

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.  
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	<b>SUMMONS 20 DAY CORPORATE SERVICE</b> (a) GENERAL FORMS	CASE NUMBER 2024-010142-CA-01
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PLAINTIFF(S) BAL HARBOUR SHOPS, LLC	VS. DEFENDANT(S) BAL HARBOUR VILLAGE	SERVICE
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**THE STATE OF FLORIDA:**  
 To Each Sheriff of the State:  
**YOU ARE COMMANDED** to serve this summons and copy of the complaint or petition in this action on defendant(s): BAL HARBOUR VILLAGE c/o Mayor Jeffrey P. Freimark  
655-96th Street Bal Harbour, Florida 33154  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: John K. Shubin, Esq.  
 whose address is: 100 SE 2nd Street, Suite 4020 Miami, FL 33131  
 \_\_\_\_\_  
 \_\_\_\_\_

06/06/2024  
 10:00 am  
 CLOCK IN  
 #230

within 20 days \* Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to 768.28, Florida Statutes, the time to respond shall be 30 days. after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

JUAN FERNANDEZ-BARQUIN CLERK OF THE COURT AND COMPTROLLER MIAMI-DADE COUNTY CIRCUIT AND COUNTY COURTS	BY: <u>[Signature]</u> 2015 DEPUTY CLERK	DATE JUN 05 2024
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**AMERICANS WITH DISABILITIES ACT OF 1990  
 ADA NOTICE**

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alican Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1<sup>st</sup> Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email [ADA@jud11.flcourts.org](mailto:ADA@jud11.flcourts.org); or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711."**

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

COMPLEX BUSINESS LITIGATION  
DIVISION

CASE NO. \_\_\_\_\_

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

Plaintiff,

vs.

BAL HARBOUR VILLAGE, a Florida  
municipal corporation,

Defendant.

\_\_\_\_\_ /

### **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 brings this action to seek relief from the Village’s adoption of a vindictive ordinance for the sole purpose of improperly restricting BHS’ ability to carry out agreed upon construction in violation of Florida law, because the ordinance is void as unconstitutional, preempted, and improperly adopted. This ordinance has the practical effect of significantly reducing available construction time (including by prohibiting construction on Saturday altogether), and makes developing commercial real estate in the Business District cost-prohibitive.

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

2. 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.

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

4. This Court has jurisdiction over this matter pursuant to Section 26.012 of the Florida Statutes and Chapter 86 of the Florida Statutes.

5. 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.

6. 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.

7. 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, the Expansion, and the Development Agreement**

8. The Bal Harbour Shops (the “Shops”) is a shopping center located in Bal Harbour Village, Florida

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

10. In 2017, BHS sought to expand the Shops, and submitted an application for site plan approval, which was approved by the Village pursuant to Resolution 2017-1077 (the "2017 Site Plan").

11. 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 "2017 DA"). The 2017 DA is also authorized and governed by the Florida Local Government Development Agreement Act, Sec. 163.3220 through 163.3243 (the "FLGDAA").

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

13. Pursuant to Section 163.3233(1), Florida Statutes, the ordinances and policies in effect when the 2017 DA was adopted govern the BHS Property such that 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 2017 DA.

14. The 2017 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.

**B. The Village Passes the Noise Ordinance**

15. At its February 20, 2024 meeting, the Village Council proposed Ordinance No. 2024-660 (the "Noise Ordinance"), which is attached hereto and incorporated herein as **Exhibit**

**A.**

16. The Noise Ordinance imposes new restrictions on construction activity in the Business District that apply to – and only to – the BHS Property subject to the 2017 DA. The 2017 DA, the 2018 DA Amendment, and the 2021 DA Amendment are attached hereto as **Composite Exhibit B**. The restrictions imposed by the Noise Ordinance were not in existence at the time the parties entered into the 2017 DA, in direct conflict with Section 163.3233(1), Florida Statutes (the “DA Statute”) that “[t]he local government’s laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.”

17. Specifically, the Noise Ordinance significantly expands the “Prohibited Hours of Construction” in the Business District. Whereas previously the prohibited hours were from 4:00 PM on Saturday through 8:30 AM on Monday, the Noise Ordinance moves the weekly start time for prohibited hours up from 4:00 PM on Saturday to 6:00 PM on Friday. In other words, the Noise Ordinance prohibits *any* construction on Saturday.

18. The Noise Ordinance also restricts BHS’ ability to carry out construction happening completely within the exterior walls of a building even where construction noise does not exceed 55 decibels. Whereas previously this type of construction was permitted at any time, the Noise Ordinance limits this construction to the new permissible hours for all construction, plus 6:00-9:00 PM Monday through Friday.

19. Moreover, the Noise Ordinance also prohibits construction on additional federal holidays which were not previously restricted.

20. In short, the Noise Ordinance increases the number of hours per week when construction noise is prohibited in the Business District from 40.5 hours to 62.5 hours, decreases the supplemental times where construction completely within the exterior walls of a building not

exceeding 55 decibels is permitted in the Business District from any time to a mere three extra hours per weeknight, and otherwise limits the availability of reasonable construction hours in the Business District.

21. The practical effects of the Noise Ordinance are that all construction relating to the DA Site Plan is restricted to the hours when BHS is open and operating (a result which will cause substantial delays in projects and damage BHS' customer and tenant experience), and that construction is prohibited at times that could have no possible impact on any other property.

22. Following an amendment, the Noise Ordinance was adopted on April 9, 2024.

23. The Noise Ordinance goes into effect on June 1, 2024.

24. Notwithstanding that the DA Statute expressly prevents application of new laws and policies governing the development of land to the DA Site Plan, and multiple deficiencies in the Noise Ordinance itself, the Village adopted the Noise Ordinance and has informed BHS that it intends to begin enforcing the Noise Ordinance against BHS' work on the DA Site Plan beginning on June 1, 2024.

25. By prohibiting construction on Saturdays and prohibiting night-time construction even indoors, the Noise Ordinance will extend the time and increase the cost of construction of the DA Site Plan. The additional costs will exceed \$50,000.00.

**COUNT I – DECLARATORY AND INJUNCTIVE RELIEF—NOISE  
ORDINANCE IS ARBITRARY AND UNREASONABLE AND PREEMPTED  
AND ENFORCEMENT MUST BE STAYED**

26. The allegations set forth in paragraphs 1 through 25 are hereby incorporated into this Count.

27. 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.

28. BHS seeks a declaration of its rights under Florida law, including the Florida Constitution, Section 163.3233(1), Florida Statutes and Section 166.0411(1), Florida Statutes.

29. Declaratory relief is necessary, justified, and timely in that the Village has adopted an arbitrary and unreasonable ordinance to BHS' detriment in violation of Florida statutory and decisional law.

30. An ordinance is arbitrary and unreasonable, and thus invalid, when it has no substantial relation to the public health, safety, morals, or general welfare. *See State v. Du Bose*, 128 So. 4, 6 (Fla. 1930); *City of Miami Beach v. 8701 Collins Ave, Inc.*, 77 So. 2d 428, 430 (Fla. 1954); *City Com'n. of City of Miami v. Woodlawn Park Cemetery Co.*, 553 So. 2d 1227, 1230 (Fla. 3d DCA 1989).

31. Village Resolution 2017-1077, which approved the 2017 DA, included a finding that the 2017 Site Plan would "not create excessive noise, traffic, illumination or other adverse impacts," and thus the Village itself has conceded that there is no excessive noise created by BHS' work under the DA Site Plan. The Village cannot now be heard to argue that the exact opposite is actually true, and that the noise is so damaging as to justify enacting the Noise Ordinance for the purpose of restricting BHS' ability to conduct the very construction that the Village agreed did not create any adverse impact.

32. Because the Village has admitted that the Noise Ordinance has no substantial relation to the public health, safety, morals, or general welfare, the Ordinance is arbitrary and unreasonable.

33. Furthermore, the Noise Ordinance arbitrarily and unreasonably prohibits construction activities that would occur entirely within an enclosed building and that could not have any adverse impact on any adjacent property.

34. The Noise Ordinance is also expressly preempted by Section 163.3233(1), Florida Statutes.

35. 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.

36. 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).

37. Section 163.3233, Florida Statutes requires that “[t]he local government’s laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.”



38. In other words, Section 163.3233 preempts the application of any land development regulations which post-date a valid development agreement to that development agreement, unless certain specific findings or determinations set out in Section 163.3233(2) apply.

39. In direct contravention of this mandate, the Village adopted the Noise Ordinance, which is a law governing the development of land, which post-dates the 2017 DA, and which would negatively impact BHS in completing its remaining work under the DA Site Plan.

40. The Village has not, and cannot, make the required showing to support the findings necessary to trigger an exception allowing the Noise Ordinance to be applied to the DA Site Plan under Section 163.3233(2).

41. Thus, application of the Noise Ordinance to BHS' remaining work under the DA Site Plan would clearly conflict with the legislative scheme put in place by the state through the DA Statute, and is preempted.

42. The Village disputes BHS' assertions relating to the Noise Ordinance in paragraph 39 and 41 and is applying the Noise Ordinance to BHS on its continued work under the DA Site Plan.

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

44. 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 Noise Ordinance is arbitrary and unreasonable, and thus invalid, pursuant to Section 166.0411(1), Florida Statutes.

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

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

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

48. 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 the Noise Ordinance.

49. Plaintiff is also legally entitled to an immediate, automatic stay preventing enforcement of the Noise Ordinance pursuant to Section 166.0411(1), Florida Statutes, which provides that:

[a] municipality must suspend enforcement of an ordinance that is the subject of an action challenging the ordinance's validity on the grounds that it is...or unreasonable if: (a) [t]he action was filed with the court no later than 90 days after the adoption of the ordinance; (b) [t]he plaintiff requests suspension in the initial complaint or petition, citing this section; and (c) [t]he municipality has been served with a copy of the complaint[.]

50. The only categories of ordinances excepted from this automatic stay requirement are contained in Section 166.0411(5), Florida Statutes. The Noise Ordinance is not excepted.

51. This action was filed within 90 days of the Village Council's adoption of the Noise Ordinance on April 9, 2024. BHS expressly asserts that the Noise Ordinance is expressly preempted by Sec. 163.3233, Florida Statutes and is arbitrary and unreasonable. Pursuant to Section 166.0411(1), Florida Statutes, BHS expressly demands the Village suspend enforcement of the Noise Ordinance pending resolution.

52. Accordingly, Plaintiff requests that the Court enter: 1) a declaration that the Noise Ordinance is arbitrary and unreasonable, and thus invalid, pursuant to Section 166.0411(1), Florida Statutes; and 2) an order enjoining enforcement of the Noise Ordinance based on this challenge to the Noise Ordinance pursuant to Section 166.0411(1), Florida Statutes.

**COUNT II – DECLARATORY RELIEF—NOISE ORDINANCE IS VOID FOR FAILURE TO PREPARE BUSINESS IMPACT STATEMENT REQUIRED BY SECTION 166.041(4), FLORIDA STATUTES**

53. The allegations set forth in paragraphs 1 through 25 are hereby incorporated into this Count.

54. 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.

55. BHS seeks a declaration of its rights under Section 166.041(4), Florida Statutes.

56. Declaratory relief is necessary, justified, and timely in that the Village adopted and is applying an ordinance for which it was required, but failed, to provide a business impact statement.

57. Section 166.041(4), Florida Statutes, requires local governments to prepare and post on their website “business impact statements” summarizing new ordinances and their purpose, estimating the direct economic impact of the proposed ordinances, providing a good faith estimate of the number of businesses likely to be impacted, and disclosing other information helpful to stakeholders in assessing the potential effects of proposed ordinances. Compliance with this requirement is jurisdictional, and the Village lacks any authority to adopt an ordinance in violation of its requirements.

