit application for construction.
Second Payment of \$500,000*	Due prior to issuance of the first building permit for construction
Third Payment of \$500,000*	Due on one-year anniversary of Second Payment.
Fourth Payment of \$500,000*	Due on two-year anniversary of Second Payment

Fifth Payment of \$500,000*	Due prior to issuance of Final TCO for entire Project <b>the second level of the last of Buildings F, G, H and Z.</b>
*NOTE: All amounts set forth in Section 21.1 and in this table are estimates subject to adjustment as set forth in Section 21.1.4 and <b>21.1.6.</b>	

**21.1.2.** Payments in Lieu of Permit Fees for Third Levels of Buildings D and E. In lieu of paying the Village’s standard fees for building permits for the third levels of Buildings D and E, Owner agrees to pay Village a Voluntary Contribution in lieu of permit fees for the third levels of Buildings D and E in the amount of \$150,000.00, with \$75,000.00 to be paid upon submittal of the permit application, and \$75,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for the third levels of Buildings D and E will be subject to the “true-up” adjustment set forth in Section 21.1.6.

**21.1.3.** Payments in Lieu of Permit Fees for Third Levels of Buildings F, G and H. In lieu of paying the Village’s standard fees for building permits for the third levels of Buildings F, G and H, Owner agrees to pay Village a voluntary contribution in lieu of permit fees for the third levels of Buildings F, G and H in the amount of \$250,000.00, with \$125,000.00 to be paid upon submittal of the permit application, and \$125,000.00 to be paid prior to the issuance of a building permit. The Voluntary Contribution in lieu of permit fees for the third levels of Buildings F, G and H will be subject to the “true-up” adjustment set forth in Section 21.1.6.

**21.1.1.4.** Voluntary Contribution Contributions Based on Estimated Construction Cost Costs. The Voluntary Contribution Contributions and payments set forth in Section Sections 21.1.1, 21.1.2 and 21.1.3 are estimates only. Prior to the issuance of the first respective building permit permits for construction of (i) the first two levels of Buildings F, G, H and Z; (ii) the third levels of Buildings D and E; and (iii) the third levels of Buildings F, G and H, Owner will provide the Village with a copy of the construction contract for the Project applicable to each respective phase of construction or other documentation acceptable to Village showing the anticipated cost of the respective phase of the Project. The amounts of the second through fifth payments for the first two levels of Buildings F, G, H and Z will be adjusted based on that cost so that the total of the five payments equals two percent of the

anticipated Project hard costs up to the first \$1.0 million, and one percent of the anticipated Project hard costs after the first \$1.0 million.

~~21.1.2-5.~~ **Items not included in Voluntary Contribution.** The calculation of the **respective** Voluntary Contribution payments under this provision does **Contributions do** not include any of the following: (i) the value of any permits required for New Village Hall; (ii) the value of any permits for work done by tenants of the Shops, which must be applied for and paid for by tenants; or (iii) the amount of any charges collected by the Village on behalf of other Governmental Authorities, which charges must be remitted to Village by Owner.

~~21.1.3-6.~~ **True-up of Voluntary Contributions.** Thirty days prior to the issuance of **each of the following: (i) the Final TCO, for the last of the first two levels of Buildings F, G, H and Z; (ii) the TCO for the third levels of Buildings D and E, and (iii) the TCO for the third levels of Buildings F, G and H,** Owner will provide Village with an updated calculation of the actual Project construction cost ~~(including the cost of the NVH Garage).~~ Any required adjustment of the Voluntary Contributions based on the Owner's actual construction costs will be paid by Owner or refunded by Village, whichever is applicable.

22. **Security for Owner's Obligations.** Subsection 22.1 is amended as follows, a new subsection 22.2 is inserted after subsection 22.1, and the remaining subsections in Section 22 are renumbered.

22.1. **Escrow of Deeds and Assignment of Lease.** Prior to the execution of this Agreement by the Village, Owner shall deliver to the Village Attorney **original executed** special warranty deeds conveying the Fairfield Property and the SunTrust Property to the Village (collectively, the "**Deeds**"). **Within 30 days of the execution of the First Amendment by the Village, Owner shall deliver to the Village Attorney an original executed assignment of the SunTrust Lease (the "Lease Assignment").** The **Deeds and Lease Assignment** must be reasonably satisfactory in form and substance to the Village Attorney. The **Deeds and Lease Assignment** will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement to be entered into by Owner, each Owner Subsidiary, Village, and Village Attorney prior to the execution of this Agreement by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of this Agreement by the Village.

22.2. **Escrow of SunTrust Obligation.** **Within 30 days of the execution of the First Amendment by the Village, Owner shall deliver to the Village Attorney an original executed obligation to pay the SunTrust Net Rents to the Village (the "SunTrust Obligation").** The **SunTrust Obligation** must be reasonably

satisfactory in form and substance to the Village Attorney. The SunTrust Obligation will be held in escrow by the Village Attorney according to the terms of an Escrow Agreement for the SunTrust Obligation to be entered into by Owner; Bal Harbour Shops Tract A, LLC; the Village, and Village Attorney within 30 days of the execution of the First Amendment by the Village. The terms and conditions of the Escrow Agreement must be agreed upon by the parties prior to the execution of the First Amendment by the Village.

23. **Taxes.** No changes.
24. **Transfer Fee.** Subsections 24.2.1, 24.2.2, and 24.2.4 are amended as follows:
- 24.2.1. **Prior to Building Permits for 50% of the GFA.** If a Transfer occurs prior to the issuance of building permits for 50% of the Expansion GFA, excluding the third levels of Buildings D, E, F, G, H and Z, 100% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
  - 24.2.2. **Prior to Building Permits for All of the GFA.** If a Transfer occurs prior to the issuance of building permits for 100% of the Expansion GFA, excluding the third levels of Buildings D, E, F, G, H and Z, 90% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
  - 24.2.5. **Prior to Fifth Anniversary of the Final TCO.** If a Transfer occurs prior to the fifth anniversary of the Final TCO, 50% of the Transfer Fee will be due and payable to Village on the closing date of the Transfer.
25. **“Look Back” Reporting and Mitigation.** Subsection 25.1 is amended as follows, and subsections 25.5 and 25.6 are added.
- 25.1. **First Look Back Reports.** Twelve months after tenant TCOs have been issued for 75% of the GFA of the first two levels of Buildings F, G, H and Z, Owner will pay for and provide to the Village reports prepared by consultants approved by the Village Manager regarding traffic, parking, acoustical matters, loading docks, and public safety at the Project (collectively, “**First Look Back Reports**”).
  - 25.5 Third Look Back Report.** In the event that the third levels of Buildings F, G and H are converted from parking area to retail space, then 12 months after tenant TCOs are issued for 75% of the GFA for the third levels of Buildings F, G and H, Owner will pay for and provide a parking report and an ingress/egress analysis, including an intersection queuing analysis for any vehicular entrance to the Project (collectively, the “Third Look Back Reports”).

**25.6 Third Look Back Mitigation Required. If any of the Third Look Back Reports objectively demonstrate that Owner has not properly mitigated the impacts to parking, ingress or egress, or queuing at intersections caused solely by the Project, Owner will provide additional mitigation ("Third Look Back Mitigation") in accordance with the recommendations of Owner's consultants for the Project, and as approved by Village. Owner will provide Village with a proposal for the Third Look Back Mitigation within 30 days after issuance of the Third Look Back Reports. Upon Village's review and acceptance of the proposal, Village and Owner will enter into an amendment to the Agreement setting forth the terms and conditions for the performance of the Third Look Back Mitigation by Owner. One year following the completion of the Third Look Back Mitigation, Owner will provide one or more reports to the Village demonstrating that the Third Look Back Mitigation has resolved any of the items identified by the Third Look Back Reports.**

26. **Indemnifications.** No changes.

27. **Insurance.** No changes.

28. **Default, Opportunity to Cure, and Remedies.** No changes.

29. **Notices.** The address for Katz Barron in subsection 29.1 is changed as follows:

Katz Barron  
~~2699 South Bayshore Drive, Seventh Floor~~  
~~Miami, Florida 33133~~  
**901 Ponce de Leon Boulevard, Tenth Floor**  
**Coral Gables, Florida 33134**  
Attention: Howard L. Friedberg and Michael D. Katz  
Telephone: 305 856 2444  
Facsimile: 305 285 9227  
Email: hlf@katzbarron.com and mdk@katzbarron.com

30. **Multiple Ownership of Shops Property.** No changes.

31. **Term of Agreement.** No changes.

32. **Enforcement of Agreement.** No changes.

33. **Authorization to Withhold Permits and Inspections.** No changes.

34. **Development Rights.** No changes.

35. **Miscellaneous Provisions.** Subsection 35.6 is amended as follows:

35.6 **Conditions of Resolutions and Site Plans.** The conditions set forth in **(i) Village Resolution No. 2017-1077**, a copy of which is attached as **Exhibit H**, **(ii) the Major Site Plan attached as Exhibit I**; **(iii) Village Resolution No. 2018-1202 attached as Exhibit O**; and **(iv) the 2018 Site Plan attached as Exhibit P** are hereby incorporated into and made a part of this Agreement.

36. **Waiver of Jury Trial.** No changes.

**[SIGNATURE BLOCKS ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, Owner and Village have executed this Agreement on the dates set forth below their respective signatures

Witnesses:

Signature

Print name:

Signature:

Print name:

*Kristin Lazenby*  
Kristin Lazenby  
*Seth E. Salvetti*  
Seth E. Salvetti

OWNER:

BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership

By:

*Matthew Whitman Lazenby*  
Matthew Whitman Lazenby, General Partner

Date:

December 18, 2018

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on December 18 2018, by Matthew Whitman Lazenby, as the General Partner of Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, who is [ ] personally known to me or [ ] has produced a valid driver's license as identification.

NOTARY SEAL



*Amy E. Huber*  
Amy E. Huber  
Notary Public, State of Florida

Print name:

Amy E. Huber

My commission expires:

May 28, 2019

[VILLAGE SIGNATURES ON FOLLOWING PAGE]

Witnesses:

VILLAGE:

Signature: Ramiro Inguanzo

BAL HARBOUR VILLAGE

Print name: RAMIRO INGUANZO

By: Jorge M. Gonzalez, Village Manager

Signature: Alex Cardelle

Date: 12/20/2018

Print name: ALEX CARDELLE

ATTEST:

Dwight Danie  
Dwight Danie, Village Clerk

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

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney

[Signature]

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

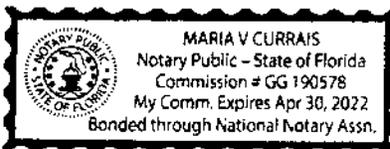
The foregoing instrument was acknowledged before me on December 20, 2018, by Jorge M. Gonzalez, as Village Manager of Bal Harbour Village, a Florida municipal corporation, on behalf of the Village. He is personally known to me.

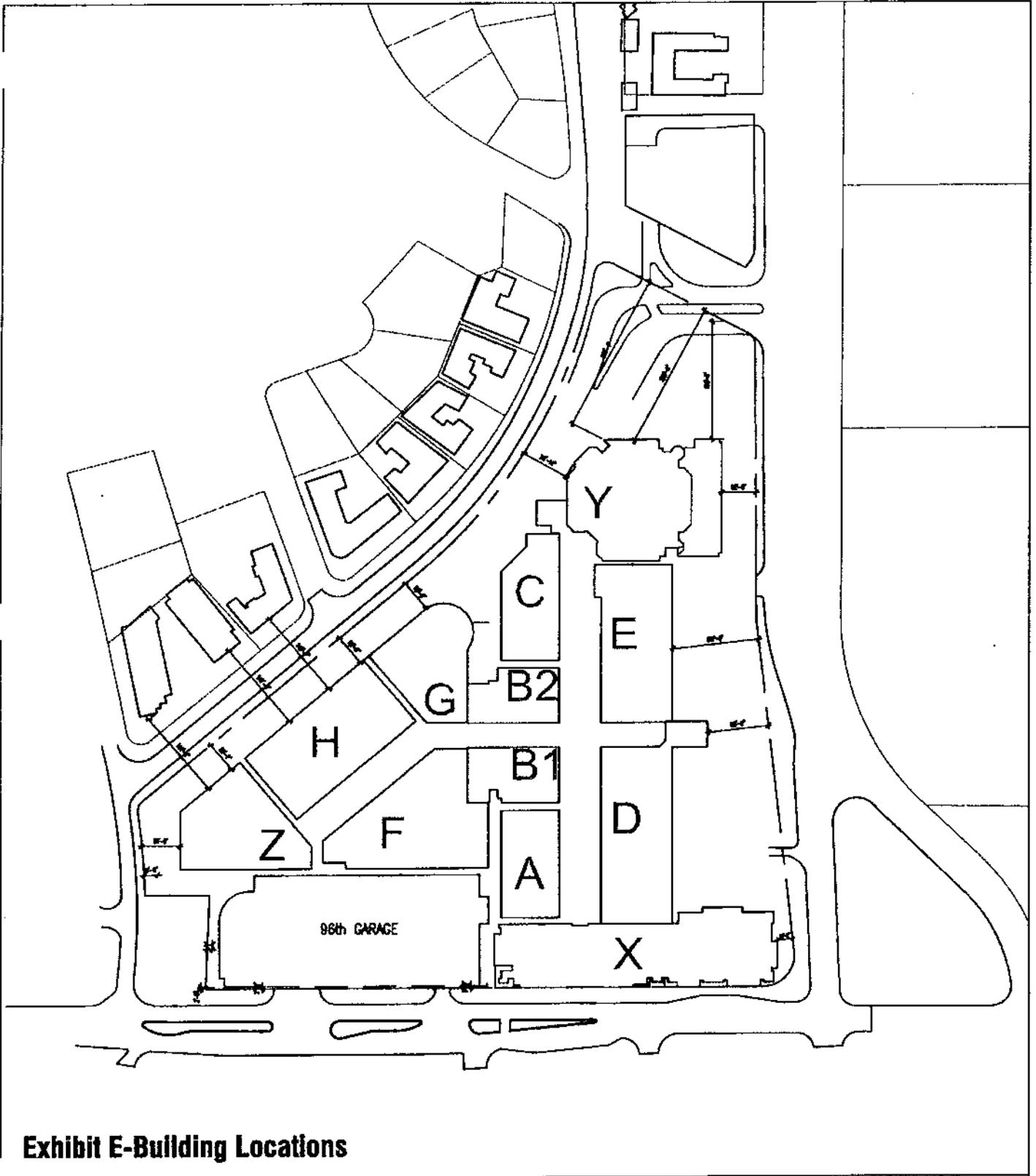
NOTARY SEAL

[Signature]  
Notary Public, State of Florida

Print name: Maria V. Currais

My commission expires: 4/30/22





**Exhibit E-Building Locations**

1"=200'

December 11, 2018

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ARCHITECTS

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Miami, FL 33132-2304  
1 305.372.8282 | 305.677.4521

• info@zyscovich.com  
• www.zyscovich.com

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 27,035 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,382 SF

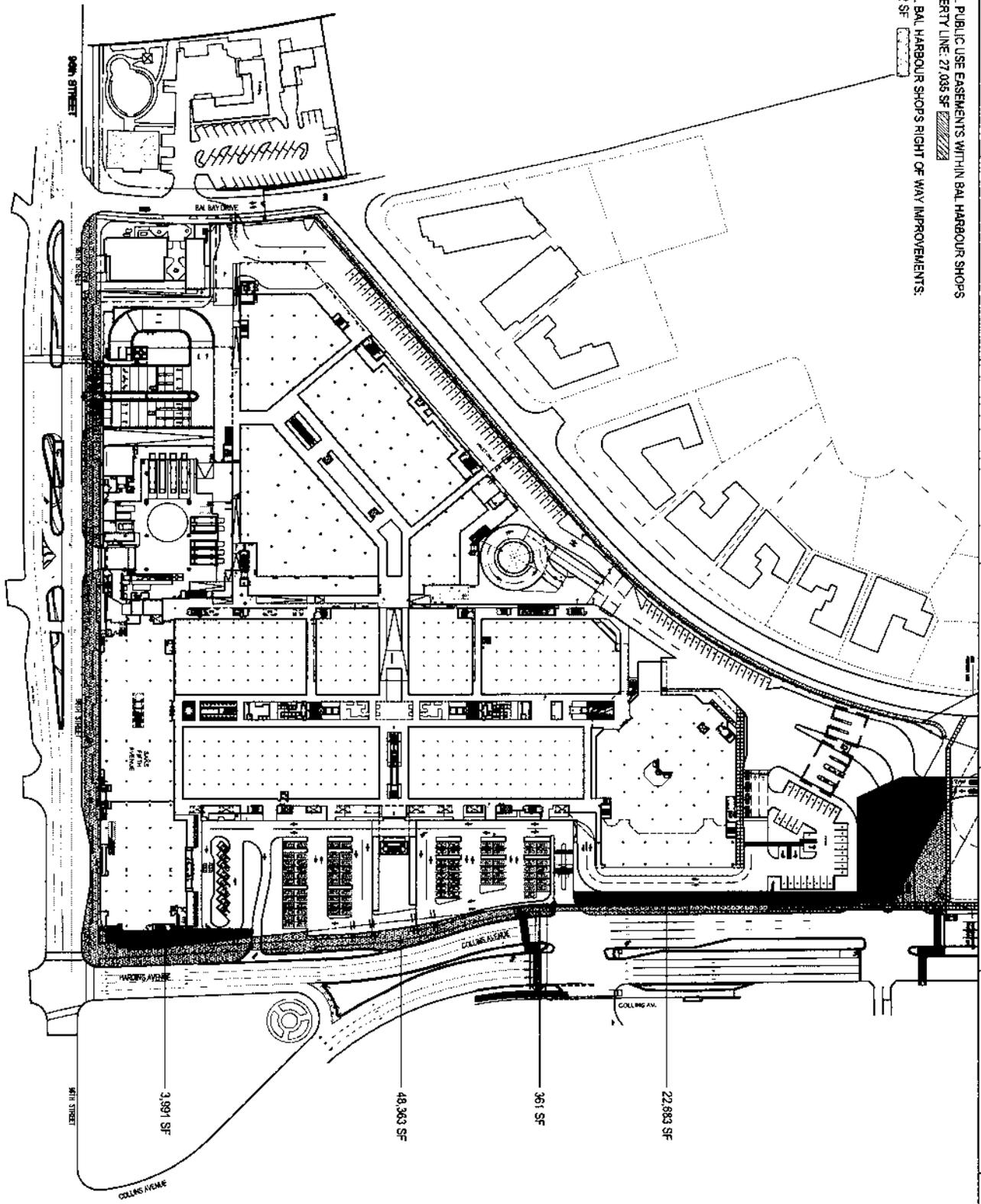
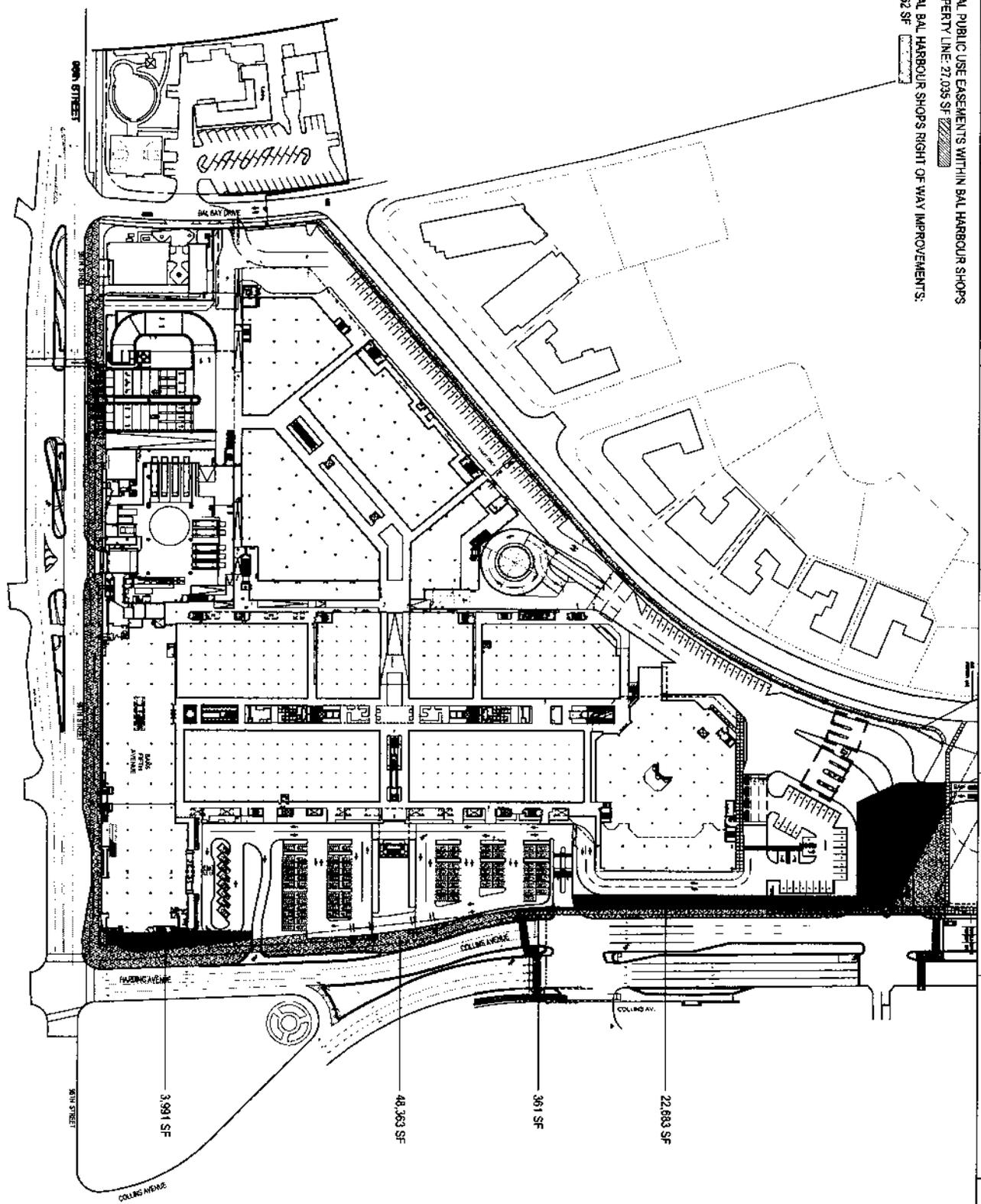


EXHIBIT L - PUBLIC USE AREAS

MINOR SITE PLAN APPLICATION

<p><b>L400-ALT</b></p> <p>LANDSCAPE PLAN EASEMENTS OVERALL</p>			<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1200 Collins Avenue Bal Harbour, FL 33154</p>	<p><b>Bal Harbour</b> Bal Harbour Shops</p> <p>6788 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17625E</p>	<p>DR. JAMES JELLIK ARCHITECTURAL CONSULTANTS</p> <p>100 Collins Avenue Bal Harbour, FL 33154</p>	<p>DR. JAMES FOYER LEAVY MOLES DAN PORTER, JR.</p> <p>100 Collins Avenue Bal Harbour, FL 33154</p>	<p>DR. JAMES DOUGLAS WOOD ASSOCIATES, INC.</p> <p>100 Collins Avenue Bal Harbour, FL 33154</p>	<p>DR. JAMES LIBERTAS DESIGN</p> <p>100 Collins Avenue Bal Harbour, FL 33154</p>

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 27,035 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,362 SF

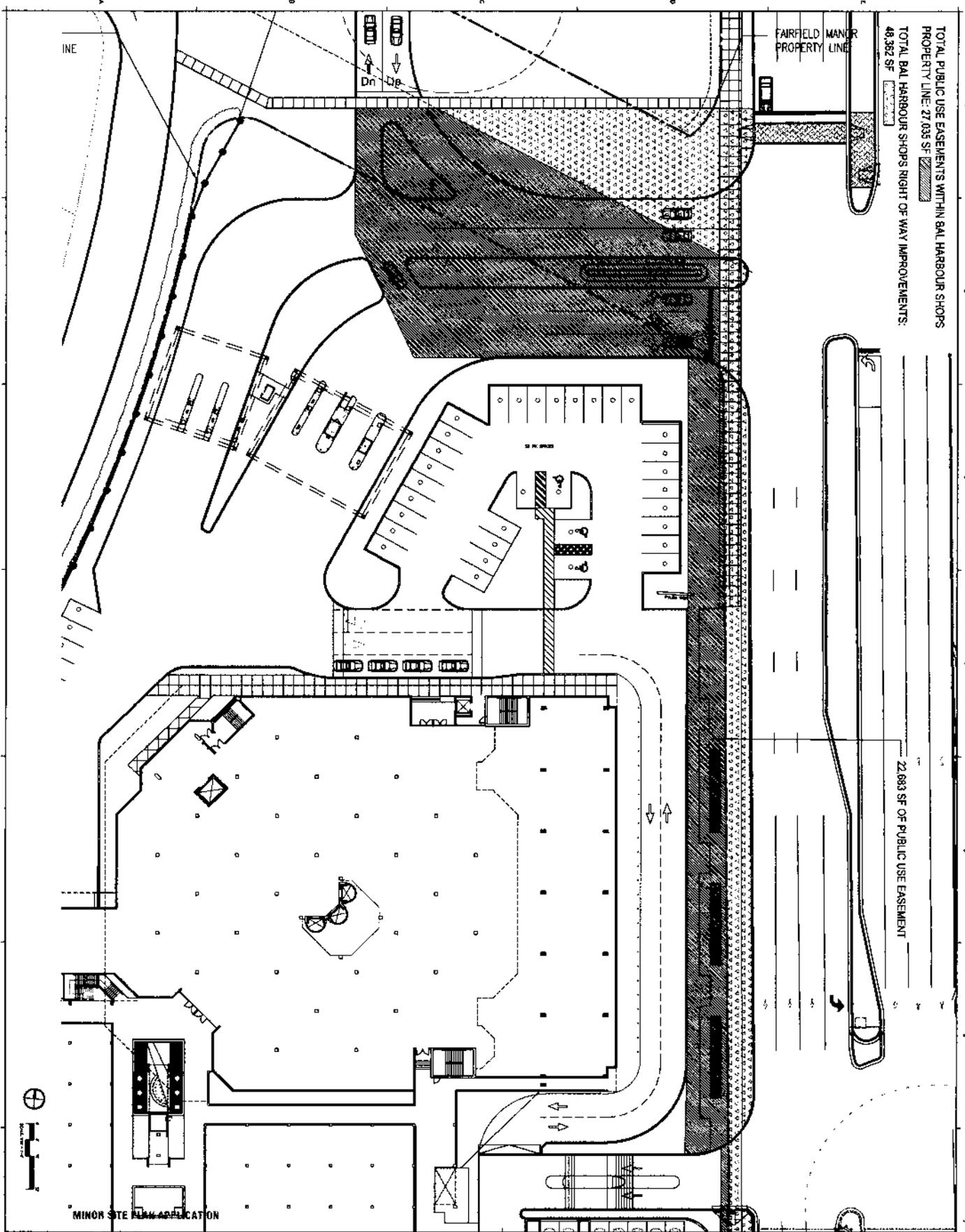


3,991 SF  
 48,363 SF  
 361 SF  
 22,883 SF



MINOR SITE PLAN APPLICATION

<b>L-400-ALT</b> LANDSCAPE PLAN EASEMENTS OVERALL	[Symbol]	[Symbol]	[Symbol]	<b>ZYSCOVICH ARCHITECTS</b> 8700 Collins Avenue Bal Harbour, FL 33154	<b>Bal Harbour Shops</b> 8700 Collins Avenue Bal Harbour, FL 33154 Project No. 7609-02E	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]
	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]	[Symbol]



TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 21,033 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,352 SF

22,683 SF OF PUBLIC USE EASEMENT

FAIRFIELD MANOR  
 PROPERTY LINE

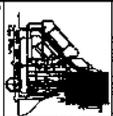
LINE

MINOR SITE PLAN APPLICATION

L401-ALT

LANDSCAPE PLAN  
 EASEMENTS  
 ENLARGEMENT

--	--	--	--	--	--	--	--	--	--



**ZYSCOVICH ARCHITECTS**  
 8700 Collins Avenue  
 Bal Harbour, FL 33154

**Bal Harbour Shops**  
 8700 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 17028-04

Prepared by:  
**MILLER ARCHITECTURAL CONSULTANTS**  
 10000 Collins Avenue  
 Bal Harbour, FL 33154

Checked by:  
**POWER LEVY BULLIS**  
 2000 BAYVIEW BLVD.  
 BAL HARBOUR, FL 33154

Reviewed by:  
**DOUGLAS WOOD ARCHITECTS, INC.**  
 10000 COLLINS AVENUE  
 BAL HARBOUR, FL 33154

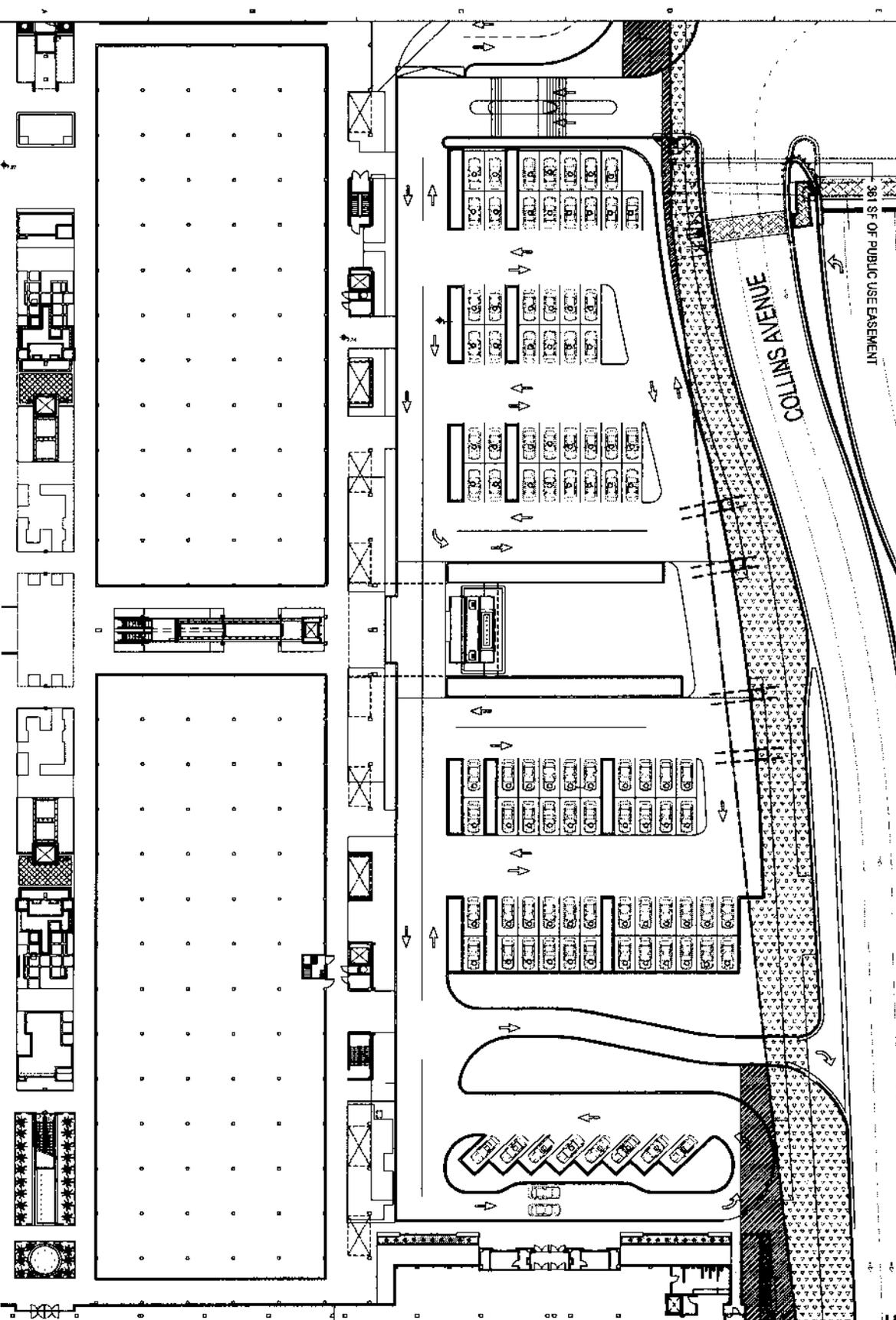
Approved by:  
**MURRAY BECKER**  
 10000 COLLINS AVENUE  
 BAL HARBOUR, FL 33154

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 27,038 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,362 SF

361 SF OF PUBLIC USE EASEMENT

COCCANVILLE

ENUE



MINOR SITE PLAN APPLICATION

<p><b>L402-ALT</b></p> <p>LANDSCAPE PLAN EASEMENTS ENLARGEMENT</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>10000 Old York Road New York, NY 10012</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>8799 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17075/02</p>	<p>Client: <b>WELLS ARCHITECTURAL CONSULTANTS</b></p> <p>10000 Old York Road New York, NY 10012</p>	<p>Site Location: <b>COCCANVILLE</b></p> <p>10000 Old York Road New York, NY 10012</p>	<p>Project Contact: <b>DOUGLAS WOOD</b></p> <p>10000 Old York Road New York, NY 10012</p>	<p>Project Contact: <b>HEATHER MOORE</b></p> <p>10000 Old York Road New York, NY 10012</p>
		<p>Scale: 1" = 100'</p>	<p>North Arrow</p>	<p>Site Plan</p>	<p>Site Plan</p>	<p>Site Plan</p>	<p>Site Plan</p>

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 11,481 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 63,889 SF

96TH STREET

HARDING AVENUE

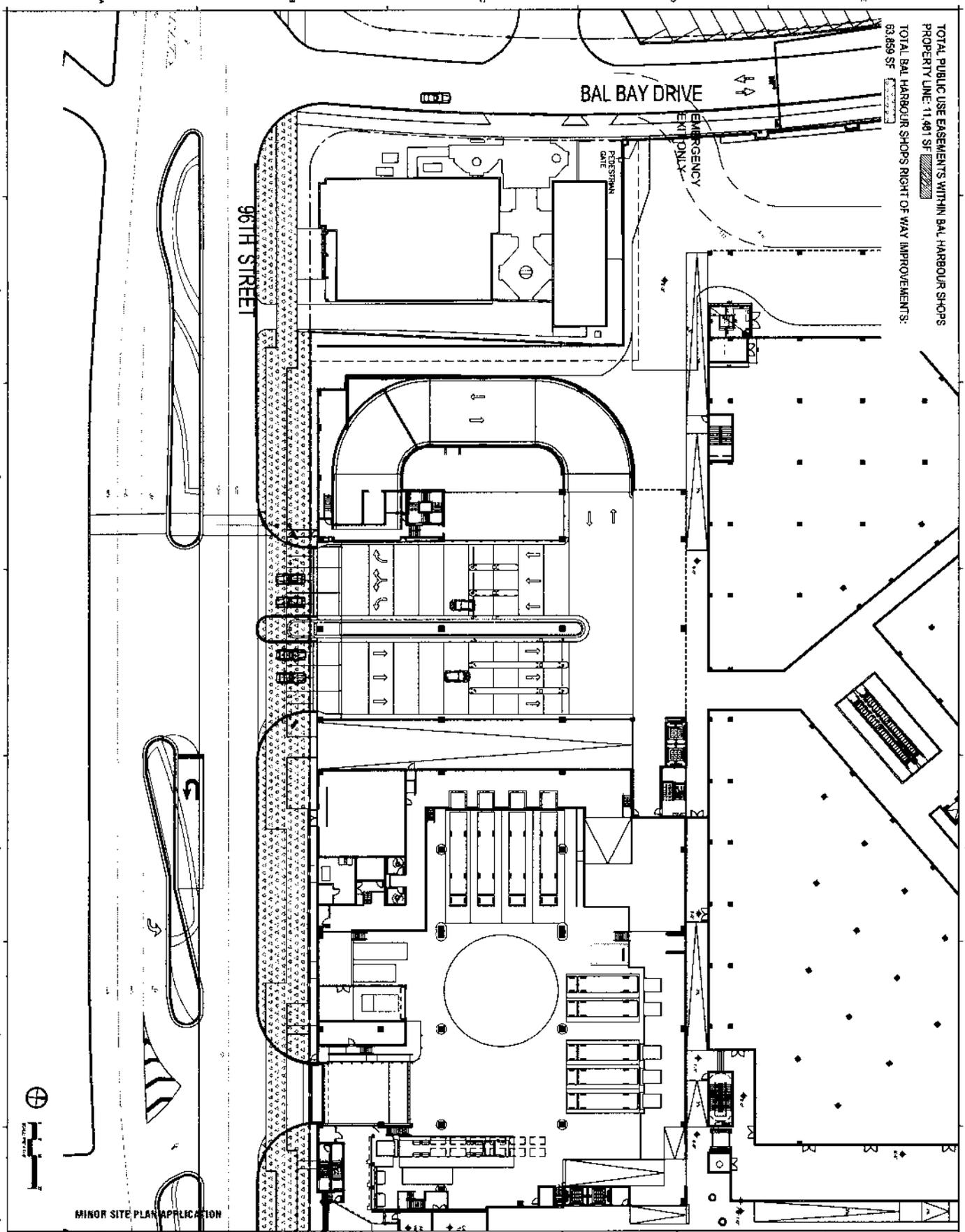
3,991 SF OF PUBLIC  
 USE EASEMENT

MINOR SITE PLAN APPLICATION



<b>LA03-ALT</b> LANDSCAPE PLAN EASEMENTS ENLARGEMENT Prepared: 10/1/2018		<b>ZYSCOVICH</b> <b>ARCHITECTS</b> 4700 Collins Avenue Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.zyscovich.com	<b>Project:</b> Bal Harbour <b>Bal Harbour Shops</b> 4700 Collins Avenue Bal Harbour, FL 33154 Project No: 17040101	<b>Architect:</b> <b>WELLS ARCHITECTURAL</b> <b>CONSULTANTS</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.wellsarchitect.com	<b>Civil Engineer:</b> <b>POTENTIAL ENGINEERS</b> <b>AND PLANNERS, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.potentialengineers.com	<b>Professional Engineer:</b> <b>ROBERTSON ENGINEERING, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.robertsoneng.com	<b>Professional Engineer:</b> <b>ROBERTSON ENGINEERING, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.robertsoneng.com
			<b>Site Plan Engineer:</b> <b>ROBERTSON ENGINEERING, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: 305.224.1111 Fax: 305.224.1112 www.robertsoneng.com				

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 11,461 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 53,859 SF



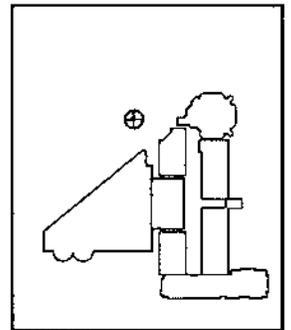
MINOR SITE PLAN APPLICATION

<b>LANDSCAPE PLAN EASEMENTS ENLARGEMENT</b> L404-ALT	DATE: 11/11/2019 DRAWN BY: [Name] CHECKED BY: [Name]	<b>Project</b> <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 8790 Collins Avenue Bal Harbour, FL 33154 Project No: 17628-05E	<b>Client</b> BELLE ARCHITECTURAL CONSULTANTS 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Design Team</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154
	SCALE: 1/8" = 1'-0" DATE: 11/11/2019	<b>Project</b> <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 8790 Collins Avenue Bal Harbour, FL 33154 Project No: 17628-05E	<b>Client</b> BELLE ARCHITECTURAL CONSULTANTS 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Design Team</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154	<b>Site Plan</b> MICHAEL BAKER GROUP, INC. 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154

# EXISTING ENCROACHMENTS

EXHIBIT M - Project Encroachments

— — — — — PROPERTY LINE     AREAS OF ENCROACHMENT     SURVEY

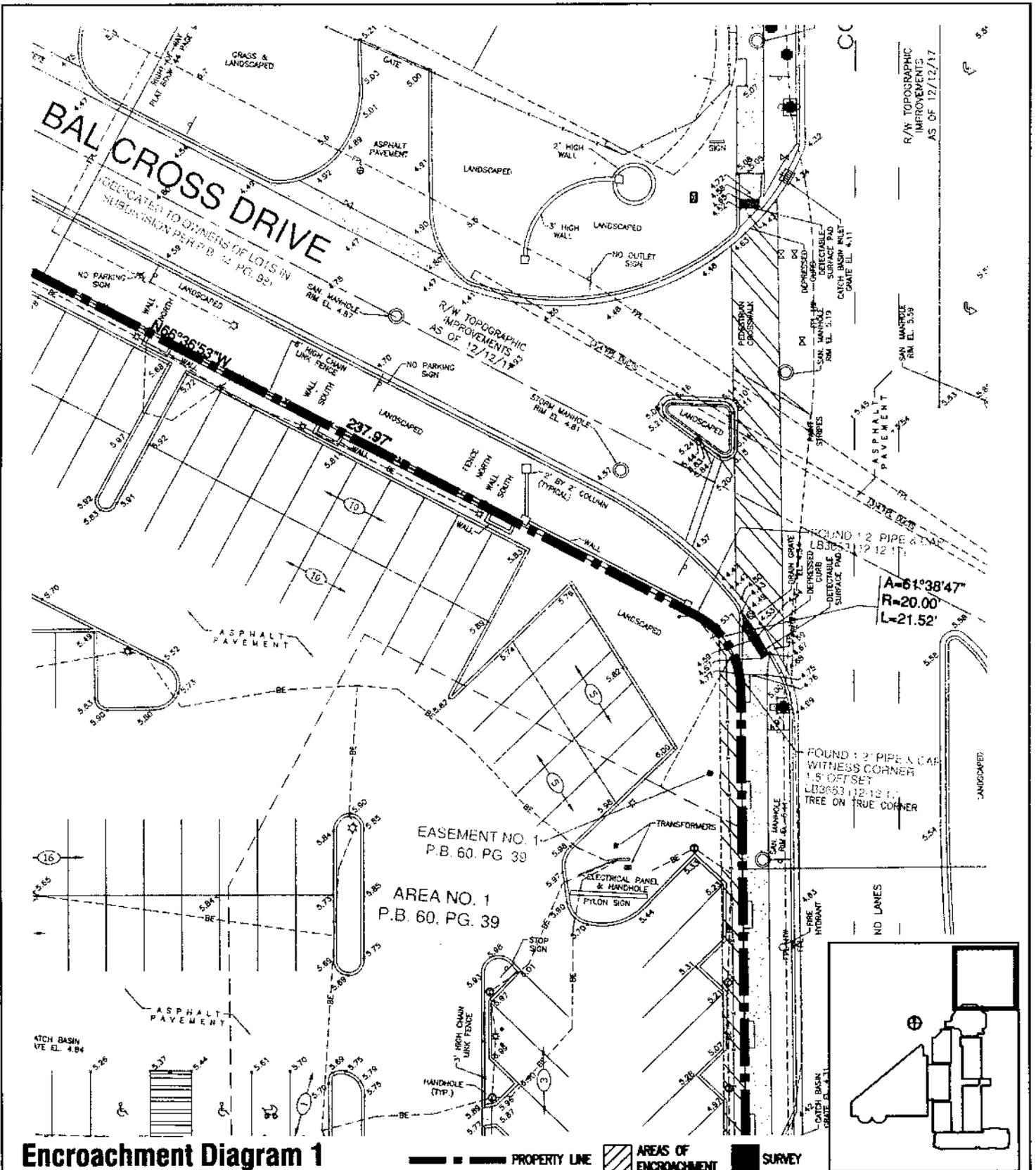


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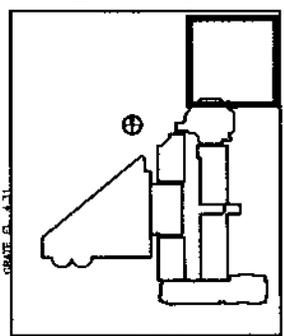
100 N Bayshore Blvd., 27th Fl  
Miami, FL 33132-2304  
1 305.372.6222 1 305.577.4521

e info@zyscovich.com  
w www.zyscovich.com



**Encroachment Diagram 1**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY



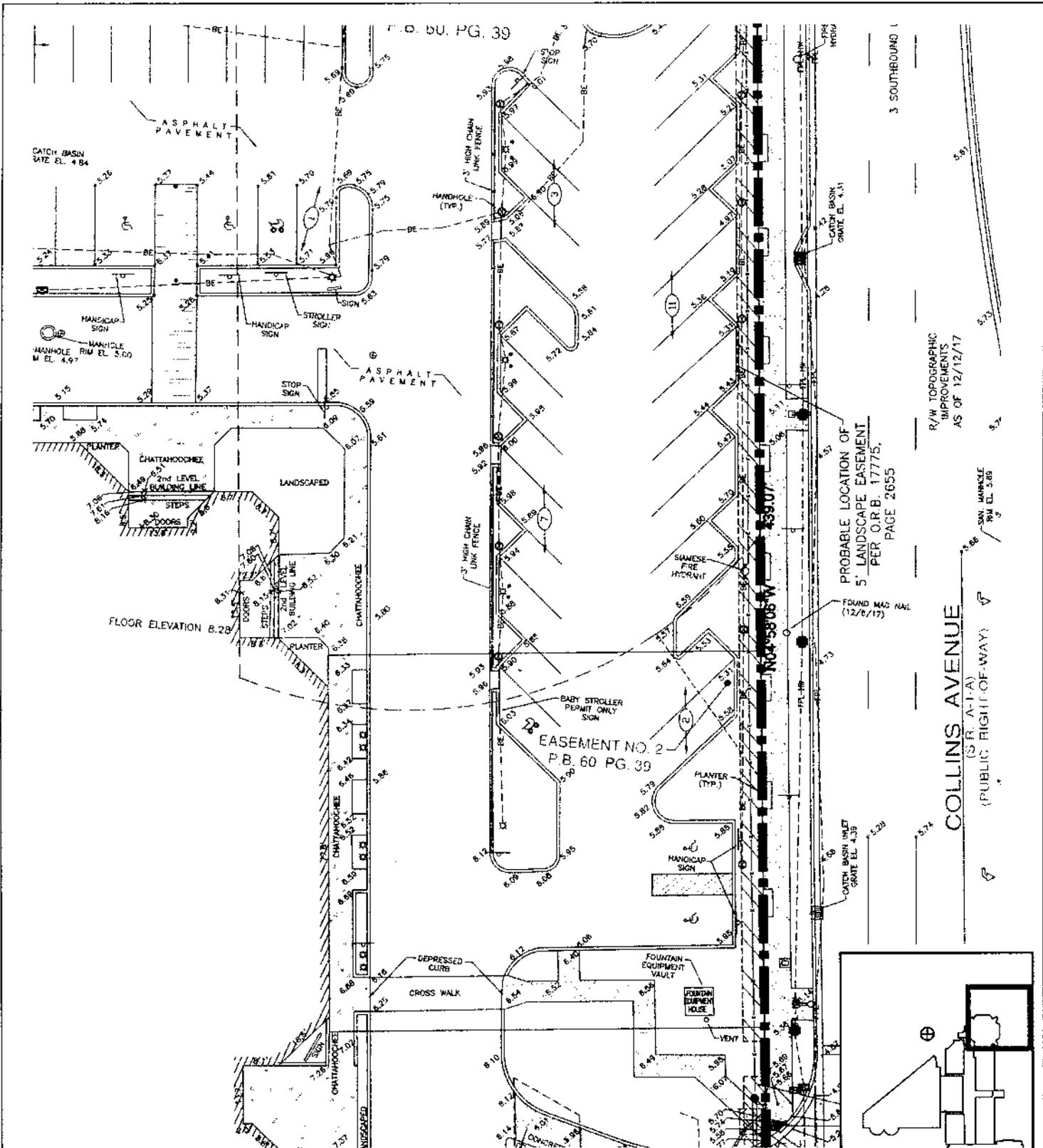
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1.305.372.5222 1.305.577.4521