58. The only categories of ordinances excepted from this requirement are contained in Section 166.041(4)(c). The Noise Ordinance is not excepted.

59. The Village was thus required to prepare and publish a business impact statement for the Noise Ordinance, but failed to do so.

60. The Village adopted and is applying the Noise Ordinance notwithstanding its failure to prepare and publish the statutorily required business impact statement.

61. BHS disputes the validity of the Noise Ordinance in its entirety in the absence of the statutorily required business impact statement, and maintains that the Noise Ordinance is thereby void due to the Village's failure to meet a jurisdictional condition precedent to its adoption.

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

63. 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 Noise Ordinance is void pursuant to Section 166.041(4), Florida Statutes.

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

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

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

67. 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 the Noise Ordinance.

68. Accordingly, Plaintiff requests that the Court enter a declaration that the Noise Ordinance is void based on the Village's failure to prepare a business impact statement as required by Section 166.041(4), Florida Statutes.

**COUNT III – DECLARATORY RELIEF—NOISE ORDINANCE IS VOID FOR  
DELEGATING ARBITRARY AND UNFETTERED DISCRETION TO THE  
VILLAGE AND ITS AGENTS**

69. The allegations set forth in paragraphs 1 through 25 are hereby incorporated into this Count.

70. 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.

71. Plaintiff seeks a declaration of its rights under Florida law and the Village Code.

72. Declaratory relief is necessary, justified, and timely in that the Noise Ordinance provides the Village (via the Village Manager and/or other agents) unfettered discretion to arbitrarily and discriminatorily enforce the Ordinance.

73. “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...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).

74. 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).

75. Non-exhaustively, the Noise Ordinance grants the Village and/or the Village Manager arbitrary and unfettered discretion to determine: how and when the Ordinance will be enforced; how quickly violations are required to be remedied before subsequent and escalating citations follow; whether the noise at issue is the result of landscaping activities; and other issues of interpretation that provide the Village and its agents unilateral discretion as to when and against whom the Ordinance is enforced.

76. BHS maintains that the Noise Ordinance grants the Village and its agents arbitrary and unfettered discretion, and should thus be voided.

77. The Village disputes BHS’ assertions relating to the invalidity of the Noise Ordinance detailed in paragraphs 75 and 76.

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

79. 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 Noise Ordinance is void.

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

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

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

83. 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 the Noise Ordinance.

84. Accordingly, Plaintiff requests that the Court enter a declaration that the Noise Ordinance provides the Village arbitrary and unfettered discretion, and is thus void.

**COUNT IV – DECLARATORY AND INJUNCTIVE RELIEF – NOISE ORDINANCE**  
**UNENFORCEABLE AS VIOLATION OF DA STATUTE**

85. The allegations set forth in paragraphs 1 through 25 are hereby incorporated into this Count.

86. 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.

87. BHS seeks a declaration of its rights under the DA Statute.

88. Declaratory relief is necessary, justified, and timely in that the Village adopted the Noise Ordinance, and is applying the Ordinance against BHS for the remaining work under the DA Site Plan, in violation of the DA Statute.

89. The Village's actions are in conflict with and preempted by Section 163.3233, Florida Statutes.

90. 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.

91. 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).

92. Section 163.3233, Florida Statutes requires that “[t]he local government’s laws and policies governing the development of the land at the time of the execution of the development agreement shall govern the development of the land for the duration of the development agreement.”

93. In other words, Section 163.3233 preempts the application of any land development regulations which post-date a valid development agreement to that development agreement, unless certain specific findings or determinations set out in Section 163.3233(2) apply.

94. In direct contravention of this mandate, the Village adopted the Noise Ordinance, which is a law governing the development of land and which post-dates the 2017 DA and which the Village contends applies to BHS for its remaining work under the DA Site Plan.

95. The Village has not, and cannot, make the required showing to support the findings necessary to trigger an exception allowing the Noise Ordinance to be applied to the DA Site Plan under Section 163.3233(2).

96. Thus, application of the Noise Ordinance to BHS’ remaining work under the DA Site Plan would clearly conflict with the legislative scheme put in place by the state through the DA Statute, and is preempted.



97. BHS disputes the Village's adoption and application of the Noise Ordinance. BHS maintains that the Noise Ordinance is preempted and unenforceable against it in its work under the DA Site Plan.

98. The Village disputes BHS' assertions. All necessary elements for the seeking of declaratory relief have been satisfied.

99. 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 Noise Ordinance is preempted by the DA Statute, and is unenforceable against BHS for the continued work to be done under the DA Site Plan.

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

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

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

103. 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 Noise Ordinance against BHS for the remaining work under the DA Site Plan.

104. Moreover, Plaintiff is also legally entitled to injunctive relief to enforce its rights under Section 163.3233, Florida Statutes.

105. Accordingly, BHS requests that the Court enter: 1) a declaration that the Noise Ordinance is preempted by the DA Statute and is unenforceable against BHS for its remaining

work to be done to complete the development provided under the DA Site Plan; and 2) an order enjoining the Village from enforcing the Noise Ordinance against BHS.

WHEREFORE, Plaintiff respectfully request that this Court enter judgment in its favor and against Defendant and enter declarations and injunctions as stated in paragraphs 52, 68, 84, and 105, and enter all such relief that it deems equitable and just, including but not limited to, the award of Plaintiff's 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.

Dated: May 31, 2024

Respectfully Submitted,

**SHUBIN LAW GROUP, P.A.**

*Counsel for Bal Harbour Shops, LLC*

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By: /s/ John K. Shubin

John K. Shubin

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Robert K. Lincoln

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Fla. Bar No. 105097

Mark E. Grafton

Fla. Bar No. 118233

Benjamin A. Mitchel

Fla. Bar No. 1018918

# Exhibit “A”

**ORDINANCE NO. 2024-660**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council of Bal Harbour Village ("Village") seeks to amend regulations related to certain noises on in the "B" Business district; and

**WHEREAS**, with the transition of construction activity from the 96<sup>th</sup> Street parking garage to the north, the noise impacts of construction are now much closer to the neighboring single family residential neighborhood to the north for the first time, and the Village has received an increase in noise complaints related to this construction; and

**WHEREAS**, in 2023, the Village amended the noise regulations applicable everywhere other than the B Business District to prohibit construction noise on Saturdays, and the Village desires to bring the noise regulations in the B Business District into alignment with those of the rest of the Village; and

**WHEREAS**, the Village further seeks to more closely align the process for enforcement of noise requirements with that followed in the remainder of the Village; and

**WHEREAS**, based on feedback received following first reading of this Ordinance, the Village Council desires to expand the holidays on which construction noise is prohibited throughout the Village to include all federally recognized holidays along with those already listed in the Code; and

**WHEREAS**, the Village finds that these changes will improve the quality of life for its residents and further 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 11.** That Chapter 11 "Nuisances", Article II "Noise" of the Code of Bal Harbour Village, Florida, is hereby

amended to read as follows:<sup>1</sup>

**CHAPTER 11 - NUISANCES**

\* \* \*

**ARTICLE II. - NOISE**

**Sec. 11-31. - Certain Noises restricted to specified hours.**

(a) *Regulated Noises.* Noises, other than those enumerated in section 11-29 because of their nature and characteristics, shall be grouped as follows for the purpose of control and restriction:

\* \* \*

(b) *Prohibited Times.*

(1) The Noises set forth in subsection (a)(1) of this section are hereby prohibited at any location and at any hour on Saturdays and Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, and Rosh Hashanah~~, and on Mondays through Fridays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.

(2) The Noises set forth in subsection (a)(2) of this section are hereby prohibited at any location and at any hour on Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, and Rosh Hashanah~~, and on Mondays through Saturdays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.

\* \* \*

**Sec. 11-32. Construction Noise in the "B" Business District.**

(a) *Definitions.* For the purposes of this section, the following terms will have the following prescribed meaning unless the context indicates otherwise:

- (1) *Permit Applicant* means the person who hired or will serve as the contractor or company to perform the construction activities.

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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.

- (2) *Noise Receptor Site* means a Lot which is the recipient of Construction Noise emanating from outside of the Lot's property line or, in the event that the Lot is part of an approved site plan, outside of the boundary of the site plan, regardless of whether that Lot is located in the Village.
  - (3) *Permitted Decibel Level* means the maximum decibel level permitted for Construction Noise.
  - (4) *Violator* means the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of this Section.
- (b) *Regulations.* Construction Noise in the "B" Business District shall conform to the following regulations:
- (1) *Prohibited Hours of Construction:* Construction Noise is prohibited from ~~6:00~~ 6:00 p.m. ~~Friday~~ Saturday through 8:30 a.m. Monday, and all day on federally recognized holidays, ~~New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, and Rosh Hashanah, and Christmas Day.~~ Construction activities that occur completely within the exterior walls of a Building may occur ~~within the prohibited hours of construction~~ from 6:00 p.m. through 9:00 p.m. Monday through Friday, so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.
  - (2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:
    - a. *Night:* 55 decibels for all hours outside of those defined as Day in subsection b. ~~from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and~~
    - b. *Day:* 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday, ~~and from 10:00 a.m. to 4:00 p.m. Saturday.~~
  - (3) The regulations of this subsection shall not be interpreted to apply to noise arising from landscaping activities.

\* \* \*

- (e) *Enforcement.* This section shall be enforced by the Village Manager in accordance with the following procedures and standards. The Village finds that Construction Noise violations are irreparable or irreversible in nature as a matter of law, and the penalties for such violations are established as follows in accordance with F.S. § 162.09(2).
- (1) *Verbal warning.* If the Village Manager finds a violation of this section, he or she shall issue a verbal warning to the Violator, Permit Applicant, and Property Owner requiring immediate correction of the violation.
  - (2) *Civil penalties.*
    - a. *First citation.* If the violation is not corrected immediately after issuance of the verbal warning, the Village Manager shall issue a citation requiring immediate

- correction of the violation, shall impose fines in the amount of \$500.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
- b. *Second citation.* If the violation is not corrected immediately after issuance of the first citation, or the violation recurs within a 60-day period, the Village Manager shall issue a second citation requiring immediate correction of the violation, shall impose fines in the amount of \$1,000.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
  - c. *Third citation.* If the violation is not corrected immediately after issuance of the second citation, or the violation recurs within a 60-day period, the Village Manger shall issue a third citation requiring immediate correction of the violation, shall impose fines in the amount of \$2,500.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
  - d. *Continuing or recurring violations.* In the event that the violation continues after or recurs within 60 days of issuance of the third citation, the Village Manager shall ~~revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for seven consecutive days, and may impose an additional penalty of \$5,000.00 against both the Violator, and Permit Applicant, and Property Owner. The Village Manager may revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for periods of time in excess of seven consecutive days, in the event that the Violator or Permit Applicant has more than three violations in a six-month period of time and the Violator or Permit Applicant has failed to address and resolve the violations. In such event, the Village Manager may also impose a penalty of \$5,000.00 against the Property Owner if the Property Owner is not the Permit Applicant.~~
  - e. *Future violations.* If no other violation occurs for ~~six~~ twelve consecutive months after a violation is complied, the enforcement procedures of this subsection shall reset as to all parties and any future violations will again result first in a verbal warning, followed by the escalating progression of citations and penalties as set forth in subsections a–e.
- (3) *Criminal penalties.* In addition to or in lieu of the civil penalties set forth above, with respect to any of the provisions of this section, the Violator may be arrested and punished by imprisonment in the county jail for a period not to exceed 60 days.