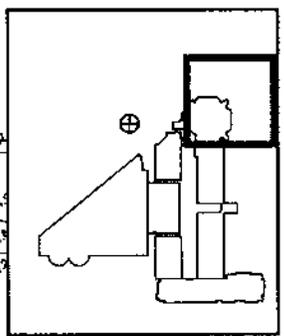
e info@zyscovich.com  
 w www.zyscovich.com





**Encroachment Diagram 3**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY



PROBABLE LOCATION OF  
 5' LANDSCAPE EASEMENT  
 PER O.R.B. 17775.  
 PAGE 2655

R/W TOPOGRAPHIC  
 IMPROVEMENTS  
 AS OF 12/12/17

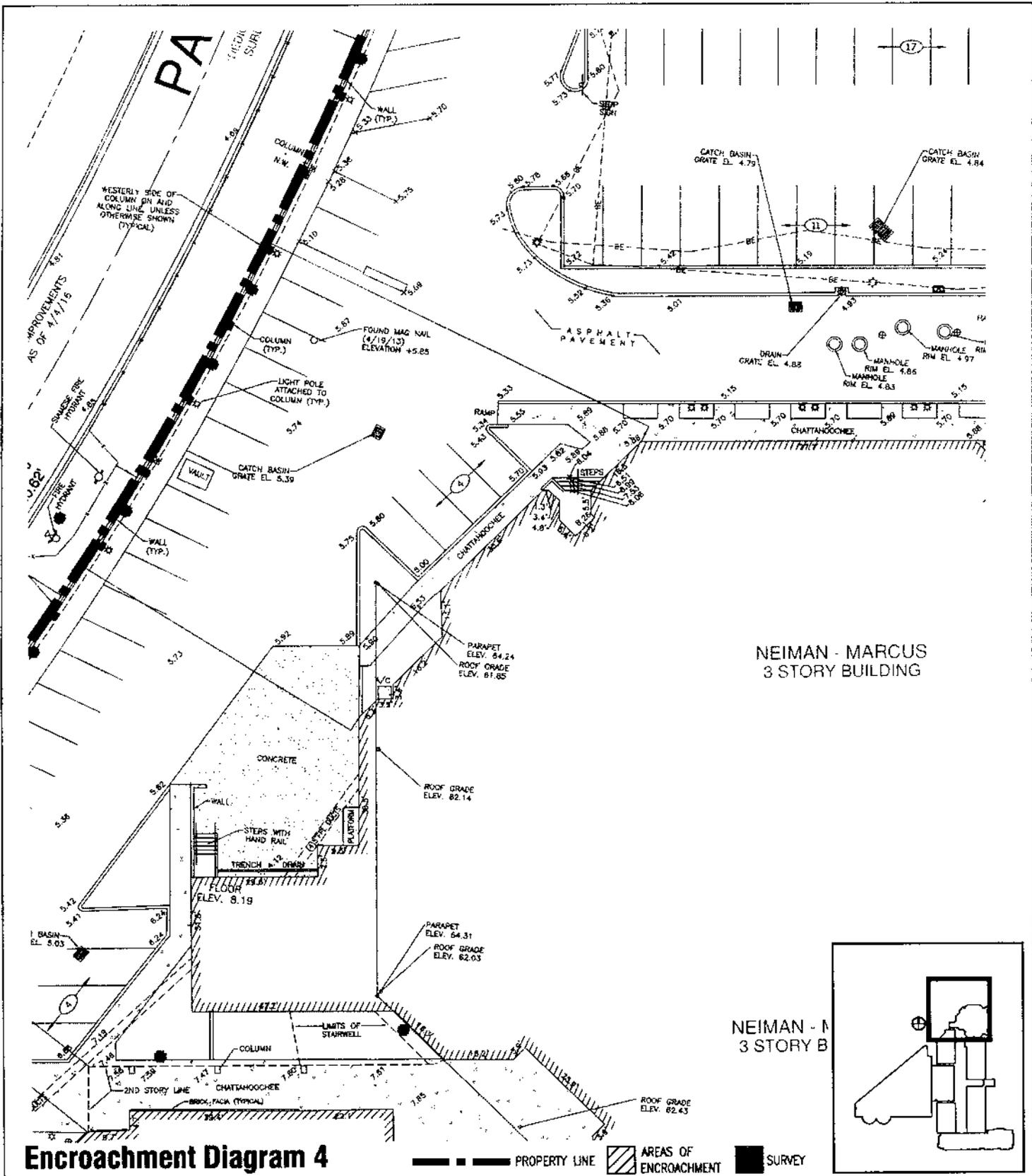
**COLLINS AVENUE**  
 (S.R. A-1A)  
 (PUBLIC RIGHT-OF-WAY)

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 w www.zyscovich.com

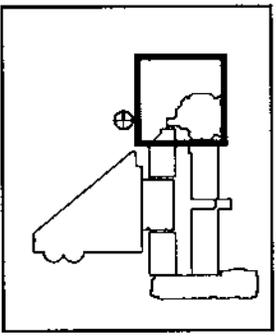


**Encroachment Diagram 4**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY

NEIMAN - MARCUS  
3 STORY BUILDING

NEIMAN - M  
3 STORY B

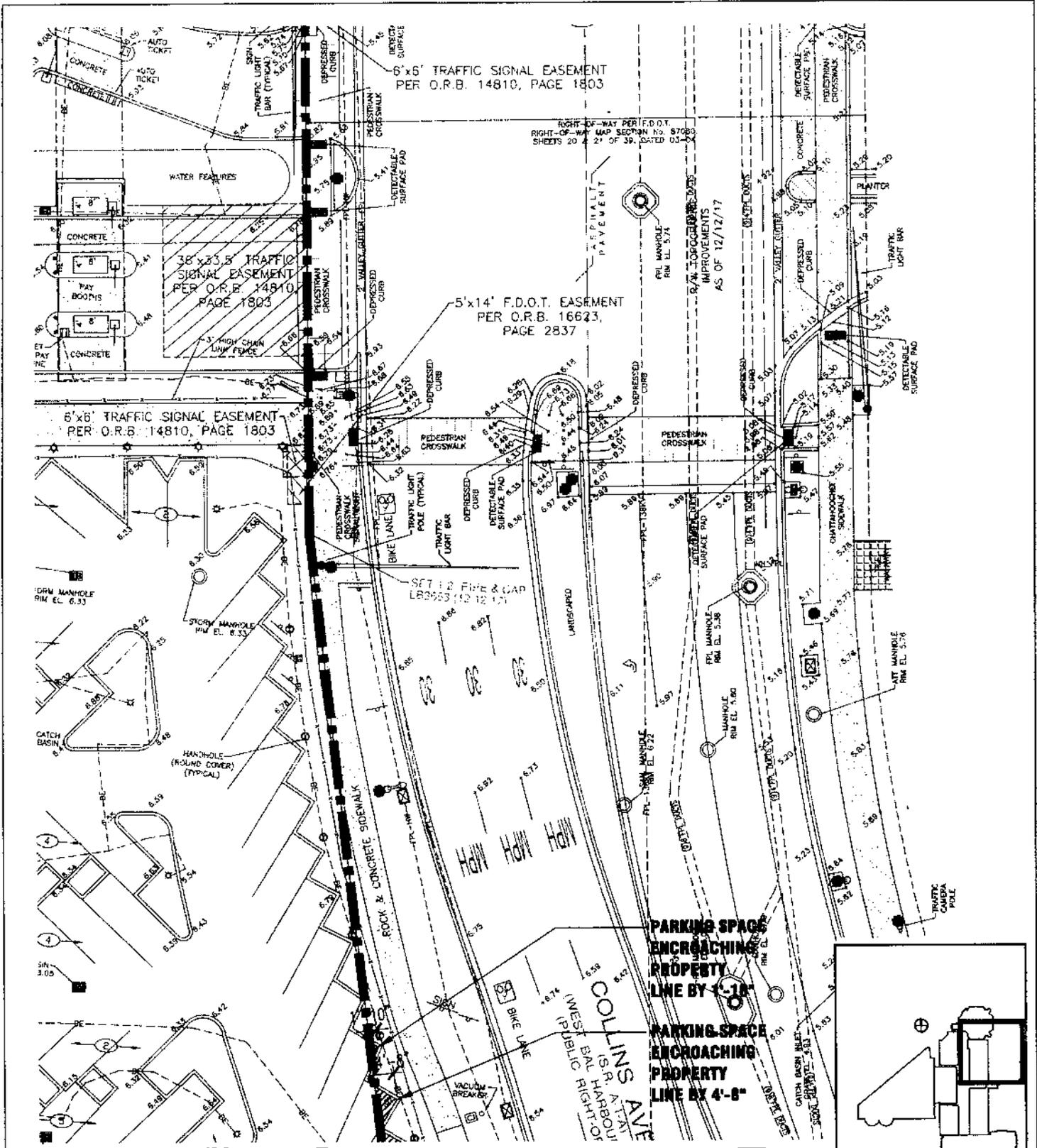


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ARCHITECTS

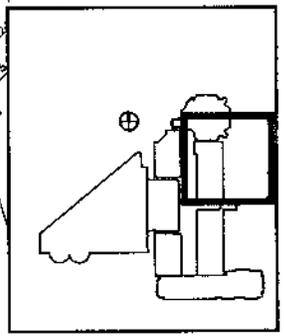
100 N. Biscayne Blvd., 27th Fl.  
Miami, FL 33132-2304  
t 305.372.5222 f 305.577.4521

e info@zyscovich.com  
w www.zyscovich.com



**Encroachment Diagram 5**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY

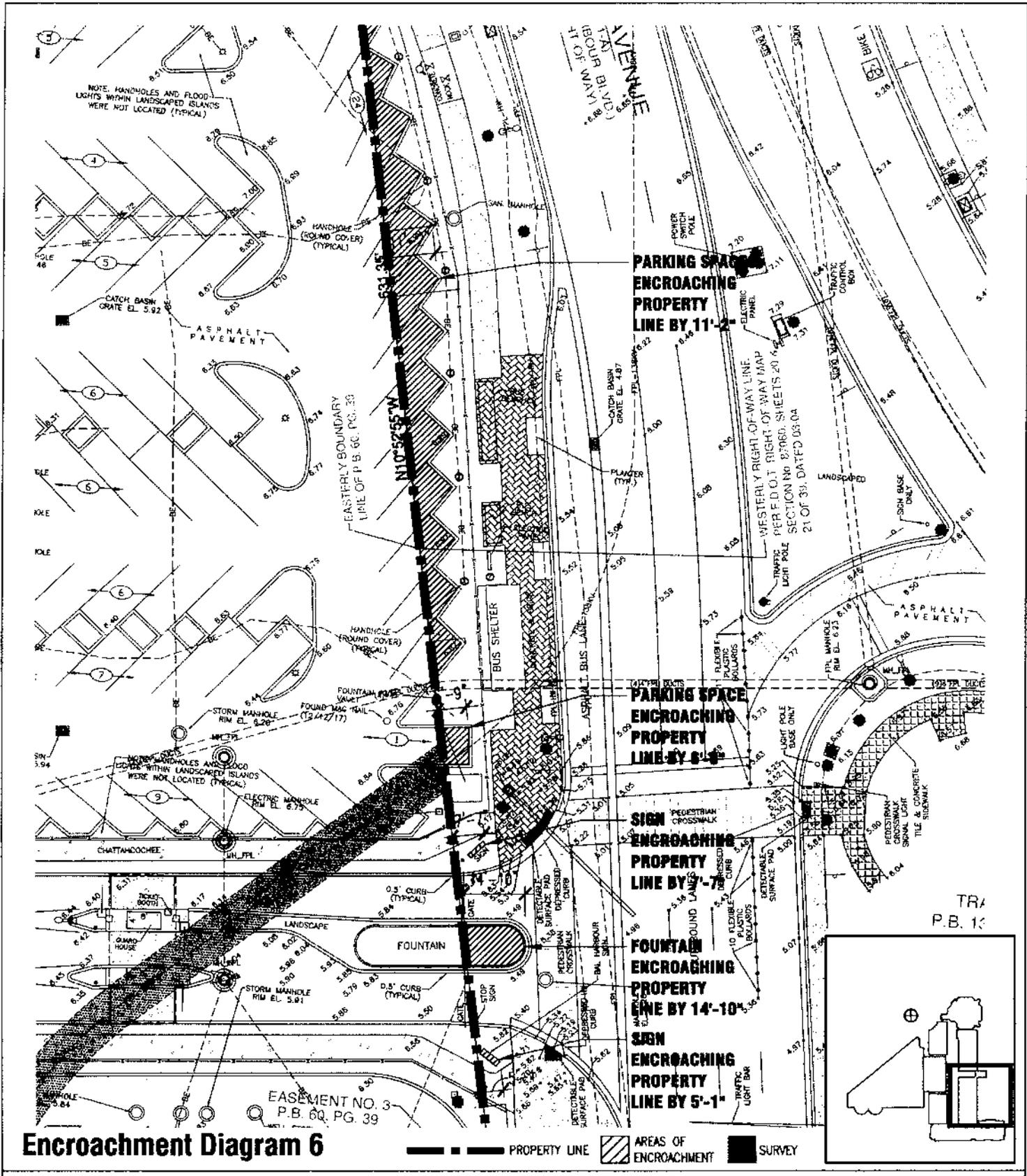


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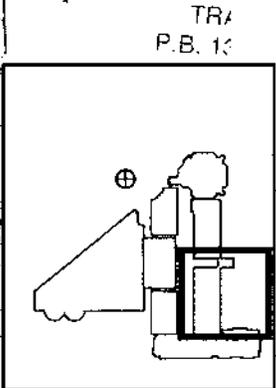
100 N. Biscayne Blvd., 27th Fl  
Miami, FL 33132 2304  
t: 305.372.5222 f: 305.577.4621

e: info@zyscovich.com  
w: www.zyscovich.com



**Encroachment Diagram 6**

--- PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    ■ SURVEY



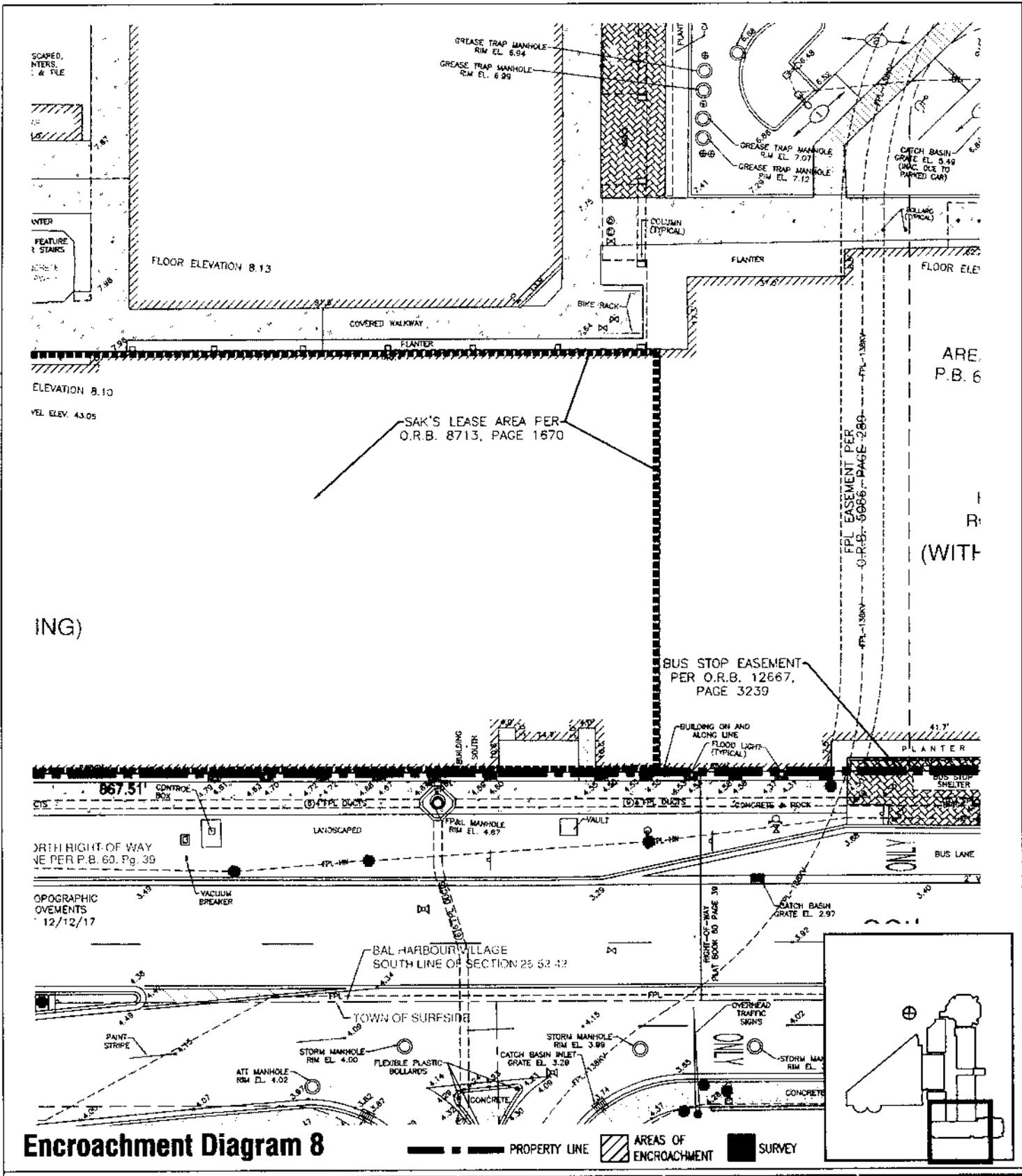
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**Encroachment Diagram 8**

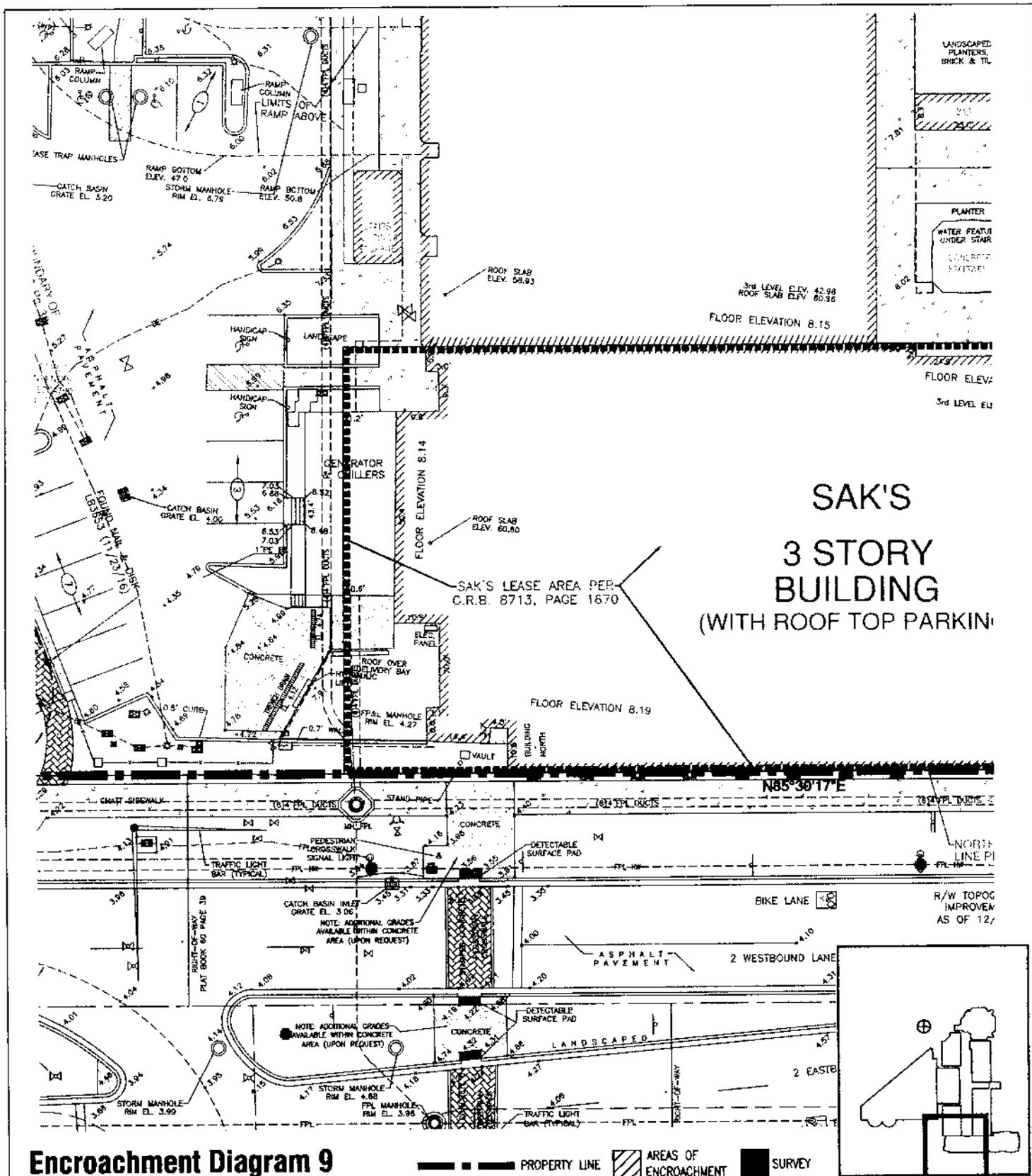
PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY

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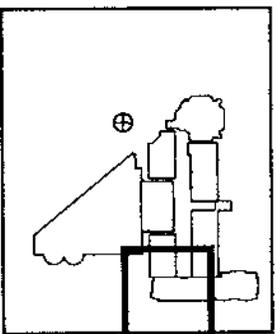
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1 305.372.8222 | 1 305.577.4521

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**Encroachment Diagram 9**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY



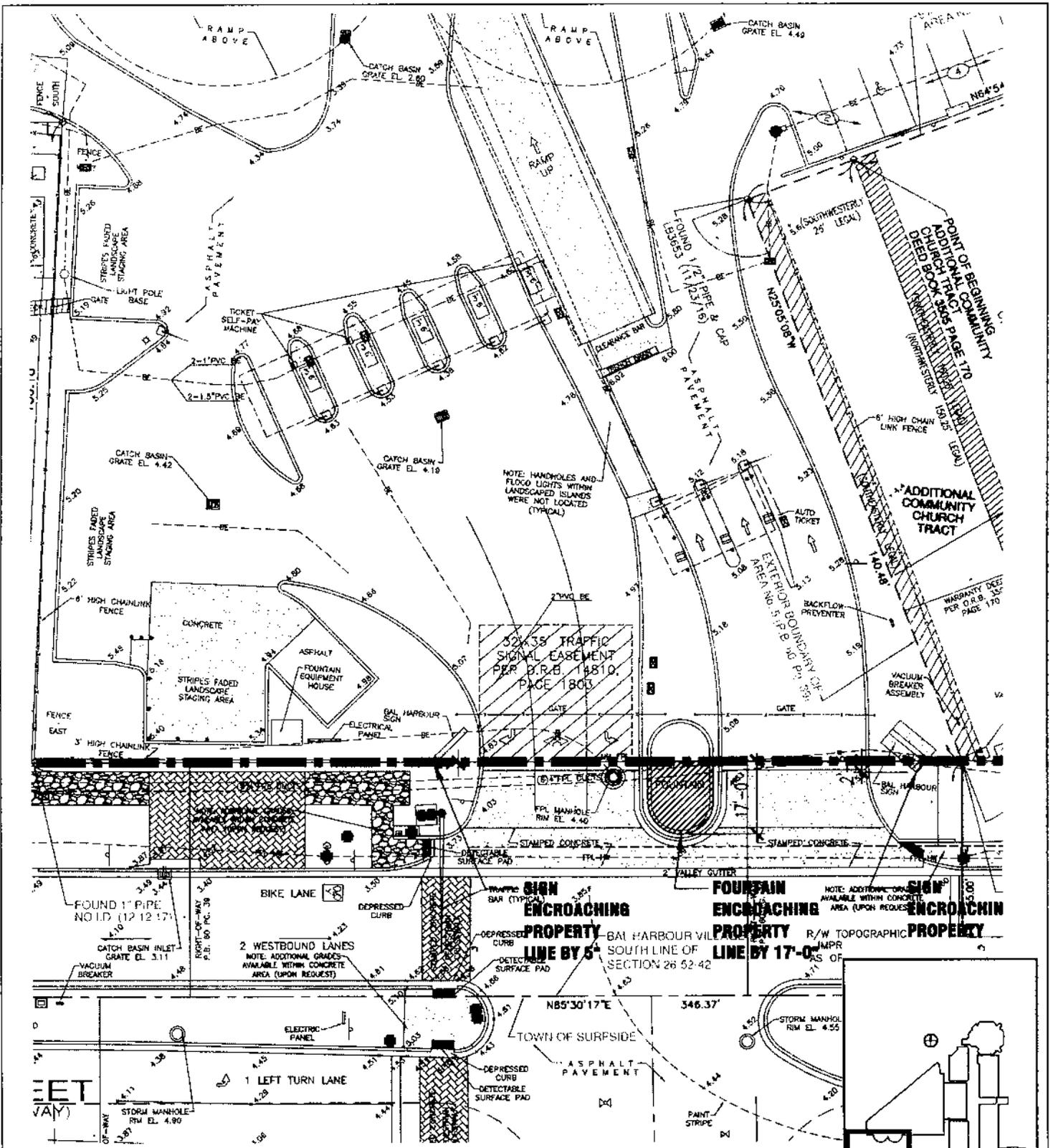
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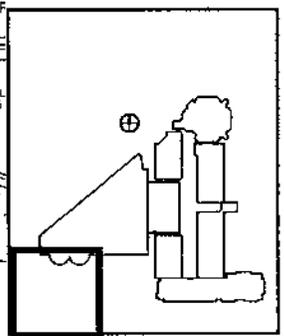
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**Encroachment Diagram 11**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY



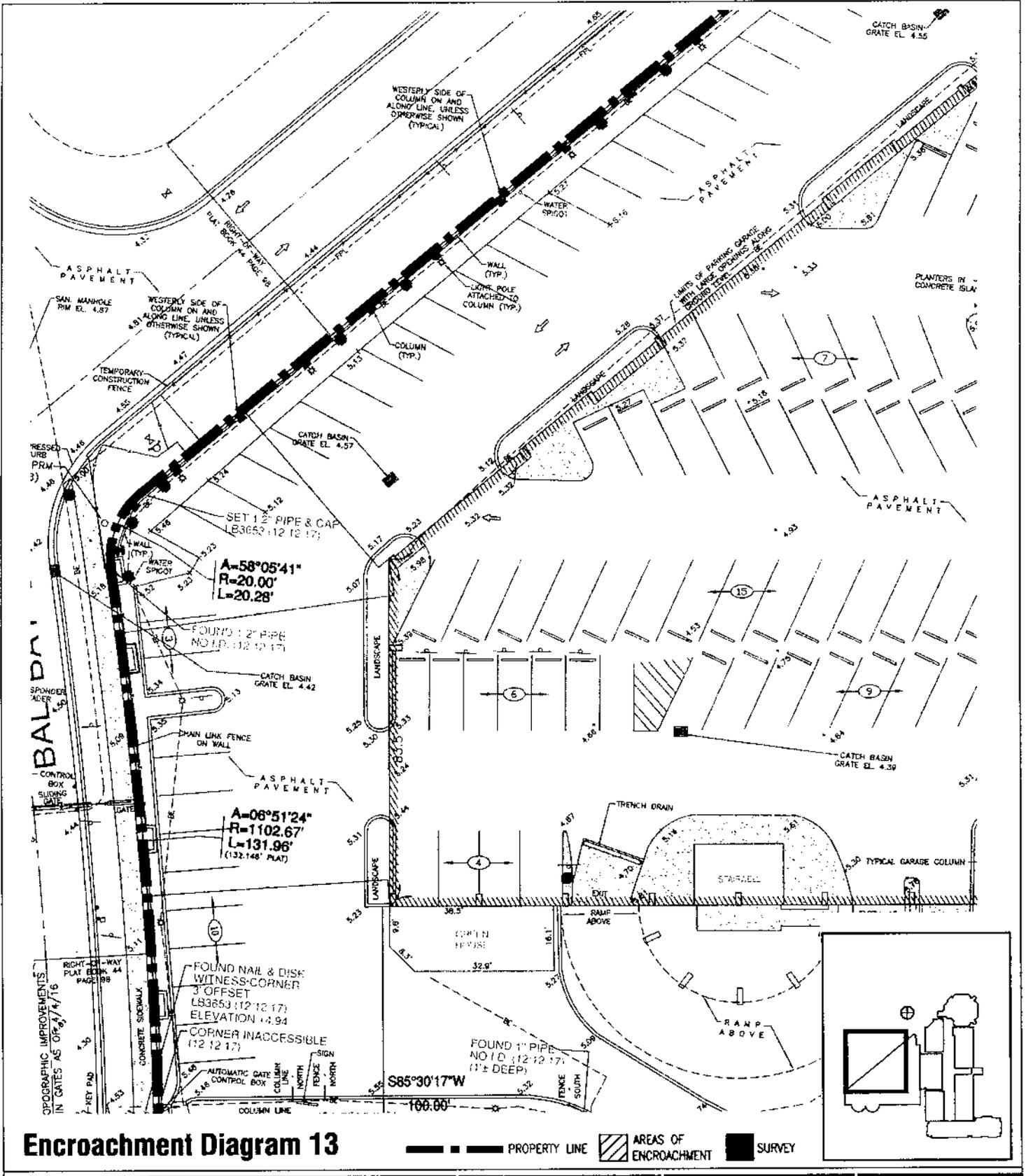
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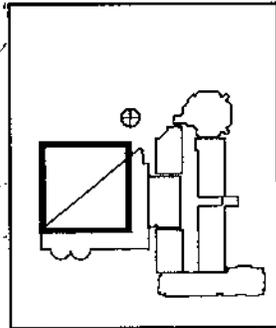
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**Encroachment Diagram 13**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY

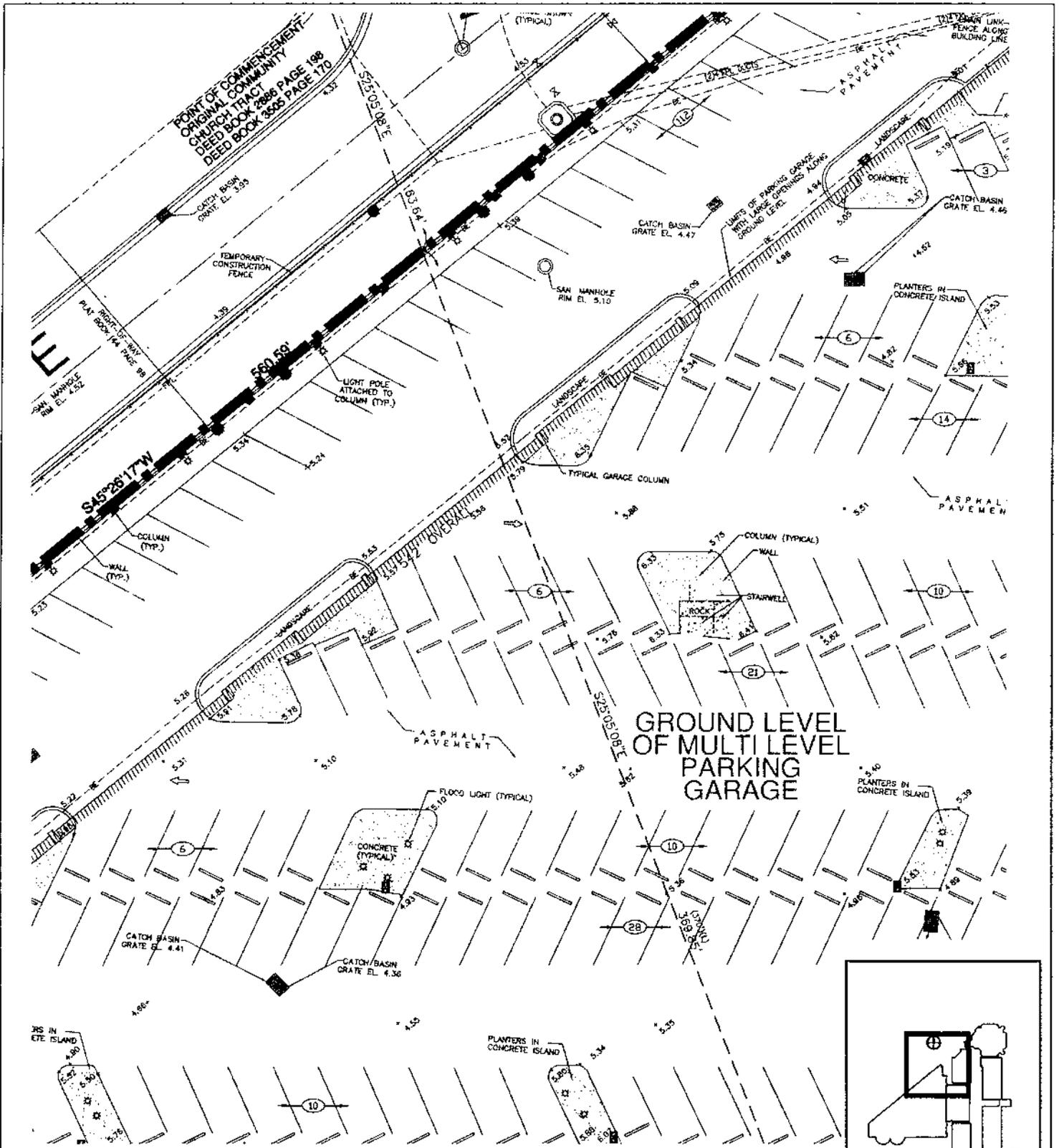


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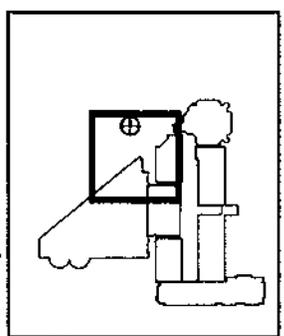
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Miami, FL 33132-2204  
t 305.372.6222 f 305.577.4621

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**Encroachment Diagram 14**

PROPERTY LINE
  AREAS OF ENCROACHMENT
  SURVEY



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**RESOLUTION NO. 2018-1202**

**A RESOLUTION OF BAL HARBOUR VILLAGE, FLORIDA, APPROVING A MINOR AMENDMENT TO THE SITE PLAN FOR THE BAL HARBOUR SHOPS EXPANSION ADDRESSING PARKING AND CIRCULATION, AND PROVIDING AN ALTERNATE NORTHERN ENTRANCE PURSUANT TO SECTION 21-322 OF THE CODE OF ORDINANCES; AND PROVIDING FOR CONFLICTS, CONDITIONS AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, on May 16, 2017, the Village Council adopted Resolution 2017-1077 approving a Major Site Plan for the expansion of the Bal Harbour Shops ("Shops"), generally located at the northwest corner of 96<sup>th</sup> Street and Collins Avenue; and

**WHEREAS**, subsequently, a minor administrative site plan amendment was approved which consolidated the underground parking in one location; and

**WHEREAS**, pursuant to Section 21-322 of the Bal Harbour Village ("Village") Code of Ordinances ("Code"), Bal Harbour Shops, LLLP (the "Applicant") has applied for a site plan amendment to revise the northern entrance of the Shops to create a joint Collins entrance for BHS and the New Village Hall, increase the truck loading area, improve valet circulation, enhance truck queuing and maneuverability, improve Collins Plaza, increase public easements and right-of-way improvement areas (the "Application"); and

**WHEREAS**, the Village Manager has reviewed the Application in accordance with Section 21-322(a)(4) and determined that the Application was a minor site plan amendment, but recommended that the Village Council hold a hearing and make the decision on whether to approve the Application; and  
Bal Harbour Village Resolution 2018-1202

**EXHIBIT O - Resolution No. 2018-1202**

**WHEREAS**, the Architectural Review Board reviewed the Application at its December 6, 2018 meeting and recommended approval; and

**WHEREAS**, this Application requires the approval of two Ordinances scheduled for adoption prior to consideration, the first amending Section 21-320(a) of the Village Code of Ordinances to remove access limitations for the Property and the second, amending Article V to address various parking requirements for "B" Business District properties; and

**WHEREAS**, the Village Council will also consider approval of an amendment to the Development Agreement between Bal Harbour Village and The Bal Harbour Shops to reflect the Amended Site Plan; and

**WHEREAS**, the Village Council conducted a duly noticed public hearing on the Application in accordance with Sections 21-52 and 21-322(f) of the Code; and

**WHEREAS**, the Village Council finds that the Minor Site Plan amendment is consistent with Village's Comprehensive Plan and land development regulations, and that approval of the Application is in the best interest and welfare of the residents of the Village; and

**WHEREAS**, the Village Council finds and intends that this Resolution shall not be interpreted to prevent the issuance of permits to the existing Shops or tenants of the Shops that are authorized by the existing Comprehensive Plan and Code of Ordinances.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

Bal Harbour Village Resolution 2018-1202     2

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

**Section 2. Findings.** THIS MATTER came before the Village Council of Bal Harbour Village, Florida, on December 18, 2018. The Village Council having considered the public testimony, evidence in the record, recommendations of the Architectural Review Board and staff, and the testimony of the Applicant, finds that the minor site plan amendment and intended uses, as conditioned herein:

- (1) Are designed and scaled to be compatible with and avoid depreciation of Adjacent properties and to minimize adverse impacts to Adjacent Development and the surrounding neighborhood by virtue of the proposal's nature, location, design, Building mass, intensity of use, or mitigation measures; and
- (2) Will not create excessive noise, traffic, illumination or other adverse impacts; and
- (3) Provide for safe, efficient, convenient and harmonious groupings of Structures, uses and facilities and for appropriate relationship of space inside and outside of Buildings to intended uses and to structural and architectural features within the site; and
- (4) Uphold the basic intent and purpose of zoning and other land use regulations, observing the spirit of the regulations and assuring public safety and welfare, without tending to create a fire or other equally or more dangerous hazard or provoke the excessive overcrowding or concentration of people or population.

**Section 3. Approval.** The request to approve the minor site plan amendment for the Bal Harbour Shops is hereby approved as shown on the plans submitted with the Application, subject to those modifications as may be required by the Building Official for the issuance of building permits.

**Section 4. Conditions.** This approval and the amended site plan are subject to all of the conditions set forth in Resolution 2017-1017, all prior administrative site plan amendments, and all other resolutions and ordinances applicable to the Property and

to the execution and terms of all attendant agreements in addition to the following conditions which are supplemental to the conditions of Resolution 2017-1017:

**Construction Conditions**

- 3. At least 60 days prior the use of "Off-site location" parking relief allowed pursuant to Sec. 21-385 (q)(2) and not later than the demolition of the existing parking garage, applicant shall provide a plan illustrating where temporary parking will occur during the construction period of the new parking garage and mall expansion. The plans must identify the location, estimated number of parking spaces and approval from those affected property owners to utilize the facility for temporary mall parking.

**Landscape/Buffer Conditions**

- 7. In order to minimize the visual impact of the rooftop improvements on nearby properties, prior to issuance of a building permit for the 96<sup>th</sup> Street Parking Garage, the applicant shall submit a detailed site plan design for the proposed rooftop configuration, including parking space locations, landscaping plan, screening materials, structures and any other items or activity to take place on the rooftops to the Village Manager or designee for approval,

**Traffic Flow Conditions**

- 9. The applicant shall submit a parking operation plan detail for any aisle valet configurations for review and comments by Bal Harbour Police Department prior to approval by the Village Manager,
- 10. Aisle valet configuration may only be implemented in designated parking areas where valet staff is present and valet services are being provided,
- 11. Mechanical parking facilities may only be provided in the final phase of the project in a location not visible from the public right-of-way and only in the following sequence:
  - First, on the ground level along the rear sound wall and not visible from a public right of way,
  - Second, on roof top locations in the 96<sup>th</sup> Street Parking Garage,
  - Third, on roof top locations on Buildings F, G, H, and Z,

12. Any roof top mechanical parking facilities shall be setback from building edge, so as to eliminate any visibility from a point six feet above grade at the closest property line of nearby properties,
13. Notwithstanding the above, the applicant may propose mechanical parking facilities prior to the final phase of the project in order to mitigate additional parking requirements identified in the "Look Back" provisions required by the Development Agreement prior to the Final Phase of the Project.
14. The Applicant shall work with Village staff to ensure that the final parking space configuration (in both the interim phase and the final phase) will maximize the total number of parking spaces on the site, if possible in excess of required zoning requirement,
15. Prior to TCO of the 96<sup>th</sup> Street Garage, the applicant shall submit location and configuration of proposed ride-hailing (Uber, Lyft, taxi, etc.) drop-off and pick-up area(s) for Village Manager review and approval,

**Section 5. Compliance with State or Federal Law.** All applicable state and federal permits must be obtained prior to commencement of development. Issuance of this development permit by the Village does not in any way create any right on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Village for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

**Section 6. Violation of Conditions.** Failure to adhere to the terms and conditions of this Resolution shall be considered a violation of the Village Code and persons found violating the conditions shall be subject to the penalties prescribed by the Village Code, including but not limited to, the revocation of any of the approval(s) granted in this Resolution. The Applicant understands and acknowledges that it must

comply with all other applicable requirements of the Village Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the Village at any time upon a determination that the Applicant is not in compliance with the Village Code or the conditions of this Approval.

**Section 7. Effective Date of Resolution.** This Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 18th day of December, 2018.



ATTEST

Dwight S. Danie, Village Clerk

Assistant Mayor Seth Salver

Approved as to Form and Sufficiency For Use and Reliance of Bal Harbour Village Only

Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

# BAL HARBOUR SHOPS PLANS MINOR SITE PLAN APPLICATION

9700 COLLINS AVENUE, BAL HARBOUR, FL. 33154

**INDEX LIST**

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3	PHASE B - GENERAL NOTES		GM-003
4	PHASE C - GENERAL NOTES		GM-004
5	PHASE D - GENERAL NOTES		GM-005
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7	PHASE F - GENERAL NOTES		GM-007
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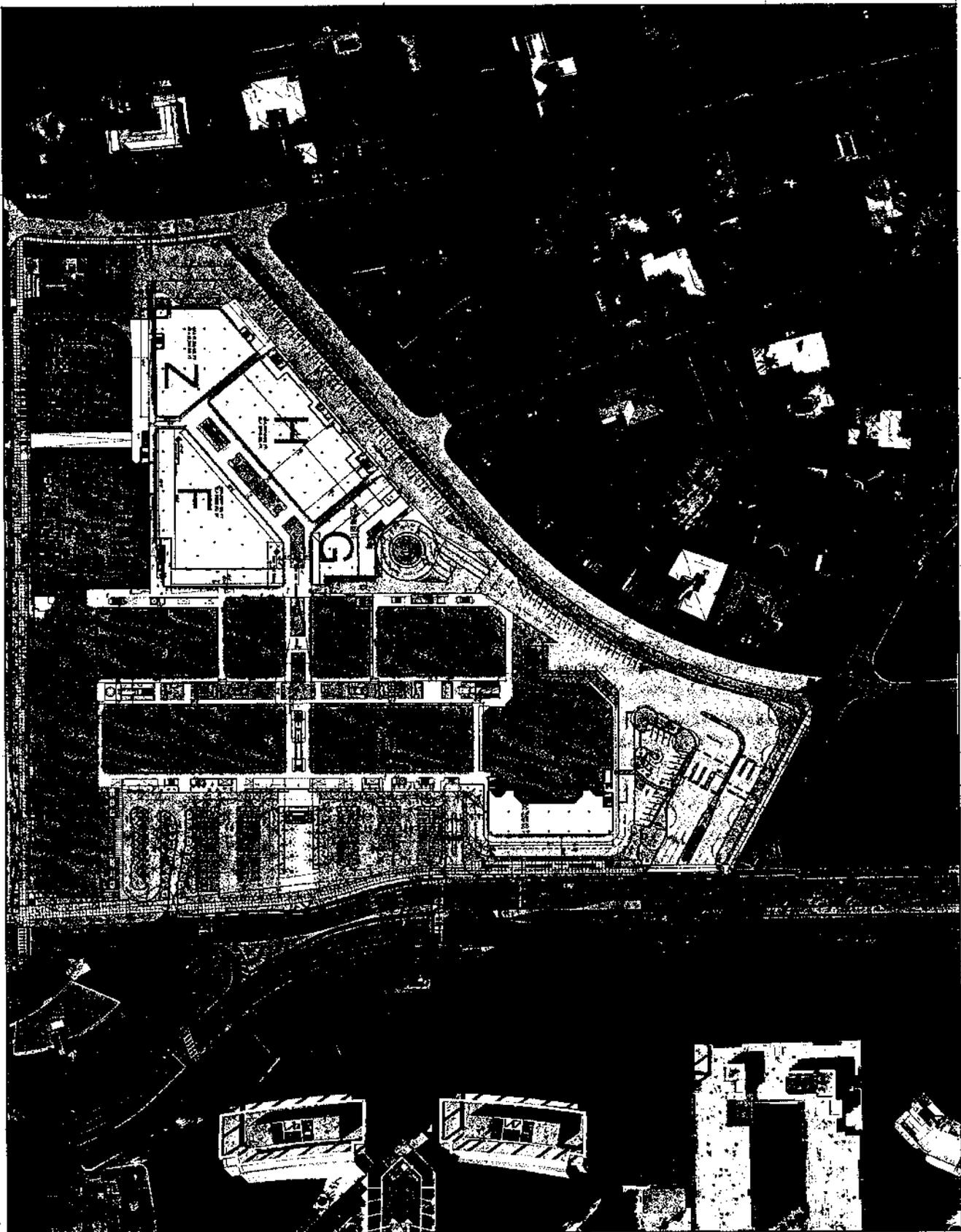
MINOR SITE PLAN APPLICATION

		<b>ZYSCOVICH ARCHITECTS</b> 9700 Collins Avenue Bal Harbour, FL 33154 Phone: 305-228-1234	Project: <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 9700 Collins Avenue Bal Harbour, FL 33154 Project No. 1748500E	Civil Engineer <b>FORREST LEWIS WELLS</b> 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33154 License No. 12345	Surveyor <b>DOUGLAS WOOD</b> 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33154 License No. 67890	Licensure Commission 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33154 License No. 12345

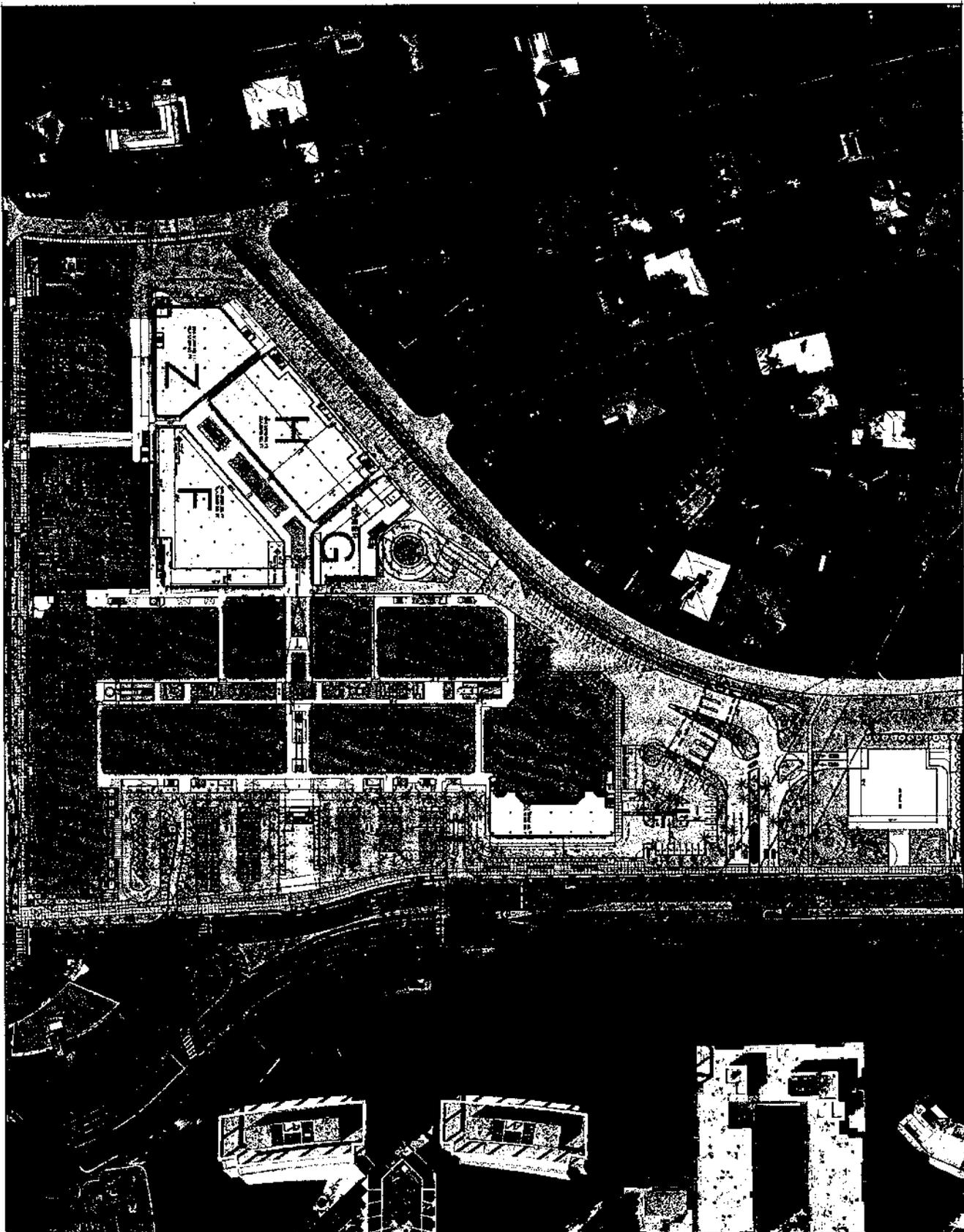
EXHIBIT P - Site Plan Amendment



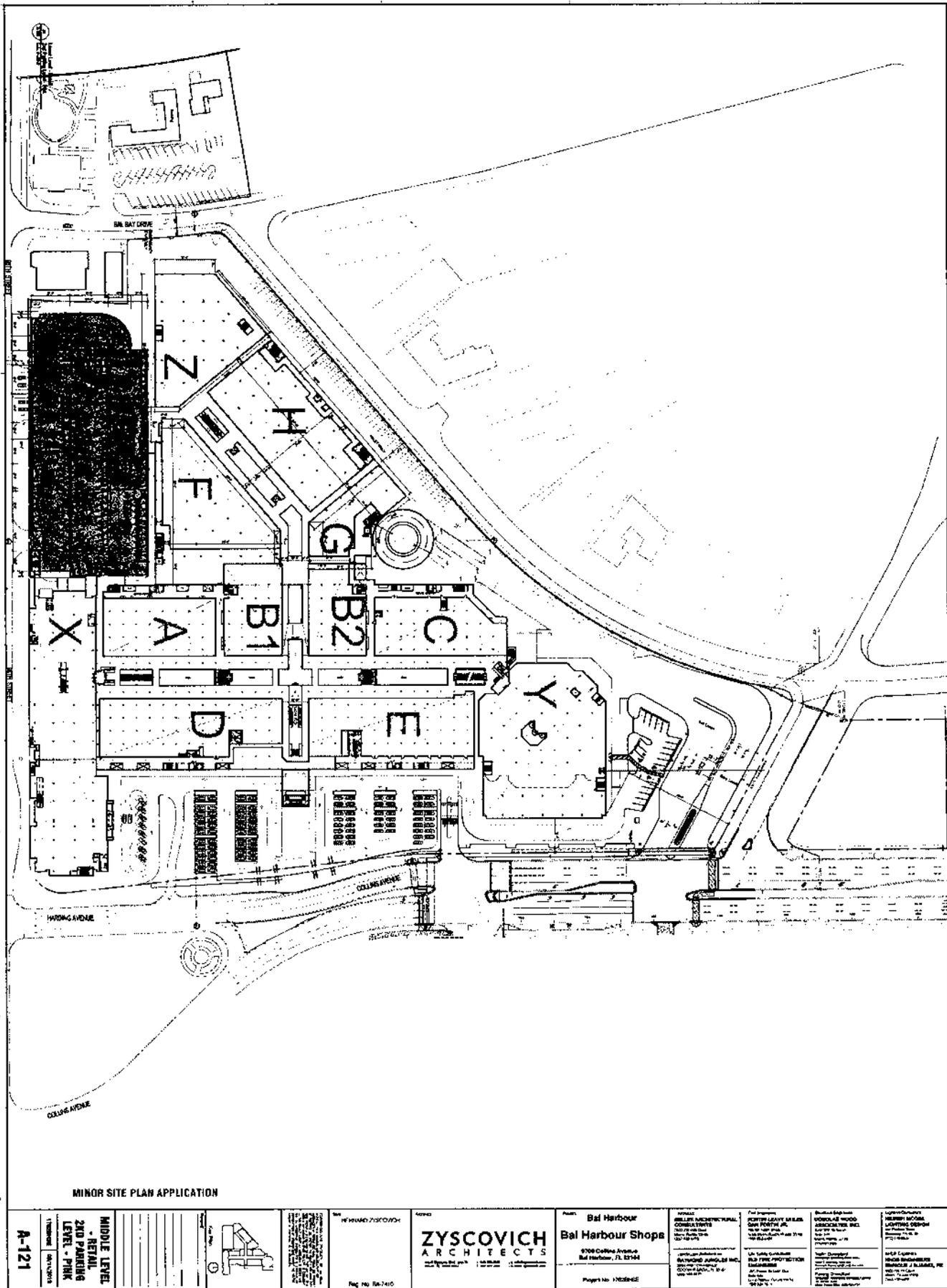




<b>A-111</b> SITE PLAN LOWER RETAIL LEVEL		<b>ZYSCOVICH</b> ARCHITECTS 8780 Collins Avenue Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101 www.zyscovich.com	<b>Bal Harbour</b> <b>Bal Harbour Shops</b> 8780 Collins Avenue Bal Harbour, FL 33154 Project No: 14098-RZ		PREPARED BY: <b>BOULEVARD ARCHITECTURAL CONSULTANTS</b> 11000 Collins Avenue Suite 200 Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101	DATE: 01/14/14 DRAWN BY: J. L. HARRIS CHECKED BY: J. L. HARRIS APPROVED BY: J. L. HARRIS	PROJECT MANAGER: <b>BOULDER BROSSE ASSOCIATES, INC.</b> 11000 Collins Avenue Suite 200 Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101	PROJECT MANAGER: <b>HELMUT JENSEN ARCHITECTS LLP</b> 11000 Collins Avenue Suite 200 Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101
			LICENSED PROFESSIONAL ARCHITECT No. 14098-RZ	LICENSED PROFESSIONAL ARCHITECT No. 14098-RZ	LICENSED PROFESSIONAL ARCHITECT No. 14098-RZ	LICENSED PROFESSIONAL ARCHITECT No. 14098-RZ		

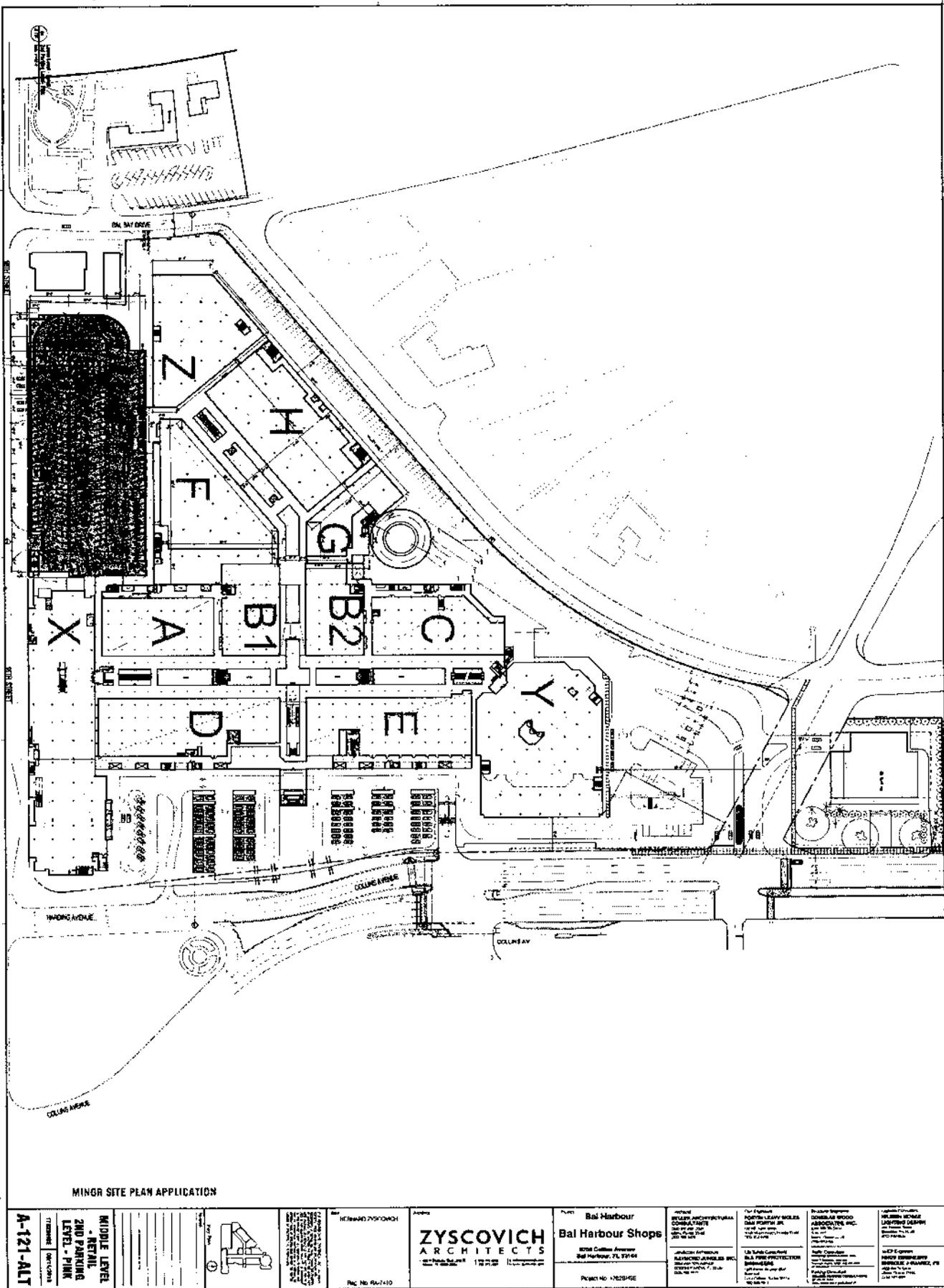


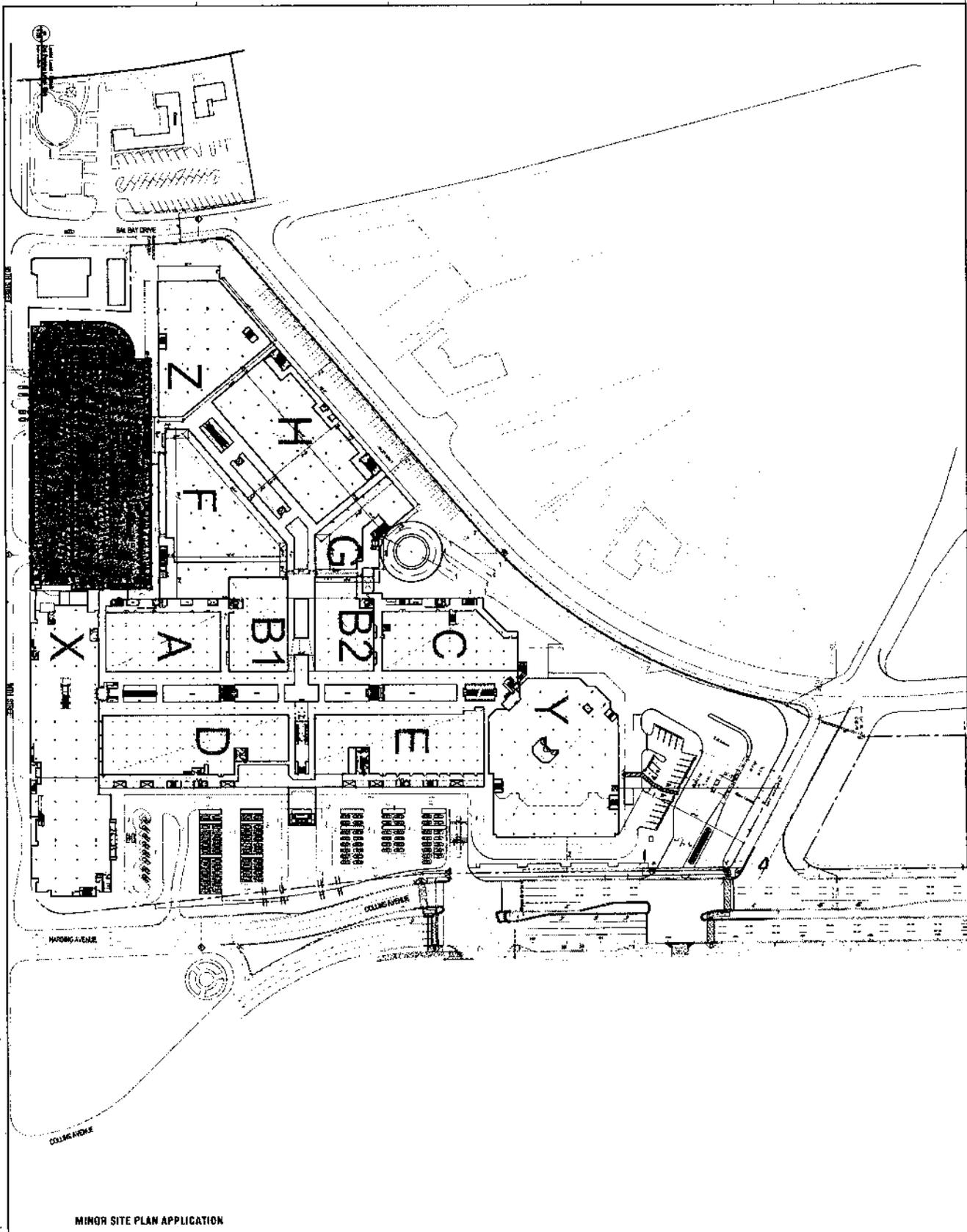
A-111-ALT TITLE BLOCK DATE: 11/11/11	SITE PLAN LOWER RETAIL LEVEL		DRAWING NO. ZYSCOVICH 11/11/11	<b>ZYSCOVICH ARCHITECTS</b> 4788 Collins Avenue Bal Harbour, FL 33154	<b>Bal Harbour</b> <b>Bal Harbour Shops</b> 4788 Collins Avenue Bal Harbour, FL 33154 Project No. 11046107	ARCHITECT <b>DELLEN ARCHITECTURAL CONSULTANTS</b> 4001 N. Collins Ave. Suite 100 Bal Harbour, FL 33154	CONTRACTOR <b>ROBERTS WOOD ASSOCIATES, INC.</b> 1100 Collins Ave. Suite 100 Bal Harbour, FL 33154	STRUCTURAL ENGINEER <b>ROBERTS WOOD ASSOCIATES, INC.</b> 1100 Collins Ave. Suite 100 Bal Harbour, FL 33154	ELECTRICAL ENGINEER <b>ROBERTS WOOD ASSOCIATES, INC.</b> 1100 Collins Ave. Suite 100 Bal Harbour, FL 33154	MECHANICAL ENGINEER <b>ROBERTS WOOD ASSOCIATES, INC.</b> 1100 Collins Ave. Suite 100 Bal Harbour, FL 33154	LIGHTING CONSULTANT <b>ROBERTS WOOD ASSOCIATES, INC.</b> 1100 Collins Ave. Suite 100 Bal Harbour, FL 33154
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MINOR SITE PLAN APPLICATION

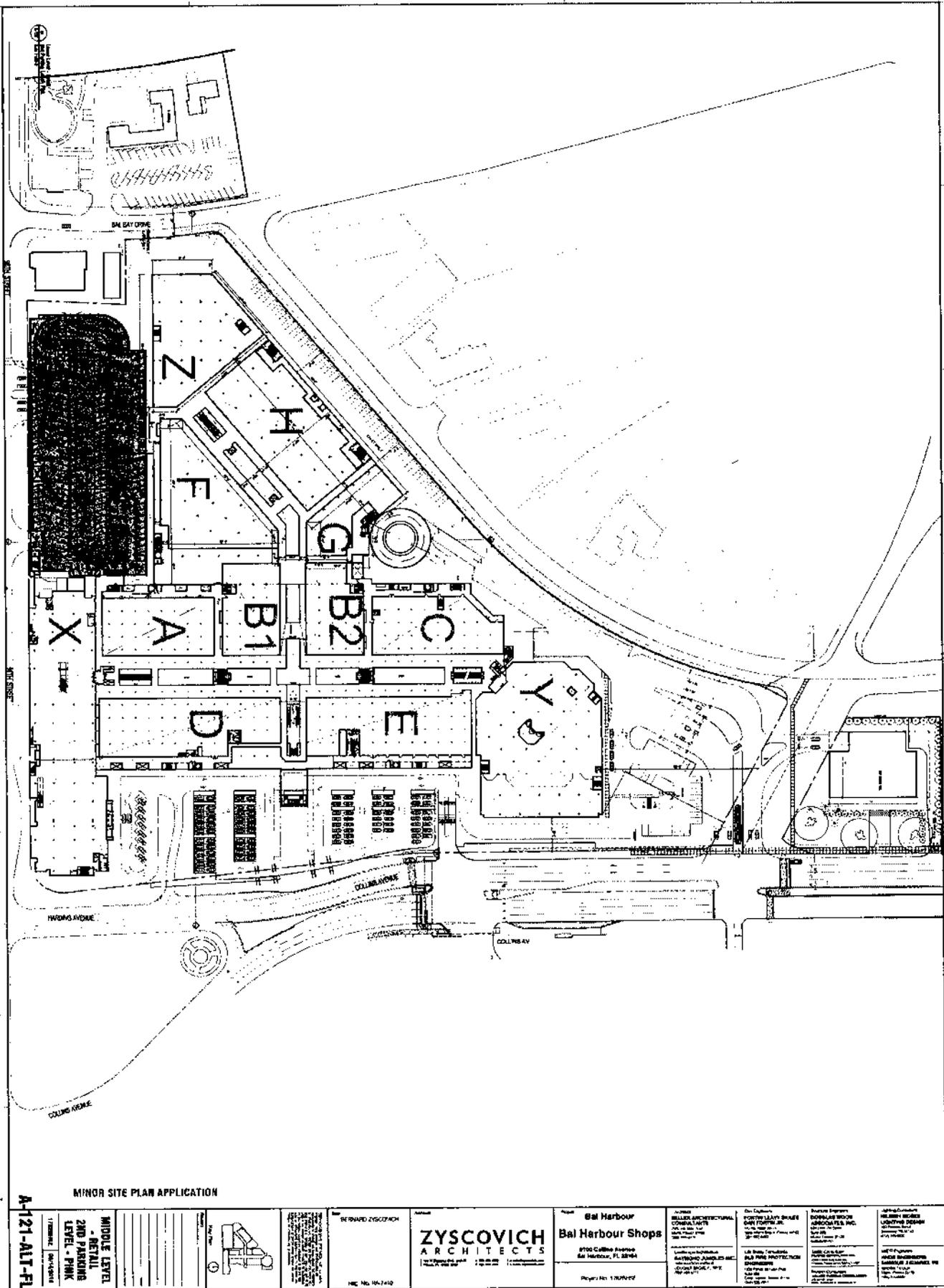
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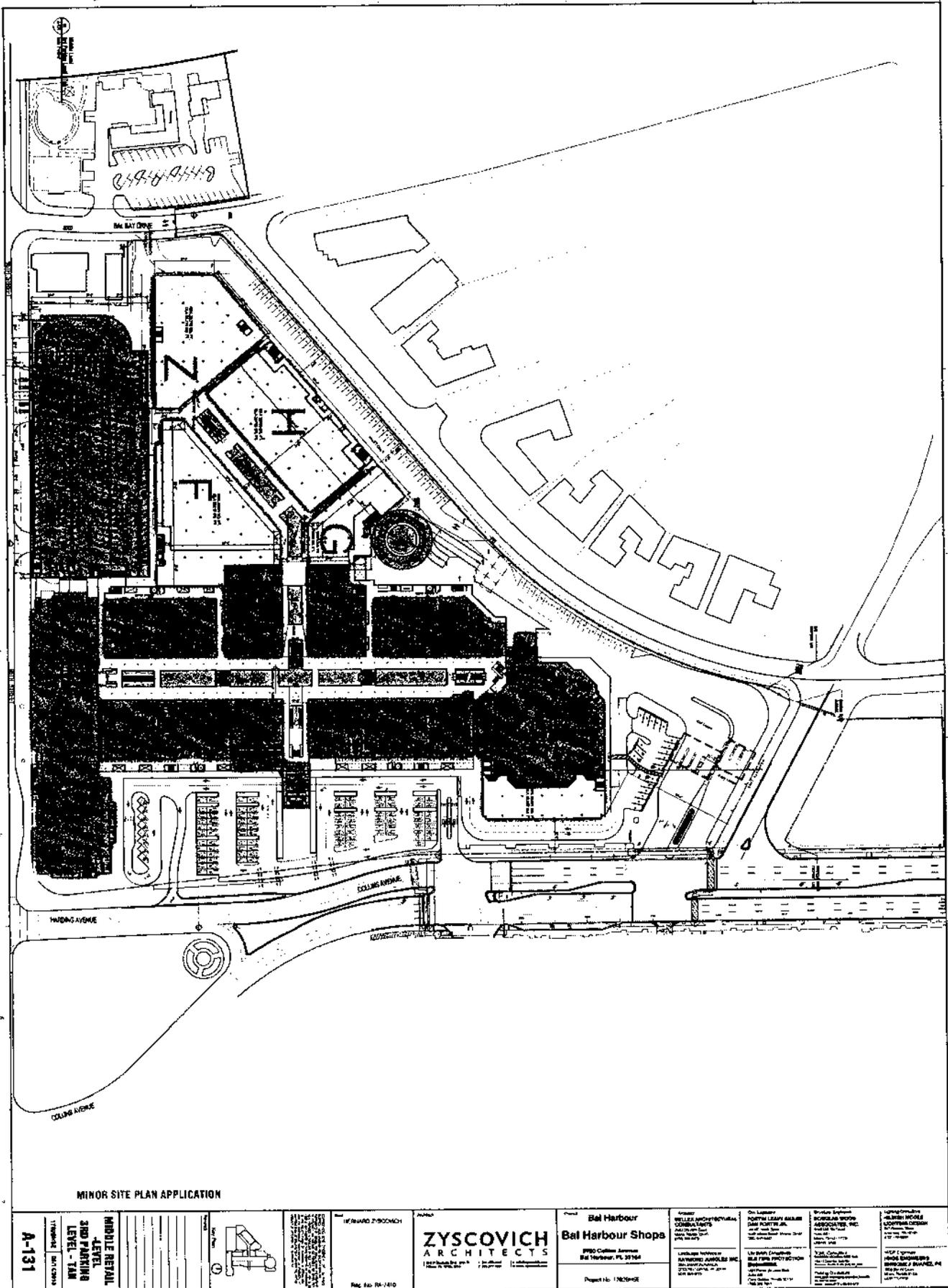




MINOR SITE PLAN APPLICATION

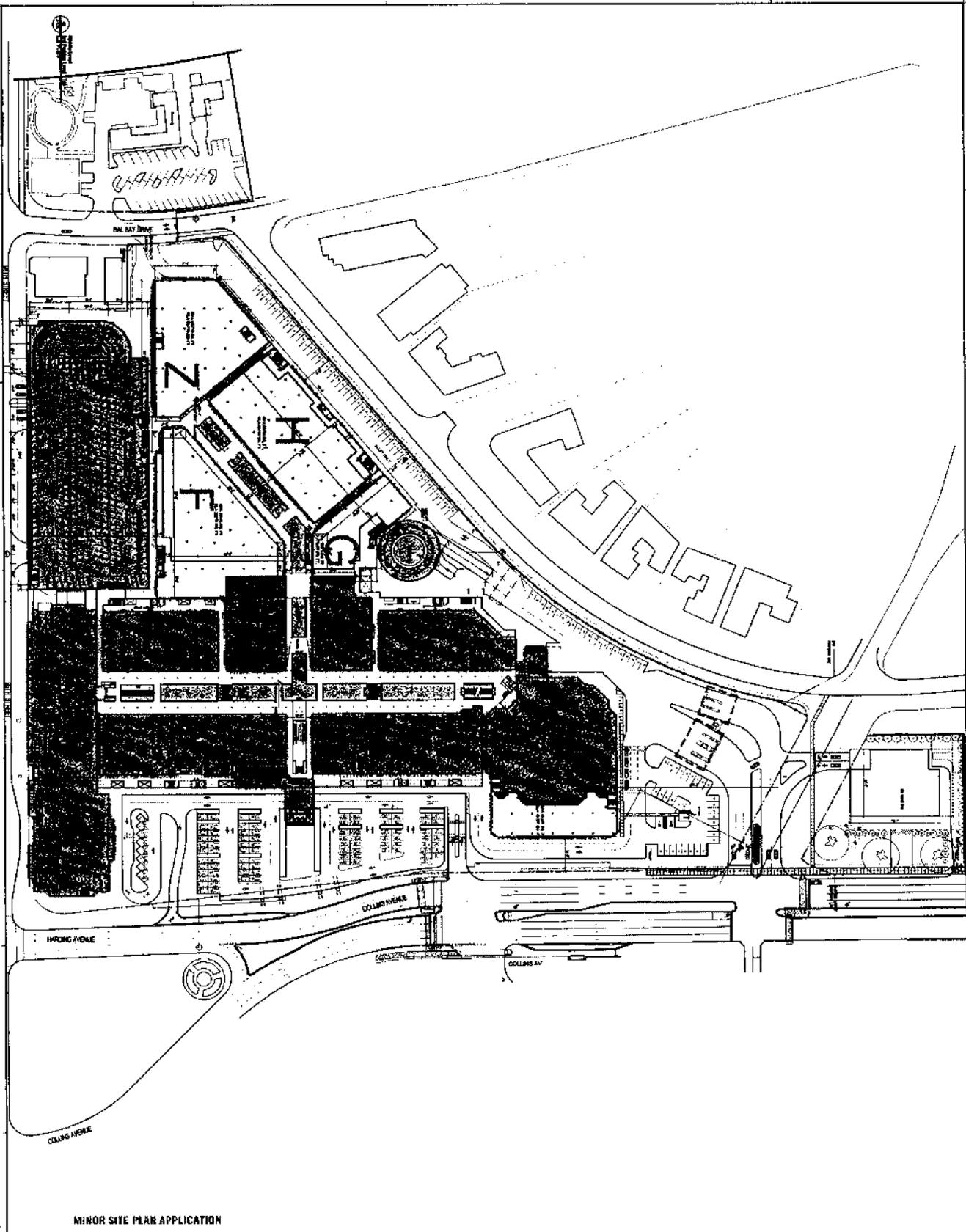
<p><b>A-121 FLEX</b></p> <p>MIDDLE LEVEL - RETAIL 2ND FLOOR - PARKING LEVEL - PARK</p>		<p>BY: <b>ZYSCOVICH</b></p> <p>Reg. No. 364-1240</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>9760 Collins Avenue Bal Harbour, FL 33154</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>9760 Collins Avenue Bal Harbour, FL 33154</p> <p>Page 1 of 17 (2/25/07)</p>	<p>Architect: <b>BELLY &amp; ARCHITECTURAL CONSULTANTS</b></p> <p>Professional Engineer: <b>PORTER LEAHY WALKER &amp; ASSOCIATES, INC.</b></p> <p>Professional Engineer: <b>WILSON ENGINEERS</b></p>	<p>Professional Engineer: <b>SCOTT &amp; SCOTT &amp; ASSOCIATES, INC.</b></p> <p>Professional Engineer: <b>WILSON ENGINEERS</b></p>
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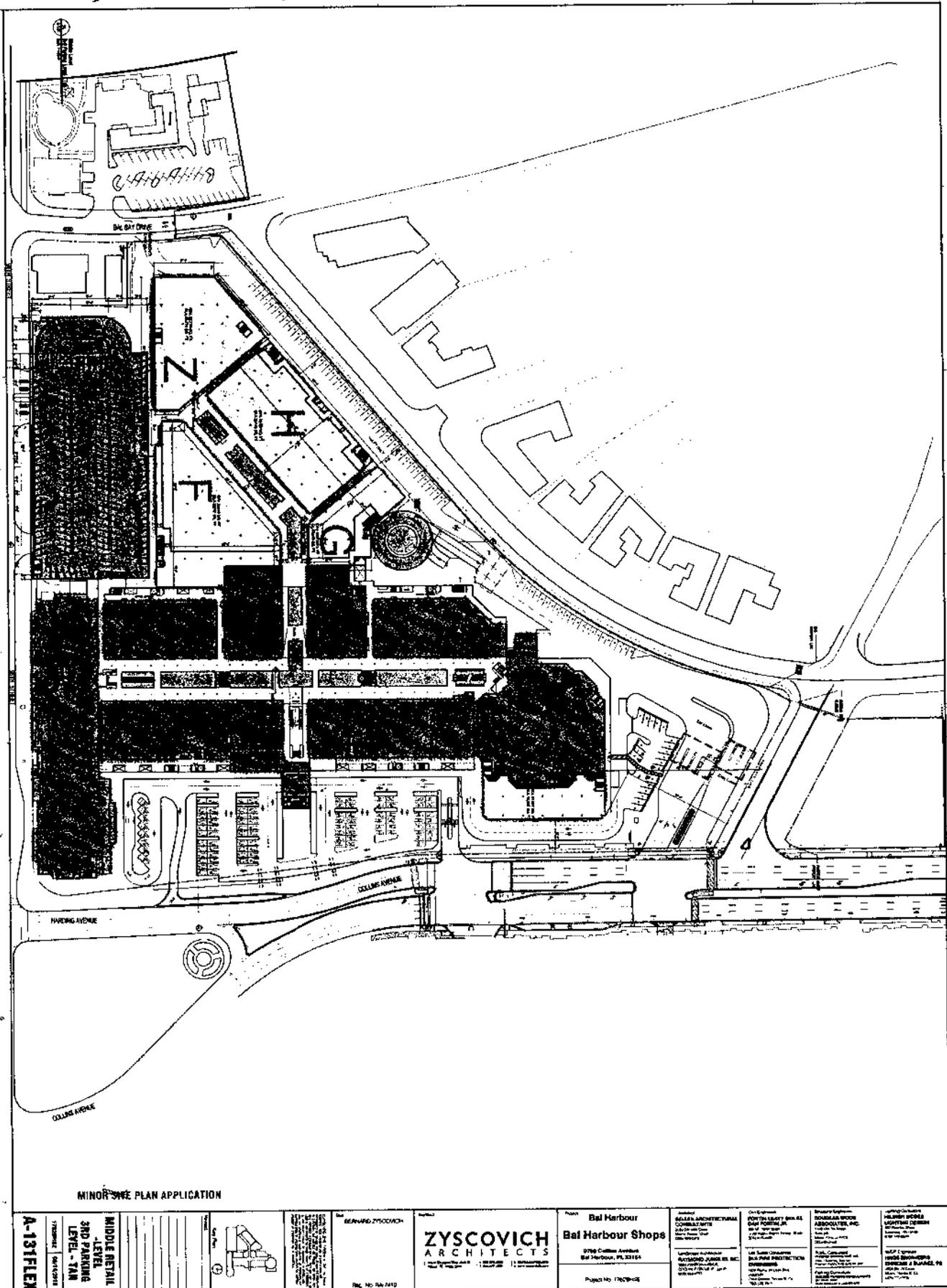
MINOR SITE PLAN APPLICATION

<p>A-131</p>	<p>MIDDLE RETAIL LEVEL 3RD PARKING LEVEL - TAN</p>		<p>BY BOARD ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b> 12000 Collins Avenue, Suite 200 Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101 www.zyscovich.com</p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b> 3780 Collins Avenue Bal Harbour, FL 33154 Project No: 1126102</p>	<p>Owner <b>WELLS FARGO BANK, N.A.</b> 1000 Brickell Avenue Miami, FL 33131 Tel: 305.375.1000</p>	<p>Site Location <b>3780 Collins Avenue</b> Bal Harbour, FL 33154 Project No: 1126102</p>	<p>Project Engineer <b>SCOTT WOOD ASSOCIATES, INC.</b> 1000 Brickell Avenue Miami, FL 33131 Tel: 305.375.1000</p>	<p>Project Manager <b>ANDREW J. BOWEN, P.E.</b> 1000 Brickell Avenue Miami, FL 33131 Tel: 305.375.1000</p>
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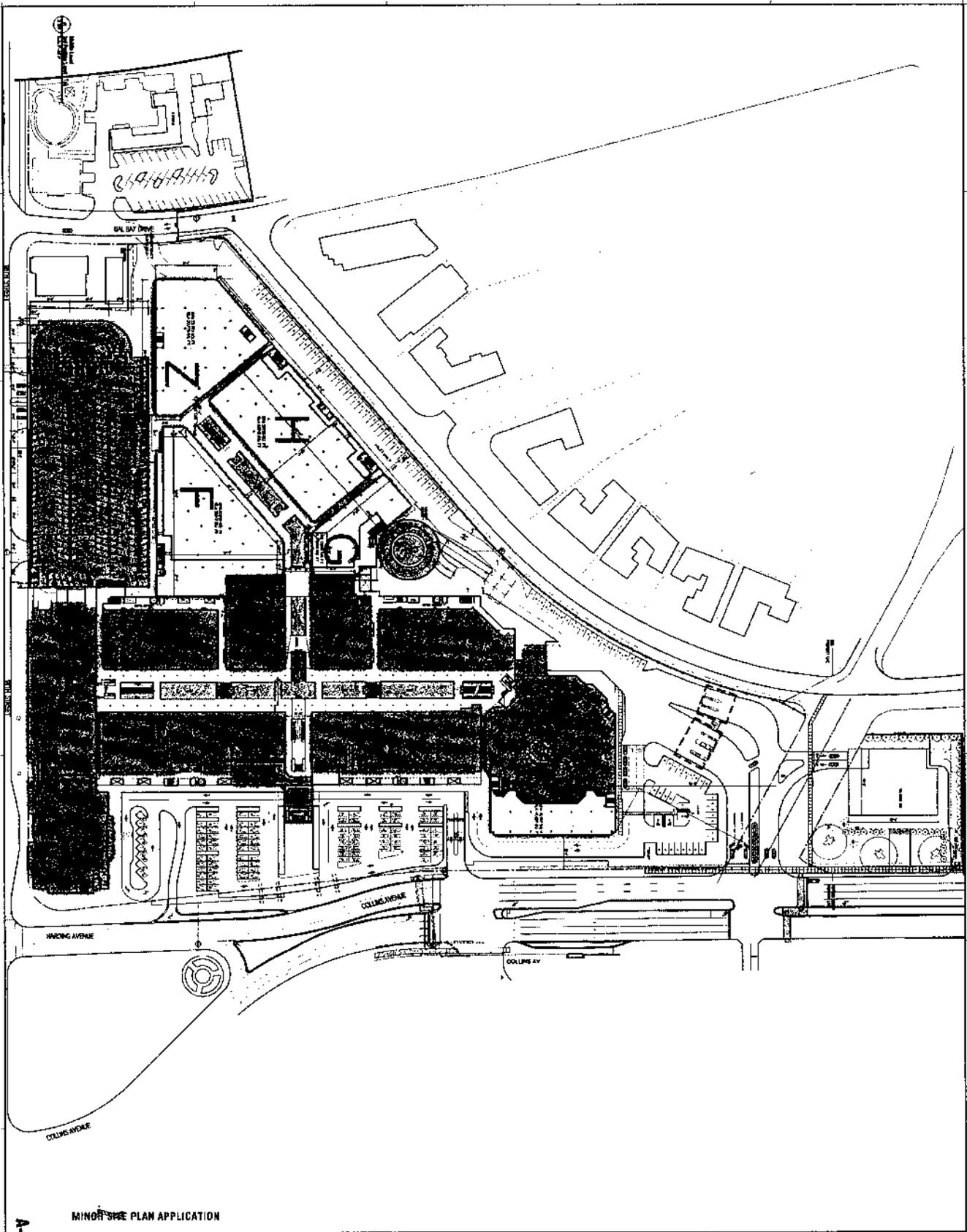
MINOR SITE PLAN APPLICATION

<p><b>A-131-ALT</b></p> <p>REVISIONS</p>	<p><b>MIDDLE RETAIL</b></p> <p><b>-LEVEL</b></p> <p><b>3RD AND PARKING</b></p> <p><b>LEVEL - TAN</b></p>		<p>DATE: 08/11/10</p> <p>BY: RYAN ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>9760 Collins Avenue, Bal Harbour, FL 33154</p> <p>Project No: 1702002E</p>	<p>Prepared by: <b>BELLES ARCHITECTURAL CONSULTANTS</b></p> <p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p>On Site by: <b>FORREST LEAVY BELLES ARCHITECTURAL CONSULTANTS</b></p> <p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p>Review Engineer: <b>SCOTT LEE WOOD</b></p> <p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p>SEALING OFFICER: <b>HELENE ROSS</b></p> <p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>
			<p>Fig. No. BA-110</p>	<p>DATE: 08/11/10</p> <p>BY: RYAN ZYSCOVICH</p>	<p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>	<p>10000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p>		