\* \* \*

**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.

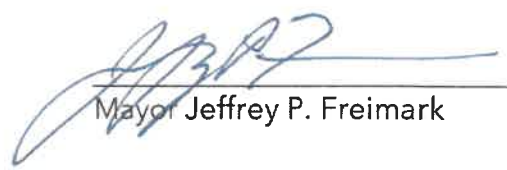
**Section 5. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall be effective upon adoption on second reading.


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.



# **Composite Exhibit “B”**

This instrument prepared by:  
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

**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. **A1A 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.** Invalidity 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: [Signature]

Print name: Tvor N. Massey

OWNER:

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

BY [Signature]  
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.

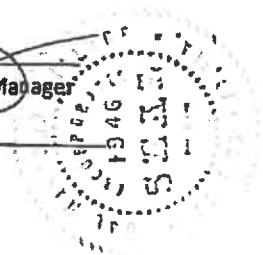
NOTARY SEAL



[Signature]  
Notary Public, State of Florida  
Print name: Dwight S. Denie  
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  
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 & Bleyman, P.L., Village Attorney  
Suzanne Serota

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**

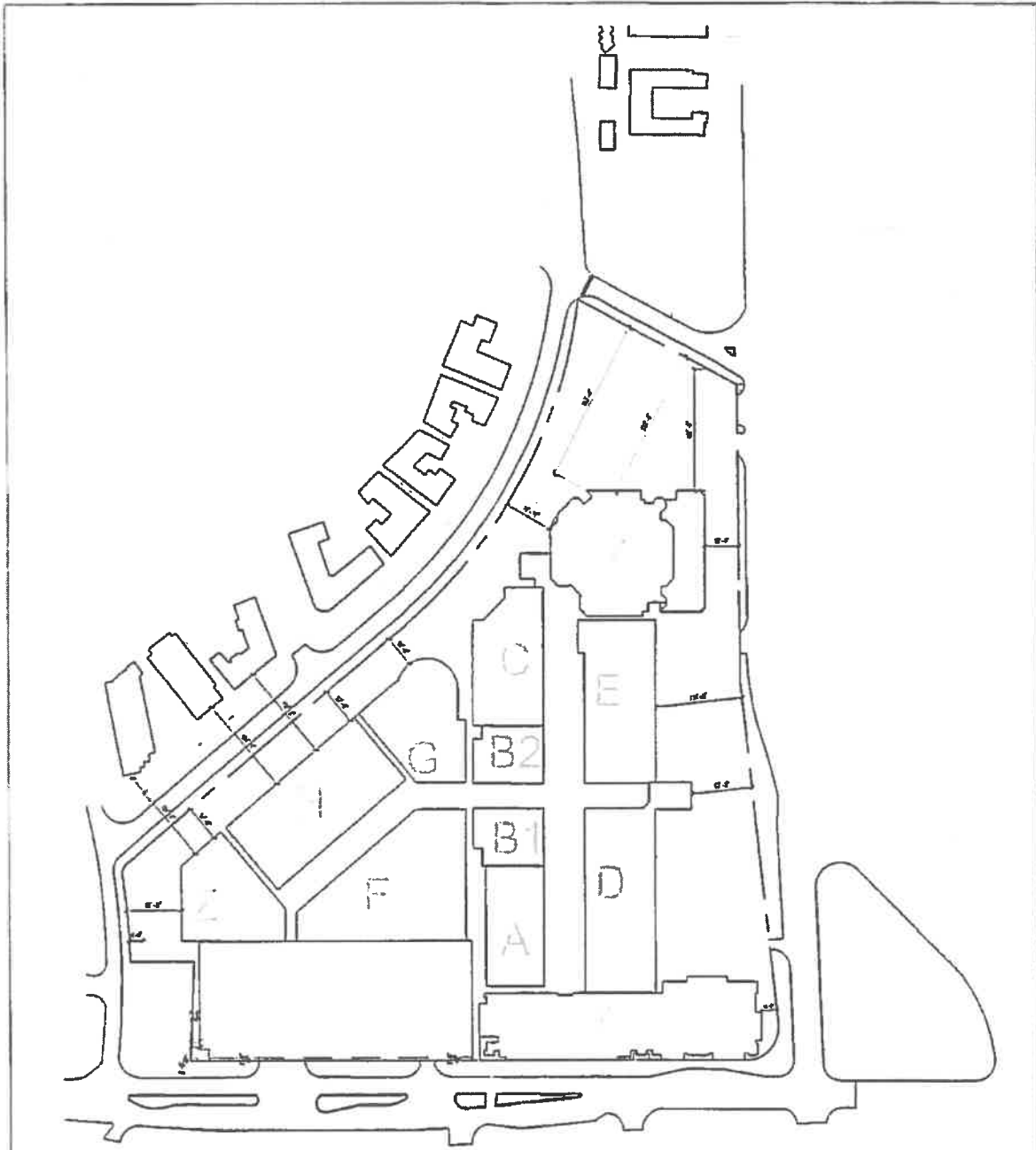
**Legal Description of SunTrust Property**

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

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**ZYSCOVICH**  
ARCHITECTS

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Miami, FL 33152-2304  
1.305.372.5222 1.305.577.4521

www.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 Scrota 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,

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

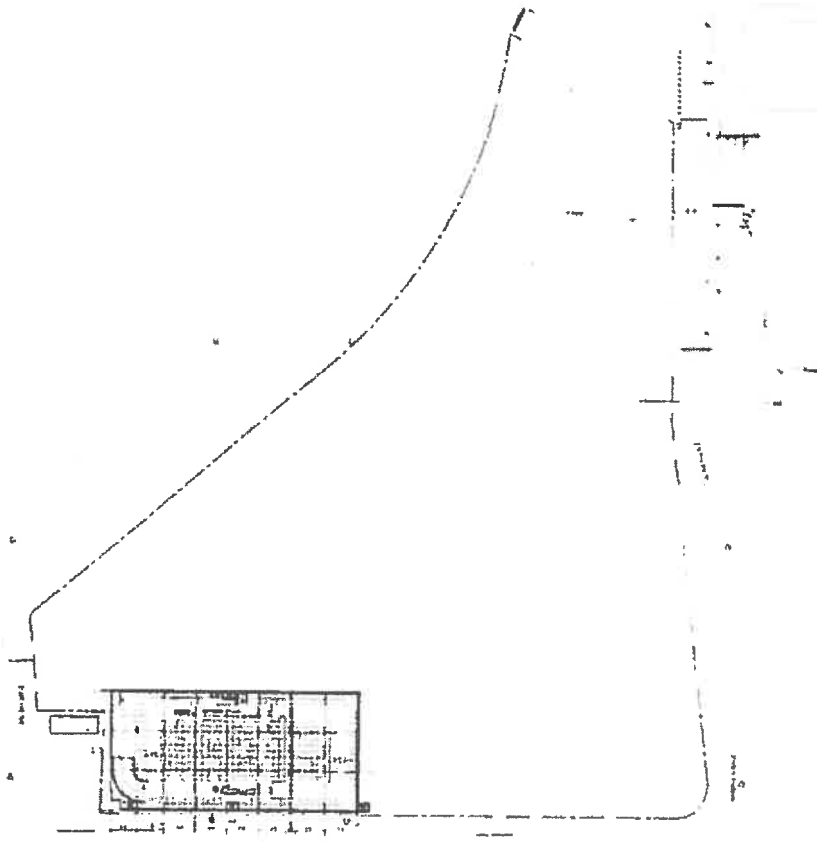


Susan L. Marsteller  
Weiss Scrota Helfman Cole & Bierman, P.L.  
Village Attorney

**Exhibit I**

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

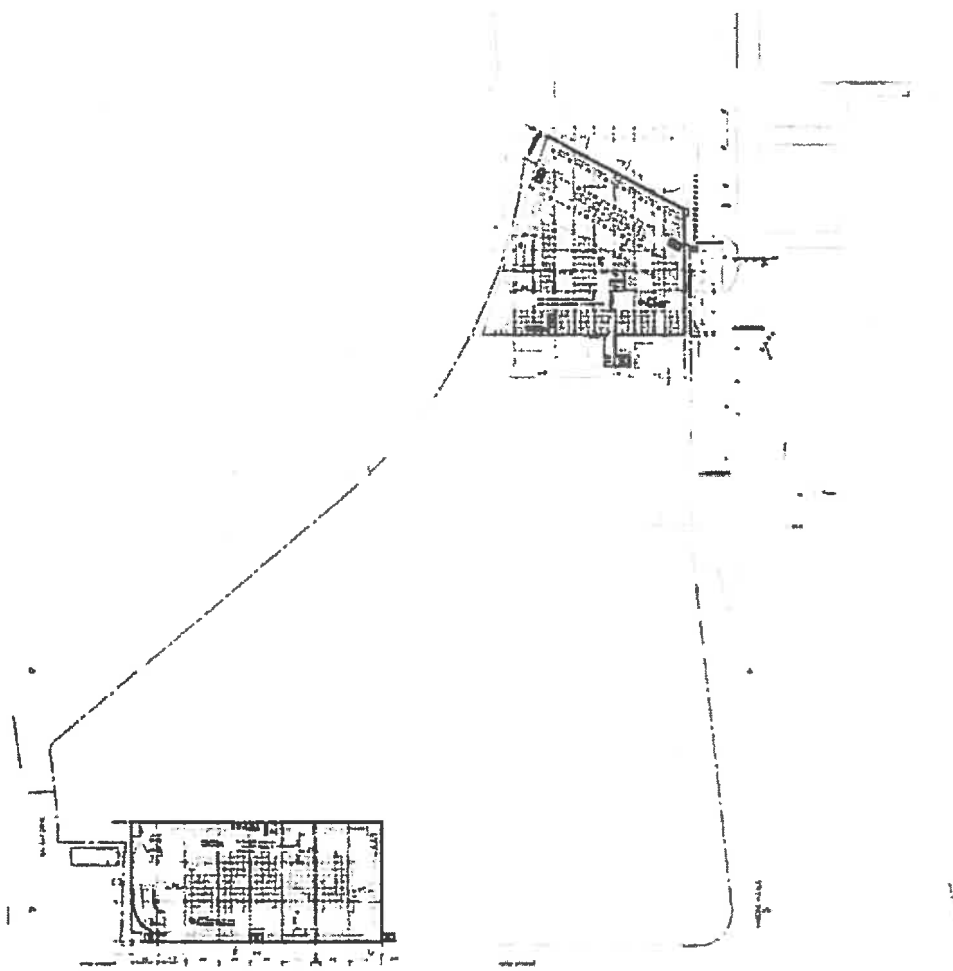
**(see following pages)**



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

**OBIEKT** ... **SKYLINE** ... **ELIMINACIJA**  
 ...  
 ...  
 ...

Bal Harbour, FL  
 July 20, 2017  
**ZYSCOV CH**



## Exhibit I - Major Site Plan

Approved by Bal Harbour Village Resolution No. 2017-1077

1. All construction shall be in accordance with the provisions of the Florida Building Code, Building Official's Edition, 2010 Edition, as amended, and the Florida Building Code, Building Official's Edition, 2010 Edition, as amended, and the Florida Building Code, Building Official's Edition, 2010 Edition, as amended.

Bal Harbour, FL

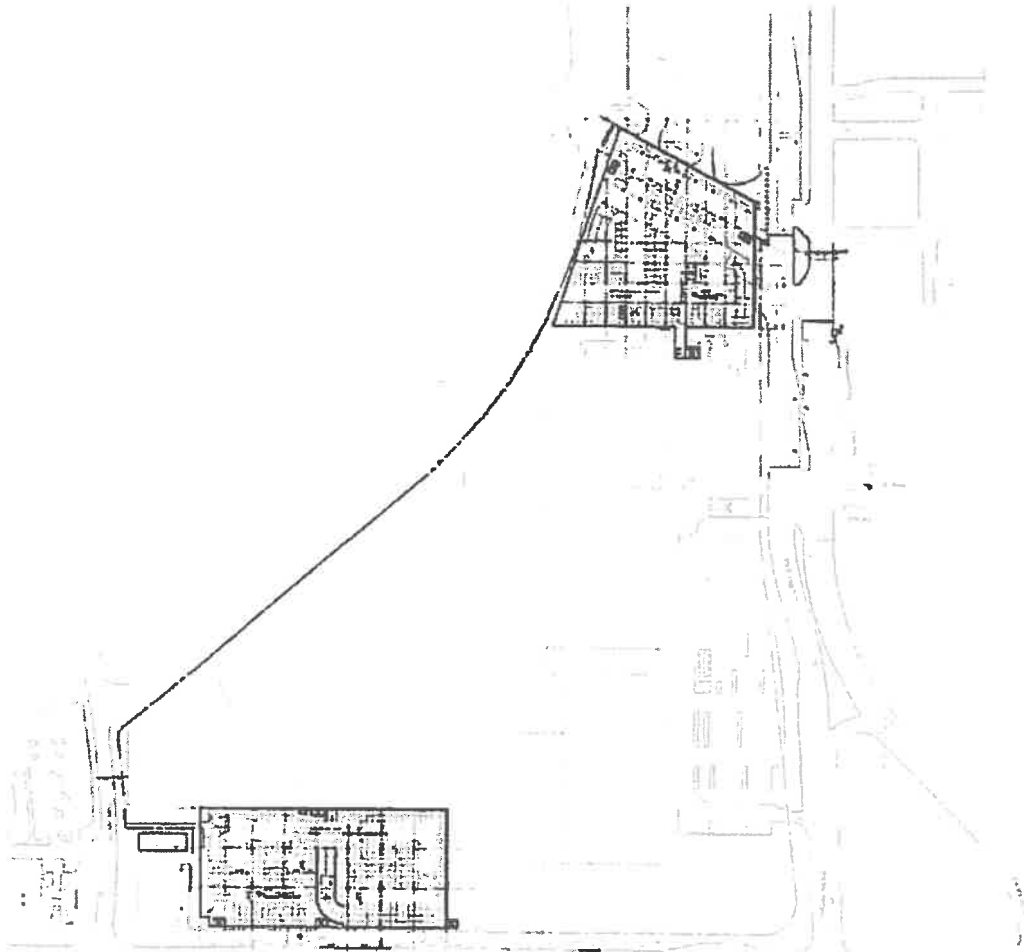
July 20, 2017

**ZYSCOVICH**  
 ARCHITECTS

11000 Biscayne Blvd.  
 Suite 1000  
 Miami, FL 33151  
 305.555.1100

11000 Biscayne Blvd.  
 Suite 1000  
 Miami, FL 33151  
 305.555.1100





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

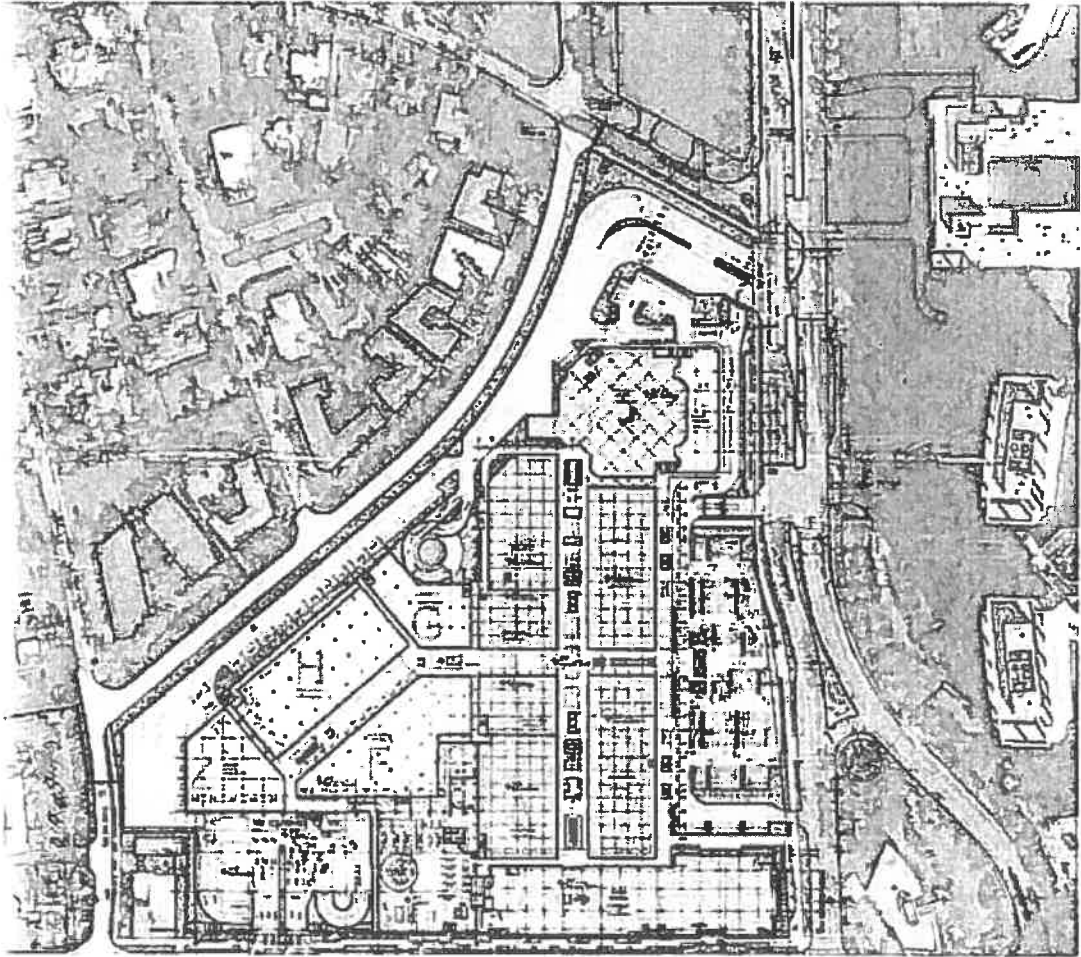
**EXHIBIT I**  
Major Site Plan  
for the proposed development of the  
Bal Harbour Village Center  
located at the intersection of  
Bal Harbour Boulevard and  
Bal Harbour Drive  
in Bal Harbour, Florida  
as shown on the attached site plan  
and approved by the Board of  
Bal Harbour Village on July 20, 2017.

**BAL HARBOUR VILLAGE**

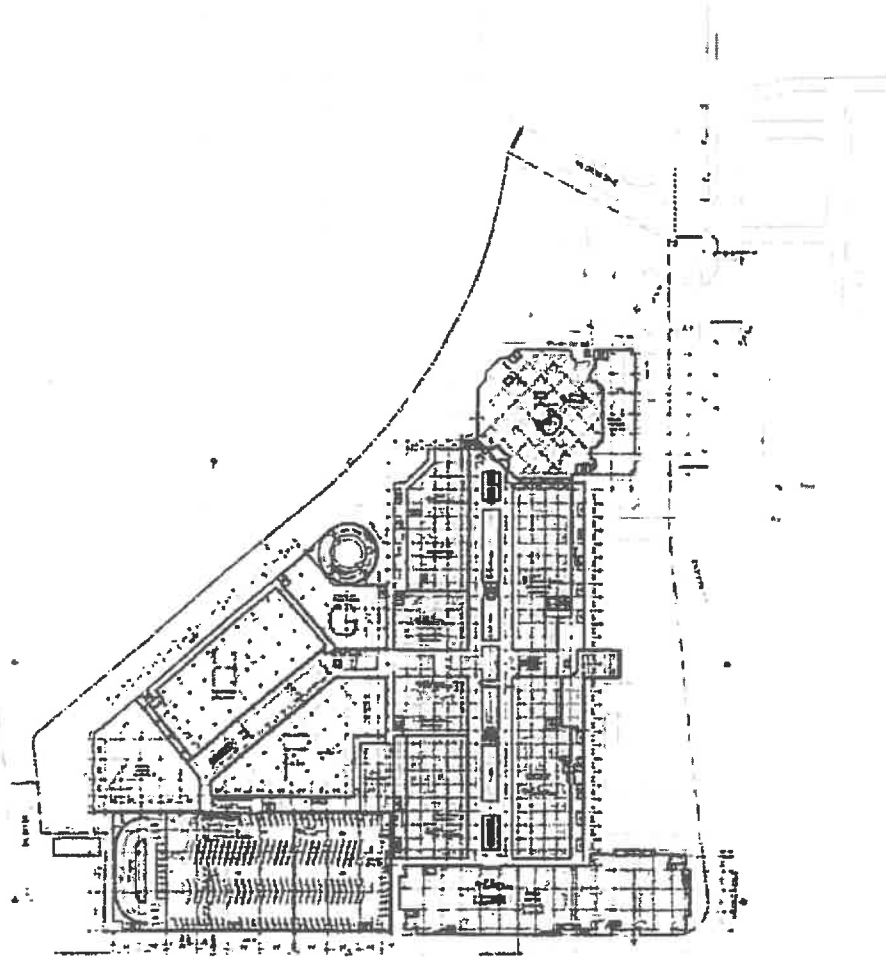
Bal Harbour, FL

July 20, 2017

**ZYSCOVICH**  
ARCHITECTS  
P.A.



**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**

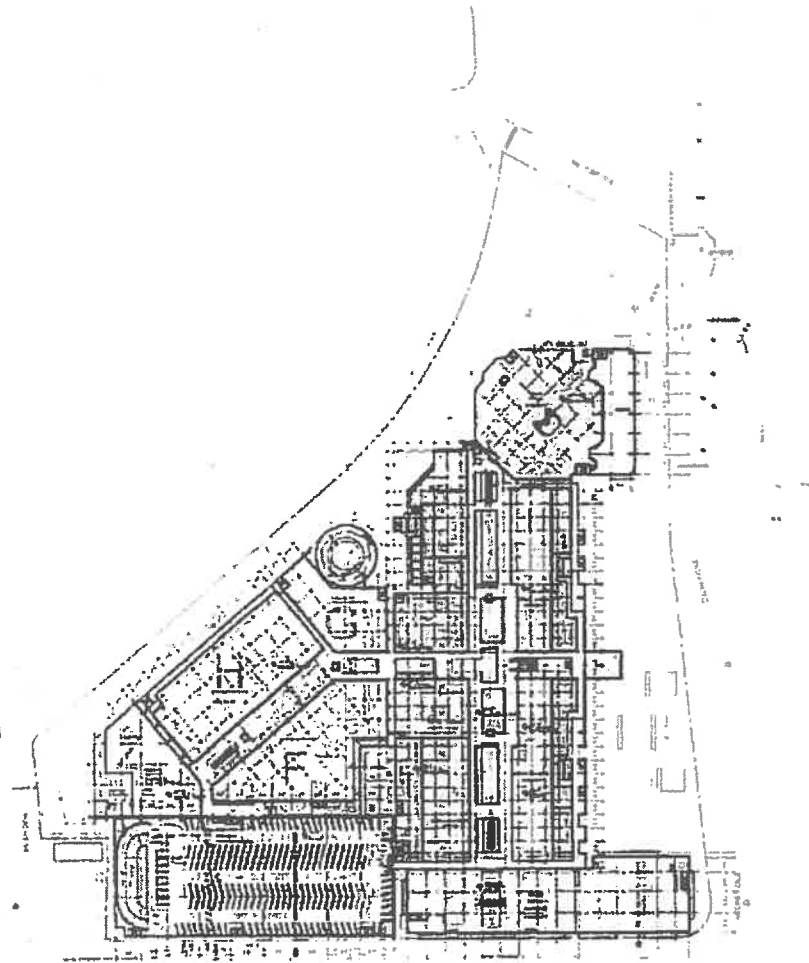
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**Bal Harbour Shops**