MINOR SITE PLAN APPLICATION

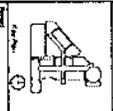
<p><b>A-137FLEX</b></p>	<p><b>MIDDLE RETAIL</b> -LEVEL <b>3RD PARKING</b> LEVEL - TAN</p>		<p>BY: <b>SEWARD ZYSCOVICH</b></p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>REG. NO. RA-2412</p>	<p>Project: <b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>6780 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17629-08</p>	<p>Architect: <b>COLLETT ARCHITECTURAL CONSULTANTS</b></p> <p>10000 Collins Avenue, Suite 200 Bal Harbour, FL 33154</p> <p>Professional Engineer: <b>RICHARD JAMES DE BEE</b></p> <p>201 NE 21st St., 2nd Fl. Miami Beach, FL 33137</p>	<p>Civil Engineer: <b>JOHN T. BERRY, III, P.E.</b> 201 NE 21st St., 2nd Fl. Miami Beach, FL 33137</p> <p>Soil Survey Engineer: <b>SUN PAVI PROTECTION ENGINEERING</b></p> <p>10000 Collins Avenue, Suite 200 Bal Harbour, FL 33154</p>	<p>Interior Designer: <b>SHARON WOOD ASSOCIATES, INC.</b></p> <p>10000 Collins Avenue, Suite 200 Bal Harbour, FL 33154</p> <p>Professional Engineer: <b>JOHN T. BERRY, III, P.E.</b> 201 NE 21st St., 2nd Fl. Miami Beach, FL 33137</p>	<p>Lighting Designer: <b>HELMUT WOOD LIGHTING DESIGN</b></p> <p>10000 Collins Avenue, Suite 200 Bal Harbour, FL 33154</p> <p>MEP Engineer: <b>ROSE BROWNSHIP ENGINEERS &amp; PLANNERS, PC</b></p> <p>10000 Collins Avenue, Suite 200 Bal Harbour, FL 33154</p>
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MINOR SITE PLAN APPLICATION

A-131-ALT-FLEX

<p><b>MIDDLE RETAIL</b> - LEVEL - AND PARKING - LEVEL - TAN</p>	
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ARCHITECT  
**BERNARD ZYSCOVICH**  
 1000  
 P.O. BOX 100-7410

**ZYSCOVICH**  
**ARCHITECTS**  
 1000  
 P.O. BOX 100-7410

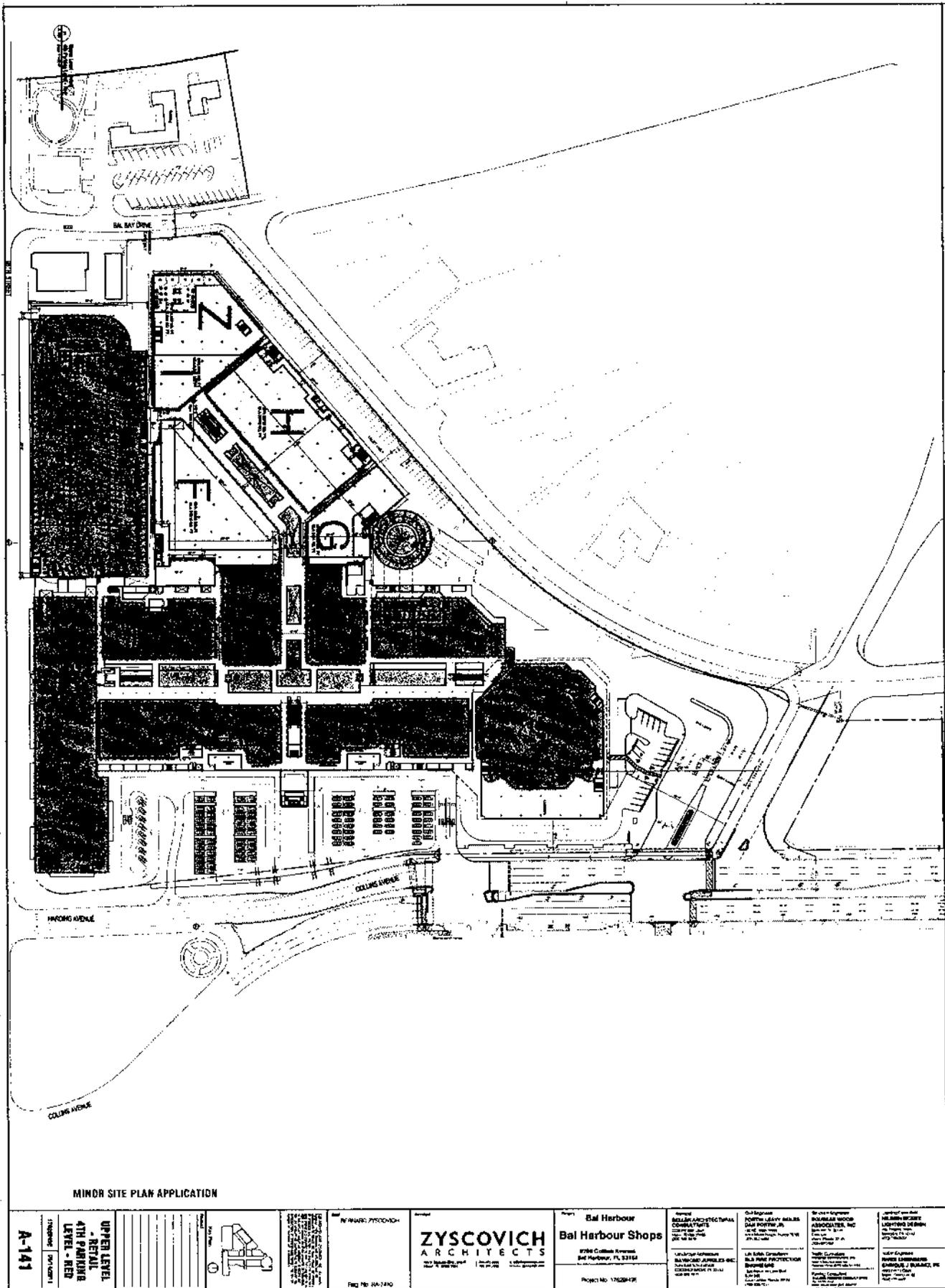
Project: **Bal Harbour**  
**Bal Harbour Shops**  
 5700 Collins Avenue  
 Bal Harbour, FL 33134  
 Project No: 170702E

PREPARED BY  
**BILLY ARCHITECTURAL CONSULTANTS**  
 1000  
 P.O. BOX 100-7410

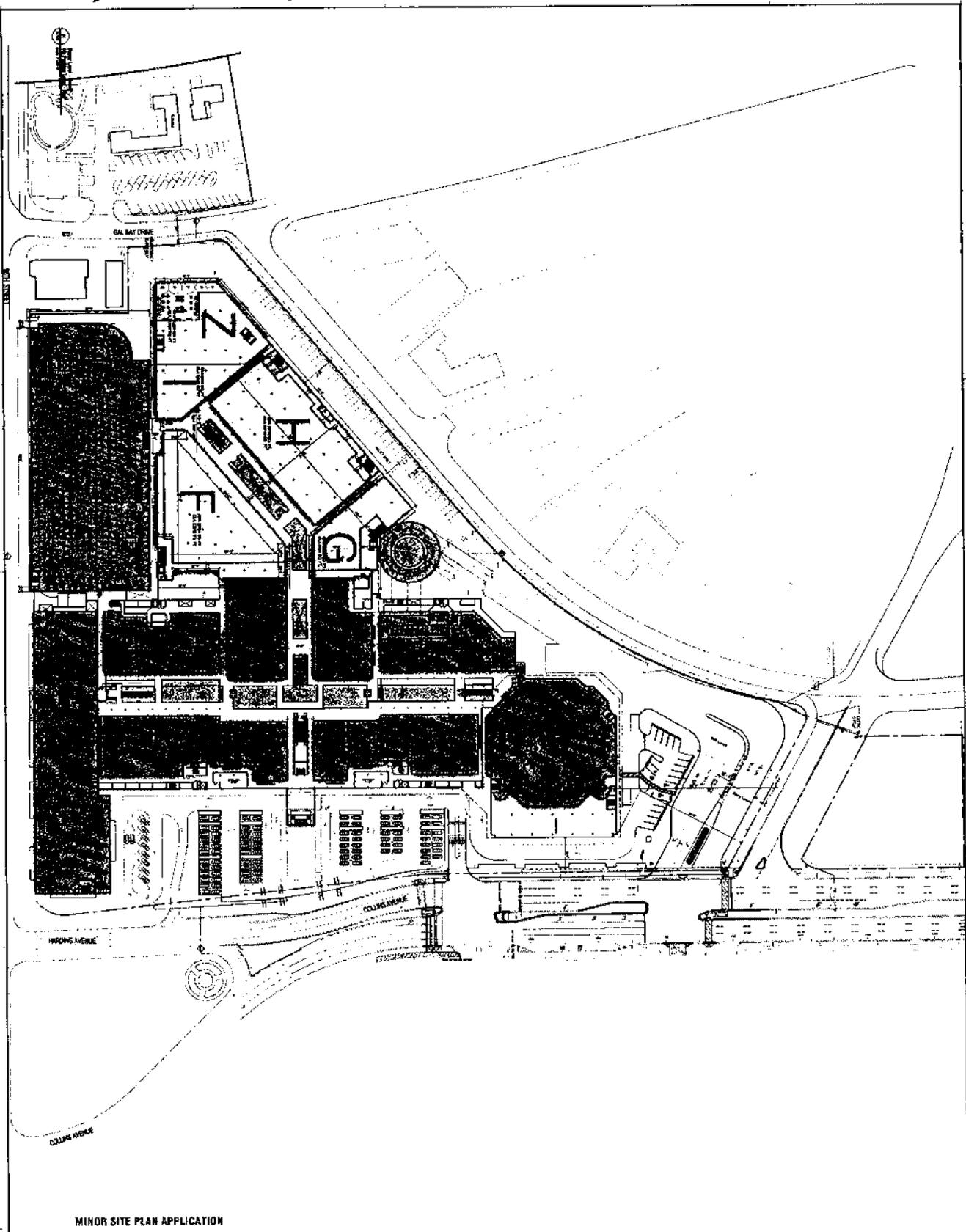
DATE SUBMITTED  
**FOR THE LEVY HILLER EAST PORTER, JR.**  
 1000  
 P.O. BOX 100-7410

CONSULTING ENGINEER  
**ROBERT WOOD ASSOCIATES, INC.**  
 1000  
 P.O. BOX 100-7410

CONSULTING ELECTRICAL ENGINEER  
**WILLIAM WOODS LIGHTING DESIGN**  
 1000  
 P.O. BOX 100-7410

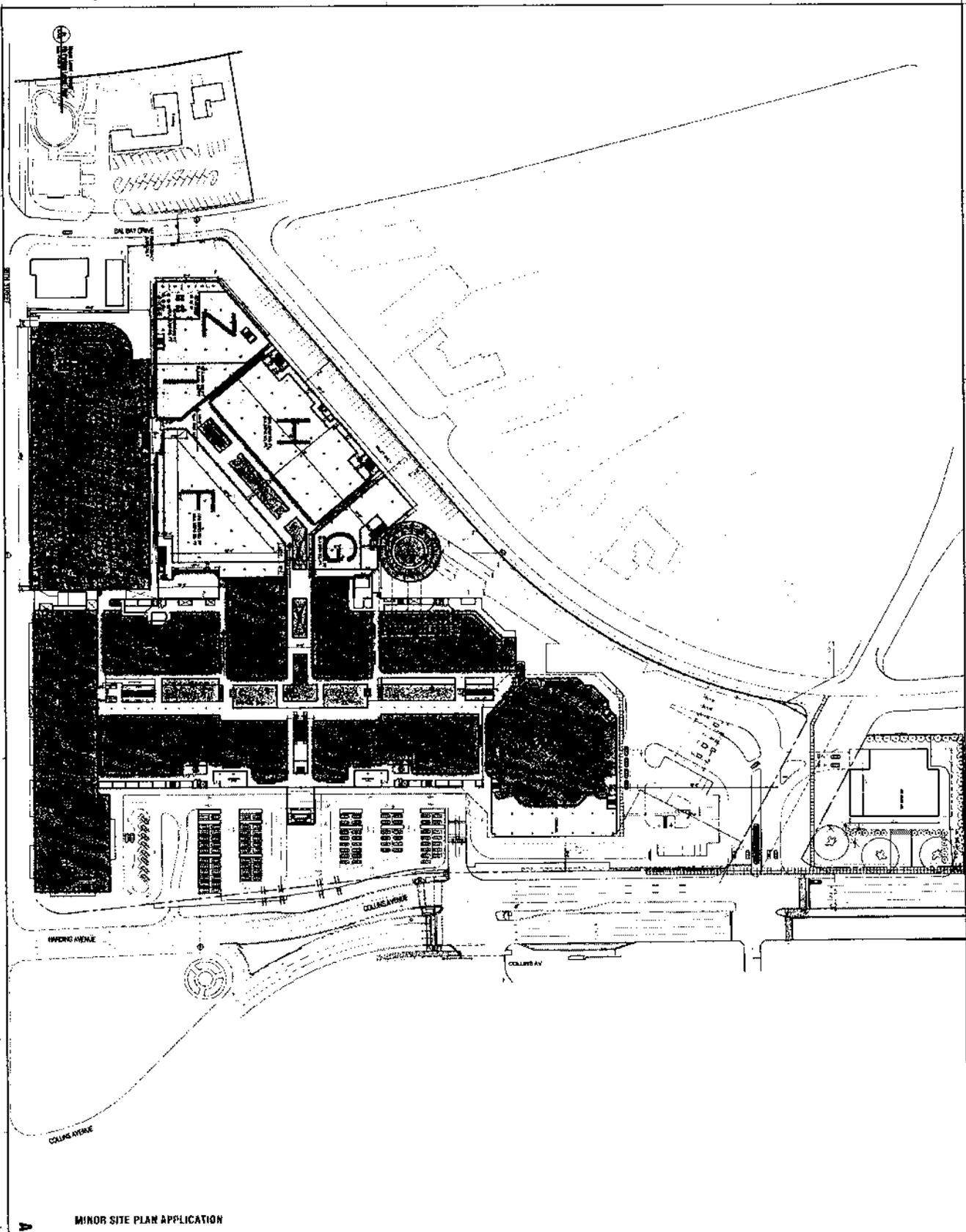






MINOR SITE PLAN APPLICATION

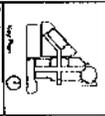
<p><b>A-141FLEX</b></p> <p>UPPER LEVEL          + RETAIL          4TH FLOOR          LEVEL - RED FLEX</p>		<p>BY: <b>BERNARD BENTON</b></p> <p>DATE: <b>11/11/11</b></p> <p>NO. <b>11-11-11-11</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>3100 Collins Avenue          Suite 200          Bal Harbour, FL 33134</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>3100 Collins Avenue          Bal Harbour, FL 33134</p> <p>Project No: 11010101</p>	<p>Architect: <b>BELDEN ARCHITECTURAL CONSULTANTS</b></p> <p>11010 Collins Avenue          Suite 200          Bal Harbour, FL 33134</p>	<p>Site Designer: <b>PORTER LEAFY SCULLY</b></p> <p>2000 Collins Avenue          Suite 200          Bal Harbour, FL 33134</p>	<p>Professional Engineer: <b>SCOTT WOOD ASSOCIATES, INC.</b></p> <p>11010 Collins Avenue          Suite 200          Bal Harbour, FL 33134</p>	<p>Professional Engineer: <b>SCOTT WOOD ASSOCIATES, INC.</b></p> <p>11010 Collins Avenue          Suite 200          Bal Harbour, FL 33134</p>
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MINOR SITE PLAN APPLICATION

A-141-ALT-FLEX

UPPER LEVEL  
- RETAIL  
4TH FLOOR  
LEVEL - NEO FLEX



BY: **BERNARD DISCOWA**  
 Title: **ARCHITECT**  
 License No: **100740**

**ZYSCOVICH ARCHITECTS**  
 10000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Website: www.zyscovich.com

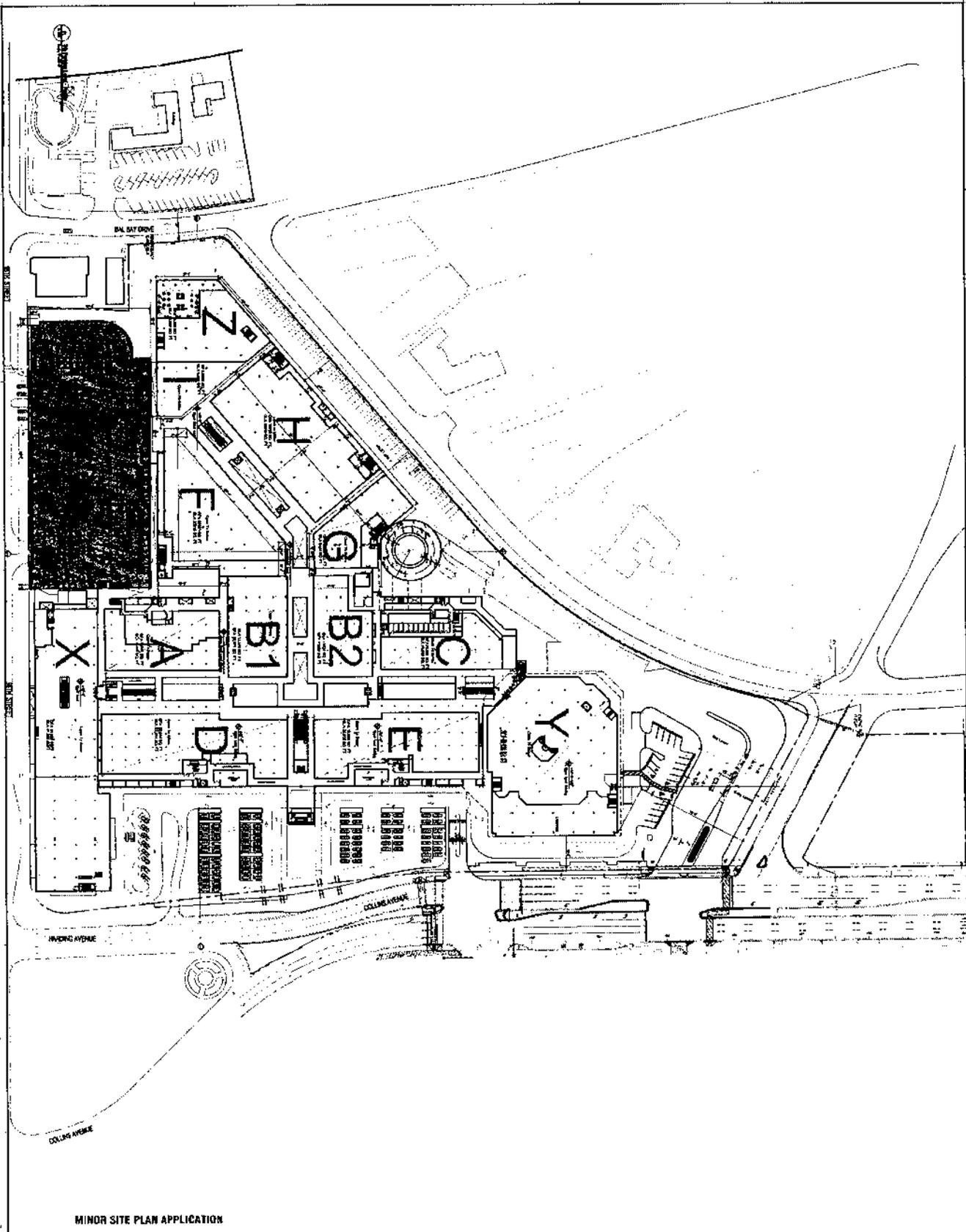
**Bal Harbour**  
**Bal Harbour Shops**  
 8750 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No: 1702642

Prepared: **BELLEVUE ARCHITECTURAL CONSULTANTS**  
 10000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Website: www.bellevue.com

On-Site: **ALBERTO LEONARDI**  
**ALBERTO LEONARDI ARCHITECTS, P.A.**  
 10000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Website: www.albertoleonardi.com

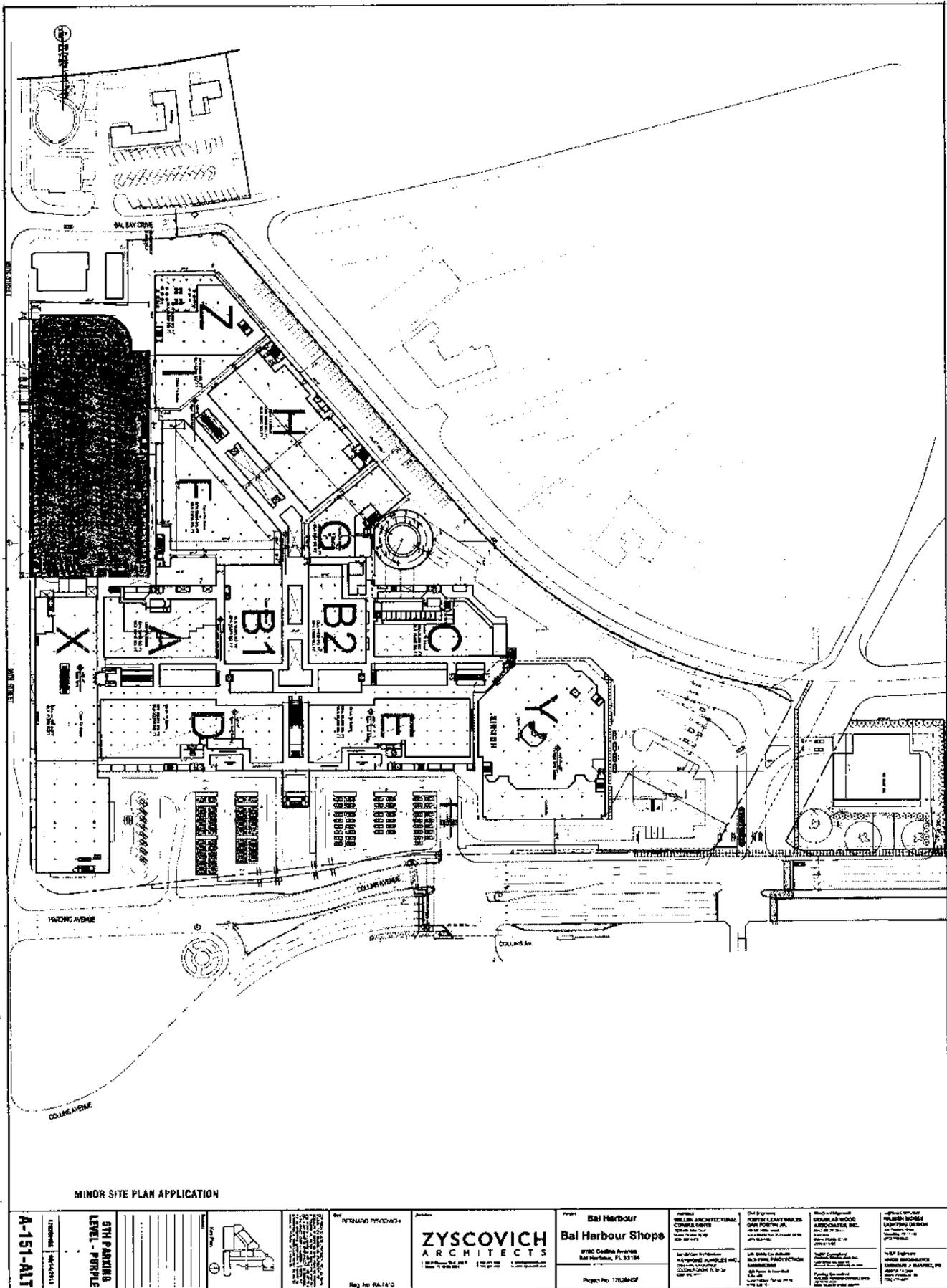
Survey: **SCOTT'S SURVEYING & CONSULTING, INC.**  
 10000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Website: www.scotts.com

Professional Engineer: **JOHN J. BLANCHARD, PE**  
 License No: **100740**  
 Title: **ENGINEER**



MINOR SITE PLAN APPLICATION

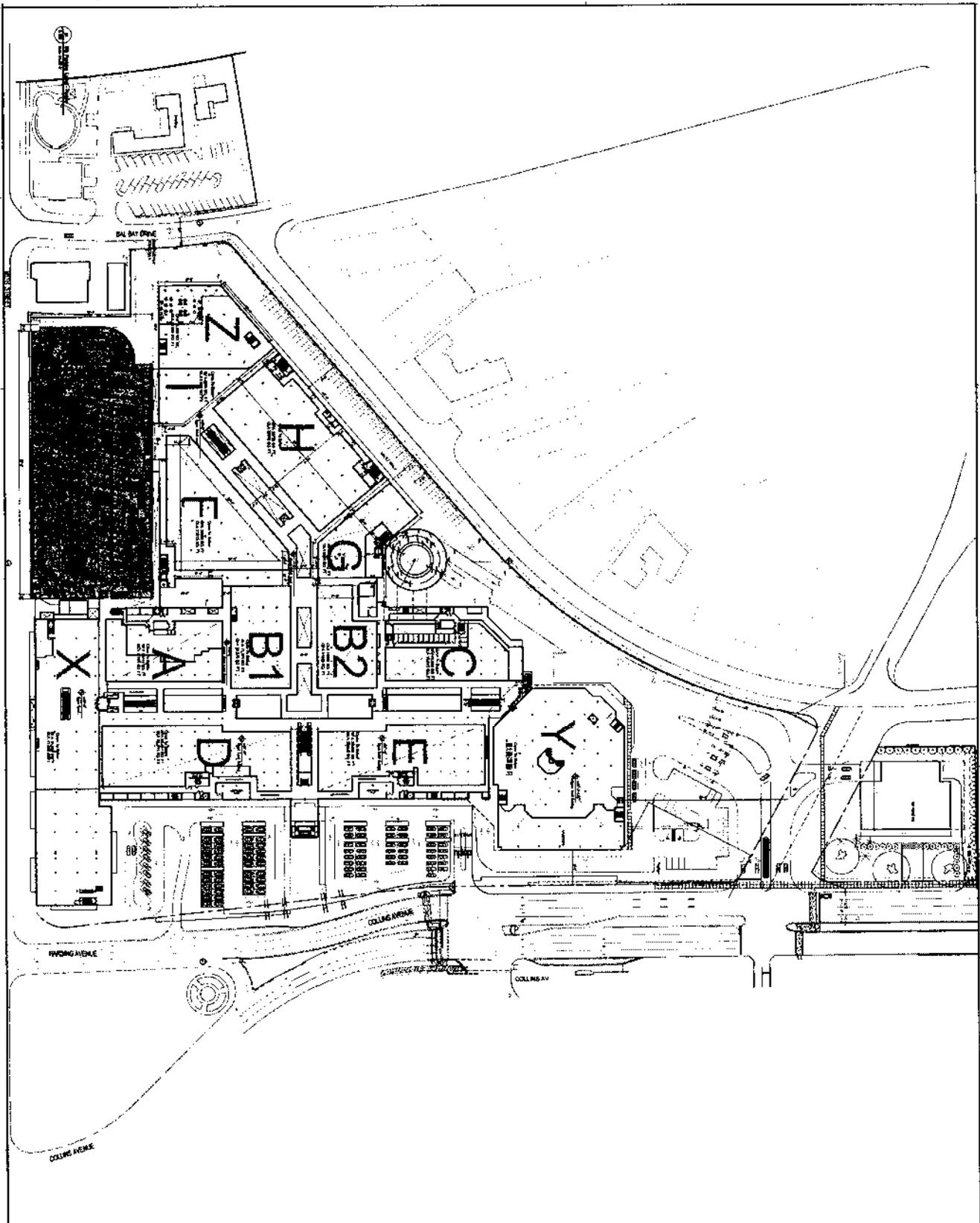
<p><b>A-151</b></p>	<p><b>STRAIGHT PARKING LEVEL - PURPLE</b></p>		<p>BERNARD ZYSCOVICH</p> <p>NYC NO. 14-710</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>8900 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 1209002</p>	<p>OWNER <b>BELLA ARCHITECTURAL CONSULTANTS</b> 2001 Collins Ave. Bal Harbour, FL 33154</p>	<p>DESIGNER <b>PORTER KIMPTON BOWEN AND PARTNERS, PC</b> 1001 Collins Ave. Bal Harbour, FL 33154</p>	<p>ENGINEER <b>WILLIAM BROWN ARCHITECTS, INC.</b> 1001 Collins Ave. Bal Harbour, FL 33154</p>	<p>CONTRACTOR <b>WILLIAM BROWN ARCHITECTS, INC.</b> 1001 Collins Ave. Bal Harbour, FL 33154</p>
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MINOR SITE PLAN APPLICATION

<p><b>A-151-ALT</b></p> <p>REVISIONS</p> <p>DATE</p> <p>BY</p> <p>APPROVED</p>		<p>PERMIT # 21500404</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>8780 Collins Avenue, Bal Harbour, FL 33154</p> <p>Project No. 17028402</p>	<p>Architect</p> <p><b>WILLIAM ARCHITECTURAL CONSULTANTS</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>	<p>Civil Engineer</p> <p><b>FORREST LEVAY ANALYSIS &amp; DESIGN, INC.</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>	<p>Structural Engineer</p> <p><b>STONER WOOD ASSOCIATES, INC.</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>	<p>Professional Engineer</p> <p><b>WALTER SCOTT ENGINEERING DESIGN</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>
					<p>Reg. No. 86-7410</p>	<p>Professional Engineer</p> <p><b>WALTER SCOTT ENGINEERING DESIGN</b></p> <p>1100 Collins Avenue, Suite 1000, Miami Beach, FL 33139</p>		

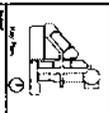




MINDR SITE PLAN APPLICATION

A-151-ALT-FILEX

STAIR PARKING LEVEL - PURPLE FILEX
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WWW.WDZYSOVICH.COM  
 Reg. No. RA-74-0

**ZYSOVICH ARCHITECTS**

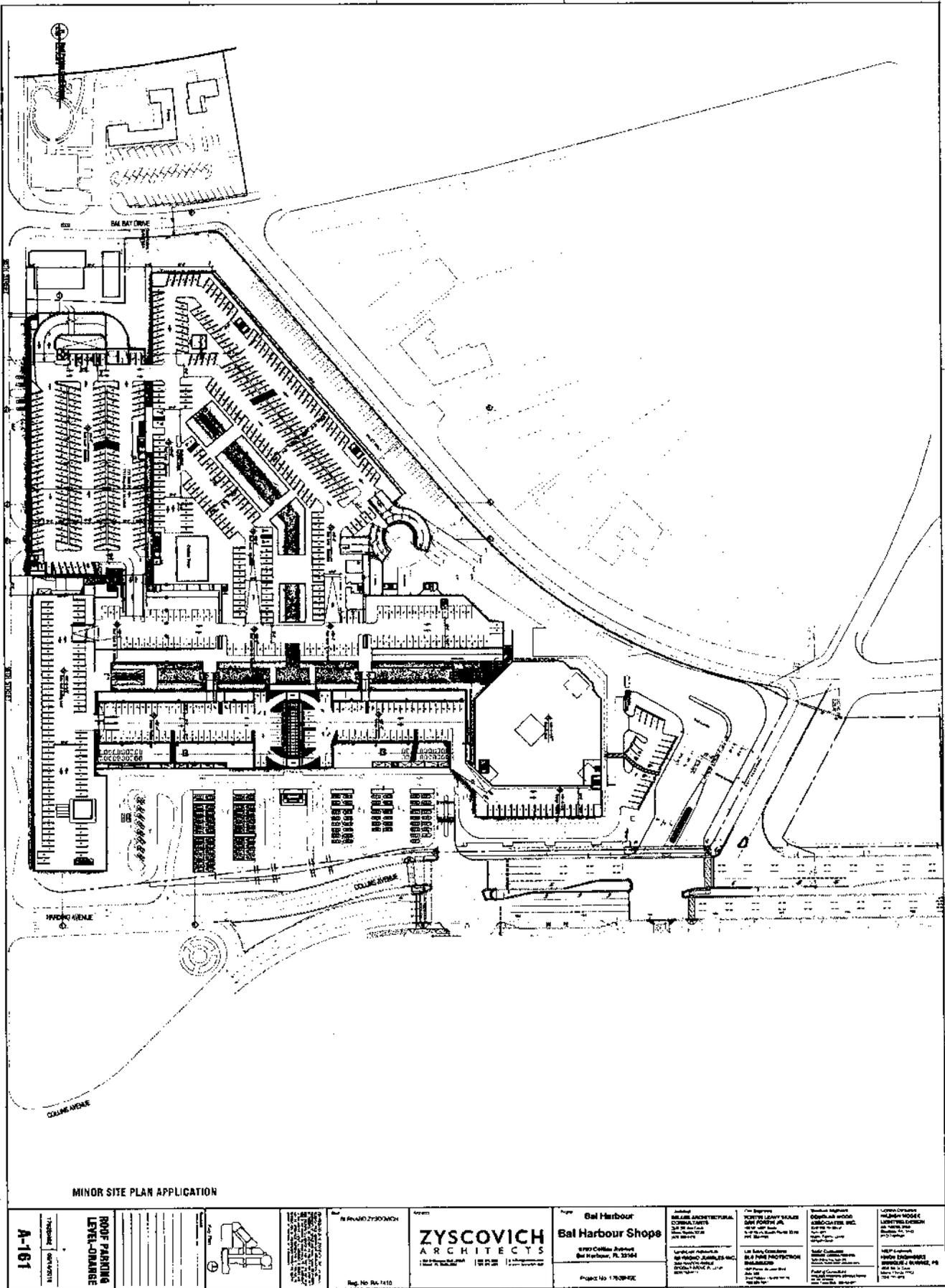
**Bel Harbour**  
**Bel Harbour Shops**  
 8708 Collins Avenue  
 Bel Harbour, FL 33414  
 Project No. 17528-02

Architect  
**WELBY ARCHITECTURAL CONSULTANTS**  
 10000 Collins Avenue, Suite 100  
 Bel Harbour, FL 33414

Structural Engineer  
**DOUGLAS BRADY ASSOCIATES, INC.**  
 10000 Collins Avenue, Suite 100  
 Bel Harbour, FL 33414

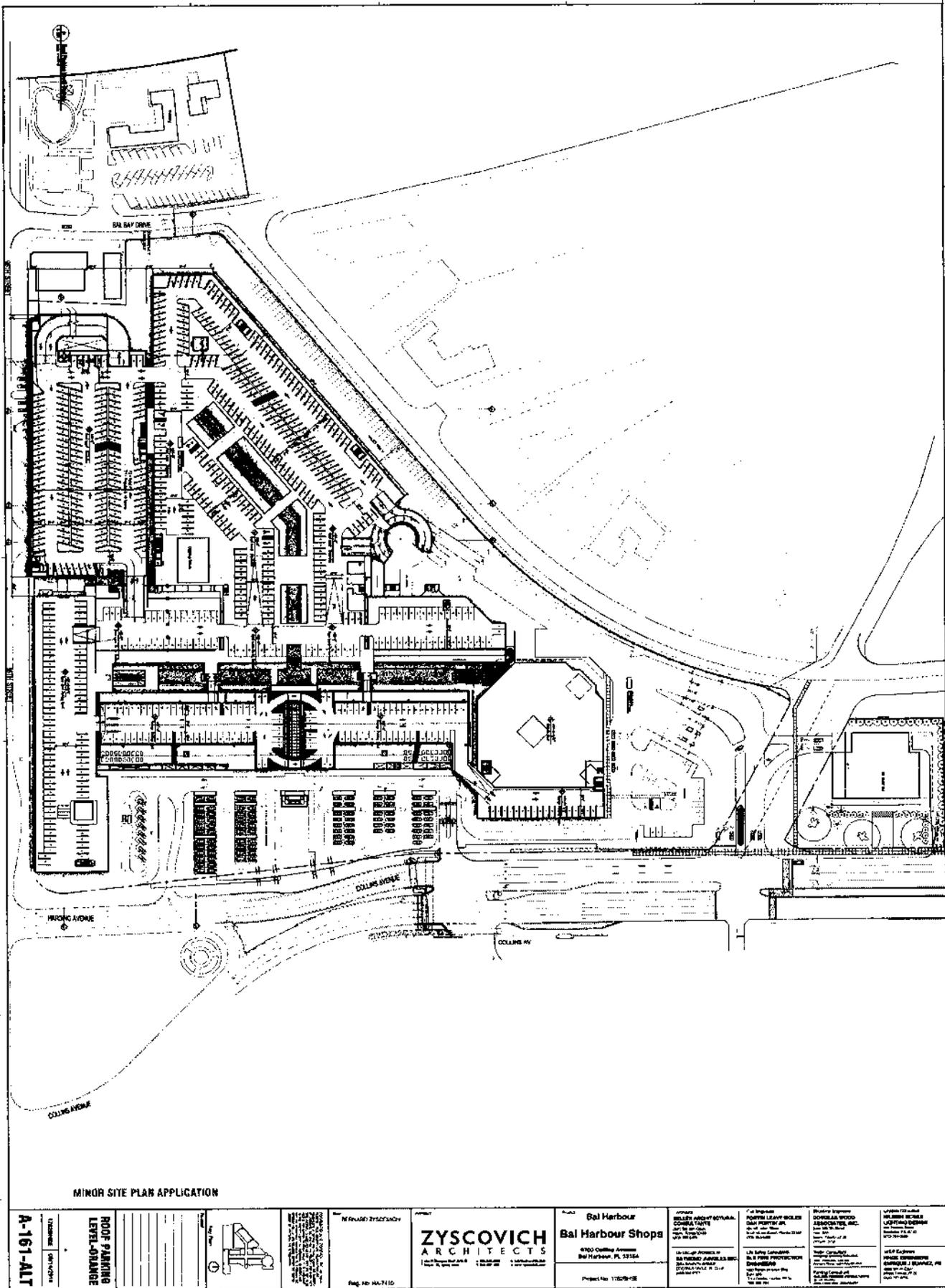
Professional Engineer  
**DOUGLAS BRADY ASSOCIATES, INC.**  
 10000 Collins Avenue, Suite 100  
 Bel Harbour, FL 33414

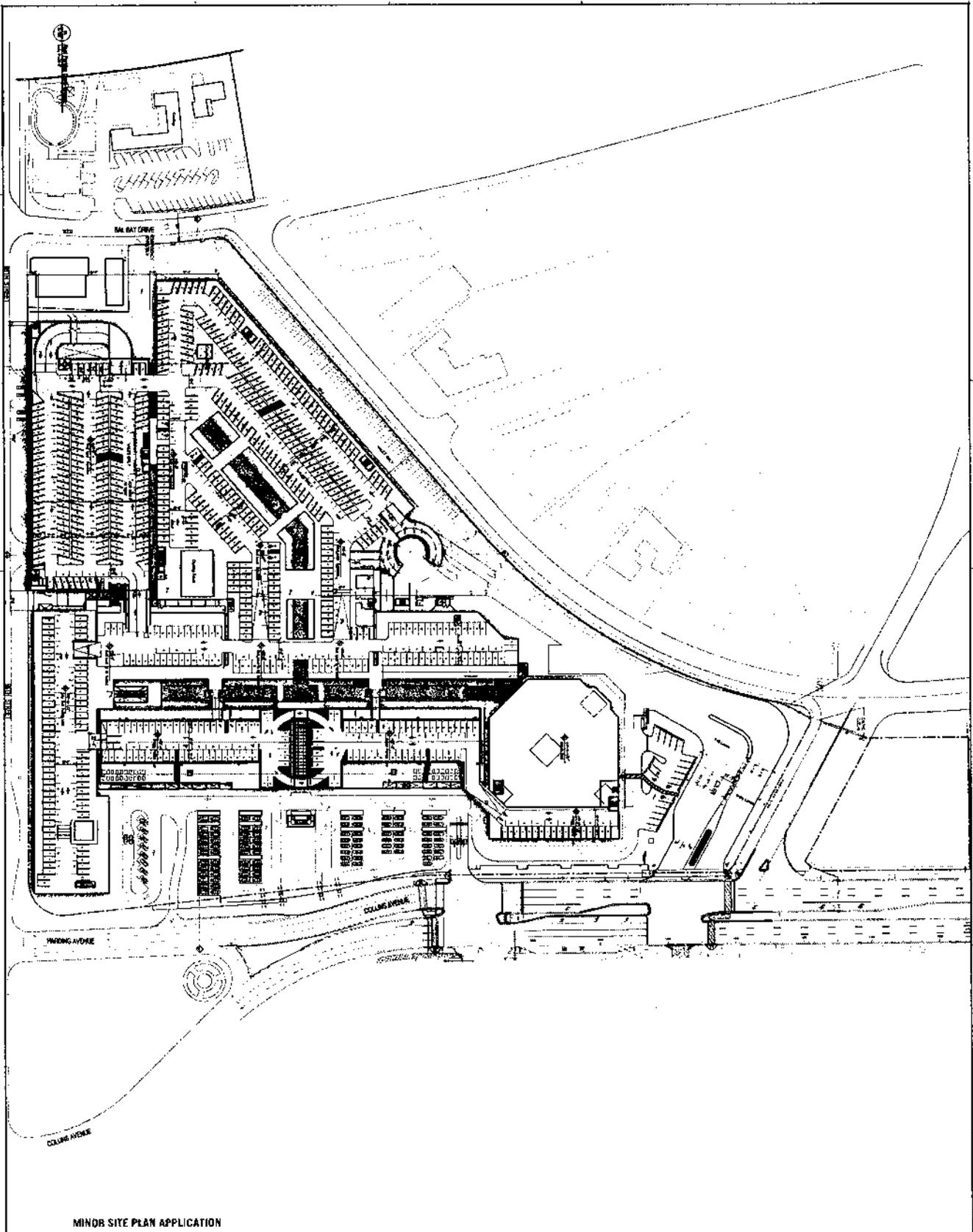
Professional Engineer  
**DOUGLAS BRADY ASSOCIATES, INC.**  
 10000 Collins Avenue, Suite 100  
 Bel Harbour, FL 33414



MINOR SITE PLAN APPLICATION

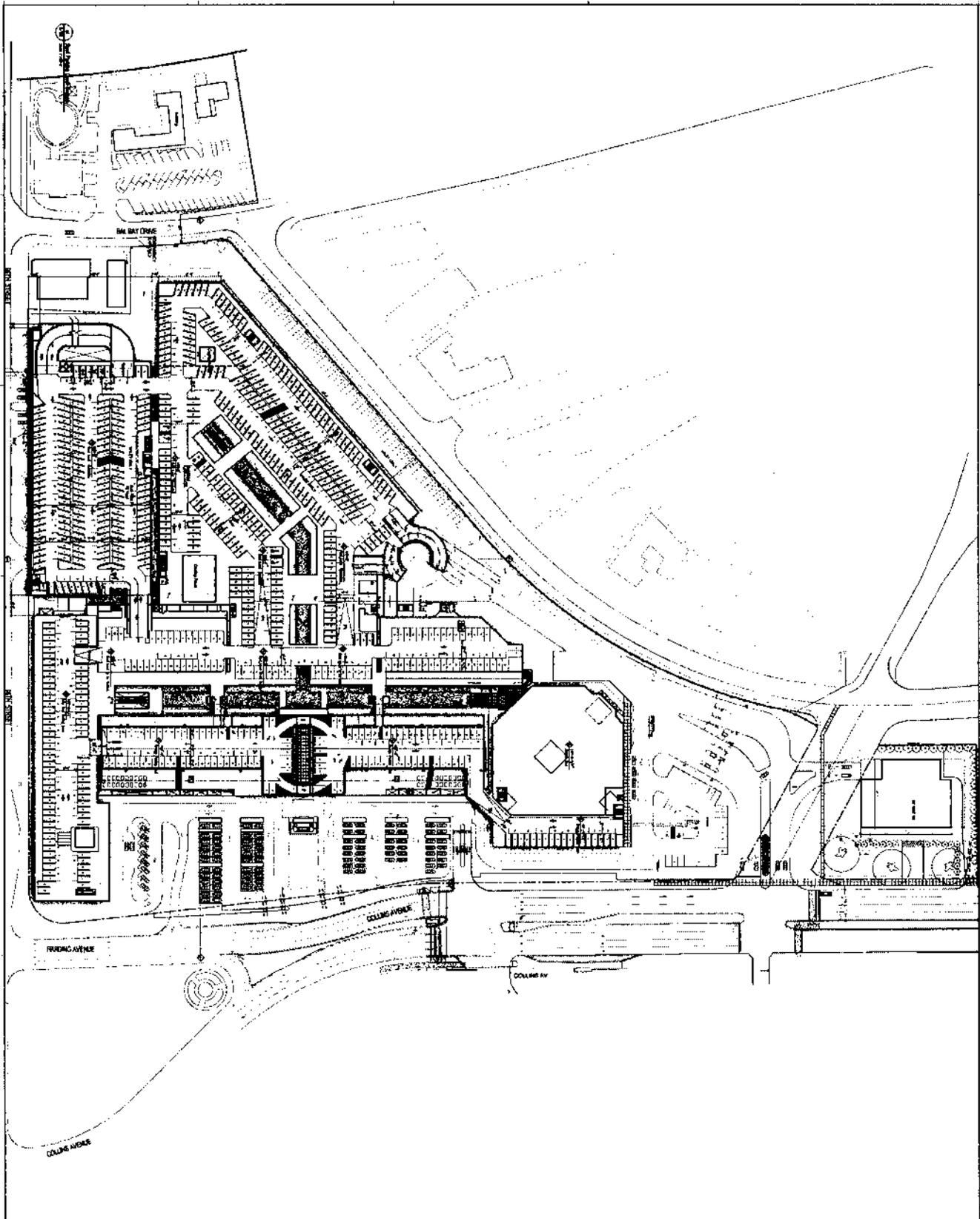
<p>A-161</p>	<p>ROOF PARKING LEVEL-CHANGE</p>		<p>BY RESOLUTION OF THE BOARD OF ZONING COMMISSIONERS</p> <p>Reg. No. 210</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour Shops</b></p> <p>3700 Collins Avenue Bal Harbour, FL 33164</p> <p>Project No. 170045E</p>	<p>Architect <b>WILLIAM ARCHITECTURAL CONSULTANTS</b> 301 W. 1st St. Miami Beach, FL 33139</p> <p>Landscaper <b>WILSON JENNIFER INC.</b> 200 N.W. 10th St. Miami, FL 33136</p>	<p>Site Engineer <b>THE LEVY GROUP</b> 3000 N.W. 10th St. Miami, FL 33136</p> <p>Site Surveyor <b>DAVID P. PROCTOR INC.</b> 1000 N.W. 10th St. Miami, FL 33136</p>	<p>Structural Engineer <b>EDWARD J. WOOD ASSOCIATES, INC.</b> 1000 N.W. 10th St. Miami, FL 33136</p> <p>Soil Consultant <b>EDWARD J. WOOD ASSOCIATES, INC.</b> 1000 N.W. 10th St. Miami, FL 33136</p>	<p>Licensee <b>WALTER WOOD</b> 1000 N.W. 10th St. Miami, FL 33136</p> <p>Professional Engineer <b>WALTER WOOD</b> 1000 N.W. 10th St. Miami, FL 33136</p>
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MINOR SITE PLAN APPLICATION