Bal Harbour, FL

July 30, 2017

**ZYSCOVICH**



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

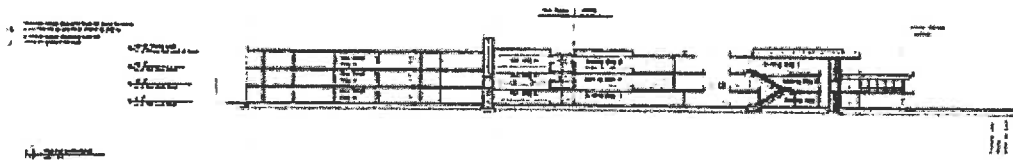
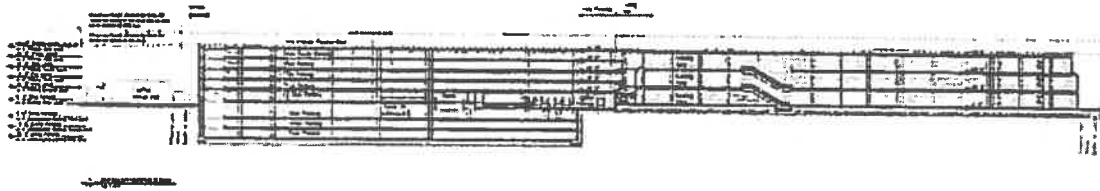
**Architectural Site Plan**  
Zyscovich Architects, Inc. 10000 Collins Avenue, Suite 100, Bal Harbour, FL 33154  
Project No. 17-001  
Date: July 20, 2017

Bal Harbour, FL

July 20, 2017

**ZYSCOVICH** ARCHITECTS, INC.





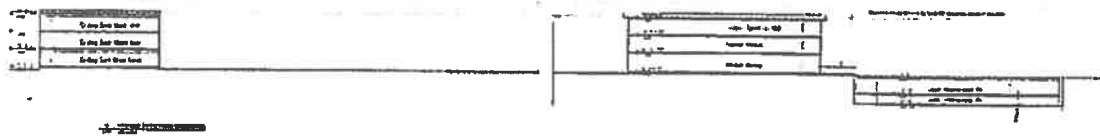
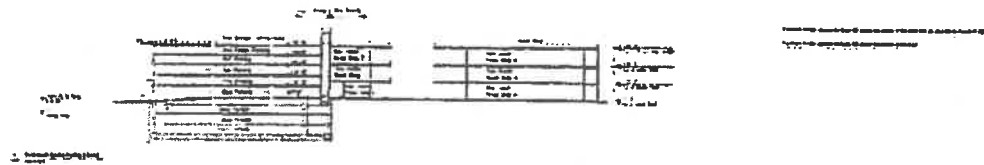
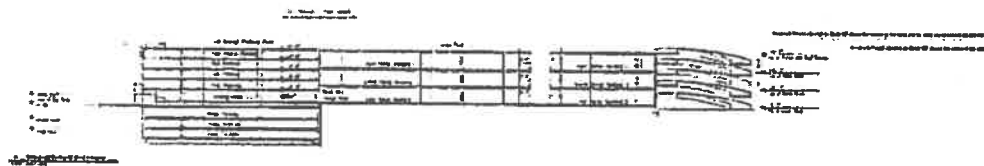
**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**





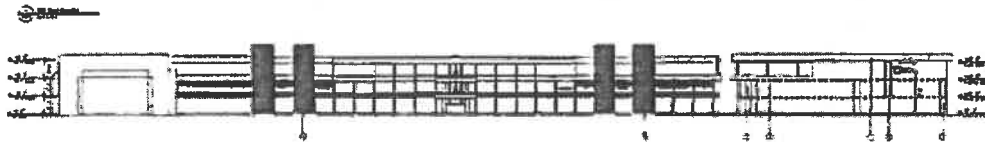
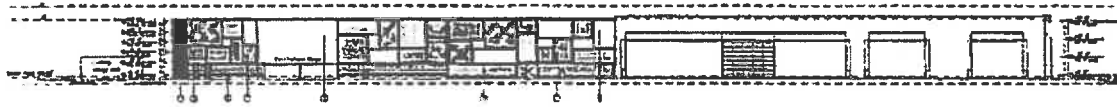






**Exhibit I - Major Site Plan**  
**Approved by Bal Harbour Village Resolution No. 2017-1077**


 Bal Harbour, FL July 20, 2017  
**ZYSCOVICH**



KEY	
1	1st Floor
2	2nd Floor
3	3rd Floor
4	4th Floor
5	5th Floor
6	6th Floor
7	7th Floor
8	8th Floor
9	9th Floor
10	10th Floor
11	11th Floor
12	12th Floor
13	13th Floor
14	14th Floor
15	15th Floor
16	16th Floor
17	17th Floor
18	18th Floor
19	19th Floor
20	20th Floor
21	21st Floor
22	22nd Floor
23	23rd Floor
24	24th Floor
25	25th Floor
26	26th Floor
27	27th Floor
28	28th Floor
29	29th Floor
30	30th Floor
31	31st Floor
32	32nd Floor
33	33rd Floor
34	34th Floor
35	35th Floor
36	36th Floor
37	37th Floor
38	38th Floor
39	39th Floor
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41	41st Floor
42	42nd Floor
43	43rd Floor
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62	62nd Floor
63	63rd Floor
64	64th Floor
65	65th Floor
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68	68th Floor
69	69th Floor
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72	72nd Floor
73	73rd Floor
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77	77th Floor
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81	81st Floor
82	82nd Floor
83	83rd Floor
84	84th Floor
85	85th Floor
86	86th Floor
87	87th Floor
88	88th Floor
89	89th Floor
90	90th Floor
91	91st Floor
92	92nd Floor
93	93rd Floor
94	94th Floor
95	95th Floor
96	96th Floor
97	97th Floor
98	98th Floor
99	99th Floor
100	100th Floor

## Exhibit I - Major Site Plan

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

Architectural Site Plan for the proposed development at Bal Harbour, Florida

Bal Harbour, FL

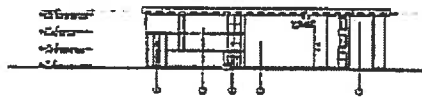
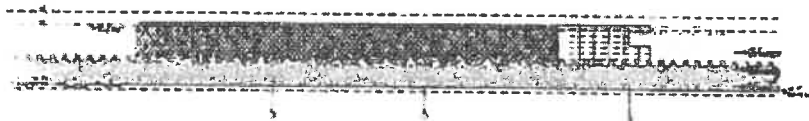
July 20, 2017

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BAL HARBOUR, FL 33154  
TEL: 305.944.1100  
WWW.ZYSOVICH.COM

Professional Seal  
Zyscovich Architects, Inc.  
Architects  
No. 12500  
Bal Harbour, FL 33154





THE PLANES	
1	Roof
2	Second Floor
3	First Floor
4	Ground
5	Basement
6	Sub-basement
7	Underground

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





























Bal Harbour, FL

July 20, 2017

**ZYSCOVICH**  
ARCHITECTS

**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. 07-14978 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.**

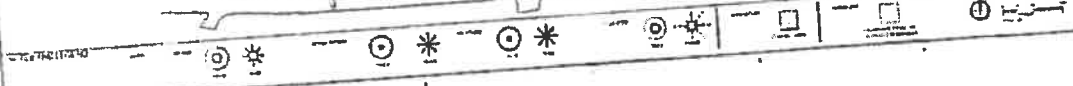
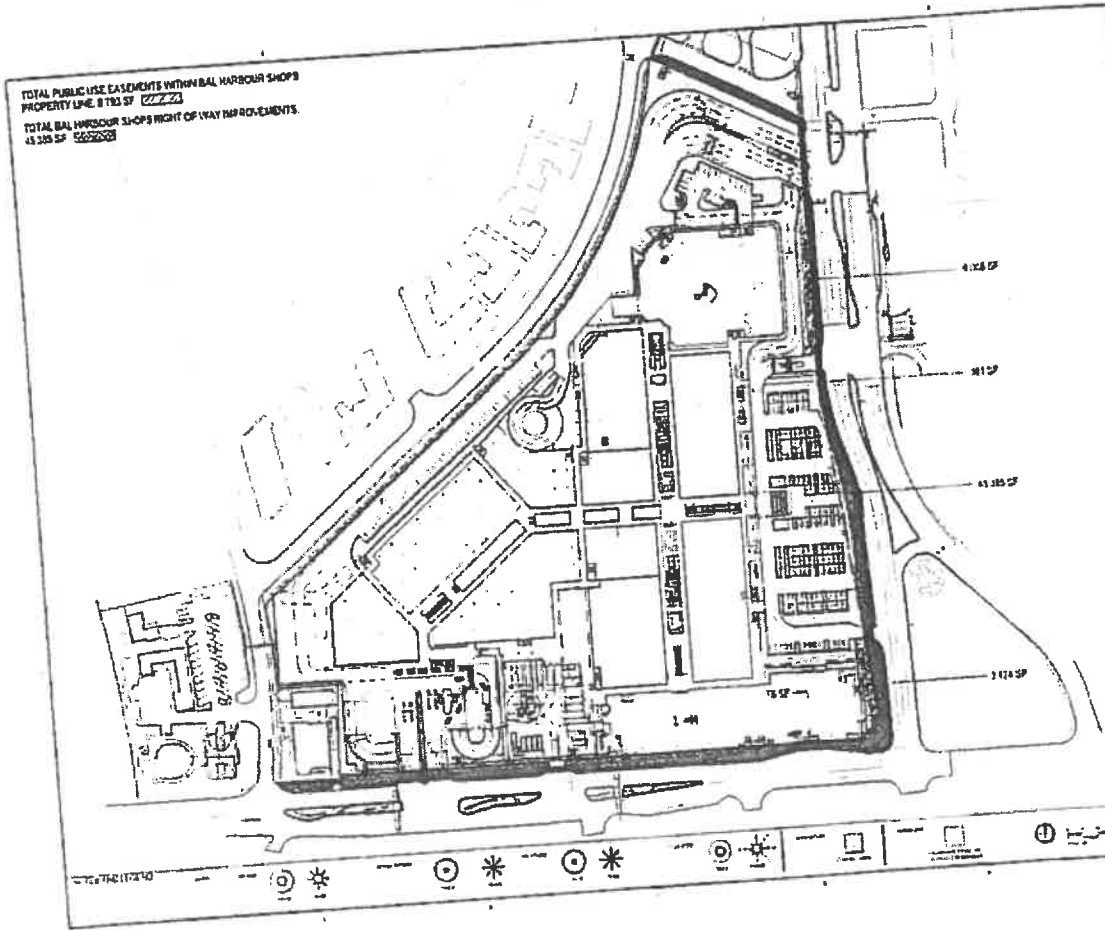
**All recording references to the Public Records of Miami-Dade County, Florida.**

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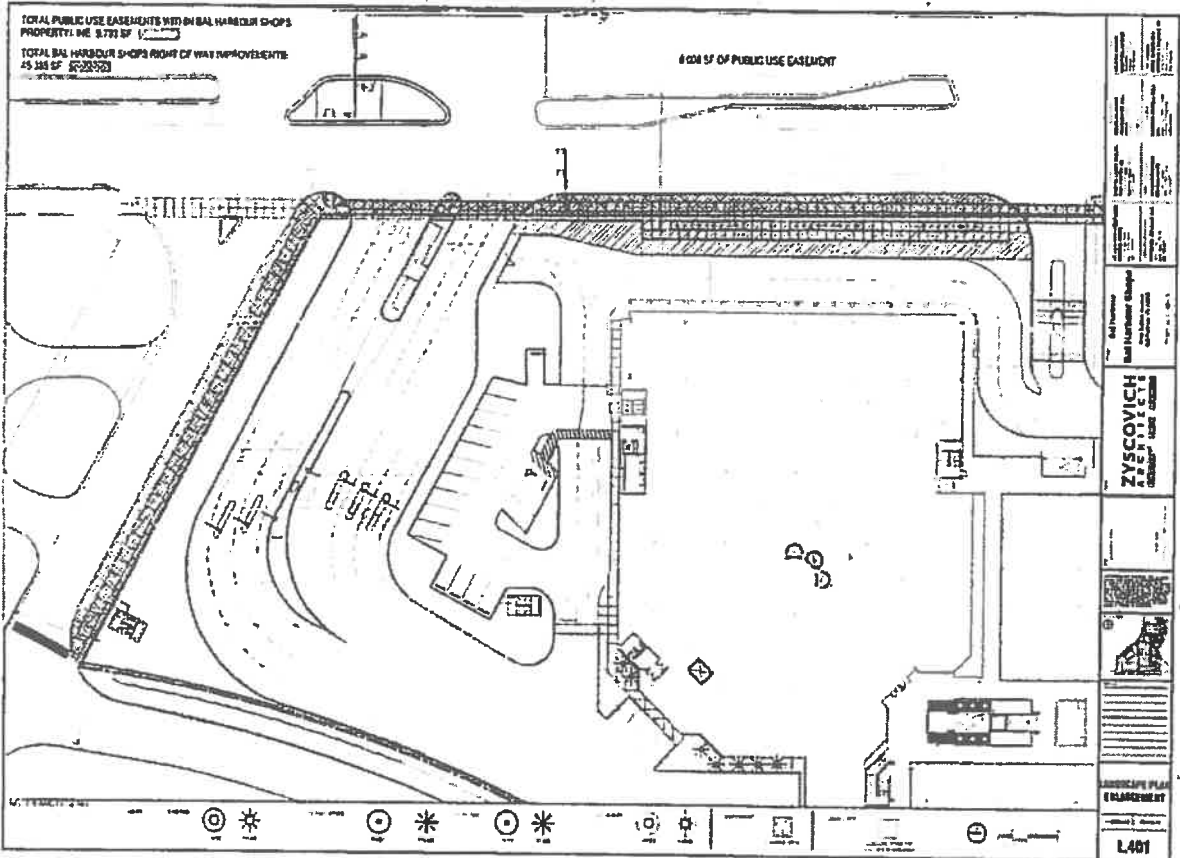
**Exhibit L**  
**Public Use Areas**  
**(see following pages)**

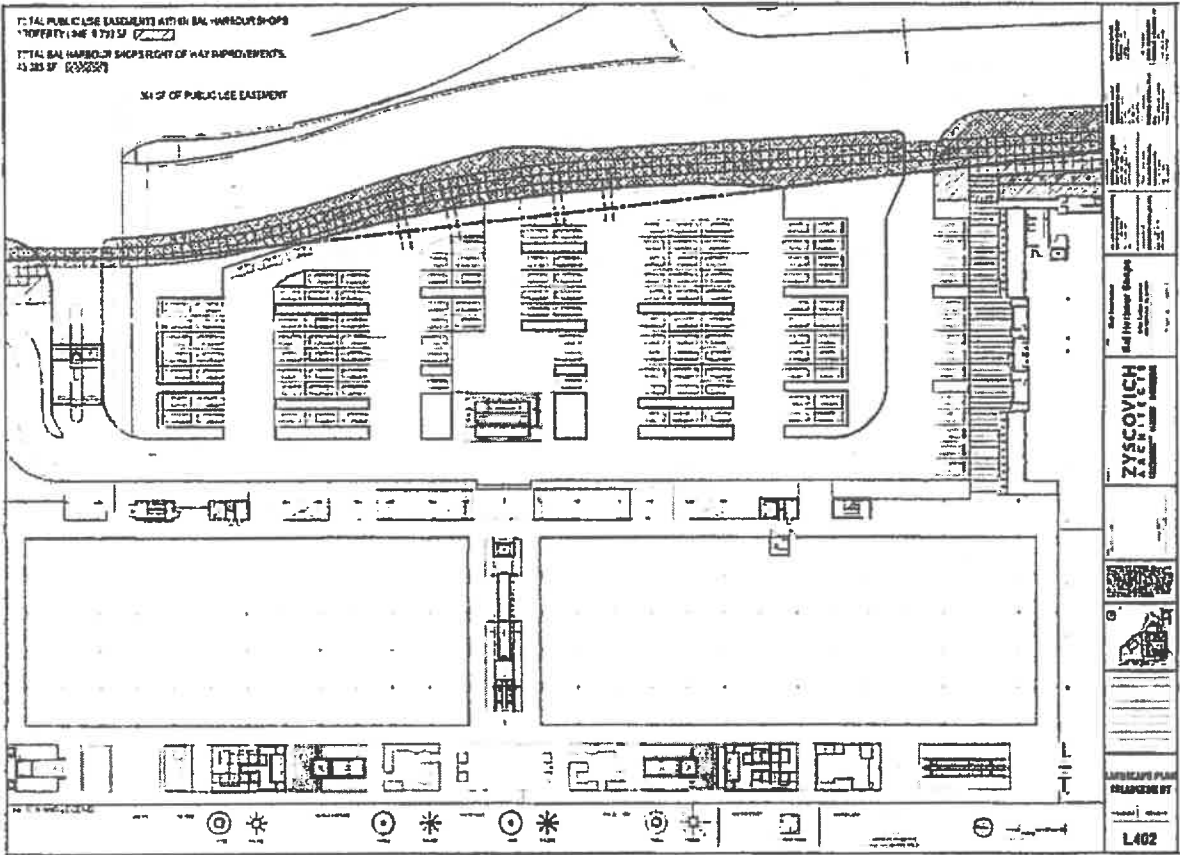
TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 8 793 SF

TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 43 320 SF



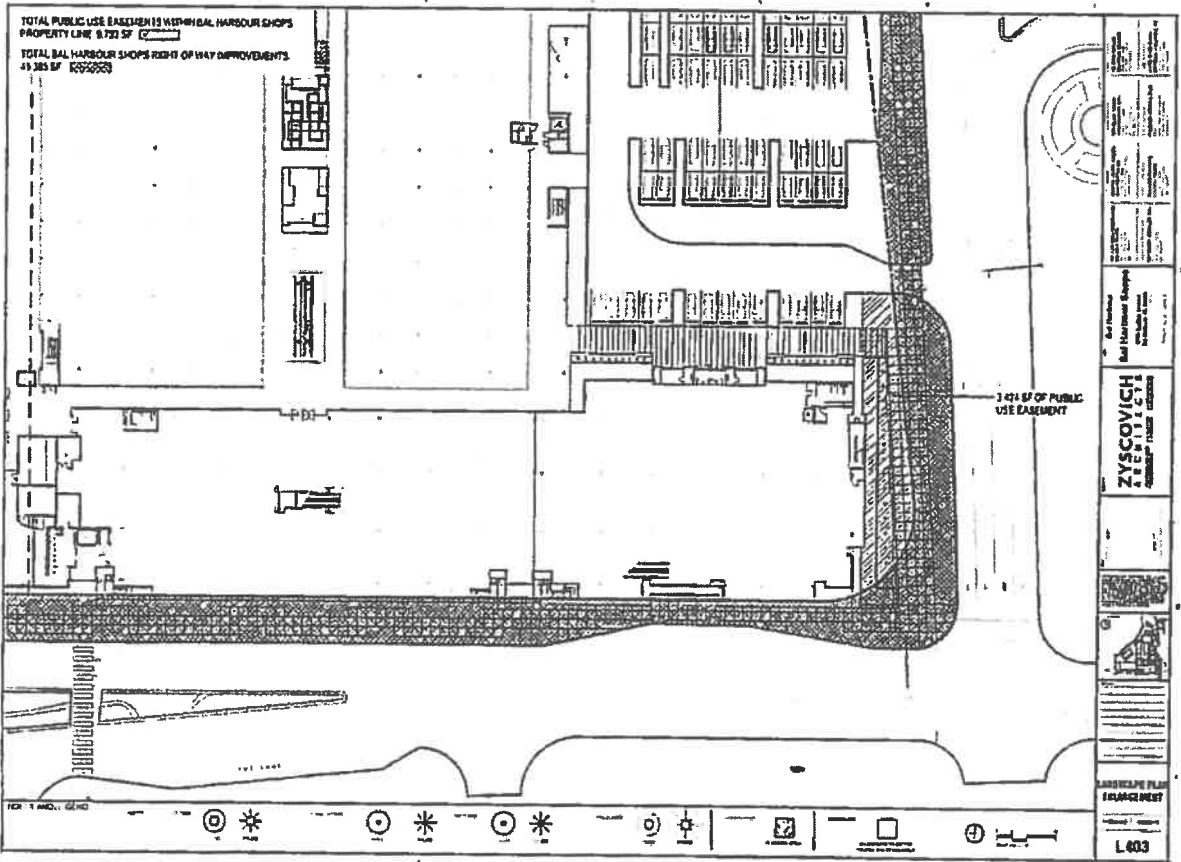
<p><b>ZYSKOVICH</b>          ZYSKOVICH &amp; ASSOCIATES          LANDSCAPE ARCHITECTS</p>	
<p>Project: BAL HARBOUR SHOPS          Date: 10.15.11</p>	<p>Scale: AS SHOWN</p>
<p>Client: BAL HARBOUR SHOPS</p>	<p>Site: BAL HARBOUR SHOPS</p>
<p>Sheet: L.408</p>	<p>Project No: 1117170</p>