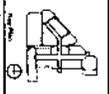
<p><b>A-161/FLEX</b></p>	<p><b>ROOF PARKING LEVEL-DRAWN FLEX</b></p>		<p>PREPARED BY ZYSCOVICH</p> <p>Reg. No. SA-7415</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour Shops</b></p> <p>4700 Collins Avenue Bal Harbour, FL 33141</p> <p>Project No. 1702846E</p>	<p>Architect <b>ZYSCOVICH ARCHITECTS</b> 1702846E</p>	<p>Site Engineer <b>AGOSTIN LEVAY</b> 1702846E</p>	<p>Structural Engineer <b>ROBERTA WOOD ASSOCIATES, INC.</b> 1702846E</p>	<p>Civil Engineer <b>WALTER WOOD ASSOCIATES, INC.</b> 1702846E</p>
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MINOR SITE PLAN APPLICATION

A-161-ALT-FLEX

**ROOF PARKING LEVEL-ORANGE FLEX**



DATE: 12/15/2015  
 DRAWN BY: J. ZYSCOVICH  
 REG. NO. BA-7410

**ZYSCOVICH ARCHITECTS**  
 9760 Collins Avenue  
 Bal Harbour, FL 33154

**Bal Harbour**  
**Bal Harbour Shops**  
 9760 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 1503916

Project: **BAL HARBOUR SHOPS**  
 9760 Collins Avenue  
 Bal Harbour, FL 33154

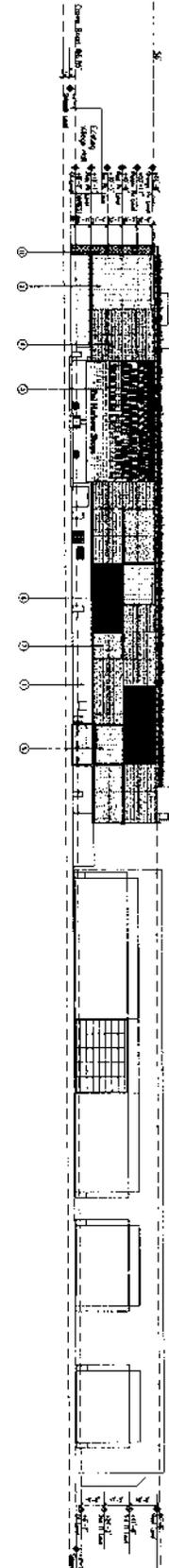
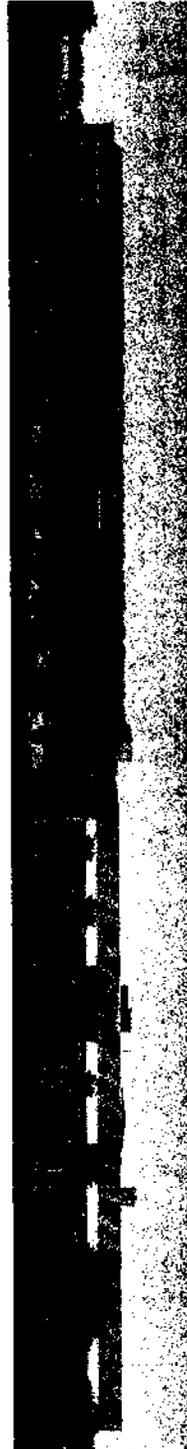
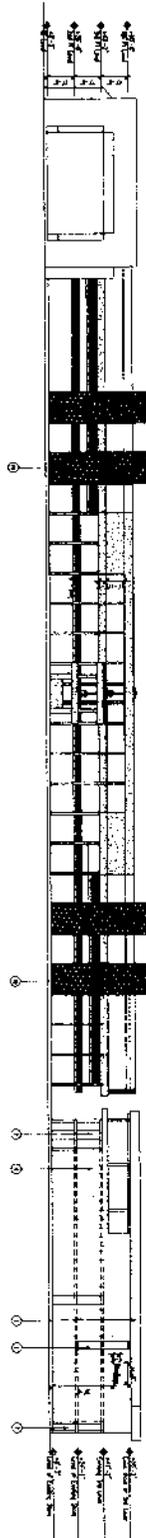
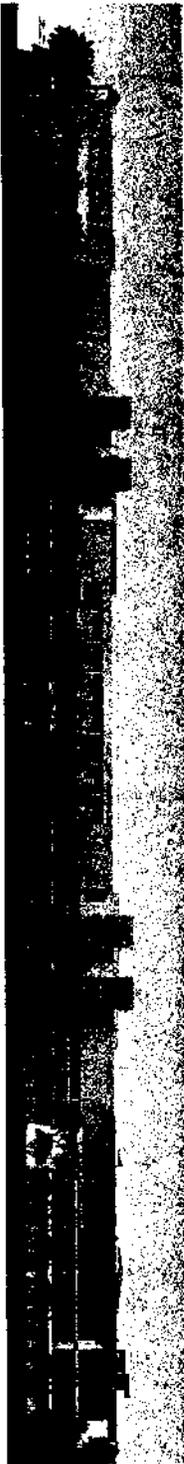
Architect: **BELLE ARCHITECTURAL CONSULTANTS**  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

Architect: **FORSTNER LEAHY WOODS**  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

Architect: **WOODLAND WOOD ASSOCIATES, INC.**  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

Architect: **HILSHORNE WOOD ASSOCIATES, INC.**  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

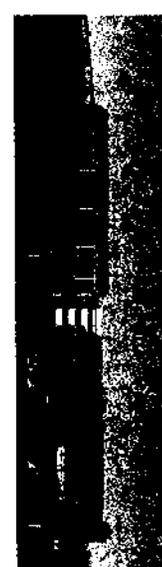
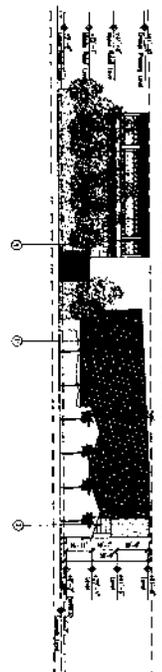
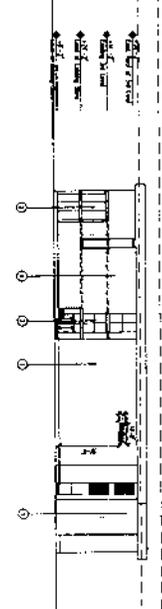
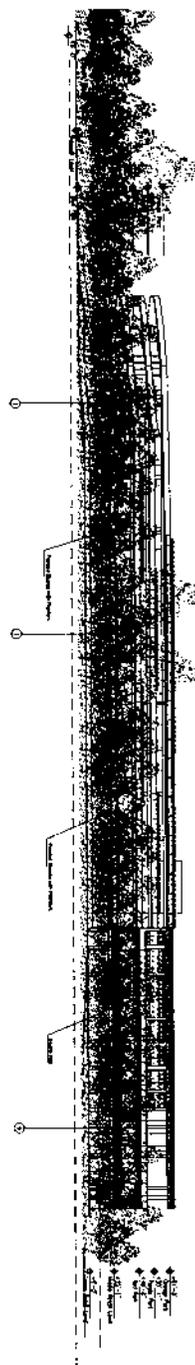




- KEY NOTES**
1. SEE EXISTING RECORD DRAWINGS FOR ALL UTILITIES AND STRUCTURES.
  2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  3. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT AND SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
  4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  6. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  8. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  9. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.
  10. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.

**MINOR SITE PLAN APPLICATION**

<p><b>ELEVATIONS</b></p> <p>1/11</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>BERNARD ZYSCOVICH</p> <p>1700 Collins Avenue Bal Harbour, FL 33154</p> <p>Phone: 305.233.1111</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>1700 Collins Avenue Bal Harbour, FL 33154</p> <p>Project NO: 170204E</p>	<p><b>Architect</b></p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1700 Collins Avenue Bal Harbour, FL 33154</p> <p>Phone: 305.233.1111</p>	<p><b>Civil Engineer</b></p> <p><b>PERKINS+WILL</b></p> <p>100 North Dearborn Street Chicago, IL 60610</p> <p>Phone: 312.345.6789</p>	<p><b>Structural Engineer</b></p> <p><b>PERKINS+WILL</b></p> <p>100 North Dearborn Street Chicago, IL 60610</p> <p>Phone: 312.345.6789</p>	<p><b>Lighting Designer</b></p> <p><b>PERKINS+WILL</b></p> <p>100 North Dearborn Street Chicago, IL 60610</p> <p>Phone: 312.345.6789</p>
				<p><b>Interior Designer</b></p> <p><b>PERKINS+WILL</b></p> <p>100 North Dearborn Street Chicago, IL 60610</p> <p>Phone: 312.345.6789</p>			



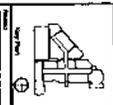
10' 0" SECTION  
 10' 0" SECTION  
 10' 0" SECTION

10' 0" SECTION  
 10' 0" SECTION  
 10' 0" SECTION

- KEYNOTES**
- 1 - 10' 0" SECTION 10' 0" SECTION
  - 2 - 10' 0" SECTION 10' 0" SECTION
  - 3 - 10' 0" SECTION 10' 0" SECTION
  - 4 - 10' 0" SECTION 10' 0" SECTION
  - 5 - 10' 0" SECTION 10' 0" SECTION
  - 6 - 10' 0" SECTION 10' 0" SECTION
  - 7 - 10' 0" SECTION 10' 0" SECTION
  - 8 - 10' 0" SECTION 10' 0" SECTION
  - 9 - 10' 0" SECTION 10' 0" SECTION
  - 10 - 10' 0" SECTION 10' 0" SECTION

**MINOR SITE PLAN APPLICATION**

<b>ELEVATIONS</b>	<p>10' 0" SECTION</p> <p>10' 0" SECTION</p> <p>10' 0" SECTION</p>
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**BY** BERNARD ZYSCOVICH

**ZYSCOVICH ARCHITECTS**

Fig. No. 65-7300

**Project** Bel Harbour  
**Bel Harbour Shops**

3700 Collins Avenue  
 Bel Harbour, FL 33534

Project No. 170080E

**Author** ZYSCOVICH ARCHITECTS

**Checked** [Signature]

**Consulting Engineer** [Signature]

**Structural Engineer** [Signature]

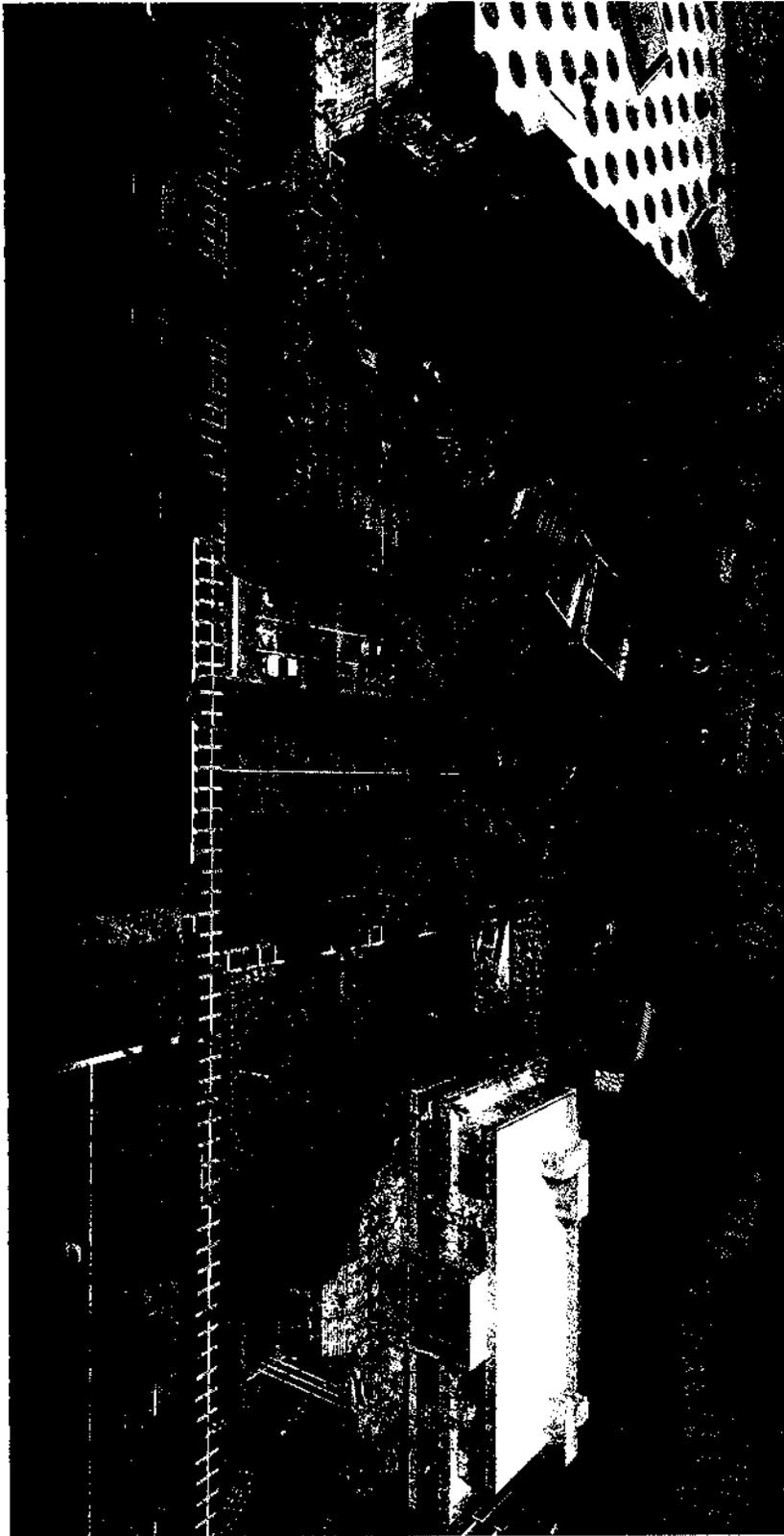
**MECHANICAL ENGINEER** [Signature]

**ELECTRICAL ENGINEER** [Signature]

**Professional Engineer** [Signature]

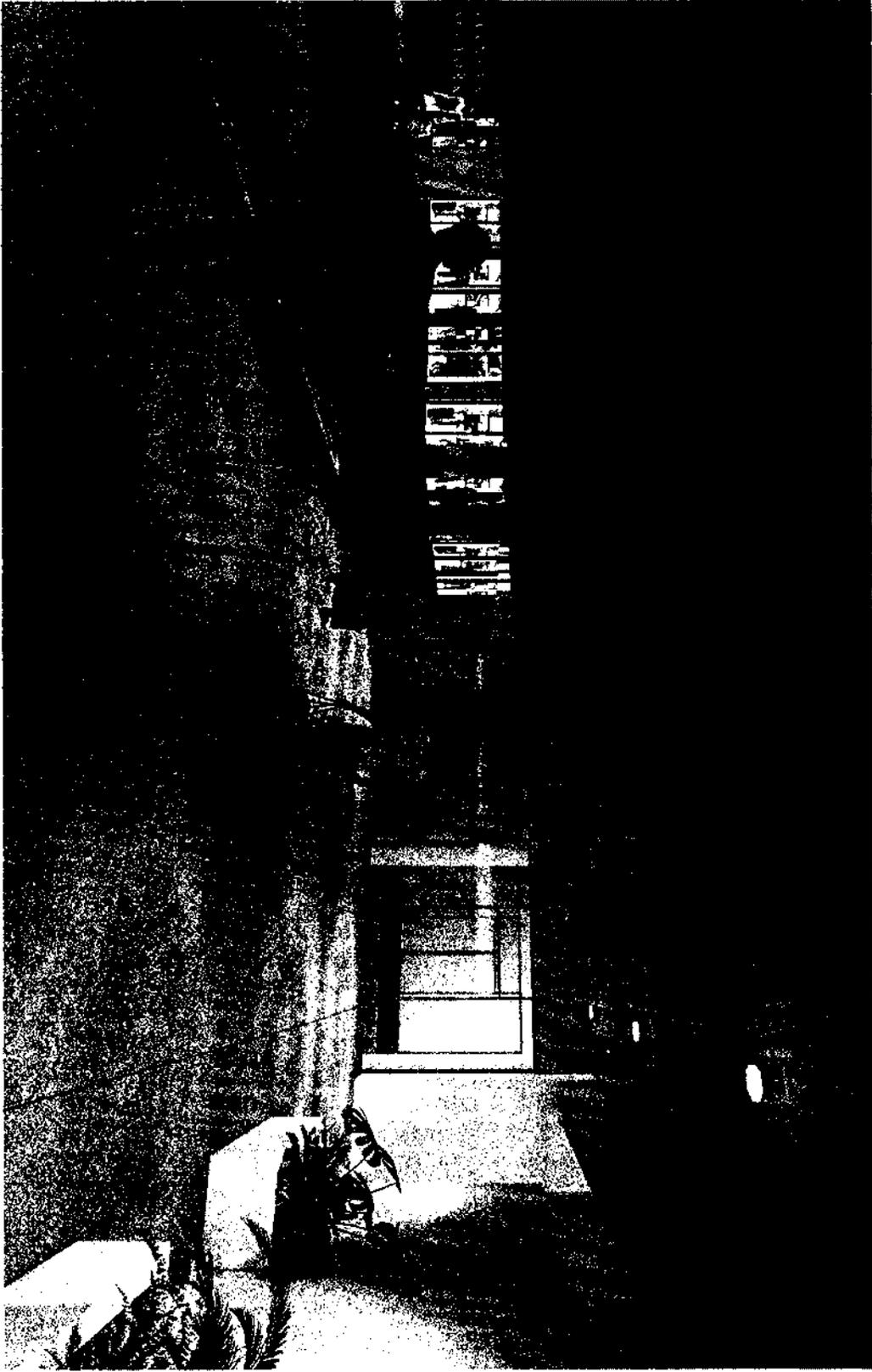
**Professional Engineer** [Signature]

**Professional Engineer** [Signature]



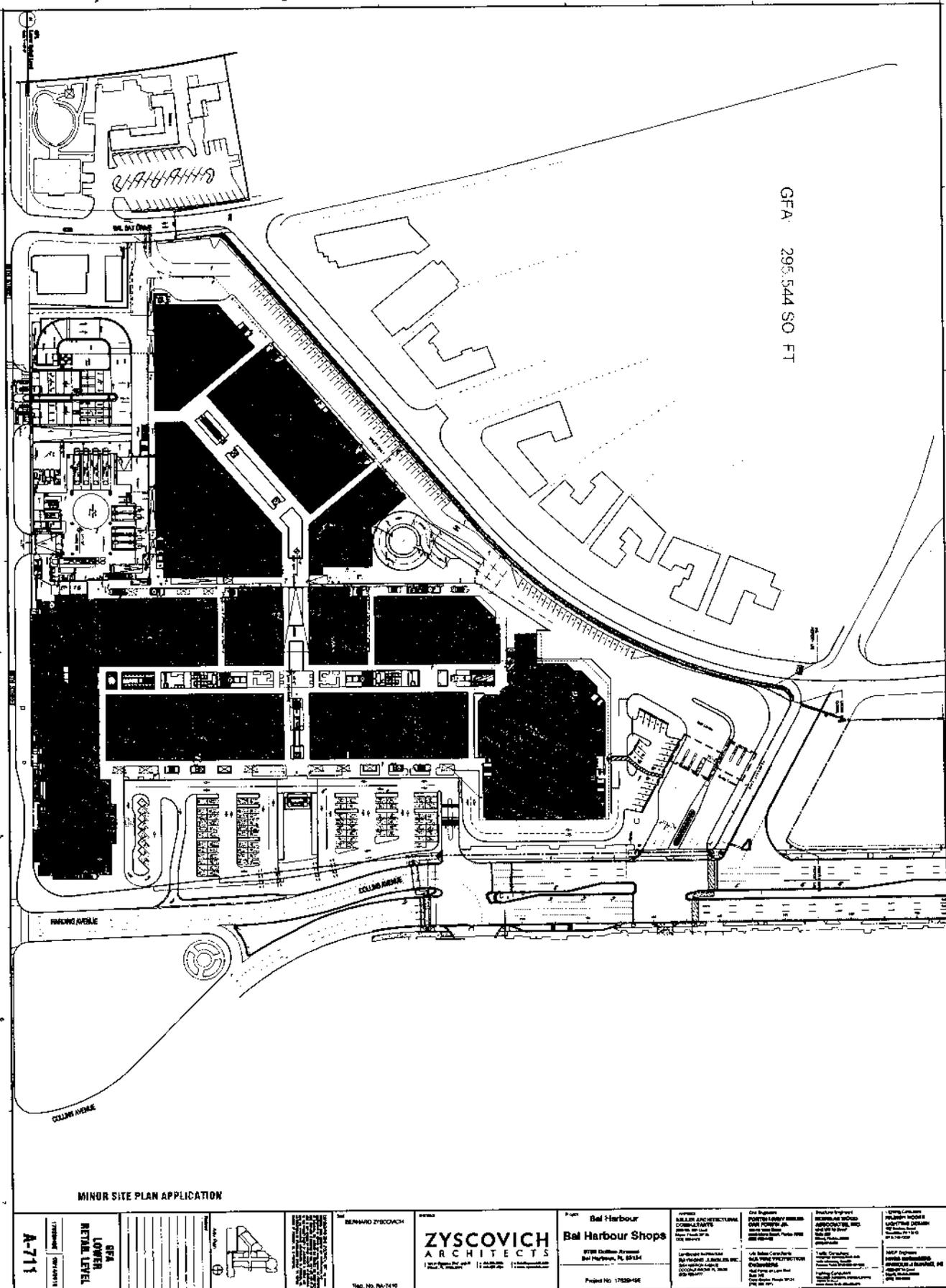
<p><b>A-509-ALT</b></p>	<p><b>RENDERINGS</b></p>		<p><b>BY</b> STANISLAV ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>2770 Collins Avenue Bal Harbour, FL, 33140</p> <p>Project No. 1120806</p>	<p><b>Client</b> SUNSHINE CONSTRUCTION CORPORATION 1100 Collins Avenue Suite 1000 Miami Beach, FL 33139</p> <p><b>Architects in Charge</b> STANISLAV ZYSCOVICH, AIA AND ALEXANDER ZYSCOVICH, AIA</p>	<p><b>City Engineer</b> ROBERT LARRY BAKER BAL HARBOUR SHOPPING CENTRE, INC. 2770 Collins Avenue Suite 1000 Miami Beach, FL 33139</p> <p><b>Planning Commission</b> WALTER HARRISON 2770 Collins Avenue Suite 1000 Miami Beach, FL 33139</p>	<p><b>Structure Engineer</b> ROBERT LARRY BAKER ARCHITECTS, INC. 2770 Collins Avenue Suite 1000 Miami Beach, FL 33139</p> <p><b>Interior Designer</b> WALTER HARRISON 2770 Collins Avenue Suite 1000 Miami Beach, FL 33139</p> <p><b>Lighting Consultant</b> WALTER HARRISON 2770 Collins Avenue Suite 1000 Miami Beach, FL 33139</p>
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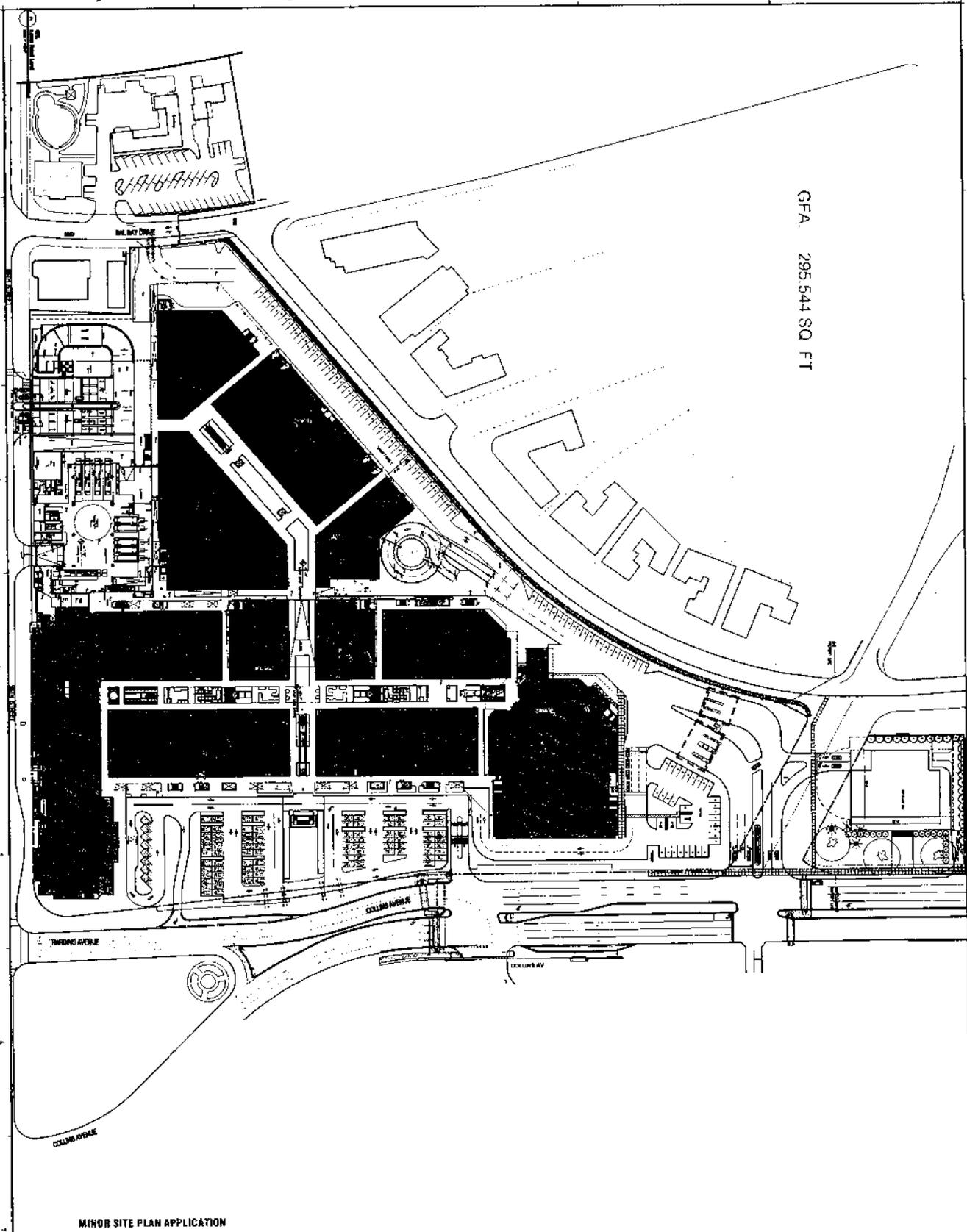




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<p><b>A-516-ALT</b></p>	<p><b>RENDERING</b></p>		<p><b>BLANCO ZYSCOVICH</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bel Harbour</b> <b>Bel Harbour Shops</b></p>	<p><b>Architect</b> <b>BELLE ARCHITECTURAL CONSULTANTS</b></p>	<p><b>Old Design</b> <b>ROBERT LARRY BROWN</b></p>	<p><b>Structural Engineer</b> <b>ROBERT J. BROWN</b></p>	<p><b>Interior Consultant</b> <b>PAULINE MOORE</b></p>
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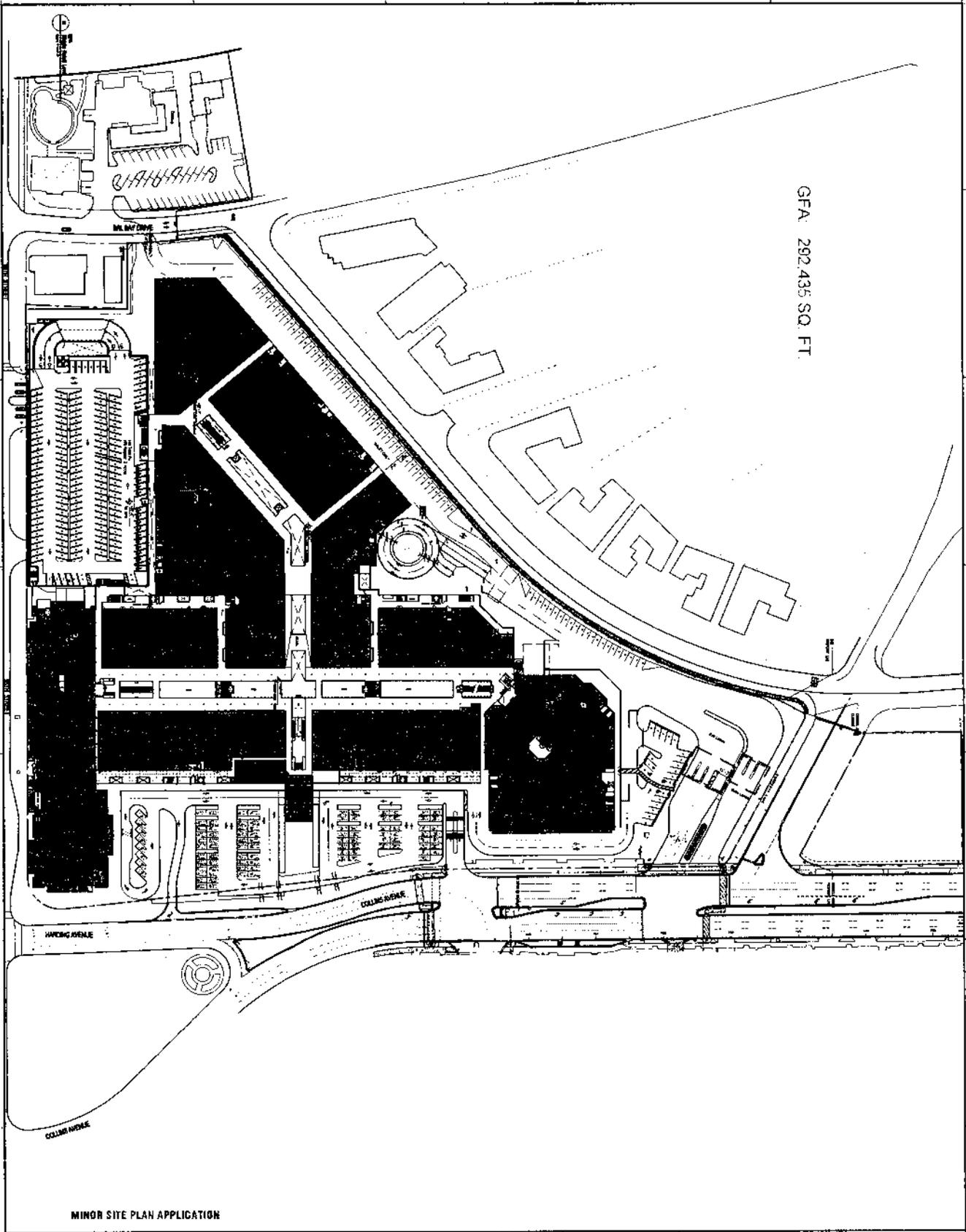




GFA 295,544 SQ. FT.

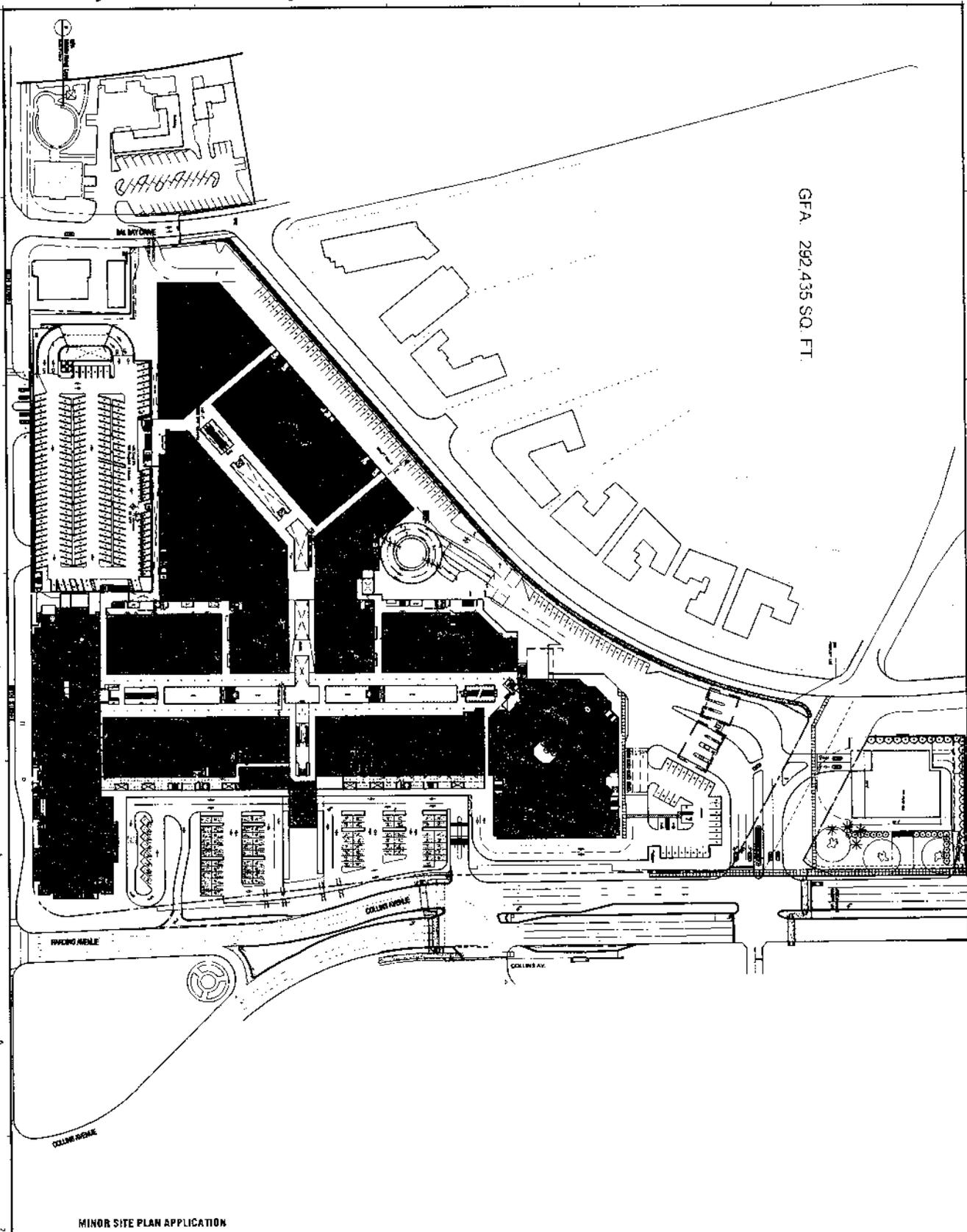
MINOR SITE PLAN APPLICATION

<p>A-711-ALT</p>	<p>GFA LOWER RETAIL LEVEL</p>		<p>BY: <b>REYNARD Z. BOGVOCH</b></p> <p>Reg. No. PB-7410</p>	<p>Project: <b>Bal Harbour</b></p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>3700 Collier Avenue Bal Harbour, FL 33194</p>	<p>Project: <b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>3700 Collier Avenue Bal Harbour, FL 33194</p> <p>Project No. 1702B-02</p>	<p>Architect: <b>ZYSCOVICH ARCHITECTS</b> 3700 Collier Avenue Bal Harbour, FL 33194</p> <p>Professional Engineer: <b>REYNARD Z. BOGVOCH</b> 3700 Collier Avenue Bal Harbour, FL 33194</p>	<p>Civil Engineer: <b>DAVID J. GIBSON</b> 10000 Collins Avenue Suite 100 Miami Beach, FL 33154</p> <p>Professional Engineer: <b>DAVID J. GIBSON</b> 10000 Collins Avenue Suite 100 Miami Beach, FL 33154</p>	<p>Professional Engineer: <b>DAVID J. GIBSON</b> 10000 Collins Avenue Suite 100 Miami Beach, FL 33154</p>	<p>Professional Engineer: <b>DAVID J. GIBSON</b> 10000 Collins Avenue Suite 100 Miami Beach, FL 33154</p>
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MINOR SITE PLAN APPLICATION

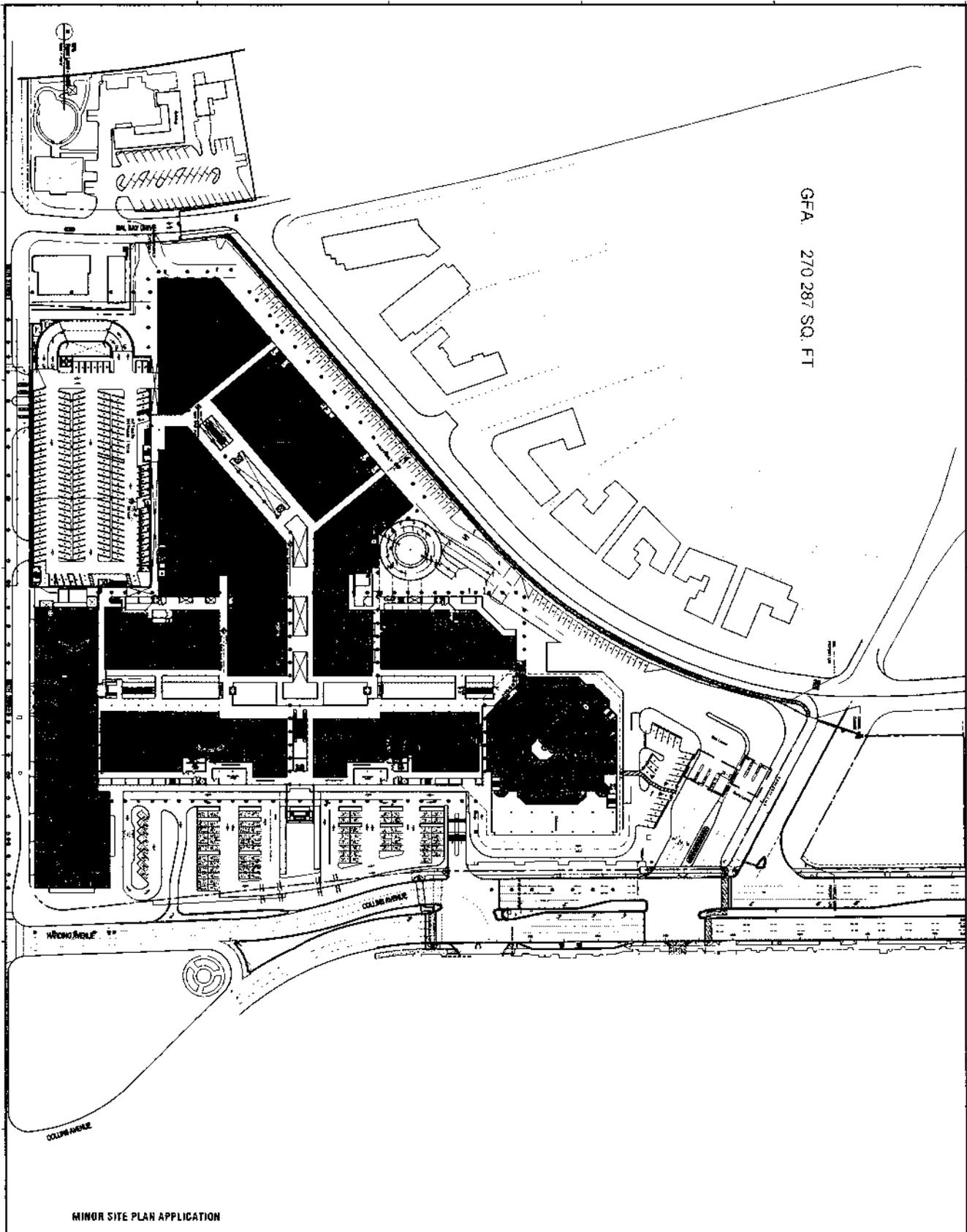
<p>A-731</p>	<p>GFA MIDDLE RETAIL LEVEL</p>		<p>EDWARD ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> Bal Harbour Shops 6750 Collins Avenue Bal Harbour, FL 33134</p>	<p>Project No. 1702868</p>	<p>Architect WILLIAM ARCHITECTURAL CONSULTANTS 6000 Collins Avenue Bal Harbour, FL 33134</p>	<p>Site Engineer ROBERT LARRY SMITH 6000 Collins Avenue Bal Harbour, FL 33134</p>	<p>Professional Engineer COLLEEN HODG LAWRENCE HODGSON 6000 Collins Avenue Bal Harbour, FL 33134</p>
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GFA 292,435 SQ. FT.

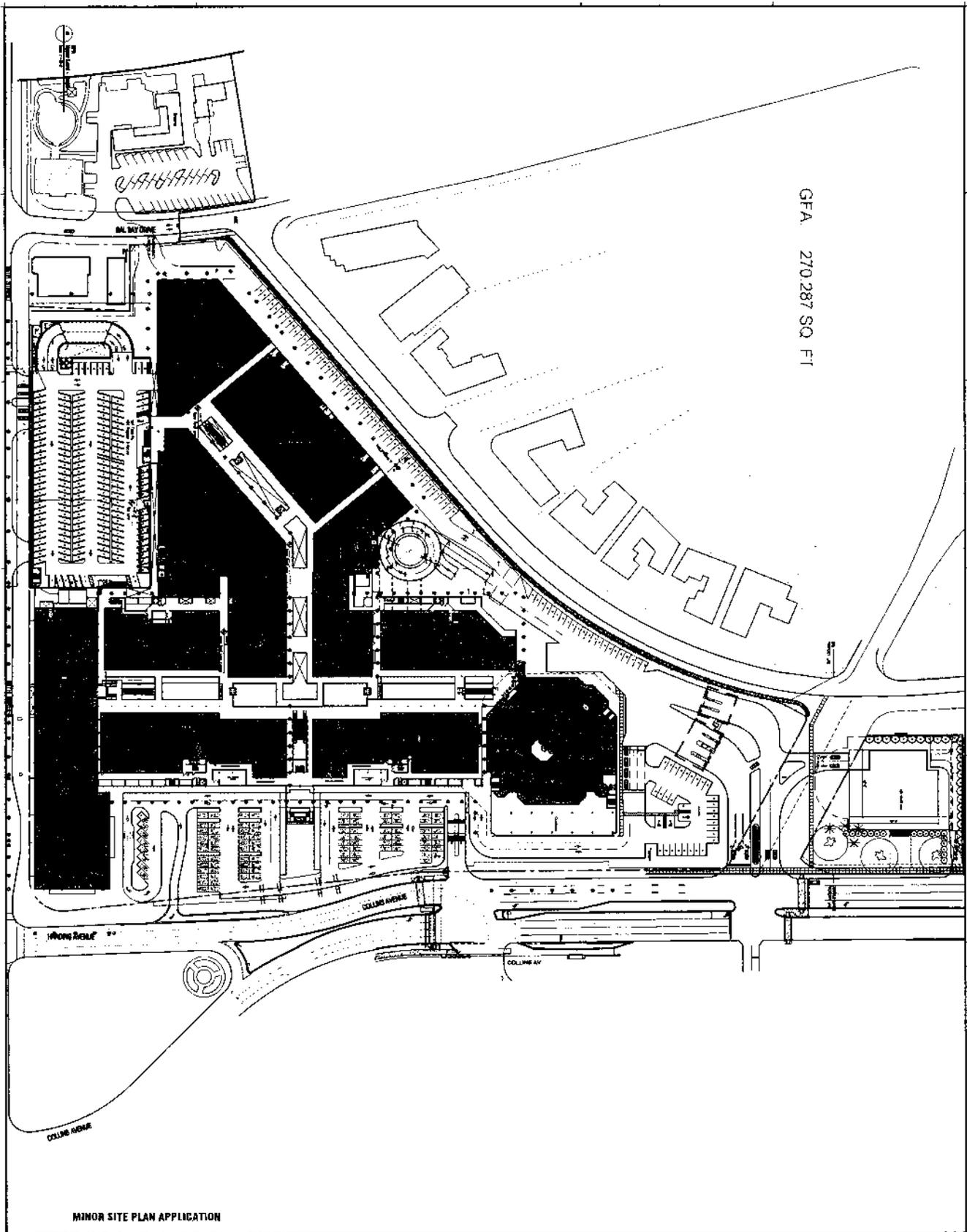
MINOR SITE PLAN APPLICATION

<p><b>A-731-ALT</b></p>	<p><b>GFA</b></p> <p><b>MIDDLE INITIAL</b></p> <p><b>LEVEL</b></p>		<p><b>BERNARD ZYSCOVICH</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>8700 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 175824E</p>	<p><b>ARCHITECT</b></p> <p><b>BAL HARBOUR ARCHITECTURAL CONSULTANTS</b></p> <p>1000 Collins Avenue Bal Harbour, FL 33154</p>	<p><b>CONTRACTOR</b></p> <p><b>PERKINS EASTMAN</b></p> <p>1000 Collins Avenue Bal Harbour, FL 33154</p>	<p><b>STRUCTURAL ENGINEER</b></p> <p><b>PERKINS EASTMAN</b></p> <p>1000 Collins Avenue Bal Harbour, FL 33154</p>	<p><b>LANDSCAPE ARCHITECT</b></p> <p><b>PERKINS EASTMAN</b></p> <p>1000 Collins Avenue Bal Harbour, FL 33154</p>
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MINOR SITE PLAN APPLICATION

<p><b>A-741</b></p> <p>UPPER LEVEL METAL</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>11000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154 TEL: 305.224.1100 WWW.ZYSCOVICHARCHITECTS.COM</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>8708 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17028-08</p>	<p>Architect: <b>WILLIS ARCHITECTURAL CONSULTANTS</b> 2000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154</p> <p>Architect of Record: <b>ALFONSO JARDINE INC.</b> 2000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154</p>	<p>Old Program: <b>PERKINS+WILL</b> 600 NORTH MIAMI AVENUE MIAMI, FL 33136 TEL: 305.375.4600</p> <p>Old Program: <b>PERKINS+WILL</b> 600 NORTH MIAMI AVENUE MIAMI, FL 33136 TEL: 305.375.4600</p>	<p>Structural Engineer: <b>BECKER &amp; HOFFER ASSOCIATES, INC.</b> 1000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154</p> <p>MEP Engineer: <b>WORLD ENGINEERING</b> 1000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154</p>	<p>MEP Engineer: <b>WORLD ENGINEERING</b> 1000 BAYVIEW BLVD, SUITE 1000 BAL HARBOUR, FL 33154</p>



GFA 270,287 SQ. FT.