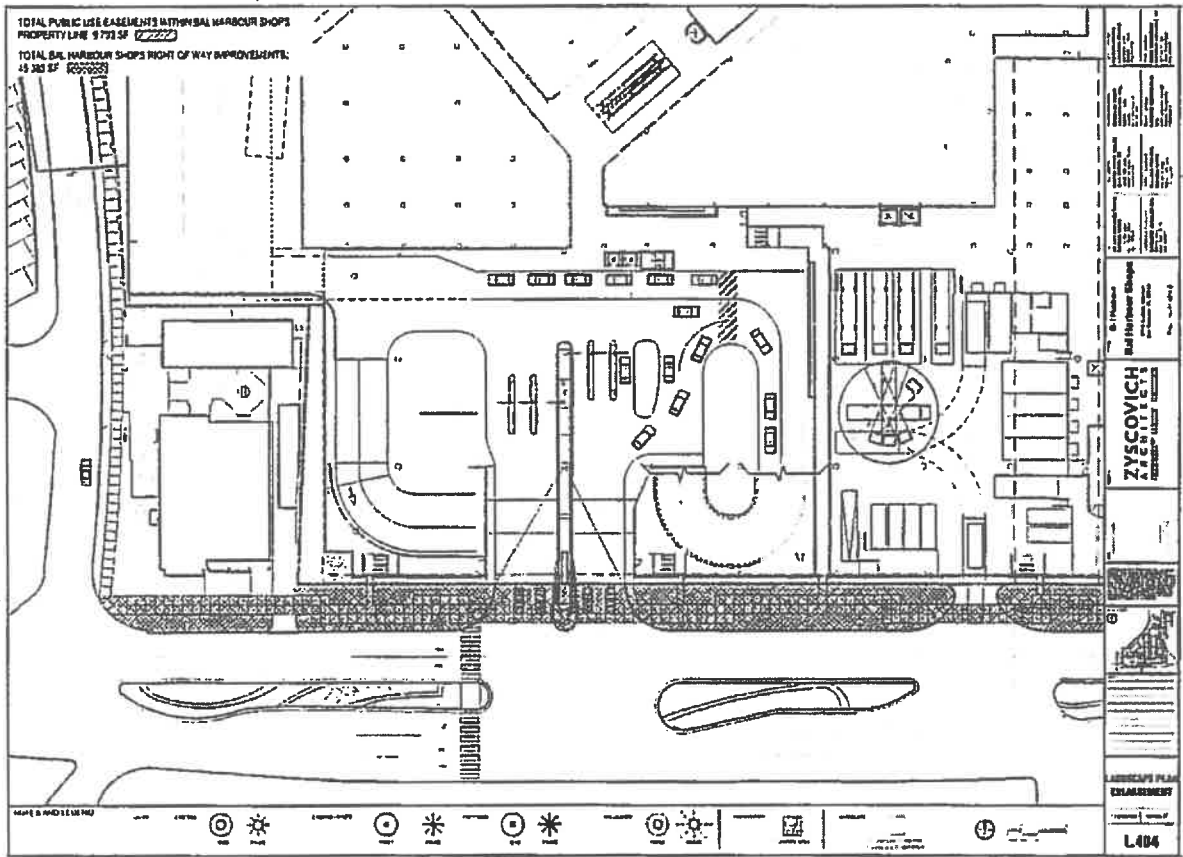




<p> <b>ZYSKOVICH</b>          ARCHITECTS          1000 ...          ...       </p>
<p>         LANDSCAPE PLAN          PREPARED BY          ...       </p>







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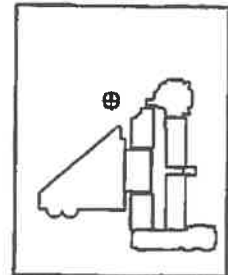
**Exhibit M**  
**Project Encroachments**  
**(see following pages)**

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# EXISTING ENCROACHMENTS

Encroachment Diagram 1

PROPERTY LINE      AREAS OF ENCROACHMENT      SURVEY



**1120-Bal Harbour Shops**

1"=30'

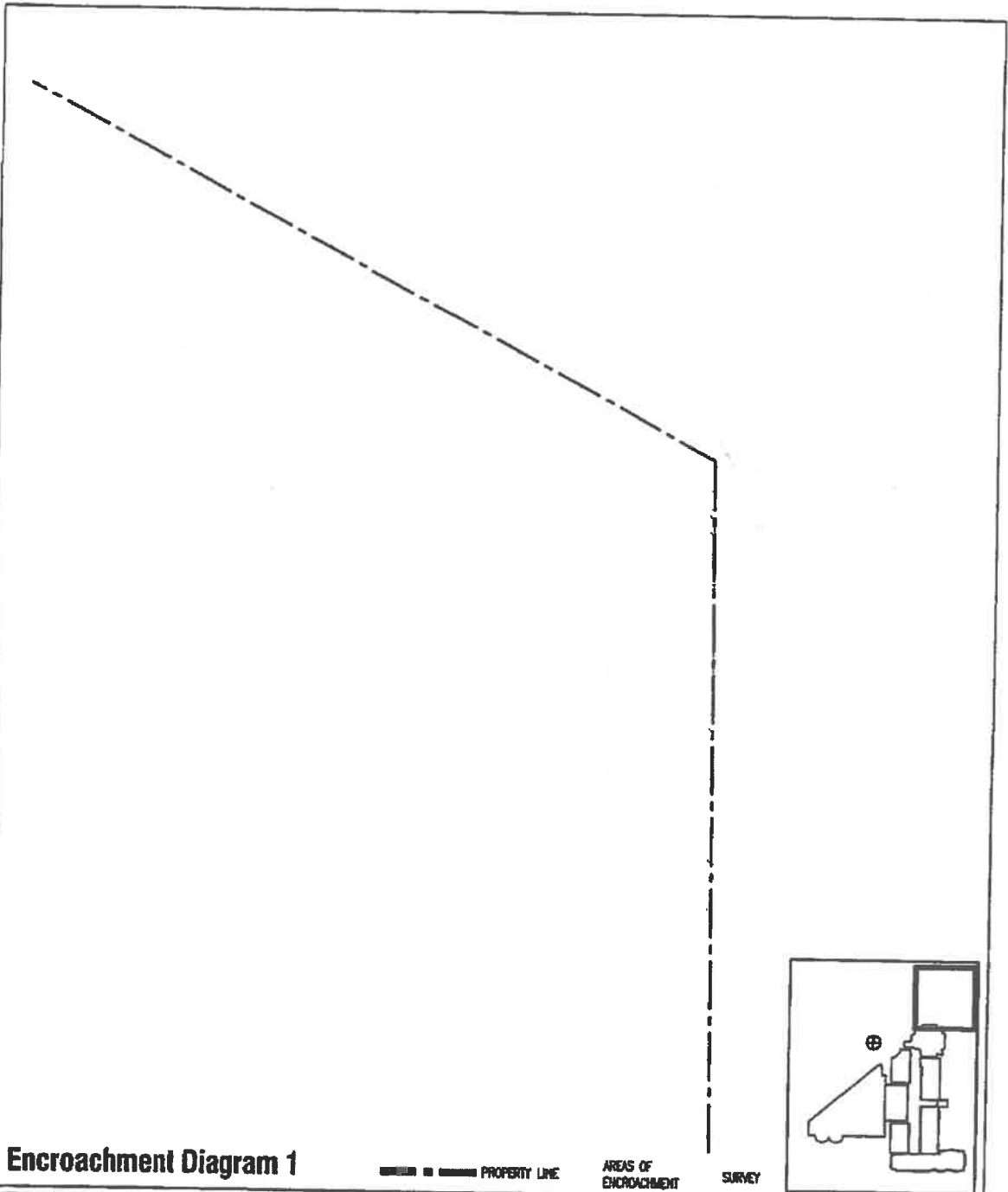
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**Encroachment Diagram 1**

**1120-Bal Harbour Shops**

1" = 30'

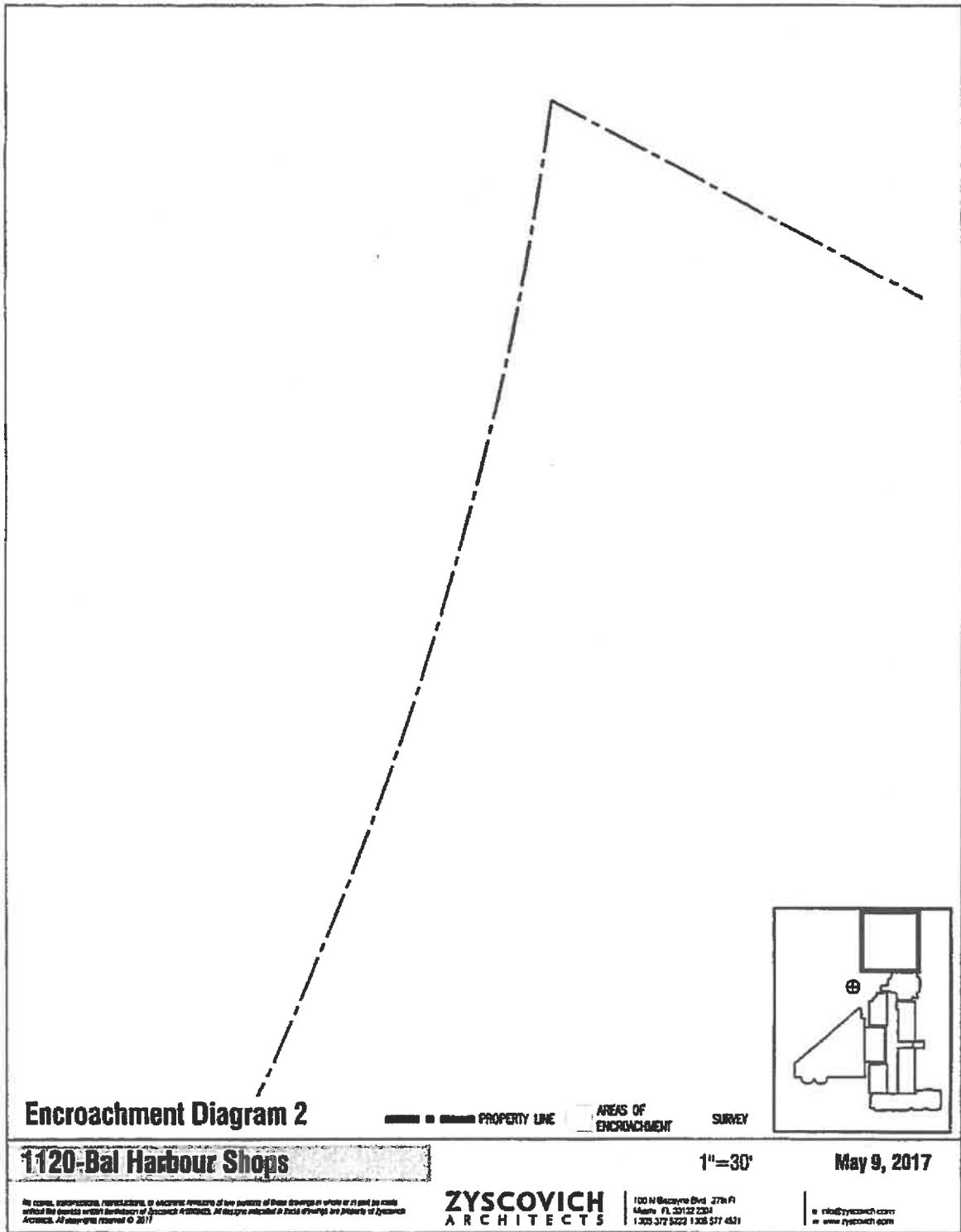
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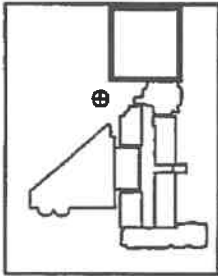
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**Encroachment Diagram 2**

PROPERTY LINE    
  AREAS OF ENCROACHMENT    
 SURVEY



**1120-Bal Harbour Shops**

1"=30'