MINOR SITE PLAN APPLICATION

<p>A-741-ALT</p>	<p>UPPER LEVEL DETAIL</p>	<p>GFA</p>		<p>PI: BERNARD ZYSCOVICH</p> <p>Reg. No. 98-7410</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>8798 Collins Avenue Bal Harbour, FL 33184</p> <p>Project No. 17859-02</p>	<p>Architect <b>WILLIS ARCHITECTURAL CONSULTANTS</b></p> <p>200 Collins Avenue Bal Harbour, FL 33184</p>	<p>Old Structure <b>FORREST LINDSEY MILLER ARCHITECTURAL, INC.</b></p> <p>100 Collins Avenue Bal Harbour, FL 33184</p>	<p>Structural Engineer <b>STANLEY WOOD ARCHITECTURAL, INC.</b></p> <p>100 Collins Avenue Bal Harbour, FL 33184</p>	<p>Lighting Consultant <b>WILSON JONES LIGHTING DESIGN</b></p> <p>100 Collins Avenue Bal Harbour, FL 33184</p>
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**BAL HARBOUR SHOPS PLANS  
 MINOR SITE PLAN APPLICATION - PHASE 1 ADDITIONAL SHEETS  
 9700 COLLINS AVENUE, BAL HARBOUR, FL. 33154**

MINOR SITE PLAN APPLICATION

<p>COVER SHEET          INDEX LIST  <b>GM-001</b></p>		<p>DATE: 08/11/10          SCALE: AS SHOWN          SHEET NO. 001 OF 001</p>	<p>BY: BERNARD ZYSCOVICH          PROJECT NO. 170209E</p>	<p><b>ZYSCOVICH          ARCHITECTS</b>          2786 Collins Avenue          Bal Harbour, FL 33154</p>	<p>Project: <b>Bal Harbour          Bal Harbour Shops</b>          9700 Collins Avenue          Bal Harbour, FL 33154          Project No. 170209E</p>	<p>Author: <b>BELLEN ARCHITECTURAL          CONSULTANTS</b>          2786 Collins Avenue          Bal Harbour, FL 33154          305.944.1111</p>	<p>Client: <b>LEAHY REALTY          BAL HARBOUR, FL</b>          2786 Collins Avenue          Bal Harbour, FL 33154          305.944.1111</p>	<p>Project Number: <b>170209E</b>          Date: 08/11/10          Scale: AS SHOWN          Sheet No. 001 of 001</p>	<p>Project Location: <b>BAL HARBOUR SHOPS          9700 COLLINS AVENUE          BAL HARBOUR, FL 33154</b></p>
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# BAL HARBOUR SHOPS DATA SHEET - PHASE

Zoning District		Map		Area	
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Zoning District		Map		Area	
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MINOR SITE PLAN APPLICATION

<p><b>DATA SHEET</b> ZONING DISTRICT AREA NUMBER PLANNING DISTRICT</p> <p>GN-002-PH</p>		<p><b>THE BERKMAN GROUP</b> 1000 N. ... REG. NO. 154740</p>	<p><b>ZYSCOVICH ARCHITECTS</b> 1000 N. ... REG. NO. 154740</p>	<p>Project: <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 2700 Collins Avenue Bal Harbour, FL 33154 Project No. 17028-02</p>	<p>Architect: <b>BELDEN ARCHITECTURAL CONSULTANTS</b> 2000 N. ... REG. NO. 154740</p> <p>Engineer: <b>BAL HARBOUR ARCHITECTURAL CONSULTANTS</b> 2000 N. ... REG. NO. 154740</p>	<p>Old Project: <b>FORREST LARRY BROWN AND PARTNERS ARCHITECTS, INC.</b> 2000 N. ... REG. NO. 154740</p> <p>Old Project: <b>DELAWARE ENGINEERING CONSULTANTS</b> 2000 N. ... REG. NO. 154740</p>	<p>Project Engineer: <b>FORREST LARRY BROWN AND PARTNERS ARCHITECTS, INC.</b> 2000 N. ... REG. NO. 154740</p> <p>Project Engineer: <b>DELAWARE ENGINEERING CONSULTANTS</b> 2000 N. ... REG. NO. 154740</p>	<p>Project Engineer: <b>FORREST LARRY BROWN AND PARTNERS ARCHITECTS, INC.</b> 2000 N. ... REG. NO. 154740</p> <p>Project Engineer: <b>DELAWARE ENGINEERING CONSULTANTS</b> 2000 N. ... REG. NO. 154740</p>

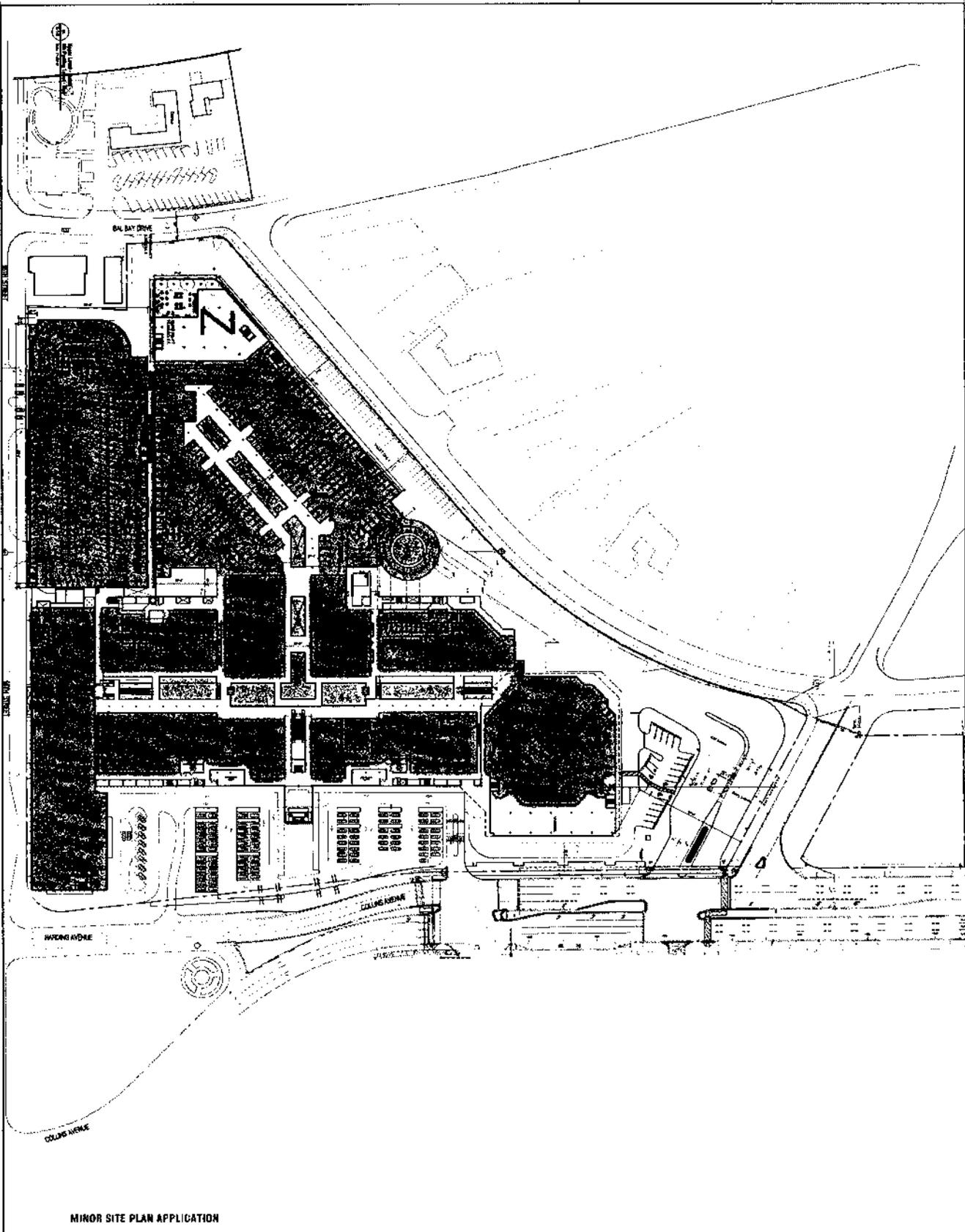
# BAL HARBOUR SHOPS DATA SHEET - PHASE

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NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
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MINDR SITE PLAN APPLICATION

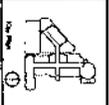
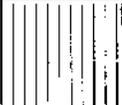
<p><b>GN-002-ALT-PH</b></p> <p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>		<p>APPLICANT: ZYSCOVICH ARCHITECTS</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>	<p>ARCHITECT: ZYSCOVICH ARCHITECTS</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>	<p>ENGINEER: BILLY J. ARCHITECTURAL</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>	<p>CONTRACTOR: BILLY J. ARCHITECTURAL</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>	<p>INSURANCE: BILLY J. ARCHITECTURAL</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>	<p>LEGAL: BILLY J. ARCHITECTURAL</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>ADDRESS: 3708 COLLIER AVENUE, BAL HARBOUR, FL 33134</p> <p>PHONE: 561-271-1100</p>
		<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>	<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>	<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>	<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>	<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>	<p>DATE: 11/11/2014</p> <p>TIME: 10:00 AM</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PHASE: DATA SHEET</p>



**MINOR SITE PLAN APPLICATION**

**A-141-PH**

UPPER LEVEL - RETAIL  
4TH FLOOR - RETAIL  
LEVEL - MED



REWARD 71500004  
Map File 104747D

**ZYSCOVICH ARCHITECTS**  
3700 Collins Avenue  
Belle Harbor, FL 33414

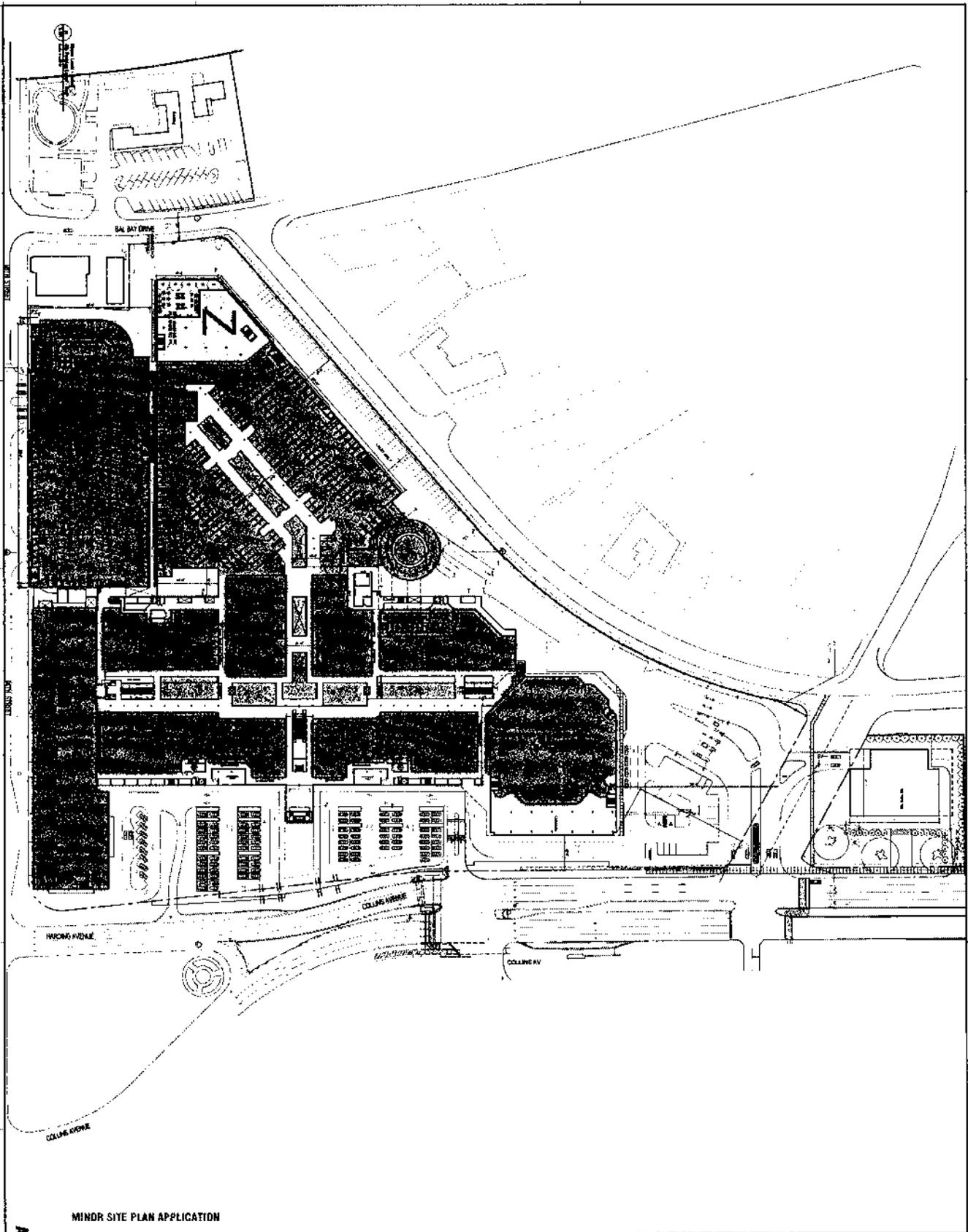
**Bel Harbour Shops**  
3700 Collins Avenue  
Belle Harbor, FL 33414  
Project No. 470209-02

Architect  
**BELLEVUE ARCHITECTURAL CONSULTANTS**  
3700 Collins Avenue  
Belle Harbor, FL 33414

Contractor  
**NORTH LEAF BUILDING CONSTRUCTION, INC.**  
3700 Collins Avenue  
Belle Harbor, FL 33414

Professional Engineer  
**DOUGLAS WOOD ASSOCIATES, INC.**  
3700 Collins Avenue  
Belle Harbor, FL 33414

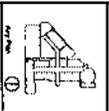
Professional Engineer  
**HELMUTH BOETTCHER ASSOCIATES, INC.**  
3700 Collins Avenue  
Belle Harbor, FL 33414



MINDR SITE PLAN APPLICATION

A-141-ALT-PH

<p>UPPER LEVEL - DETAIL 4TH PARKING LEVEL - REG</p>
---



DATE: 08/14/2018  
 DRAWN BY: ZYSCOVICH  
 CHECKED BY: ZYSCOVICH  
 PROJECT NO: 17008-02

**ZYSCOVICH ARCHITECTS**  
 1700 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154  
 Phone: 305.438.1100  
 Fax: 305.438.1101  
 www.zyscovich.com

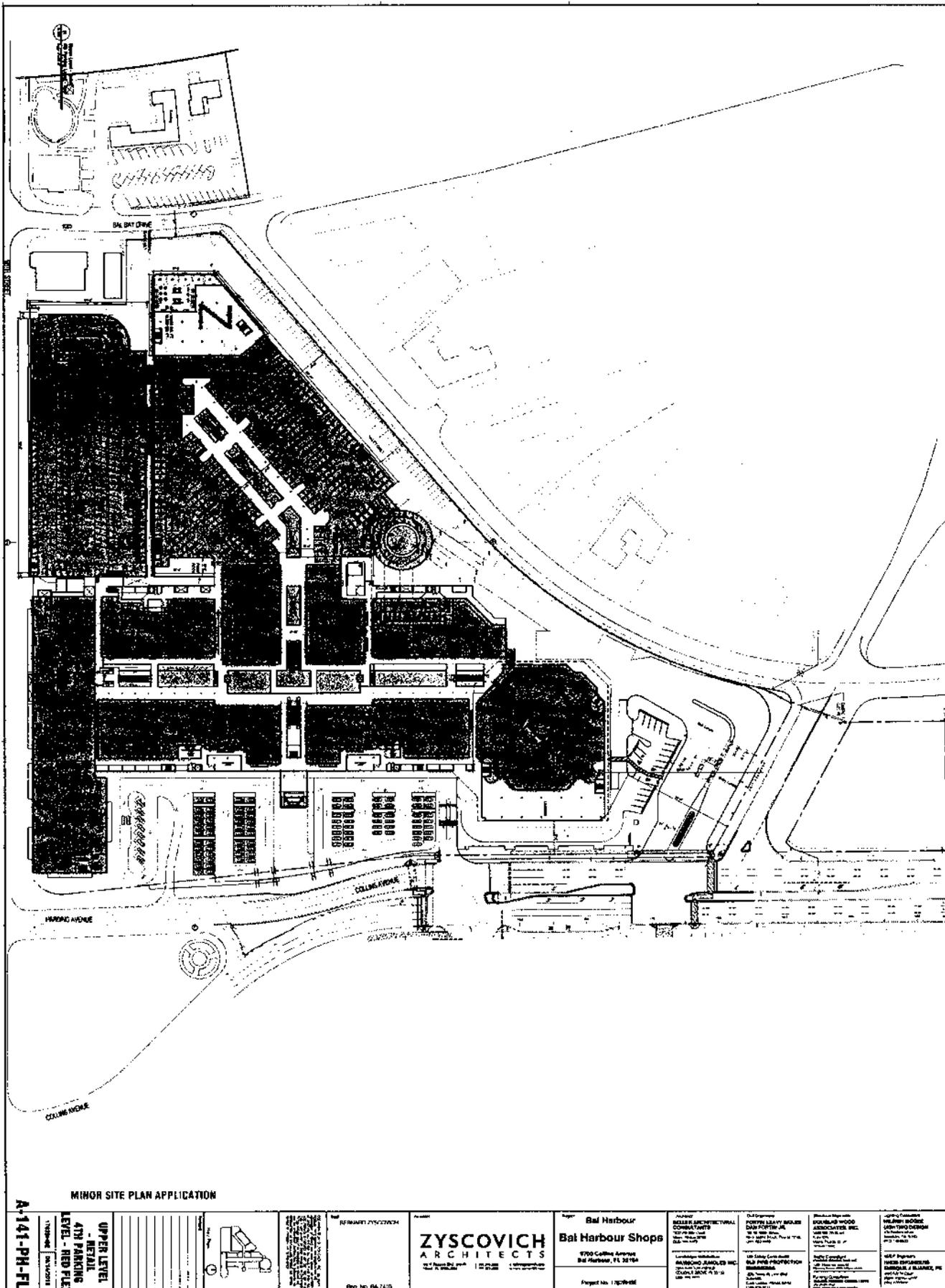
**Bal Harbour**  
**Bal Harbour Shops**  
 6760 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No: 17008-02

**OWNER**  
 GALLERIE ARCHITECTURAL  
 CONSULTANTS  
 1700 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154  
 Phone: 305.438.1100  
 Fax: 305.438.1101  
 www.gallerie.com

**DESIGNER**  
 ZYSCOVICH ARCHITECTS  
 1700 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154  
 Phone: 305.438.1100  
 Fax: 305.438.1101  
 www.zyscovich.com

**ENGINEER**  
 HENNINGSON  
 1700 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154  
 Phone: 305.438.1100  
 Fax: 305.438.1101  
 www.henningson.com

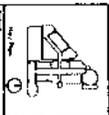
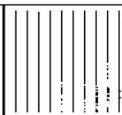
**GENERAL CONTRACTOR**  
 HENNINGSON  
 1700 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154  
 Phone: 305.438.1100  
 Fax: 305.438.1101  
 www.henningson.com



MINOR SITE PLAN APPLICATION

A-141-PH-FLEX

UPPER LEVEL - METAL  
4TH PARKING LEVEL - RED FLEX



REF: 275027074  
 ZYSCOVICH ARCHITECTS  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.zyscovich.com

**Bal Harbour**  
**Bal Harbour Shops**  
 9700 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 1709066

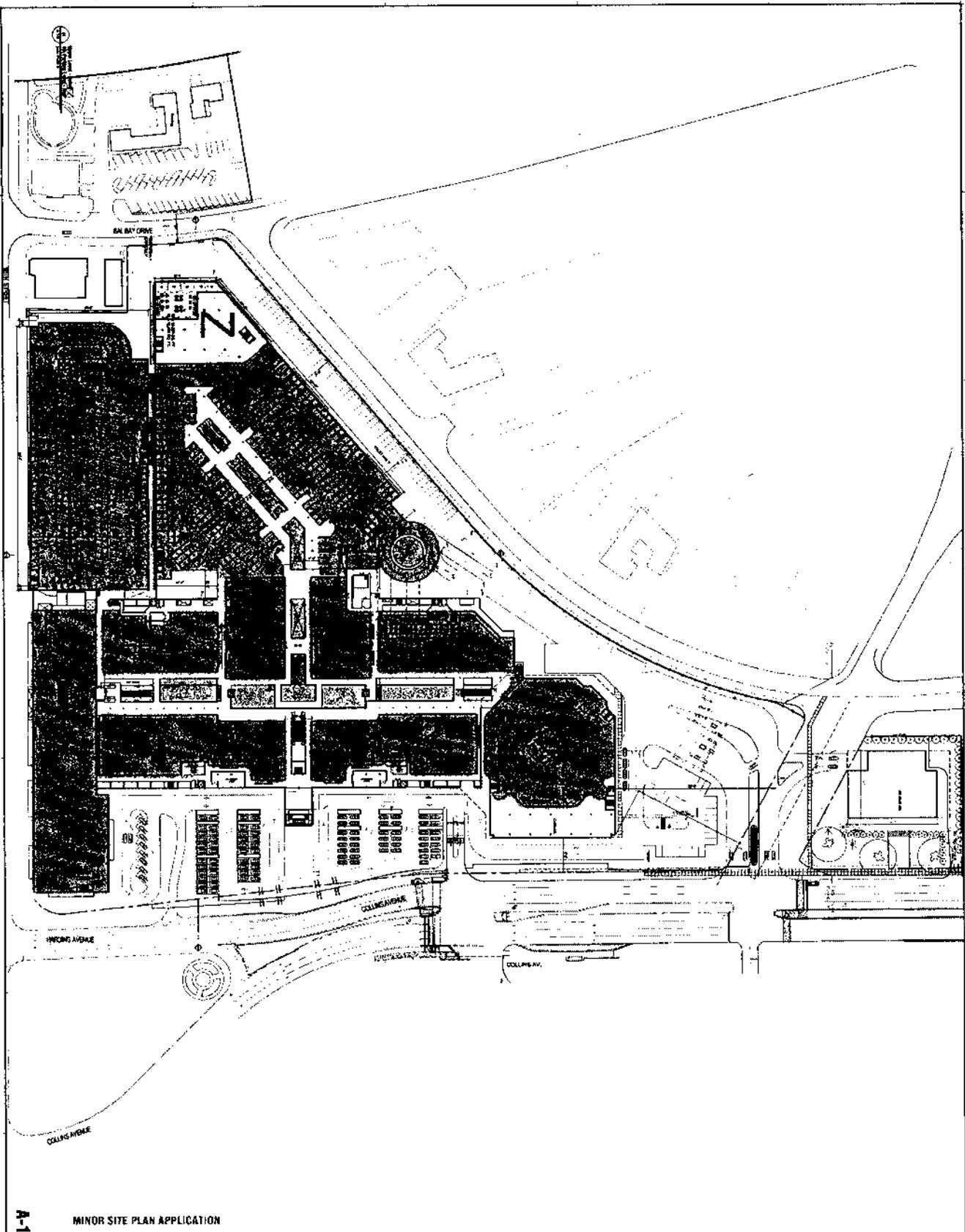
Architect  
**ZYSCOVICH ARCHITECTS**  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.zyscovich.com

Structural Engineer  
**WILLIS TOWERS WATSON**  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.willistowerswatson.com

MEP Engineer  
**WSP | Parsons**  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.wsp.com

MEP Engineer  
**WSP | Parsons**  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.wsp.com

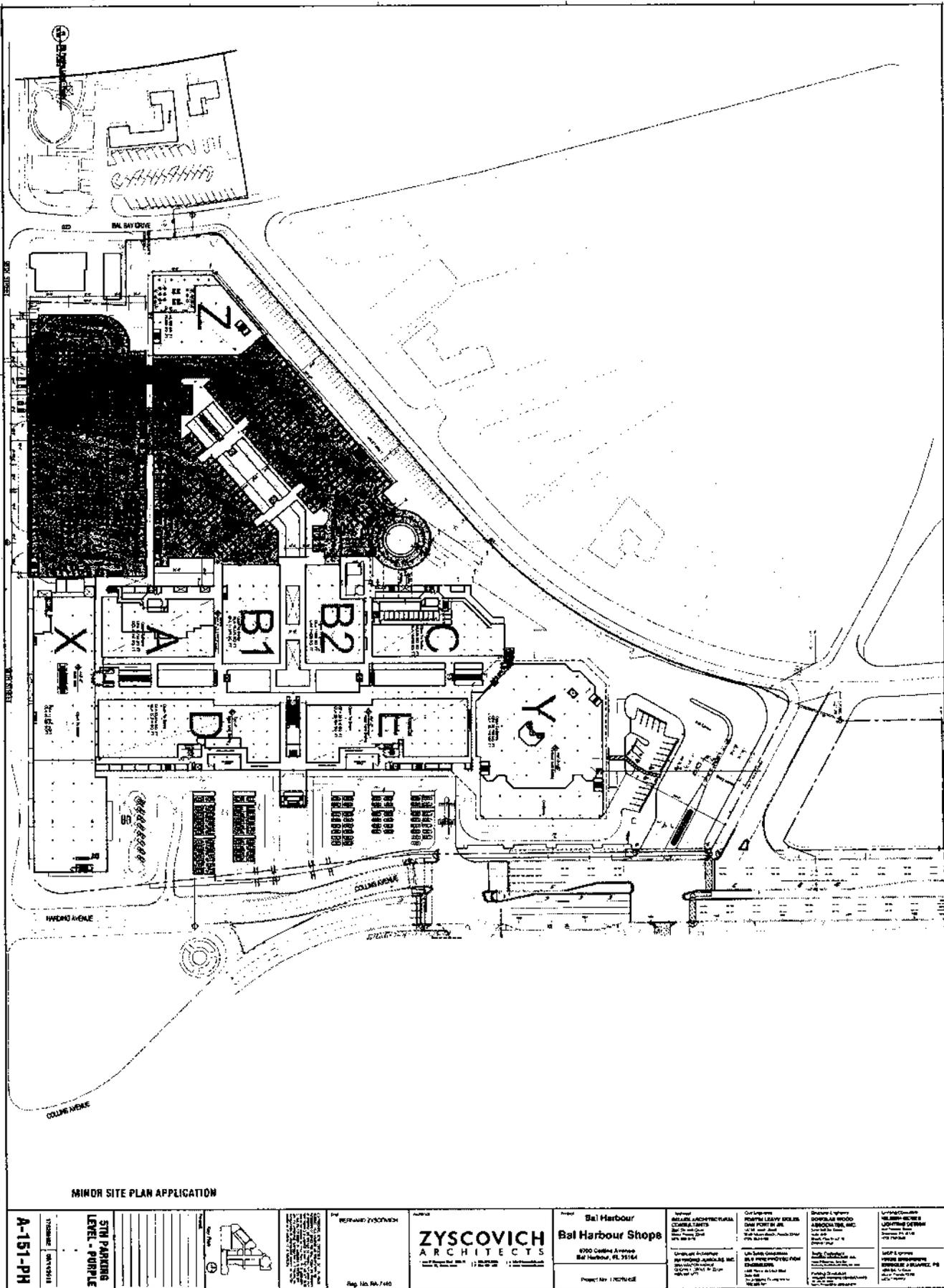
MEP Engineer  
**WSP | Parsons**  
 1000 Collins Avenue, Suite 1000  
 Bal Harbour, FL 33154  
 Tel: 305.261.1100  
 Fax: 305.261.1101  
 www.wsp.com



A-141-ALT-PH-FLEX

MINOR SITE PLAN APPLICATION

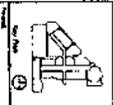
<p>UPPER LEVEL - RETAIL 4TH PARKING LEVEL - RED FLEX</p>		<p>BY: RICHARD ZYSCOVICH</p> <p>Fig No. 86-7410</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour Shops</b></p> <p>8750 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17587-CE</p>	<p>OWNER: <b>BAL HARBOUR SHOPS</b> CORPORATION</p> <p>17587-CE</p>	<p>DATE: 08/14/14</p> <p>SCALE: AS SHOWN</p>	<p>DESIGNED BY: <b>DAVID WOOD ASSOCIATES, INC.</b></p>	<p>APPROVED BY: <b>DAVID WOOD ASSOCIATES, INC.</b></p>
--	--	---	------------------------------------	--	--	--	--	--



MINOR SITE PLAN APPLICATION

A-151-PH

STAIR PARKING  
LEVEL - PURPLE



FOR  
**RYAN ZYSCOVICH**  
Architect  
Reg. No. 94,740

**ZYSCOVICH ARCHITECTS**  
11000 Collins Avenue, Suite 100  
Bal Harbour, FL 33154  
Tel: 305.234.1100  
Fax: 305.234.1101  
www.zyscovich.com

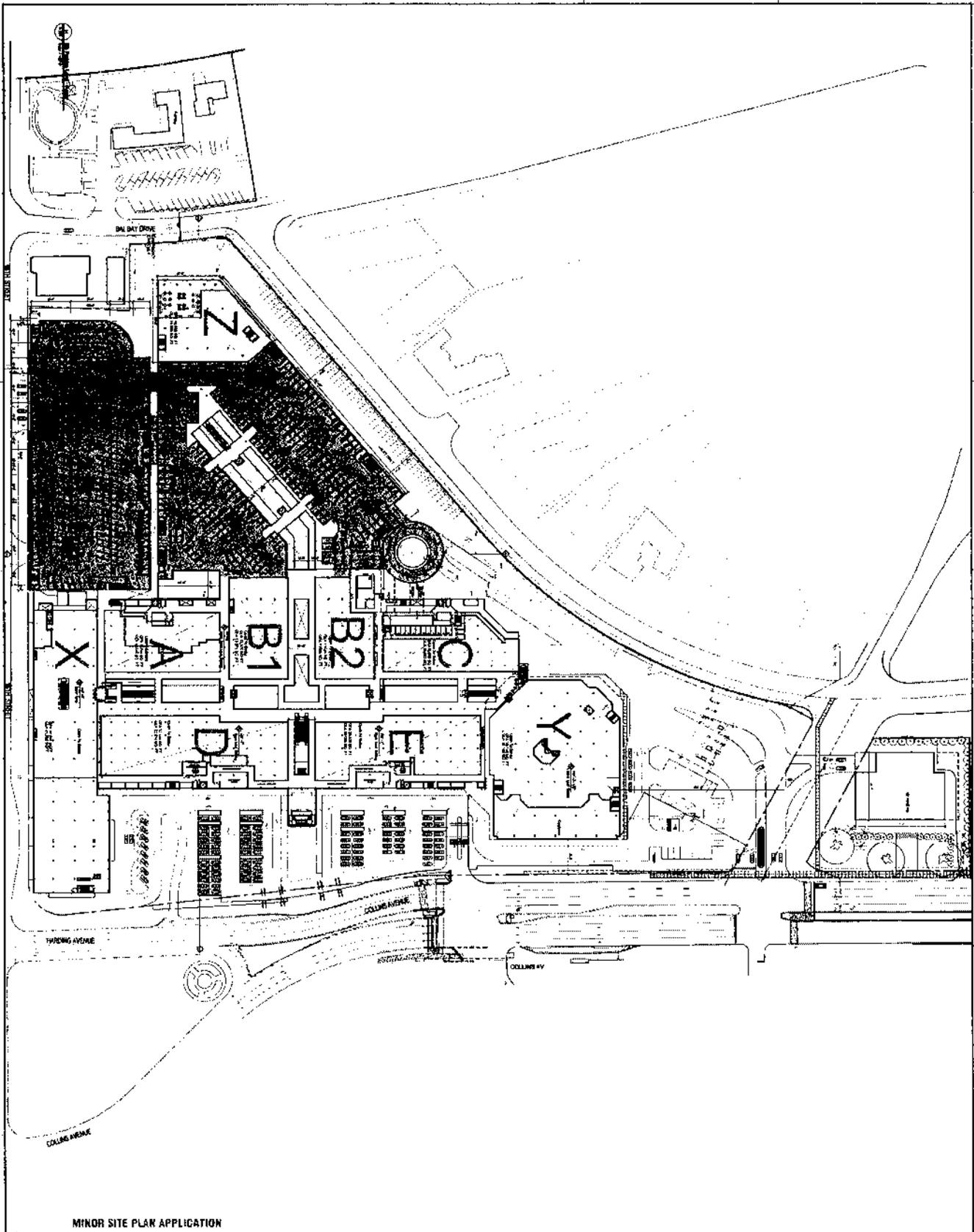
Project: **Bal Harbour**  
**Bal Harbour Shops**  
6700 Collins Avenue  
Bal Harbour, FL 33154  
Project No: 11070101

Architect  
**RYAN ZYSCOVICH ARCHITECTS**  
6700 Collins Avenue, Suite 100  
Bal Harbour, FL 33154  
Tel: 305.234.1100  
Fax: 305.234.1101  
www.zyscovich.com

Contractor  
**FORNIA LEVAY SKELLS**  
6000 North Bay Blvd.  
Miami Beach, FL 33157  
Tel: 305.531.1111  
Fax: 305.531.1112  
www.fornialeveyskells.com

Engineer  
**DOUGLAS WOOD ASSOCIATES, INC.**  
11000 Collins Avenue, Suite 100  
Bal Harbour, FL 33154  
Tel: 305.234.1100  
Fax: 305.234.1101  
www.douglaswood.com

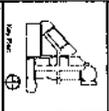
Surveyor  
**WILSON BROWN & ASSOCIATES, INC.**  
11000 Collins Avenue, Suite 100  
Bal Harbour, FL 33154  
Tel: 305.234.1100  
Fax: 305.234.1101  
www.wilsonbrown.com



MINOR SITE PLAN APPLICATION

A-151-ALT-PH

STREETS	5TH PARKING LEVEL - PURPLE
UTILITIES	



BY: ALPHARD ZYSCOVICH  
 Title: ARCHITECT  
 REG. NO. 56-7610

**ZYSCOVICH ARCHITECTS**  
 1000 Collins Avenue  
 Bal Harbour, FL 33154  
 Phone: 305.254.1100  
 Fax: 305.254.1101  
 www.zyscovich.com

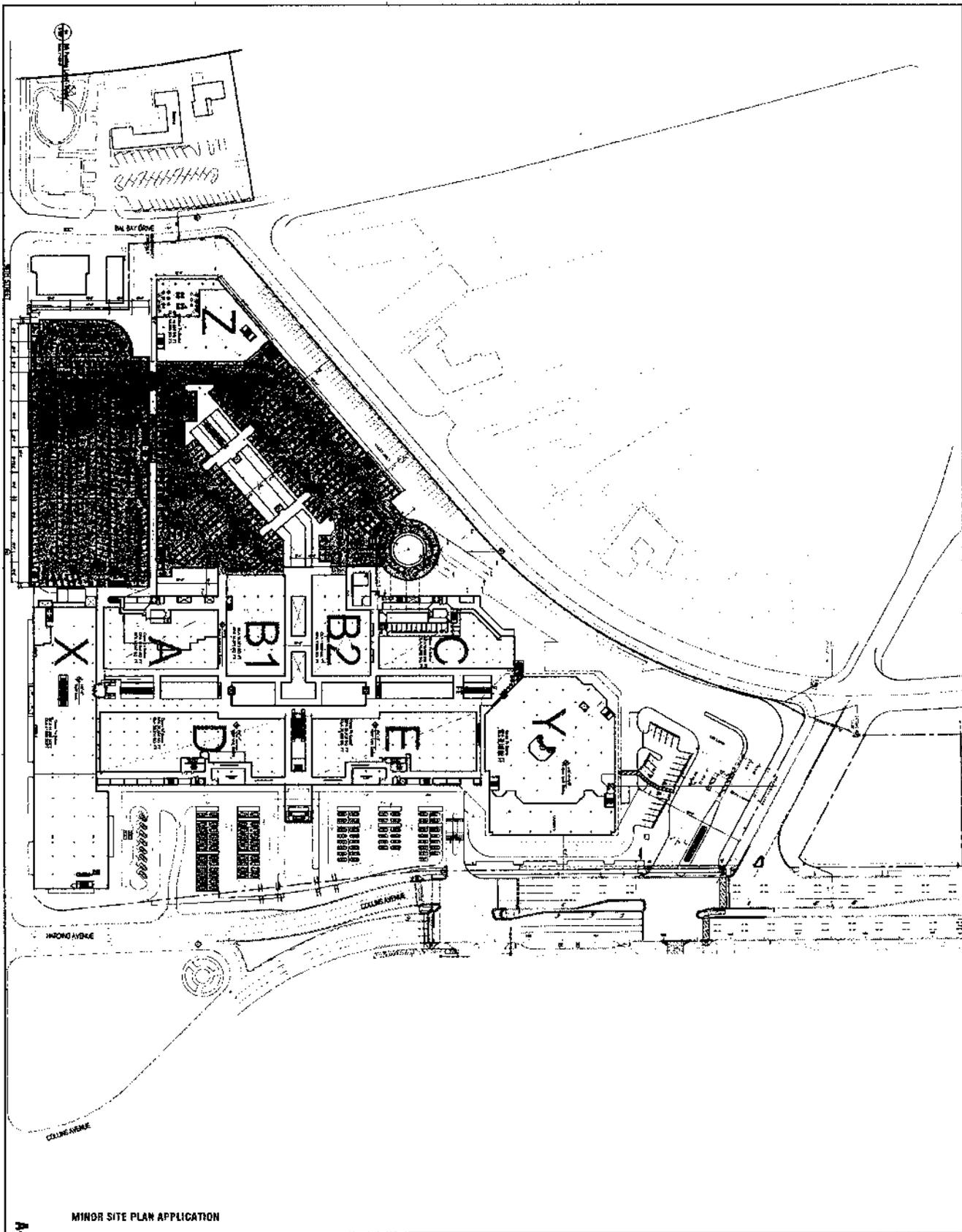
**Bal Harbour**  
**Bal Harbour Shops**  
 4700 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 15121010

Prepared by: JAMES ARCHITECTURAL CONSULTANTS  
 1000 Collins Avenue  
 Bal Harbour, FL 33154  
 Phone: 305.254.1100  
 Fax: 305.254.1101  
 www.jamesarch.com

Site Plan Consultant: B.L. FINE ARCHITECTURE  
 1000 Collins Avenue  
 Bal Harbour, FL 33154  
 Phone: 305.254.1100  
 Fax: 305.254.1101  
 www.blfine.com

Structural Engineer: GARCILLO WOOD ASSOCIATES, INC.  
 1000 Collins Avenue  
 Bal Harbour, FL 33154  
 Phone: 305.254.1100  
 Fax: 305.254.1101  
 www.garcillogroup.com

Site Plan Consultant: B.L. FINE ARCHITECTURE  
 1000 Collins Avenue  
 Bal Harbour, FL 33154  
 Phone: 305.254.1100  
 Fax: 305.254.1101  
 www.blfine.com



**MINOR SITE PLAN APPLICATION**

A-151-PH-FLEX

**STP PARKING LEVEL - PURPLE TILES**

**BERNARD ZYSCOVICH**

**ZYSCOVICH ARCHITECTS**

1100 BAYVIEW BLVD., SUITE 1000  
BAL HARBOUR, FL 33154  
TEL: 305.261.1100  
FAX: 305.261.1101  
WWW.ZYSCOVICHARCHITECTS.COM

File No. PH-15-0

**Bal Harbour**

**Bal Harbour Shops**

8700 Collins Avenue  
Bal Harbour, FL 33154

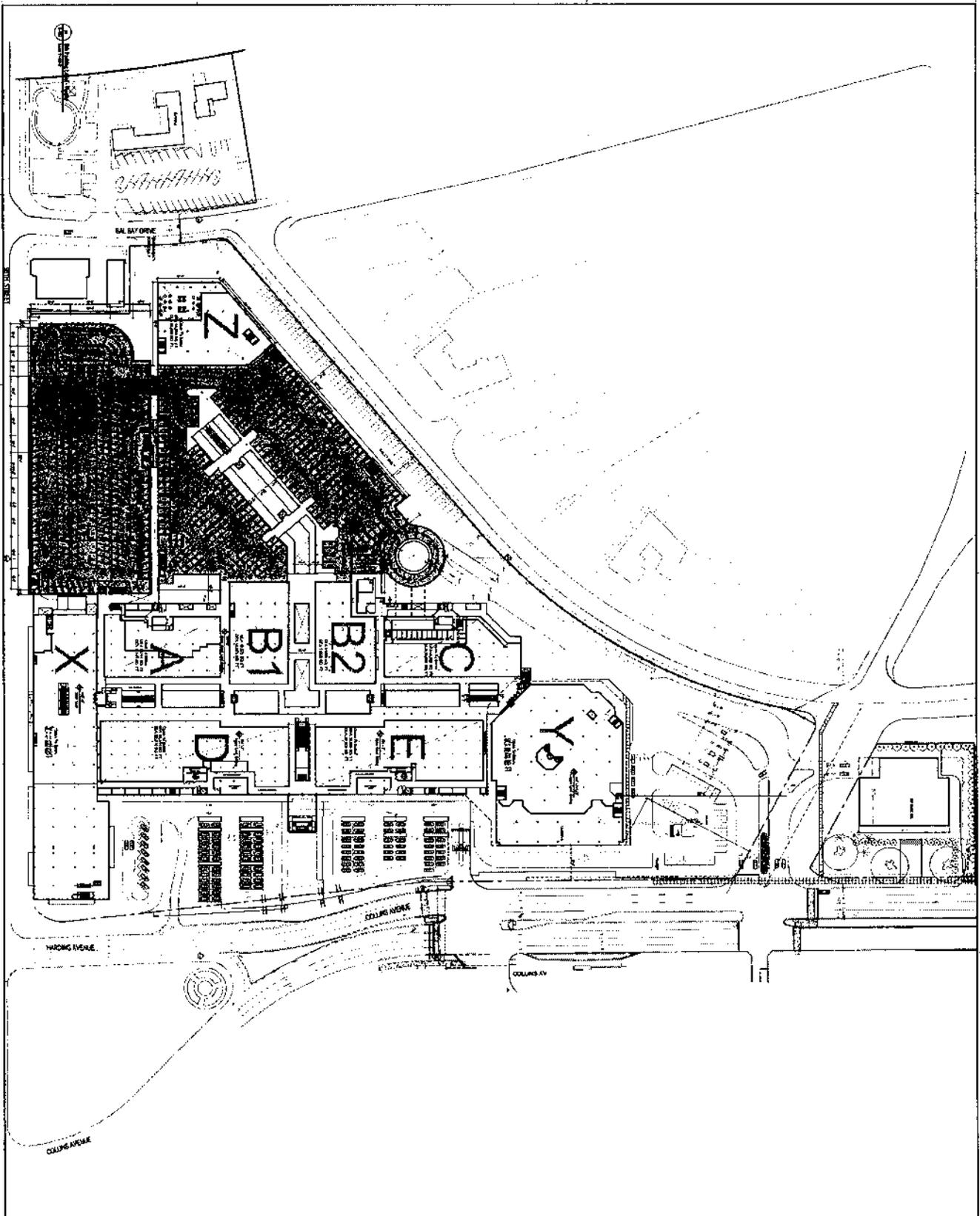
Project No. 1702052

**Architect**  
**BILLY ARCHITECTURAL CONSULTANTS**  
1100 BAYVIEW BLVD., SUITE 1000  
BAL HARBOUR, FL 33154  
TEL: 305.261.1100  
FAX: 305.261.1101  
WWW.BILLYARCHITECTS.COM

**Site Engineer**  
**JOHN LEAFY SULLIVAN ASSOCIATES, INC.**  
1100 BAYVIEW BLVD., SUITE 1000  
BAL HARBOUR, FL 33154  
TEL: 305.261.1100  
FAX: 305.261.1101  
WWW.JLSA.COM

**Professional Engineer**  
**ROBERT WOOD ASSOCIATES, INC.**  
1100 BAYVIEW BLVD., SUITE 1000  
BAL HARBOUR, FL 33154  
TEL: 305.261.1100  
FAX: 305.261.1101  
WWW.RWA.COM

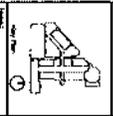
**Professional Engineer**  
**JOHN LEAFY SULLIVAN ASSOCIATES, INC.**  
1100 BAYVIEW BLVD., SUITE 1000  
BAL HARBOUR, FL 33154  
TEL: 305.261.1100  
FAX: 305.261.1101  
WWW.JLSA.COM



MINOR SITE PLAN APPLICATION

A-151-ALT-PH-FLEX

<p><b>SITE PARKING LEVEL - PARKING FLEX</b></p>
---



BY: **BERNARD ZYSCOVICH**  
 Title: **ARCHITECT**  
 Firm: **ZYSCOVICH ARCHITECTS**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Email: info@zyso.com  
 Website: www.zyso.com

**ZYSCOVICH ARCHITECTS**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Phone: (305) 351-1111  
 Fax: (305) 351-1112  
 Email: info@zyso.com  
 Website: www.zyso.com

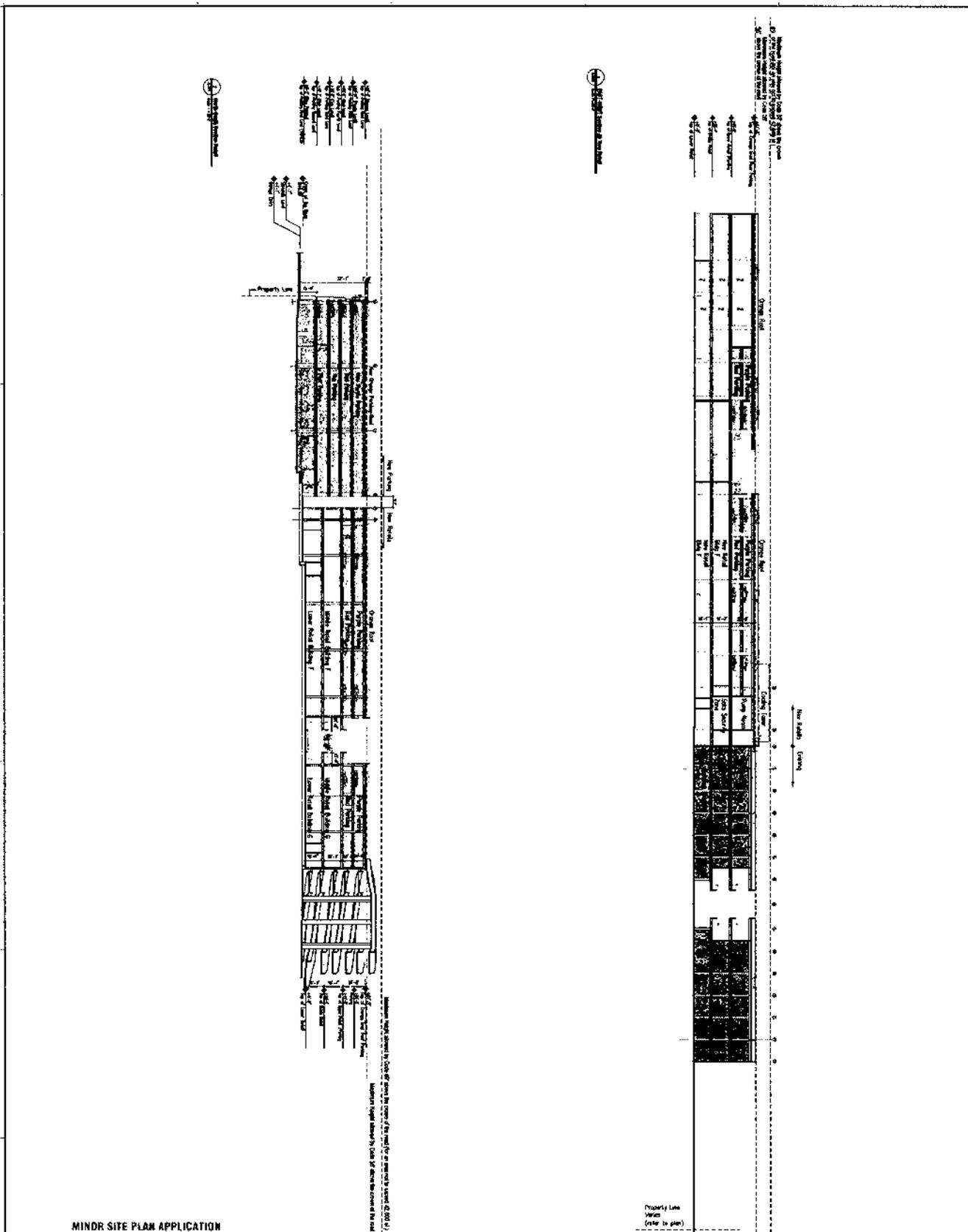
Project: **Bal Harbour**  
**Bal Harbour Shops**  
 8750 Collins Avenue, Bal Harbour, FL 33154  
 Project No. 17052-GE

Client: **RELIANT CONTRACTING CONSULTANTS**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Project No. 17052-GE

Client: **PORTER LESTER BELLUS LLP**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Project No. 17052-GE

Client: **DOUGLAS WOOD ARCHITECTS, INC.**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Project No. 17052-GE

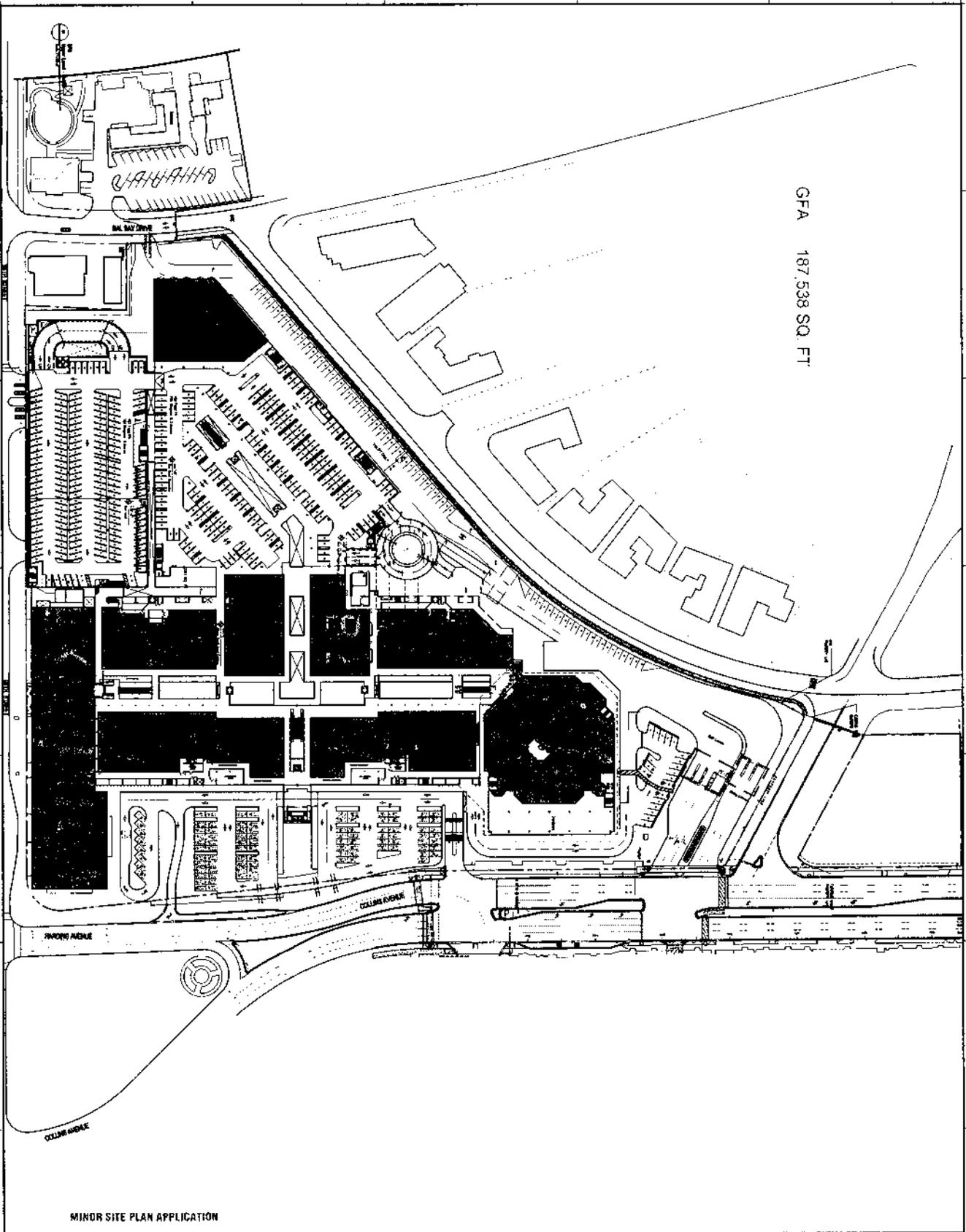
Client: **WALTER BOWEN LUTHERY CORP.**  
 1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154  
 Project No. 17052-GE



MINDR SITE PLAN APPLICATION

Property Line  
North  
(refer to plan)

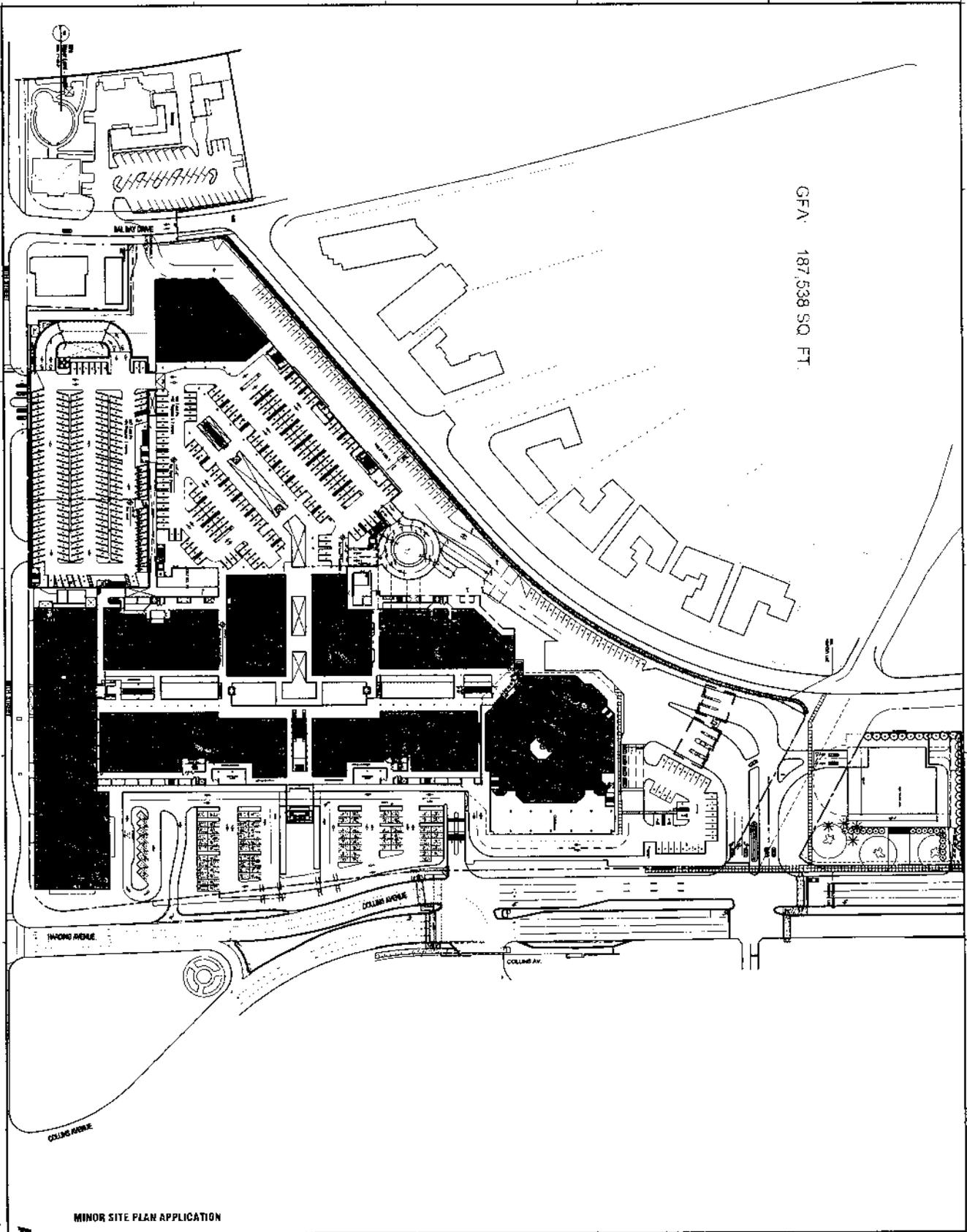
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GFA 187,538 SQ. FT.

MINDR SITE PLAN APPLICATION

<p>A-741-PH</p>	<p>GFA UPPER LEVEL RETAIL</p>		<p>BY BERNARD ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>8761 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 171639E</p>	<p>Architect <b>SHLOTT ARCHITECTURAL CONSULTANTS</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p> <p>Contractor <b>DAVIDSON CONSTRUCTION COMPANY</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p>	<p>Structural Engineer <b>DOUGLAS WOOD ARCHITECTURAL, INC.</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p> <p>Mechanical Engineer <b>DOUGLAS WOOD ARCHITECTURAL, INC.</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p> <p>Electrical Engineer <b>DOUGLAS WOOD ARCHITECTURAL, INC.</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p>	<p>Professional Engineer <b>DOUGLAS WOOD ARCHITECTURAL, INC.</b> 10000 Collins Ave., Suite 1000 Bal Harbour, FL 33154</p>
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GFA: 187,538 SQ. FT.

MINOR SITE PLAN APPLICATION

A-741-ALT-PH UPPER LEVEL METAL METAL	GFA 187,538 SQ. FT.		REG. NO. 105298	<b>ZYSCOVICH ARCHITECTS</b> 9798 Collins Avenue Bal Harbour, FL 33154 Phone: (305) 105298	<b>Bal Harbour</b> <b>Bal Harbour Shops</b> 9798 Collins Avenue Bal Harbour, FL 33154 Phone: (305) 105298	Architect: <b>BALISE ARCHITECTURAL CONSULTANTS</b> 2501 NE 15th Ave. Suite 1000 Miami, FL 33132 Phone: (305) 555-1111	Civil Engineer: <b>PEREIRA LARRY AND ASSOCIATES, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: (305) 555-1111	Mechanical Engineer: <b>HEARN ROBERT LAMBERT ENGINEERS</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: (305) 555-1111	Electrical Engineer: <b>PEREIRA LARRY AND ASSOCIATES, INC.</b> 10000 Collins Avenue Suite 1000 Bal Harbour, FL 33154 Phone: (305) 555-1111

**INTERIM MODIFICATION OF LEASE**

THIS INTERIM MODIFICATION OF LEASE AGREEMENT ("**Interim Modification**") is made and entered into as of the 31st day of March, 2018 ("**Interim Modification Date**"), by and between BAL HARBOUR SHOPS, LLLP, a Florida limited liability limited partnership ("**Landlord**"), whose address is 420 Lincoln Road, Suite 320, Miami Beach, Florida 33139, and BAL HARBOUR VILLAGE, a municipality ("**Tenant**"), whose address is Bal Harbour Village Hall, 655 - 96th Street, Bal Harbour, Florida 33154, Attn: Jorge M. Gonzalez, Village Manager.

**WITNESSETH:**

WHEREAS, Landlord and Tenant are landlord and tenant, respectively, pursuant to that certain Lease dated June 1, 2009, as amended by a Modification of Lease dated March 7, 2017 (collectively, the "**Lease**") respecting Space No. 280, containing approximately 2,554 square feet of gross leasable area ("**Demised Premises**"), located in Bal Harbour Shops ("**Fashion Center**"), Bal Harbour, Florida; and (the "**Lease**"); and

WHEREAS, the Lease expires by its terms of March 31, 2018 ("**Expiration Date**") and there is no Security Deposit under the Lease; and

WHEREAS, in connection with the Development Agreement between Landlord, as "Owner" and the Tenant, as "Village," dated July 27, 2017, and recorded in Official Records Book 30632, Page 3661, of the Public Records of Miami-Dade County, Florida ("**Development Agreement**"), the parties negotiated a Second Modification of Lease ("**Second Modification**") which provides for an extension of the Lease until 90 days after conveyance of the Fairfield Property and the New Village Hall to the Village; and

WHEREAS, the Second Modification will not become effective until three business days after the "**Final Approval Date**" defined in the Development Agreement; and

WHEREAS, because the Second Modification is not yet effective, the parties hereto have agreed to extend the term of the Lease on an interim basis, subject to and in accordance with the following terms and conditions.

NOW, THEREFORE, for and in consideration of the sum of TEN (\$10.00) DOLLARS, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **RECITALS:** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **EXTENSION OF TERM:** The term of the Lease is hereby extended for a period of time ending on the "**Extended Expiration Date**," which date will be the earliest of (i) Tenant's election to vacate the Premises; (ii) the effective date of the Second Modification; or (iii) March 31, 2028. The period from and including the day after the Expiration Date to and including the Extended Expiration Date shall be the "**Extended Term**." The Extended Term shall be upon the

same terms and conditions set forth in the Lease, except as modified by this Interim Modification, and there shall be no re-imposition of Landlord's Work, allowances, or rent concessions, if any of the same were provided in the Lease.

3. **ELIMINATION OF RENT/ADDITION OF COMMON AREA CHARGE:**

For the Extended Term, there shall be no Minimum Rent. However, in consideration of Landlord's operation, management, maintenance and repair of the Fashion Center, Tenant shall pay to Landlord, for and with respect to each and every calendar year during the Extended Term (prorated for any partial calendar year), a fixed annual "Common Area Charge" in the amount of \$20.00 per square foot of the Gross Leasable Area of the Demised Premises, together with sales tax thereon, if any. The Common Area Charge shall be paid in equal monthly installments due and payable in advance on the first (1<sup>st</sup>) day of each and every month during the Extended Term.

4. **RATIFICATION:** Except as hereby modified, all of the provisions of the Lease are hereby ratified by the parties thereto and confirmed and shall be and remain in full force and effect, and the same are enforceable in accordance with their terms. All terms defined in the Lease used in this Interim Modification shall have the meanings ascribed to them in the Lease, unless the context clearly otherwise requires.

5. **MISCELLANEOUS:** (i) Time is of the essence; (ii) this Interim Modification may be signed in separate counterparts and delivered electronically, each of which, when taken together, shall constitute one and the same instrument; (iii) the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns; (iv) except as set forth in this Interim Modification, the Lease has not been modified and constitutes the entire understanding between and among the parties in respect to the subject matter hereof; and (v) Tenant hereby covenants, represents and warrants to Landlord that (a) Tenant owns and holds the Tenant's interest in the Lease, as well as all leasehold improvements, furniture, fixtures and equipment, and personalty, and the same are free and clear of all liens, claims and encumbrances of whatsoever kind and nature, and Tenant has paid all personal property and other taxes currently due relating to the same and to the Demised Premises and the Lease, (b) since the Date of Lease, there has been no event which may constitute a "Transfer" under Section 11.9 of the Lease, (c) the person executing this Interim Modification on behalf of Tenant has full right, power and authority so to do, and the same constitutes the legal, valid and binding obligations of Tenant fully enforceable in accordance with the terms hereof, (d) there are no unfulfilled Landlord repairs or other obligations under the Lease, (e) no broker is entitled to a commission arising out of this Interim Modification, and (f) the parties agree that the Lease, as modified by this Interim Modification, shall be governed by Chapter 83, Florida Statutes.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, as of the date first above written.

**WITNESSES:**

*Sandra Villaman* *Sandra Villaman*  
[Sign & Print]  
*[Signature]* *Sasha Paray*  
[Sign & Print]



*R. Inguanzo* / *R. INGUANZO*  
[Sign & Print]  
*[Signature]* / *ALEX CARDELL*  
[Sign & Print]

**LANDLORD:**

**BAL HARBOUR SHOPS, LLLP,**  
a Florida limited liability limited partnership

By: *[Signature]*  
Print Name: \_\_\_\_\_  
Its: General Partner

**TENANT:**

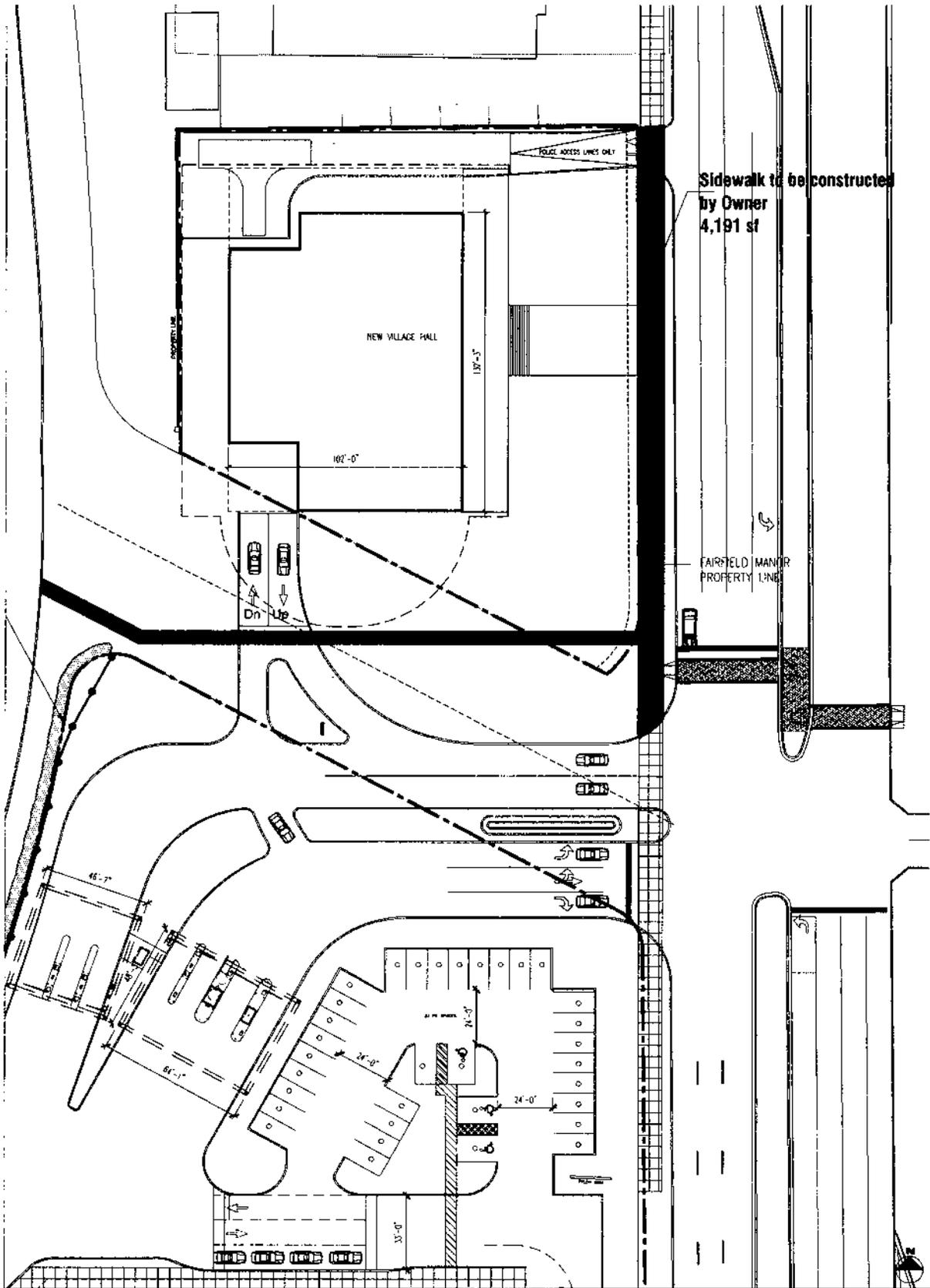
**BAL HARBOUR VILLAGE,**  
a municipality

By: *[Signature]*  
*Jorge M. Gonzalez, Village Manager*

Attest: *[Signature]*  
*village clerk*

**APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE VILLAGE ONLY**

By: Weiss Scrota Helfman Cole & Bierman, P.L., Village Attorney  
*Susana Swarthon*



Sidewalk to be constructed  
by Owner  
4,191 sf

FAIRFIELD MANOR  
PROPERTY LINE

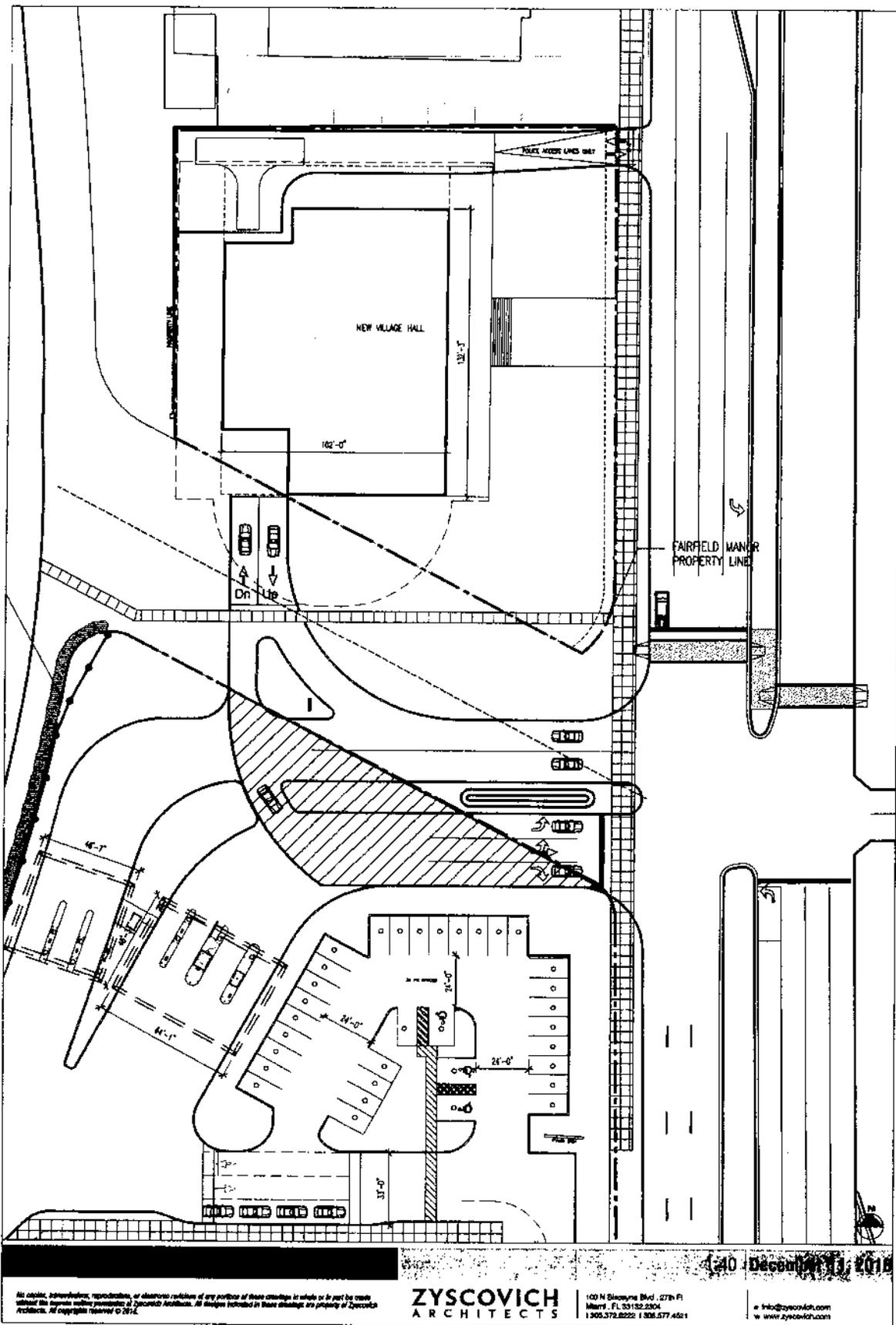
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**ZYSCOVICH**  
ARCHITECTS

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Miami, FL 33132 2304  
1 305 372 5222 | 305 577 4524

e info@zyscovich.com  
w www.zyscovich.com

EXHIBIT R - VILLAGE HALL SIDEWALKS



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info@zyscovich.com  
www.zyscovich.com

EXHIBIT S- ALTERNATIVE NORTH ENTRANCE

This instrument prepared by:  
Maria V. Currais, Esq.  
Weiss Serota Helfman Cole & Bierman, P.L.  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, Florida 33134

## ADDENDUM TO BAL HARBOUR SHOPS DEVELOPMENT AGREEMENT

This Addendum to Bal Harbour Shops Development Agreement ("**Addendum**") is entered into on October 25, 2021 ("**Addendum Date**") by and between **BAL HARBOUR SHOPS, LLC**, a Delaware limited liability company ("**Owner**") and **BAL HARBOUR VILLAGE**, a Florida municipal corporation ("**Village**").

This Addendum supplements that certain Development Agreement between the Village and a predecessor in interest to the Owner dated July 27, 2017 and recorded in Official Records Book 30632, Page 3661, as amended by that certain First Amendment to Bal Harbour Shops Development Agreement dated December 20, 2018 and recorded in Official Records Book 31269, Page 4587, both of the public records of Miami-Dade County, Florida (collectively the "**Agreement**"). In the event of a conflict between the Agreement and this Addendum, the terms of this Addendum control. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

In consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Owner hereby mutually covenant and agree as follows:

1. Section 11 is revised to provide that, (a) simultaneously with the execution of this Addendum, Owner Subsidiary and Village shall execute and deliver to the Village an updated Special Warranty Deed attached hereto as Exhibit A ("**Updated Fairfield Deed**") and Grant of Utility Easement attached hereto as Exhibit A-2, (b) Village acknowledges that (i) Village has completed all due diligence respecting the Fairfield Property and (ii) Owner has satisfied all obligations under Section 11 of the Agreement, as modified hereby, (c) Owner is not required to furnish survey, and (d) in light of the easement which is "permitted exception #13" in the Updated Fairfield Deed from Owner's subsidiary to Owner ("**Staging Area Easement**"), Section 11.6 is deleted in its entirety. Village acknowledges that Owner may continue to use the Fairfield Property under the Staging Area Easement until November 30, 2024 which may be extended to June 1, 2025 as provided for in the Staging Area Easement. If the ESA for the Fairfield Property shows evidence of any environmental contamination, Owner or the Owner Subsidiary will be responsible for the removal of the contamination at its sole expense in accordance with applicable laws prior to the end of the Term of the Staging Area Easement.
2. As the Village has elected to undertake the construction of New Village Hall and the NVH Garage ("**Fairfield Property Improvements**"); therefore (a) the Owner is relieved of all further obligations with respect to the plans for and construction of the Fairfield Property Improvements other than payment by Owner of the Owner's Total Costs as set forth below, and (b) the Village is entitled to the cost of constructing the Fairfield Property Improvements plus the costs of project management and construction oversight calculated as follows:

- a. \$18,056,228.00 ("Owner's Initial Costs") which are calculated as follows:
  - i. New Village Hall cost calculated as \$9,600,000 in the Agreement increased by estimate from January 2016 until the date of this Addendum for a total of \$12,056,228.00; and
  - ii. NVH Garage cost calculated as \$6,000,000 in the Agreement.

As used herein, the term "RS Means Index" shall mean the "Historical Cost Index" for Miami, Florida, (which, for January, 2021 is evidenced on Exhibit C attached hereto and made a part hereof), as published by RS Means; provided however, if the RS Means Index is not published for the period in question, the parties, acting reasonably and in good faith, shall agree on a comparable index.

- b. The parties agree that at the earlier of (i) the time that the Owner actually vacates all of the Fairfield Property or (ii) the time that construction of the Fairfield Property Improvements commences (which for purposes herein means, beginning actual construction [i.e. installation of auger cast piles, auger piles, pile caps, footers or other foundation for vertical construction] of the Fairfield Property Improvements) (the "Adjustment Date"), the following additional costs to be paid by the Owner to the Village shall be calculated as follows:
  - i. Subsection (i) of the Owner's Initial Costs will be recalculated by increasing the \$9,600,000 in the Agreement by the percentage change in the RS Means Index from January 2016 through January 2025; and subsection (ii) of the Owner's Initial Costs will be adjusted to provide the percentage change in the RS Means Index from January 2022 through January 2025 (the sum of these two adjustment amounts, less the amount estimated under Section 2a above, being the "True-Up Amount"); provided however, if, pursuant to the Agreement as modified by this Addendum or by agreement between the parties, the Adjustment Date is deferred beyond June 1, 2025, the foregoing calculation shall be supplemented by the percentage increase in the "BLS Index" from June 1, 2025 through the amount published closest to the month in which the Adjustment Date occurs. As used herein, the term "BLS Index" shall mean the index published by the U.S. Bureau of Labor Statistics entitled "Producer Price Index (PPI) Data for Nonresidential Building Construction Sector — New Office Building Construction, NAICS 236223" which may be found using the following link:  
<https://data.bls.gov/timeseries/PCU236223236223>.
  - ii. The cost of project management and construction oversight relating solely to the construction of the Fairfield Property Improvements in accordance with the below Project Scope, calculated as follows:
    - 1. Prior to the Adjustment Date, Village will issue a notice for Request of Proposals ("RFP") to provide a fixed fee project management and construction oversight for the items set forth in Exhibit B attached hereto (the "Project Scope").
    - 2. After receiving responsible and responsive the proposals in accordance with the RFP, the Village will average the cost of all such bids submitted (after discarding the highest and lowest bids), but such average cost shall not be deemed higher than the bid selected by the Village ("Project Management Average").

3. Without affecting the Project Management Average for which BHS is liable, nothing in this section shall impede the Village from contracting with any of the responsible and responsive bidders to provide project management and construction oversight.
    - iii. The Owner's Initial Costs plus the True-Up Amount and the Project Management Average calculated in accordance to this subsection will be the "Owner's Total Costs" for the Fairfield Improvements. Any references in the Agreement to the Owner's NVH Cost and the cost for the NVH Garage shall collectively be referred to as the Owner's Total Costs.
  - c. Owner's Total Costs will be funded by Owner as follows: (i) \$18,056,228.00 within ten (10) days after the mutual execution of this Addendum (and approval by the Village Council of the Village), and (ii) the balance within thirty (30) days after the Owner's receipt of the Village's calculation of the balance of the Owner's Total Costs as provided above.
  - d. The parties agree that, subject to Section 9.6.2. or as otherwise provided in the Agreement, the Owner's Total Costs payment in full will be the maximum amount that the Owner will pay the Village for the construction of the Fairfield Property Improvements. Except as set forth in Section 9.6.2, Village will be responsible for any additional cost for the construction of the Fairfield Property Improvements. This section replaces Sections 9.2.6. and 10.3 of the Agreement. The parties agree that the Owner's Total Costs only relates to the construction of the Fairfield Property Improvements and does not affect any other monetary obligations of the Owner set forth in Agreement. Except as provided above, Article 9 is deleted in its entirety.
3. The provisions of Section 14.2 of the Agreement are hereby modified to provide that, regardless as to (i) whether there is an underground portion of the NVH Garage or (ii) that Village exercised its option to construct the New Village Hall, Owner shall be entitled to retain up to 50% of each quarterly payment of the Parking Surcharge to offset the Owner's Total Costs up to a maximum of \$6,000,000, as increased by RS Means pursuant to Section 2.a.ii above .
  4. Within ten (10) days of the execution of this Addendum, the Owner will pay the Village the Third and Fourth Installments of the Voluntary Contribution set forth in 21.1.1 in the amount of \$1,000,000.
  5. The parties acknowledge that Subsections 15.2.1, 15.2.4 and 15.3.2 of the Agreement have been completed as certified by the Owner's Architect. Subsection 15.1 shall become new 15.2.5. Subsection 15.3.1 shall become new 15.4.4. Subsection 15.2.2 shall become new Section 15.3.1, except that the work described therein shall not be required as a condition precedent to the issuance of a TCO for the 96<sup>th</sup> Street Garage.
  6. In consideration of the accommodations provided herein, the parties hereby unconditionally, irrevocably and forever release, acquit and discharge the other party and its affiliates, officers, directors, employees, and agents from any and all claims, demands and causes of action arising out of the Agreement that each has had or may now have against the other party and its affiliates, officers, directors, employees, and agents from the beginning of time through, to and including the date of this Addendum. Additionally, although the parties do not agree on the applicability of any tolling or extension rights, Owner hereby agrees not to assert any tolling or extension rights that may apply under Florida Statutes Section 252.363

by Executive Order Number 20-52 related to COVID-19 or any variant thereof or any other governmental order related to COVID-19 or any variant thereof, including, but not limited to, any rights Owner may have including any rights asserted in correspondence to the Village dated April 13, 2020 and May 18, 2020. Village acknowledges that no release, acquittal, discharge or waiver contained in this Addendum applies to rights accruing after the Addendum Date. Notwithstanding anything contained in this Addendum and although the Shops have requested that the Village provide a credit related to the use of a private provider and the Village has declined such request, Owner does not waive and expressly reserves any and all rights and remedies which have arisen and/or hereafter may arise relating to 21.3 (but no other portion of Section 21) of the Agreement or Fla. Stat. 553.791.

7. The parties acknowledge that language contained in the First Amendment to Bal Harbour Shops Development Agreement may be interpreted to have deleted Sections 21.2 and 21.3 of the 2017 Agreement. Any such deletion was unintended and the parties agree that Sections 21.2 and 21.3 remain valid as set forth in the 2017 Agreement.
8. Except as specifically modified or waived hereby, (a) all of the provisions of the Agreement which are not in conflict with the terms of this Addendum shall remain in full force and effect, (b) this Addendum does not create any rights other than those specifically described herein, (c) this Addendum preserves and does not alter the rights granted to and obligations assumed by the Owner or Village under the Agreement, as those rights and obligations existed prior to the adoption of this Addendum. This Addendum does not revive or extend any Owner's or Village rights that may have existed under the Agreement but no longer existed or expired prior to this Addendum.
9. Section 10.4 is revised to provide that the temporary parking shall end the (a) the earliest date on which (i) a certificate of occupancy (temporary or permanent) is issued for the Fairfield Property Improvements or (ii) the Fairfield Property is converted to a surface parking lot designated for use by Village employees, or (iii) no fewer than forty (40) Village employees are able to park on the Fairfield Property; provided however, that the temporary (no longer than 12 months) use of the Fairfield Property for parking prior to the commencement of construction does not qualify under this part (iii), or (b) such other date as Village and Owner may agree, each acting reasonably and in good faith.
10. This Addendum may be executed in counterparts which together shall constitute one document. It shall be recorded as required by Section 35.2 of the Agreement.

{SIGNATURES ON THE FOLLOWING PAGES}

IN WITNESS WHEREOF, Owner and Village have executed this Addendum on the date set forth above.

Witnesses:

Signature Jennifer Faeth

Print name: Jennifer Faeth

Signature: Ivor Nikolas Massey

Print name: Ivor Nikolas Massey

OWNER:

BAL HARBOUR SHOPS, LLC, a Delaware limited liability company

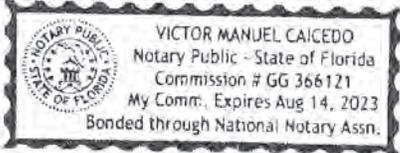
By WHITMAN FAMILY PROPERTIES, LLLP

By: Matthew Whitman Lazenby, General Partner

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization on October 22, 2021, by Matthew Whitman Lazenby, as the General Partner of WHITMAN FAMILY PROPERTIES, LLLP f/k/a Bal Harbour Shops, LLLP, a Florida limited liability limited partnership, on behalf of the limited liability limited partnership, as Manager of Bal Harbour Shops, LLC, a Delaware limited liability company, who is  personally known to me or  has produced a valid driver's license as identification.

NOTARY SEAL



[Signature]  
Notary Public, State of Florida

Print name: Victor Caicedo

My commission expires: 8/14/2023

[VILLAGE SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Owner and Village have executed this Addendum on the date set forth above.

Witnesses:

Signature: [Handwritten Signature]

Print name: Maria V. Currais

Signature: [Handwritten Signature]

Print name: Michael Alvarez

VILLAGE:

BAL HARBOUR VILLAGE

By: [Handwritten Signature]  
Jorge M. Gonzalez, Village Manager

ATTEST:  
[Handwritten Signature]  
Dwight Danie, Village Clerk

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

By: Weiss Serota Helfman Cole & Bierman, P.L., Village Attorney

[Handwritten Signature]

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization on October 21, 2021, by Jorge M. Gonzalez, as Village Manager of Bal Harbour Village, a Florida municipal corporation, on behalf of the Village. He is personally known to me.

NOTARY SEAL

[Handwritten Signature]  
Notary Public, State of Florida

Print name: Maria V. Currais

My commission expires: 4/30/22



# **Exhibit “B”**

**ORDINANCE NO. 2024-659**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," OF THE CODE OF ORDINANCES TO ESTABLISH AND AMEND PROCEDURES AND REGULATIONS TO IMPLEMENT SECTION 166.04151(7), FLORIDA STATUTES, AS CREATED BY CHAPTER 2023-17, LAWS OF FLORIDA (THE LIVE LOCAL ACT OF 2023, AS AMENDED) FOR DEVELOPMENT OF STATUTORILY AUTHORIZED MIXED-USE MULTIFAMILY RESIDENTIAL DEVELOPMENT INCLUDING AFFORDABLE HOUSING; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, EXPIRATION, AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, Section 166.04151(7), Florida Statutes, as created by Chapter 2023-17, Laws of Florida, known as the Live Local Act of 2023 (the "Live Local Act"), as amended by 2024 Senate Bill 328 ("SB 328") (the "Act") in relevant part, requires municipalities to permit mixed-use multifamily residential development in areas zoned for commercial use if at least 40% of the multifamily residential units are, for a period of at least 30 years, affordable as defined in Section 420.0004, Florida Statutes; and

**WHEREAS**, the Live Local Act expires on October 1, 2033; and

**WHEREAS**, the Village seeks to amend Chapter 21 by defining terms and revising regulations and procedures to implement the requirements of the Live Local Act, as it may be amended, for the period of time in which it is effective; and

**WHEREAS**, the Village has one commercial zoning district, the B Business District, in which the Live Local Act applies (no industrial or mixed use zoning districts), and the B Business District does not allow residential use; and

**WHEREAS**, Section 166.04151(7)(f), Florida Statutes, provides that, if a municipality has designated less than 20% of the land area within its jurisdiction for commercial or industrial use, it is required to allow multifamily development pursuant to the Act as part of a mixed-use development, and the Village finds and determines that less than 20% of the Village's land area is designated for commercial use; and

**WHEREAS**, the Act requires that such mixed-use multifamily development (“LLA Development”) involve a combination of residential and nonresidential components, as well as a minimum 40% percentage of residential dwelling units that qualify as affordable housing units; and

**WHEREAS**, the Act requires that the residential component of LLA Development must be a minimum of 65% of the total square footage of the LLA Development; and

**WHEREAS**, the Act contains self-executing provisions regarding LLA Development that affect the application of the list of permitted uses and the density and height regulations applicable to such development in commercial zoning districts, and the Village hereby acknowledges and incorporates those mandatory provisions into this Ordinance for ease of reference; and

**WHEREAS**, rather than rely on administrative interpretation and for ease of reference, it is appropriate to amend the B Business District of the Village’s zoning code in Chapter 21 to specifically reference the statutorily permitted uses and statutorily mandated regulations and processes for LLA Development; and

**WHEREAS**, the Village finds it appropriate and in the public interest that the land development regulations applicable to LLA Development be based on those regulations applicable to development of residential uses in the OF Oceanfront District, because it is the Village’s only zoning district that allows more than 45 feet in height; greater height is available for development in the B Business District, and the Act’s height preemption introduces the potential for much greater height for LLA Development than is already allowed in the B Business District; and

**WHEREAS**, the Planned Development option for development in the OF Oceanfront District requires a discretionary rezoning decision of the Village Council, based on the negotiation of a site plan and development agreement that establish development standards which may vary from the OF Oceanfront District standards, so it is therefore not relevant to the application of the Act in the Village; and

**WHEREAS**, certain modifications to the OF Oceanfront District standards are necessary for them to be applied to LLA Development in the B Business District because mixed use development is not allowed in the OF Oceanfront District as of right; and

**WHEREAS**, the addition of LLA Development to an existing B Business development is a change that triggers the requirement of the B Business District for a major site plan amendment; and

**WHEREAS**, the Act provides that LLA Development must be “administratively approved” if it satisfies the Village’s regulations for multifamily developments, and is otherwise consistent with the Village’s Comprehensive Plan and Code requirements (aside from the use, height and density preemptions of the Act), and the Village requires submission of a major site plan amendment pursuant to Section 21-322 of the B Business District of the Code in order to determine that these other requirements are satisfied; and

**WHEREAS**, the major site plan process requires Village Council approval, but the minor site plan process requires an administrative approval by the Village Manager considering the review and recommendation of the Village’s Architectural Review Board, and is therefore the process most similar to the requirements of the Act and most suitable for LLA Development; and

**WHEREAS**, the purpose of this Ordinance is to provide uniformity, clarity and predictability to the Village’s implementation of the Act, and the Village therefore determines that it is appropriate for all applications for LLA Development to be processed in accordance with the regulations herein, regardless of the timing of such application or submission, and that any application for LLA Development submitted after the effective date of the Act but before the effective date of this Ordinance shall be subject, and processed pursuant to this Ordinance; and

**WHEREAS**, it is the intention of the Village to comply with the Act by adoption of this Ordinance, and provide for affordable housing for Village residents of a quality and character respectful of the dignity of Village residents, that is not discriminatory to any resident in terms of their access to the amenities and quality of development in which they reside; and

**WHEREAS**, the Village Council specifically finds and determines that this Ordinance is necessary to facilitate the orderly development of affordable multifamily housing pursuant to the Act; identify the B Business District as the sole zoning district in the Village eligible for LLA Development; confirm that LLA Development must be mixed-use residential rather than solely residential as provided by the Act; confirm which land

development regulations are applicable to LLA Development, while incorporating the statutory mandates as to density, height, and use; confirm the minimum dwelling unit square footage of the residential component in order to provide reasonable living conditions; provide a maximum commercial square footage of 35% to ensure the statutory mandate for mixed-use; confirm the maximum Floor Area Ratio for LLA Development and how it applies to Parking Structures; and designate the B Business District minor site plan process as the administrative approval process for LLA Development, including provisions for appeals of administrative decisions; and

**WHEREAS**, the Village Council further finds and determines that this Ordinance is necessary to respond to the 2024 amendments to the Act, by specifying that the affordable residential units within the mixed use residential project must be rental, incorporating the statutory preemption of and standards for FAR regulation, addressing the impact of adjacent single family zoning on the height preemption, addressing the impact of any bonuses or other variations to the statutory height, FAR, and density preemptions, identifying that the Village considers reduction of parking requirements for proposed LLA Development located within one-quarter mile of a transit stop, and requiring the posting of a policy containing procedures and expectations for administrative approval on the Village website; and

**WHEREAS**, the Village Council further desires to add minimum habitable unit sizes of residential units in an LLA Development, as required in Section 21-289 of the OF Oceanfront District; and

**WHEREAS**, the Village Administration recommended approval of this Ordinance in its report for the March 27, 2024 Village Council meeting; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on April 9, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village

Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 21, Article III, Division 11.** That Chapter 21 "Zoning," Article III "District Regulations," Division 11 "B Business District" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 21. - ZONING**

\* \* \*

**ARTICLE III. - DISTRICT REGULATIONS.**

\* \* \*

**DIVISION 11. - B BUSINESS DISTRICT.**

**Sec. 21-316. - Permitted uses.**

No Building or land shall be used in the B Business District and no Building shall be erected, constructed, reconstructed or structurally altered which is designed, arranged, or intended to be used for any purpose, unless otherwise provided for in this chapter, except for one or more of the following permitted, ~~or conditional~~ or statutory uses:

\* \* \*

(c) Statutory uses: Mixed Use multifamily development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, as it may be amended. For purposes of this section, "Mixed Use" means a combination of residential uses and their amenities with nonresidential uses, where the percentage of FAR devoted to nonresidential uses does not exceed 35% of the total FAR. The nonresidential uses shall be those uses allowed as permitted or conditional uses provided in subsections (a) and (b) above.

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

### **Section 21-318. Maximum Building Height.**

Except as set forth herein, no Building or Structure in the B Business District shall exceed 56 feet or three Stories in Height, whichever is less. No Parking Structure shall exceed 56 feet or five Stories above the surface parking level in Height, whichever is less. Any Parking Structure which exceeds 36 feet or three Stories shall require a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a). Notwithstanding any other limitation herein, for any assemblage of contiguous Lots now or hereafter owned by the same owner in the Business District which contains five or more contiguous acres, an area not to exceed 42,600 square feet thereof may, after a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a), contain Structures not to exceed 69 feet in Height. Except as provided below, when a parapet wall is provided, the vertical distance shall be measured from the highest point of any street bounding the property to the highest point of the parapet wall. Parapet walls shall not exceed four feet in Height as measured from the highest point of the roof to the highest point of the parapet wall. Except as otherwise provided herein, a "Story" of a Structure shall be considered to be no greater than 19 feet in Height and a "Story" of a Parking Structure shall be considered to be no greater than 11 feet six inches in Height. For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, the Village will comply with the building height requirements set forth in section 166.04151(7), F.S., as it may be amended from time to time.

### **Section 21-319. Yards; Setbacks.**

\* \* \*

#### **(b) Front Yard Setback.**

(1) Front Yard Setback for Commercial Development. The following front Yard Setbacks shall be maintained for commercial development of uses permitted in the B Business District as permitted or conditional uses:

- a. From Collins/Bal Harbour Boulevard and Harding Avenues: 1. 50 feet for Buildings occupied and used for the sale of merchandise or services at retail. 2. 100 feet for Parking Structures and all other Structures.
- b. From 96th Street: 7.5 feet for all Buildings, Parking Structures and all other Structures.
- c. From Bal Bay Drive: 20 feet for all Buildings, Parking Structures and all other Structures.
- d. From Park Drive: 100 feet for all Buildings, Parking Structures and all other Structures.
- e. From Bal Cross Drive: 50 feet for all Buildings, Parking Structures and all other Structures.

(2) Front Yard Setback for Live Local Act Development. To ensure that the appearance and scale of all taller buildings are consistent as to appearance and separation from the right of way and surrounding uses, the following front Yard Setbacks from the OF Oceanfront District shall be maintained for development pursuant to the Live Local Act (which allows additional height for mixed use or residential development in the B Business District, based on the maximum building height in the OF Oceanfront District):

a. From Collins Avenue/Bal Harbour Boulevard and Harding Avenues: All buildings and structures used for residential or mixed use of 17 stories or less shall be set back a minimum of 150 feet from the right of way. Each story above the 17th story shall be set back an additional 25 feet from the story below: i.e., 18 stories, 175-foot setback; 19 stories, 200-foot setback; etc. Buildings may comply by either setting back each higher story by the minimum amount or by placing the entire building at the maximum setback from the right of way. Parking Structures used for residential or mixed use shall be set back a minimum of 100 feet from the right of way.

b. From 96th St.: 0 feet for all Buildings, Parking Structures, and all other Structures.

c. From Bal Bay Drive, Park Dr. and Bal Cross Drive: All Buildings and Structures used for residential or mixed use shall be set back a minimum of 100 feet from the property line of the listed roadways. The following requirements shall apply to such Buildings and Structures, including their Parking Structures that are taller than 56 feet (or 69 feet as provided in Section 21-318):

(i) The minimum setback shall be the height of the Building or Structure.

(ii) Each story above the 10th story shall be set back an additional 25 feet from the story below: i.e., 11 stories, 125-foot setback; 12 stories, 150-foot setback; etc.

(iii) Buildings and Structures may comply by either setting back each higher story by the minimum amount or by placing the entire Building or Structure at the maximum setback from the property line of the listed roadways.

~~(23)~~ *Interior, side and rear Yards.* There shall be interior, side and rear Yards having a width of not less than seven feet six inches on each side of a Building or Structure, including Parking Structures.

~~(34)~~ *Waterfront Setback.* There shall be a waterfront Setback of 40 feet, as measured from the outside face of the Seawall.

\* \* \*

**Sec. 21-321. - Floor Area Ratio, Minimum Habitable Unit Floor Areas, and Density.**

(a) The maximum allowable Floor Area Ratio for the B Business District shall be FAR 0.70.

(b) The maximum allowable Floor Area Ratio for the Special Business Improvement Area shall be FAR 1.22.

(c) For development pursuant to the Live Local Act of 2023, Chapter 2023-17, Laws of Florida (which allows residential development in the B Business District):

1. FAR shall be determined by the B Business District regulations; if state law later preempts the application of this FAR standard, FAR shall be as defined in Section 21-280 for the OF Oceanfront District, and shall comply with the FAR requirements of the OF Oceanfront District in Section 21-286, so that only the FAR of Parking Structures under 22 feet in height shall be exempt from the calculation of maximum FAR; and

2. Minimum habitable unit floor areas shall be as provided in the OF Oceanfront District, as follows: Efficiency dwelling units: 600 square feet; One-bedroom dwelling units: 900 square feet; Two-bedroom dwelling units: 1,150 square feet; Three-bedroom dwelling units: 1,500 square feet; and For each additional bedroom over three, an additional 200 square feet of floor area shall be required. Spaces which are convertible to additional bedrooms shall be considered as bedrooms for purposes of determining minimum habitable unit floor areas.; and

2.3. The Village will comply with the density requirements set forth in section 166.04151 (7), F.S., as it may be amended from time to time, by applying the density requirements of Section 21-285(1) of the OF Oceanfront District.

## **Sec. 21-322. - Site plan review.**

(a) *Definitions and Applicability.*

(1) For purposes of this section and Section 21-323, the following terms are defined:

a. *Adjacent* shall mean contiguous with, or located immediately across any roadway, right-of-way or easement from, a development site that is subject to this section.

b. *Development* shall mean (1) construction, reconstruction, conversion, structural alteration, relocation, enlargement, or demolition of a building or structure; or (2) any change in the use or intensity of use of any building, structure or use of land. When appropriate to the context, development refers to the act of development or to the result of development.

c. *Development Site* shall mean a lot, tract or parcel of land, or combination of lots, tracts or parcels of land, which has been developed or is proposed to be developed as a unified project.

d. *Municipal Building* shall mean a Building, Structure or other improvement owned by the Village.

e. *Exterior Facing* shall mean work subject to this section or Section 21-323 which faces a property which is not owned by the applicant, or is not located in the B Business District.

f. *Interior* shall mean work subject to this section or Section 21-323 which is not Exterior Facing.

(2) Site plan review and approval as hereinafter provided shall be required prior to issuance of a building permit for any new Development, modification, or redevelopment, including an amendment to a previously approved site plan, that would result in one or more of the following:

- a. A horizontal shift of the exterior-facing boundaries of the existing building footprint of any Structure which results in an increase in Floor Area Ratio or lot coverage;
- b. An increase in the height of any existing Structure;
- c. Alterations to existing physical features affecting traffic circulation or access patterns between the site and any right-of-way; or
- d. A change in use of a Structure, or any part thereof, to a Conditional Use or Statutory Use as listed in Section 21-316.
- e. A reduction or relocation of more than ten percent of the parking spaces existing on a Development Site.

★ ★ ★

(4) A site plan application for LLA Development shall be presumed to be a major site plan. Any site plan application shall be presumed to be a major site plan unless the applicant demonstrates to the satisfaction of the Village Manager or designee that the proposed Development and/or Conditional Use will not significantly alter existing impacts to Adjacent premises or significantly increase the burden on existing infrastructure or public services, in which case it shall be reviewed as a minor site plan. In evaluating such impacts, the Village Manager or designee shall consider, as appropriate for the circumstances of the application:

- a. The extent to which the Development would create or alleviate environmental problems such as air or water pollution or noise;
- b. The amount of pedestrian or vehicular traffic likely to be generated;
- c. The number of persons, including employees, likely to be present;
- d. The size of the Development;
- e. The likelihood that additional or subsidiary Development will be generated; and
- f. The extent to which the Development would create an additional demand for, or additional use of, energy, water, sewer capacity, road infrastructure, and other public services.

(b) *Application.* The application shall be in a form prescribed by the Village Manager or designee, and shall be accompanied by a current survey, detailed site plan, a description of the intended use, a conceptual building plan and elevations, preliminary engineering plans, proposed preliminary design guidelines, exterior lighting plan, and a landscaping plan, as applicable, and in no event shall require disclosure of the name of the prospective tenant. The application shall be reviewed by the Village Manager or designee to determine whether the application involves a minor or major site plan, and whether any additional supporting documentation is required for review. A minor site plan application shall be accompanied by a nonrefundable fee of \$1,02,500.00. A major site plan application shall be accompanied by a nonrefundable application fee of \$3,5,000.00. The Village shall maintain a record of all costs of review of a major site plan application including, but not

limited to, fees of Village staff and consultants and out of pocket costs. Prior to scheduling a major site plan application for a public hearing, the applicant shall pay the Village for all actual costs over \$3,5,000.00. The application fee does not include the costs of advertising and public notice; all such advertising and public notice costs shall be borne by the applicant.

*(c) Review of Minor Site Plan Applications.*

(1) *Procedure.* A minor site plan application shall be evaluated by the Village Manager or designee, for compliance with the criteria described in sub-paragraph (f) of this section. If the Village Manager or designee determines that more information is warranted, additional materials that are reasonably related to the application may be requested from the applicant. The Architectural Review Board shall review the application in accordance with sub-paragraph (d) below, and the Board's comments and recommendation, if any, shall be provided to the Village Manager or designee. The Village Manager or designee shall review the application, and the comments and recommendations of the Architectural Review Board, if any, and shall render a final written decision on the application within 21 days of the Architectural Review Board meeting on the application. At least seven days prior to the Village Manager or designee rendering a final decision, posted notice regarding the application shall be provided on the property and at a conspicuous location at Village Hall. The posted notices shall provide that any interested person may contact the Village Clerk and request a written notice of the final decision on the application. In issuing the final decision, the Village Manager or designee may attach conditions including, but not limited to, requirements for screening or buffering, landscaping, limitations on manner, scope, and extent of operation(s), changes in proposed construction, location or design of Buildings, and relocation of proposed open space or alteration of use of such space. The final written decision of the Village Manager or designee shall be mailed to the applicant and to any interested parties who have requested written notice of the decision, along with instructions on the process for an appeal.

(2) *Expiration.* Failure to obtain a master building permit within 12 months from the approval of a minor site plan shall render the site plan approval void.

(3) *Appeal.* If the applicant, or any other substantially affected party, disagrees with the final decision of the Village Manager or designee, the decision may be appealed by filing a written request with the Clerk accompanied by a \$1,500.00 appeal fee within 15 days of the date of issuance of the final decision. In the event of such appeal, the Village Council shall review the minor site plan application on a regularly scheduled agenda and shall have the power to approve, reverse or modify the decision of the Village Manager or designee. At its discretion, the Council may assess any portion of the costs associated with the appeal against the losing party to the appeal, or may order the appeal fee refunded to the appellant.

*(d) Advisory Review of Site Plan Applications by the Architectural Review Board.* The Architectural Review Board shall review each major and minor site plan application.

(1) *Criteria for ARB Review.* The Board shall evaluate the application under the following review criteria, and the design and aesthetic appearance of the site and Buildings.

Definitions of capitalized terms shall be as defined in this Chapter and Section 5.5-2 of the Code.

- a. The Exterior Building Components and External Architectural Features shall have Attractive and cohesive Architectural Character.
- b. The orientation, appearance and design of External Architectural Features of new and existing Buildings and Structures, and/or additions or modifications to existing Buildings and Structures, shall indicate sensitivity to and shall be compatible with the Streetscape and Adjacent Buildings and Structures, enhance the appearance of surrounding properties, and create or maintain important view corridor(s).
- c. Landscaping and paving materials shall ensure a cohesive relationship with and enhancement of the overall site plan design.
- d. Buffering materials shall ensure that headlights of vehicles, noise, and light from Structures are adequately shielded from public view, Adjacent properties and pedestrian areas.
- e. Colors shall be subtle and harmonious with the Landscaping and nearby Buildings and Structures. Bright or brilliant colors shall be used for accent only.
- f. All rooftops of buildings with flat roof decks, including parking garage roof decks, shall be designed to minimize negative appearances by screening Mechanical Equipment and Utility Hardware, and by minimizing the ponding of stormwater through use of drains and scuppers. Rooftops shall be designed to allow for the continued maintenance of the roof surface in an attractive manner in accordance with Section 21-324.
- g. Mechanical Equipment and Utility Hardware on roofs, ground or buildings shall be screened from public view with materials harmonious with the building, or shall be located so as not to be visible from streets, Waterways, service alleys, and adjoining properties. Screening shall be of such material and color so that it matches or blends with the existing roof or portion above the top floor where it is installed. This provision shall not be interpreted to require screening of Mechanical Equipment and Utility Hardware from adjoining buildings that may exceed the height of the rooftop upon which the Mechanical Equipment or Utility Hardware is installed. In this instance, only screening to the maximum height of the equipment or hardware is required.
- h. The choice of materials and their usage shall be conducive to regular maintenance and durability in accordance with Section 21-324.

(2) *Conditions.* The Board may recommend to the Village Manager or designee specific conditions to address potential incompatibility, to better address the applicable criteria, or other impacts to surrounding properties.

(3) *Additional Reviews.* The initial review by the Board is mandatory for each site plan application proposed. All subsequent reviews by the Board, should they be requested, are at the option of the applicant.

(4) *Response to ARB Review.* If the Board does not recommend approval of the site plan and the applicant elects not to pursue further review by the Board, the Board's position on the site plan and any comments discussed at the meeting shall be included within the staff report to the Village Manager (for an application for minor site plan approval) or the Village Council (for an application for major site plan approval), as applicable.

(e) *Staff Review of Site Plan Applications.* The Village Manager or designee shall review the application when complete and shall prepare a staff report to the Village Council (for an application for major site plan approval), or to the Architectural Review Board (for an application for minor site plan approval), as applicable, including (without limitation) an assessment of whether the review criteria of Section 21-322(d)(1) are met. The staff report shall include a recommendation for approval, approval with conditions, or denial of the site plan.

(f) *Village Council Determination of Major Site Plan Applications.* The Village Council shall consider the major site plan application at a public hearing that is noticed in the manner set forth in Section 21-52. The Village Council may approve, approve with conditions, defer or deny the application. In rendering its decision, the Village Council shall consider the Village Manager or designee's recommendation. Approval of the proposed application and intended use shall require a finding that the major site plan and intended use(s):

- (1) Are designed and scaled to be compatible with and avoid depreciation of Adjacent properties and to minimize adverse impacts to Adjacent Development and the surrounding neighborhood by virtue of the proposal's nature, location, design, Building mass, intensity of use, or mitigation measures; and
- (2) Will not create excessive noise, traffic, illumination or other adverse impacts; and
- (3) Provide for safe, efficient, convenient and harmonious groupings of Structures, uses and facilities and for appropriate relationship of space inside and outside of Buildings to intended uses and to structural and architectural features within the site; and
- (4) Uphold the basic intent and purpose of zoning and other land use regulations, observing the spirit of the regulations and assuring public safety and welfare, without tending to create a fire or other equally or more dangerous hazard or provoke the excessive overcrowding or concentration of people or population.

In connection with the approval of the application, the Village Council may impose reasonable limitations on the permissible uses, and conditions for Development and operation to ensure the compatibility of the uses with Adjacent Development(s) and the surrounding neighborhood and the mitigation of any adverse impacts from the proposed Development. Such mitigation may include, without limitation, screening or buffering, landscaping, limitations on manner, scope, and extent of operation(s), changes in proposed construction, location or design of Buildings, relocation of proposed open space or alteration of use of such space, changes in traffic circulation or signalization, and any other matter reasonably calculated to address potential impacts to Adjacent Development and the surrounding neighborhood.

(g) *Extensions of Major Site Plan Approvals.* Failure to obtain a building permit within 18 months of the Village Council's approval of the application shall render the major site plan void, unless after good cause shown, an extension to this timeframe has been granted by

the Village Council. The major site plan extension shall be advertised and noticed in the same manner as a major site plan application. The Village Council shall consider the Village Manager or designee's recommendation on the major site plan extension and render its decision after a public hearing.

(h) *Development Agreement*. As a condition of a major site plan application, a Development Agreement, or amendment to an existing Development Agreement, may be required in order to mitigate the impacts that the proposed Development will have on the Village. The Development Agreement shall provide for one or more of the following, as appropriate for the circumstances of the application: (1) the applicant's dedication of property and/or construction of facilities to mitigate its impacts upon the Village; (2) any deed restrictions, covenants, and bonded commitments that are necessary and acceptable to the Village to ensure timely completion of the Development according to the approved major site plan; (3) any new or continuing operational obligations and maintenance of areas, functions and facilities which are not proposed to be provided, operated or maintained at public expense; and (4) any other matter determined by the Village to be appropriate to mitigate impacts of Development. Unless otherwise specifically agreed to in the Development Agreement and otherwise approved by variance in the manner provided for in this Chapter 21, construction of all Structures shall comply with all provisions within the Village Code of Ordinances. If approved, the Development Agreement shall be recorded at the applicant's expense in the Miami-Dade County public records.

(i) Administrative Review and Design Criteria of Live Local Act Development.

(1) Definitions. For purposes of this subsection (i), the following terms are defined:

a. The Live Local Act or the Act means the Live Local Act of 2023, Chapter 2023-17, Laws of Florida, as it may be amended.

b. LLA Development means mixed use multifamily development pursuant to the Act. All components of the LLA Development shall be located on the same parcel or on one unified parcel.

(2) Intent. The Act requires that the Village allow LLA Development in the B Business District even though this district does not permit residential use. The Act further requires that the Village allow height, density, floor area ratio, and use inconsistent with the otherwise applicable requirements of the Code. LLA Development shall comply with all requirements of the Code for such development unless otherwise specified for LLA Development in the B Business District. The Village Manager shall review and approve a major site plan or major site plan amendment for LLA Development, if:

a. no further action by the Village is required (e.g., no variance, conditional use or other approval is required); and

b. the proposed development satisfies the land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, floor area ratio, and land use, in the manner further specified herein.

(3) Review Process. The review process shall assure that LLA Development satisfies all requirements of the Act, as well as the Village Comprehensive Plan and Code provisions that are not preempted by the Act for a major site plan, and all other applicable laws. LLA Development shall follow the minor site plan process, with review by the Administration of whether the LLA Development satisfies all requirements of law, including (without limitation) the review criteria of Section 21-322(d)(1) and other requirements for major site plan approval, a recommendation by the ARB, and administrative approval by the Village Manager rather than approval by the Village Council. The Village Manager shall promulgate a policy containing procedures and expectations for administrative approval, and shall maintain it on the Village website.

(4) Density and height.

a. The maximum density of a residential component of an LLA Development is the highest currently allowed density on any land in the Village where residential development is allowed (55 dus/acre), or as otherwise provided by statute.

b. The maximum height of a residential component of an LLA Development shall be the highest currently allowed for a commercial or residential development within the Village and within 1 mile of the proposed development, or 3 stories, whichever is higher.

c. When determining "highest currently allowed density" or "highest currently allowed height," the following shall not be considered:

(i) an LLA Development;

(ii) a development that is not in compliance with the current zoning code (such as non-conforming structures); and

(iii) a development with increased height or increased density, if any, allowed as a bonus or incentive, or as a variance.

d. Any LLA development eligible for additional height, FAR, or density bonuses is permitted to utilize them.

(5) Standards for LLA Development Residential Components. LLA Development shall meet all requirements for major site plan approval. As LLA Development is the only type of development in the B Business District allowed to include residential uses in a mixed use project, the following additional standards are provided to assure that such residential development is equitable, is consistent with the quality of Village development, and avoids discrimination against any Village resident.

a. Required residential and non-residential uses.

(i) Residential uses. At least 65 percent of the total square footage of an LLA Development shall be used for residential purposes. Lobby, service areas, and amenity areas exclusively serving the residential uses of the LLA Development shall not be considered residential square footage. Common/shared ground floor lobby, service areas, and amenity areas shall be proportionately allocated to the residential and non-residential square footage requirements.

(ii) Non-residential uses. A maximum 35 percent of the total square footage of the LLA Development shall be devoted to main or principal (and not accessory) nonresidential uses. Retail or restaurant uses shall be located on the first 75 feet of the ground floor of any Building of the LLA Development facing Collins Avenue/Bal Harbour Boulevard and Harding Avenues or 96<sup>th</sup> Street.

b. Equivalency of affordable dwelling units.

(i) No segregation of units. Affordable dwelling units and market rate units within an LLA Development shall be located within the same Building or shall be proportionately distributed between multiple Buildings, if multiple Buildings are proposed. In no event shall an LLA Development Building's residential component consist entirely of market rate units.

(ii) Equal access to amenities. All common areas and amenities within an LLA Development shall be equally accessible and available to all residents (both affordable and market rate units).

(iii) Equal access to units. Access to the required affordable dwelling units in an LLA Development shall be provided through the same principal entrance(s) and with the same elevators/stairwells utilized by market rate dwelling units in the development. For townhouse-style affordable dwelling units, each unit shall have its own entrance.

(iv) Equal access to parking. Parking for affordable dwelling units shall be provided in the same manner, with the same level of convenience and proximity as parking for market rate units.

(v) Equal quality of construction and common areas. The design and construction of the affordable dwelling units and associated common areas shall be of the same quality as the design and construction of the market rate units and associated common areas.

(vi) Equal provision of a range of unit types. The number of each type of affordable dwelling unit provided in an LLA Development shall be approximately proportional to the number of each type of market rate unit in the LLA Development, with type determined by the number of bedrooms. For purposes of this subparagraph, "approximately proportional" shall mean that the percentage of each type of unit among the affordable dwelling units shall be within 5 percentage points of the percentage of each type of unit among the market rate dwelling units (e.g. if 25 percent of the market rate units are two-bedroom units, then between 20 percent and 30 percent of the affordable units shall also be two-bedroom units, etc., maintaining an approximately proportional distribution of affordable and market rate units and unit types within the LLA Development). If the 5 percent calculation results in less than a full unit, then the amount shall be rounded up and "approximately proportional" shall mean a difference of one unit.

d.c. Affordability commitment. Pursuant to the Act, at least 40 percent of the residential units within a proposed LLA Development shall be rental units and shall be "affordable" as defined in Section 420.0004, Florida Statutes, and shall remain affordable for a period of at least 30 years. This requirement shall be incorporated

as a condition of any administrative approval of an LLA Development. Furthermore, as a prerequisite to the issuance of a building permit, the Owner shall execute and deliver to the Village for recordation in the public records, on a form approved by the Village Attorney, a deed restriction in favor of the Village ensuring compliance with, and enforcement of, this affordability requirement. Additionally, the property owner shall provide to the Village, each year on January 15, copies of all leases then in effect for the affordable units, together with such other documentation necessary to demonstrate that such leases meet the affordability criteria as set forth in Section 420.0004, Florida Statutes, and confirm that the occupants of the affordable units meet the requirements of the income standards. The Village has the right to audit the evidence of compliance with Section 420.0004, Florida Statutes, at any time if warranted.

e.d. Tower articulation. To avoid large unbroken “boxy” massing appearances of taller Buildings and Parking Structures, the Village adopts the following required design criteria.

(i) Length of Building or Parking Structure. For Buildings or Parking Structures over 56 feet in height, the maximum overall length of any single Building or Parking Structure in a linear shape, with no breaks or angles greater than 15 degrees, shall not exceed 200 feet, as further regulated by the requirements provided below.

(ii) Breezeways. For purposes of this section, a “breezeway” is an open area that divides two buildings or structures, or parts of buildings or structures, that may be crossed by a path or bridge. A Building or Parking Structure may exceed 120 feet in length if breezeways divide such Building or Parking Structure, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width of at least 20 feet for their entire length. Components of a Building(s) or Parking Structure(s) may be connected through bridges, which may have covers. The top floor bridge may be covered by the roof of the overall Building or Parking Structure.

(iii) Distance Between Buildings/Parking Structures. The minimum distance, unobstructed, between Buildings and Parking Structures on a lot, plot or parcel of land shall be 20 feet.

(iv) Alternative Design. Notwithstanding the above, the Village may modify the application of this tower articulation requirement in instances where enhanced architectural articulation and detailing is provided on the Building or Parking Structure façade(s) to break the massing of the Building or Parking Structure.

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**Section 3. Village Code Amended - Chapter 21, Article V.** That Chapter 21 "Zoning," Article V "Off-Street Parking" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

## **CHAPTER 21. - ZONING**

\* \* \*

### **ARTICLE V. - OFF-STREET PARKING.**

\* \* \*

#### **Sec. 21-381. - Generally.**

(a) Except as otherwise provided in this chapter, when any Building or Structure is erected or structurally altered, off-street parking spaces shall be provided in accordance with the regulations set out in this article.

(b) In the Ocean Front (OF) District, 100 percent of required parking spaces shall be contained in a fully enclosed Parking Structure.

(c) In all other zoning districts, off-street parking spaces may be located in surface parking facilities open to the sky, or within enclosed parking garages.

(d) For development pursuant to the Live Local Act in the B Business District, 100% of required parking spaces for residential uses shall be fully enclosed, designated for residential use only, and integrated into the Building containing the residential units served by that parking. Parking spaces serving any nonresidential uses in the Building open to the public shall be in accordance with the requirements of the B Business District. The Village Manager may, after consideration of the LLA Development application, reduce parking requirements for the proposed development if the development is located within one-quarter mile of and accessible to a transit stop.

#### **Sec. 21-382. - Interpretation of requirements.**

(a) *Alterations and change in use.* Whenever a Building, Structure or use is enlarged by the addition of floor area, number of units, employees, seating capacity or otherwise, which creates a requirement for increased off-street parking spaces, such spaces shall be provided on the basis of the enlargement or change.

(b) *Change in use.* When the use of any Structure or premises is changed, in total or part, to a different use, parking spaces shall be provided on the basis of the change in use.

(c) *Mixed uses.* In the case of mixed uses within a Building or Structure, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, unless otherwise approved by the Village Council, based on a traffic study, or parking study or both submitted by the applicant meeting the technical specifications required by the Village Manager. For development pursuant to the Live Local Act in the B Business District,

the Village Manager shall require the same studies and may approve any parking variations based on the internalization of uses or sharing of parking based on his reasonable determination of whether the study findings are professionally acceptable.

\* \* \*

(m) *Tandem parking.* Tandem parking is a parking layout in which one or more automobiles must be moved in order to retrieve another automobile. Where tandem parking is employed, full-time parking attendants are required, and no self-parking shall be permitted, and tandem parking must not be more than two stalls in depth. The restrictions of this paragraph, requiring parking attendants and prohibiting self-parking, shall not apply if the tandem parking spaces which restrict access to one another are assigned to the same occupancy or dwelling unit, in accordance with a restrictive covenant filed in the official records of Miami-Dade County, Florida, and approved as to legal form and sufficiency by the Village Attorney. Where tandem parking is employed in a Special Business Improvement District, spaces shall not be limited to a two-stall depth but shall meet all other requirements for the Special Business Improvement Area. However, if residential uses are provided pursuant to the Live Local Act, tandem stalls shall not be used for the parking constructed to serve the residential components since tandem parking is not allowed for any residential uses.

\* \* \*

(q) *Special Business Improvement Area.* These provisions shall supersede any other provisions in this section which may be in conflict, except as provided for herein.

(1) *Number of spaces.*

a. *Permanent Parking Ratio.* 2.1 permanent parking spaces for each 1,000 square feet of 90 percent of gross floor area. For residential development proposed under the Live Local Act, the off-street parking requirements for Multiple-Family residential uses in Section 21-384(2) of the OF Oceanfront District shall apply to the parking constructed to serve the residential components. The flex parking ratio and the potential reductions in parking ratios in b. and c. below shall not apply to such residential development, but will apply to the nonresidential uses.

b. *Flex Parking Ratio.* Recognizing the seasonal nature of population, tourism, business activity and parking demand in the Village of Bal Harbour, parking plans whereby spaces designed and normally used for self-parking may be converted to valet parking layout and operations to increase the parking ratio to 2.9 parking spaces for each 1,000 square feet of 90 percent of the gross floor area and higher. The capacity of the parking facility in the valet parking layout shall be used in determining the adequacy of the parking supply. The valet layout need not be striped or have bumper guards or wheel stops. In the event the property owner intends to utilize flex parking for more than six continuous months, the property owner shall provide written notice to the Village Manager of the scope of its intended use.

c. *Reductions in Permanent and Flex Parking Ratios.* The permanent parking ratio may be reduced below 2.1 but no lower than 1.8 permanent parking spaces, and the flex parking ratio may be reduced below 2.9 but no lower than 2.3 flex parking spaces, upon

presentation of a professionally acceptable parking report by a parking expert demonstrating that over the immediate prior twenty-four consecutive months, parking utilization in the facility remained below the proposed reductions in the permanent and flex parking ratios 85 percent of the time. The analysis of the permanent parking ratio shall exclude peak season (peak season is defined as November 1 to April 1, excluding the week of Thanksgiving, December 16 to January 2, and the week of Art Basel).

\* \* \*

(6) *Minimum dimensions.* Parking layouts shall conform to the minimum requirements of this section. For any residential development proposed under the Live Local Act, the minimum parking lot design criteria listed in Section 21-385(a)-(p) for Multiple-Family residential uses shall apply to the parking constructed to serve the residential components.

\* \* \*

(8) *Mechanical Parking:* Mechanical parking, including mechanical lifts and stackers, shall be permitted and shall count towards permanent or flex parking ratios. Mechanical parking may not be placed in surface parking lots located along Collins Avenue or 96th Street. Mechanical parking structures shall not be interpreted to be structures as defined by this Chapter, and shall be subject to the screening requirements of Section 21-386. For any residential development proposed under the Live Local Act, mechanical parking facilities are prohibited for the parking constructed to serve the residential components to assist in reduced construction costs, living costs, and safety concerns for those residents.

\* \* \*

**Section 4. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed

to "Section" or other appropriate word.

**Section 6. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 7. Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 27<sup>th</sup> day of March, 2024.

PASSED AND ADOPTED on second reading this 9<sup>th</sup> day of April, 2024.



  
\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

  
\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.

# **Exhibit “C”**

## ORDINANCE NO. 2024-658

### **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE III "DISTRICT REGULATIONS," DIVISION 10 "OF OCEAN FRONT DISTRICT" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, the Village seeks to amend Chapter 21 regulations related to development in the OF Oceanfront District of the Village; and

**WHEREAS**, the Village Administration recommended approval of this Ordinance in its report for the February 20, 2024 Village Council meeting; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on March 5, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

### **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 21.** That Chapter 21 "Zoning," Article III "District Regulations," Division 10 "OF Oceanfront District" of the Code of Bal

Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 21. - ZONING**

\* \* \*

**ARTICLE III. - DISTRICT REGULATIONS.**

\* \* \*

**DIVISION 10. - OF OCEAN FRONT DISTRICT.**

\* \* \*

**Sec. 21-280. - Definitions.**

The definitions in Section 21-1 apply to all of chapter 21. For purposes of this division, the following terms are defined:

“Floor Area Ratio (FAR)” means the Gross Floor Area, not including Parking Structures up to 22 feet in height per Section 21-288(4), on a Lot or Project Site, divided by the area of the Lot or Project Site. (For example, a Building containing 20,000 square feet of floor area on a Lot or Project Site of 10,000 square feet, with a Parking Structure that is 22 feet in height, has a Floor Area Ratio of 2.0).

\* \* \*

**Sec. 21-286. - Maximum Floor Area Ratio.**

The Floor Area Ratio in the OF Ocean Front District shall not exceed ~~2.8~~ 1.3 to one, exclusive of floor area within enclosed Parking Structures devoted entirely to off-street parking and those floor areas listed in section 21-1 that are excluded in the definition of Floor Area Ratio. The Floor Area Ratio calculation in the OF Ocean Front district may include the area of the Project Site located east of the platted Lot and west of the erosion control line.

OF development may achieve additional bonus FAR if it complies with additional incentives for development to be compatible with adjacent development(s) and the surrounding neighborhood, and to mitigate any adverse impacts from the proposed development. The OF Development may qualify for one or both of the incentives, but in no event shall the maximum FAR exceed 2.8:

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strike through~~. Any changes between first and second reading are shown by highlighted double underline and ~~double strike through~~ font.

(a) A bonus of 0.50 FAR applies if nonresidential uses, excluding amenities exclusively for the use of the residents of the OF development, are limited to a maximum of 20% of the FAR of the OF Development.

(b) A bonus of 1.0 FAR applies if all Buildings are at the maximum front setback provided by Section 21-291(1).

\* \* \*

### **Sec. 21-299. - PD Planned Development District.**

(a) *Applicability.* Owners of properties located within the OF Ocean Front District which contain ~~five~~ four or more contiguous acres may apply to the Village Council to approve a rezoning to a PD Planned Development district applicable to their properties, in accordance with the following provisions and in the discretion of the Village Council.

\* \* \*

(f) *Maximum Density and FAR.*

(1) Density: The maximum densities applicable to the OF Ocean Front District, at section 21-285, are also applicable to a PD Planned Development District. Where an application for site plan in a PD Planned Development District includes multiple Lots or phases, and any one or more of those Lots or phases contains legal non-conforming use as to Density, the existence of such legal non-conforming use shall not reduce the number of units per acre permitted in this section for any other Lot or phase. However, Density may be transferred within PD phases, provided that a final PD site plan for a particular phase shall not be approved unless:

(1) a. The cumulative Density of the final PD phase site plan to be approved and all prior approved final PD phase site plans does not exceed the Density of the OF Ocean Front District; or

(2) b. The Density of future phase site plans is restricted such that the total Density of the final PD site plan to be approved, all prior approved PD phase site plans, and all future PD phase site plans do not exceed the Density requirements of the OF Ocean Front District.

(2) FAR. The maximum FAR of PD development shall be as approved by the PD zoning and development agreement, and all PD site plans shall not exceed the FAR approved by those documents.

\* \* \*

**Section 3. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall

remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



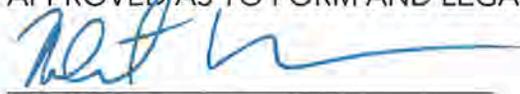
  
\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

  
\_\_\_\_\_

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

# **Exhibit “D”**

**ORDINANCE NO. 2024-657**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 21 "ZONING," ARTICLE I "IN GENERAL," ARTICLE II "ADMINISTRATION," AND ARTICLE V "OFF-STREET PARKING FACILITIES" OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, the Village seeks to amend Chapter 21 by defining terms, by providing for application requirements, and by regulating parking standards for residential development in the Village; and

**WHEREAS**, the Village Administration recommended approval of this Ordinance in its report for the February 20, 2024 Village Council meeting; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on March 5, 2024, determined that this Ordinance is consistent with the Village's Comprehensive Plan, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 21, Article I.** That Chapter 21 "Zoning," Article I "In General" of the Code of Bal Harbour Village, Florida, is hereby

amended to read as follows:<sup>1</sup>

**CHAPTER 21. - ZONING**

**ARTICLE I. - IN GENERAL.**

**Sec. 21-1. Definitions and rules of construction.**

*Floor Area Ratio* (FAR) means the Gross Floor Area, not including Parking Structures unless otherwise defined or required by the applicable regulations for the Zoning District, on a Lot or Project Site, divided by the Lot area or Project Site area. (For example, a Building containing 20,000 square feet of floor area on the zoning Lot of 10,000 square feet has a Floor Area Ratio of 2.0).

\* \* \*

**Section 3. Village Code Amended - Chapter 21, Article II.** That Chapter 21 "Zoning," Article II "Administration," Division 2 "Amendments; Zoning Changes; Variances" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows

**CHAPTER 21. - ZONING**

\* \* \*

**ARTICLE II. - ADMINISTRATION**

\* \* \*

**DIVISION 2. - AMENDMENTS; ZONING CHANGES; VARIANCES**

**Sec. 21-51. - Procedure for nonuse variances and for other public hearings or approvals–Application; fees.**

(a) All applications for nonuse variances or for other public hearings or approvals required under this Code shall be initiated by the filing of an application with the Village Building Official on a form prescribed by the Village Manager, executed and sworn to by the Owners of at least 80 percent of the Property described in the application, by Tenants with the Owner's Written, sworn-to consent, or by duly authorized agents, such agent to be evidenced by a Written power of attorney if not a member of the Florida Bar. If the application proposes changes to any portion of a Property subject to a lease with a term

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double strikethrough~~ font.

of at least 20 years, the application must be accompanied by the Written, sworn-to consent of the leaseholder.

\* \* \*

**Section 4. Village Code Amended - Chapter 21, Article V.** That Chapter 21 "Zoning," Article V "Off-Street Parking Facilities" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

**CHAPTER 21. - ZONING**

\* \* \*

**ARTICLE V. - OFF-STREET PARKING FACILITIES**

\* \* \*

**Sec. 21-384. - Number of spaces.**

The schedule of off-street parking requirements shall be as follows:

(1) *Single-family detached dwellings:* Two parking spaces for each dwelling unit, with not less than one space provided within a garage or Carport.

(2) *Multiple-Family Dwellings:*

*a. Per unit:* One parking space for each studio dwelling unit. One and one-half parking spaces for each dwelling unit with one or two bedrooms. For each additional bedroom, one additional parking space is required, plus one additional space for each ten dwelling units in the total apartment multifamily complex, plus the required spaces for any business establishments contained within the complex.

*b. Per employee:* For each employee of the Multiple-Family complex, one additional parking space shall be provided.

*c. Guest, Deliveries and Loading:* Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for guests, deliveries and temporary loading, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All such parking spaces shall be located in the front yard areas of a site near the lobby entrance, unless otherwise approved by the Village Manager. All such parking spaces and drop off areas shall be noted by the use of signage and pavement markings, and shall not

be located on remote public or private parking lots or garages without prior approval of the Village Manager.

d. Maintenance/Service Workers and Construction Contractors. Each Multiple-Family residential complex, including any residential developments located in mixed-use complexes, shall provide at least one parking space for Maintenance/Service Workers and Construction Contractors, and overall shall provide at least one parking space for each 15 dwelling units in the complex for these purposes. All such parking spaces shall be accessible for oversized vehicles. All such parking spaces and drop off areas shall be noted by the use of signage and pavement markings, and shall not be located on remote public or private parking lots or garages without prior approval of the Village Manager.

**Sec. 21-385. - Design and maintenance.**

\* \* \*

(i) *Driveway width.* In the ~~Ocean Front (OF) and Business (B)~~ all Districts, access driveway widths shall have the following minimum dimensions:

(1) A minimum of 12 feet for all one-way driveways; one-way driveways shall not exceed 15 feet in width.

(2) A minimum of 20 feet for all two-way driveways; two-way driveways shall not exceed 30 feet in width.

\* \* \*

**Section 5. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 7. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 8. Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance. The new parking standards in Section 4 of this Ordinance shall only apply to change(s) to an existing building that meet the definition of substantial improvement pursuant to Village Code Section 8.5-2.

PASSED AND ADOPTED on first reading this 20<sup>th</sup> day of February, 2024.

PASSED AND ADOPTED on second reading this 5<sup>th</sup> day of March, 2024.



ATTEST:

  
\_\_\_\_\_  
Dwight S. Danie, Village Clerk

  
\_\_\_\_\_  
Mayor Jeffrey P. Freimark

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.