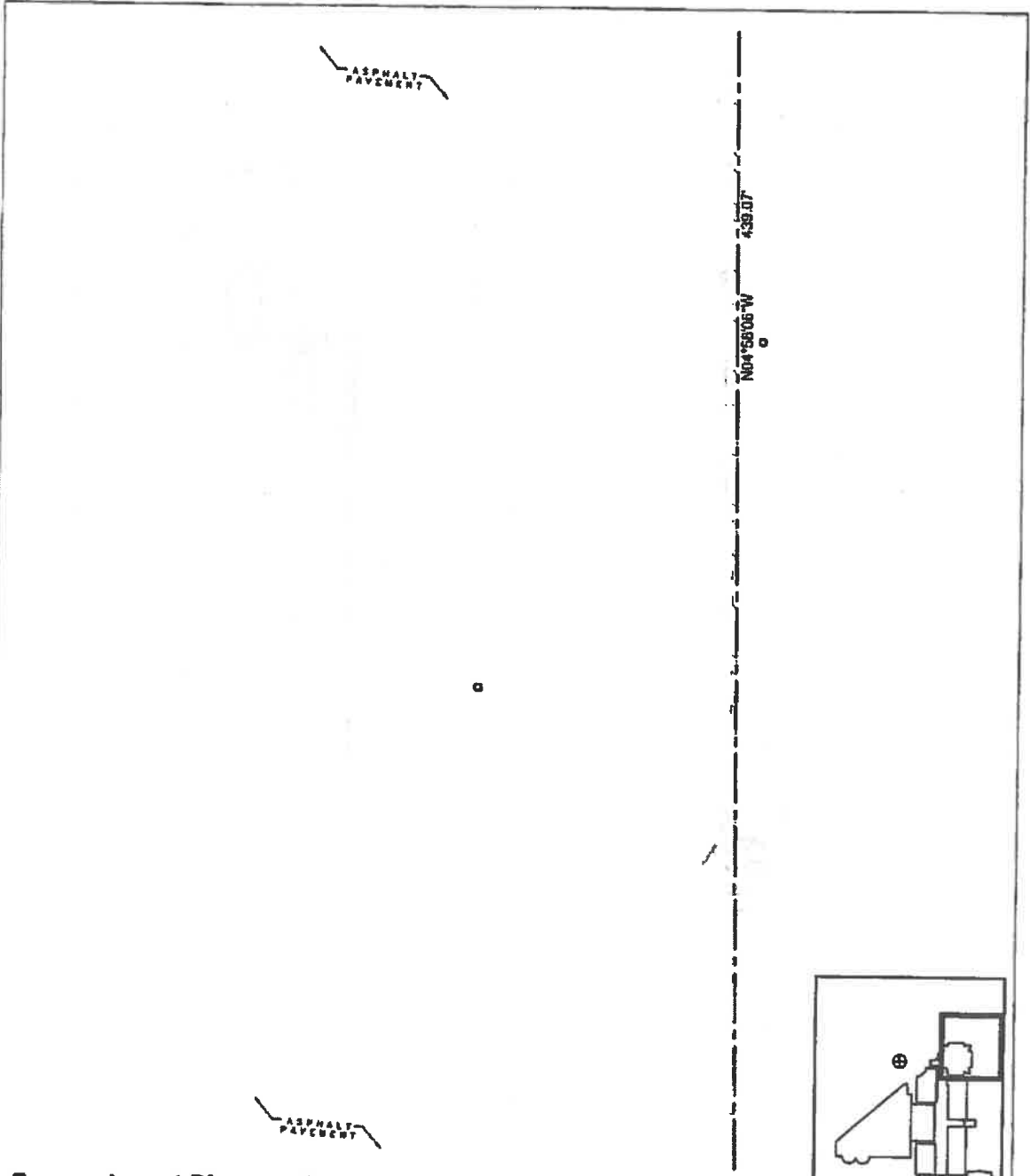
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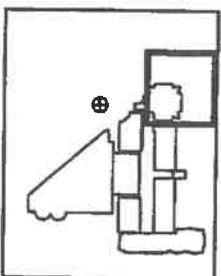
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**Encroachment Diagram 3**

— — — — — PROPERTY LINE      AREAS OF ENCROACHMENT      SURVEY



**1120-Bal Harbour Shops**

1"=30'

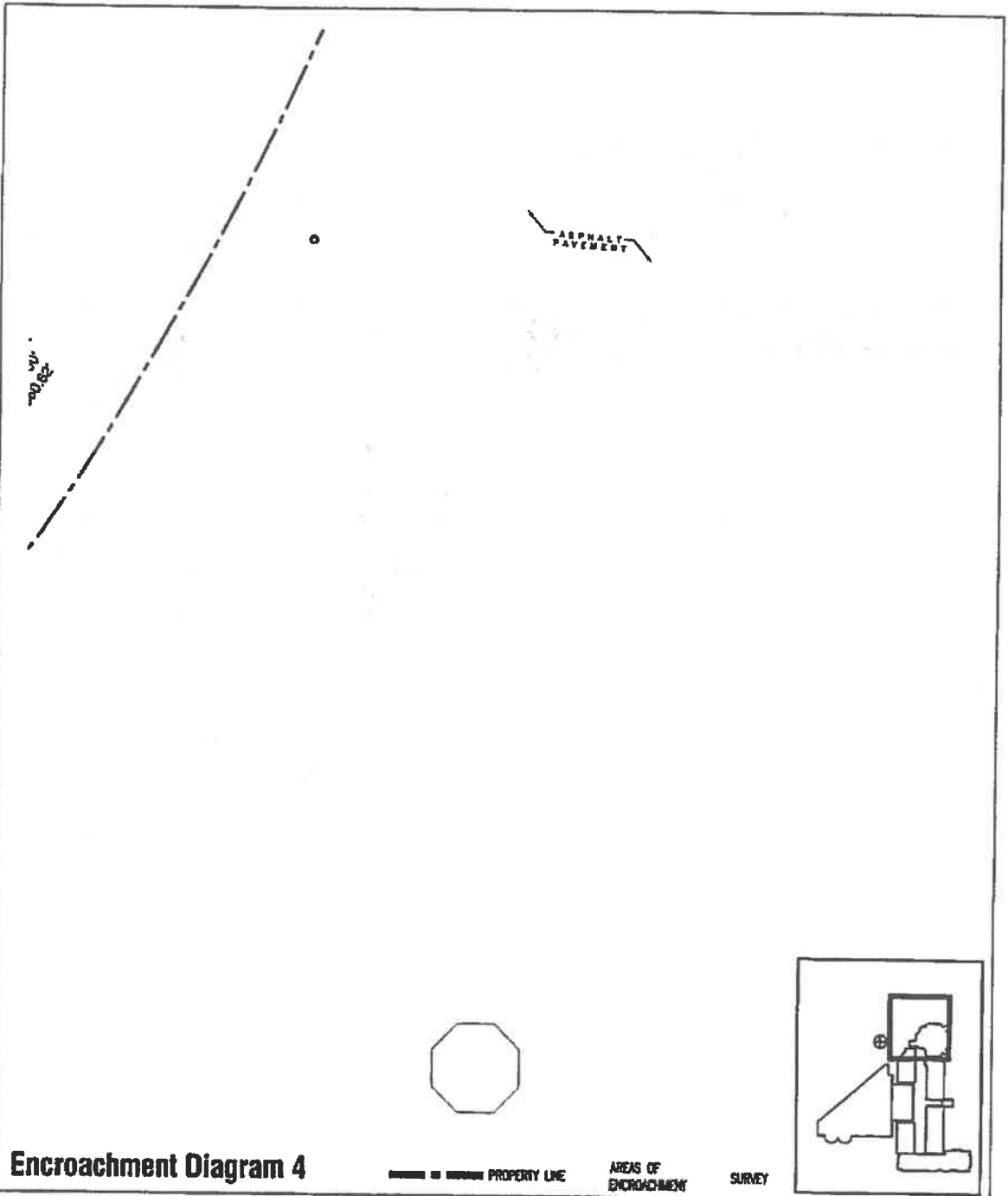
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**Encroachment Diagram 4**

**1120-Bal Harbour Shops**

1"=30'

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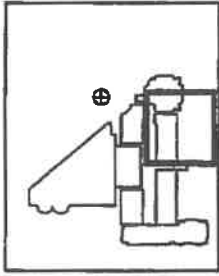
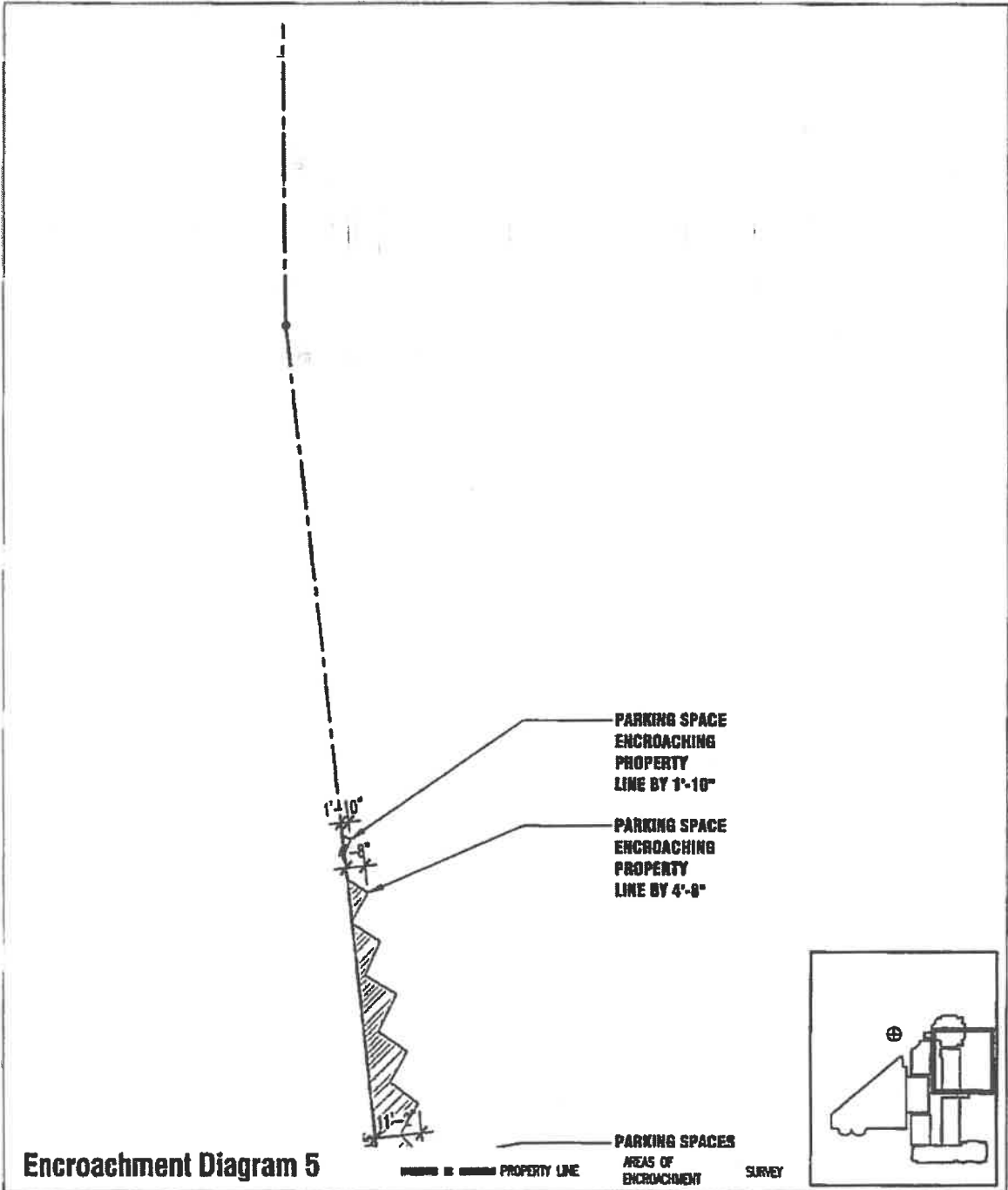
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**Encroachment Diagram 5**

**1120-Bal Harbour Shops**

1"=30'

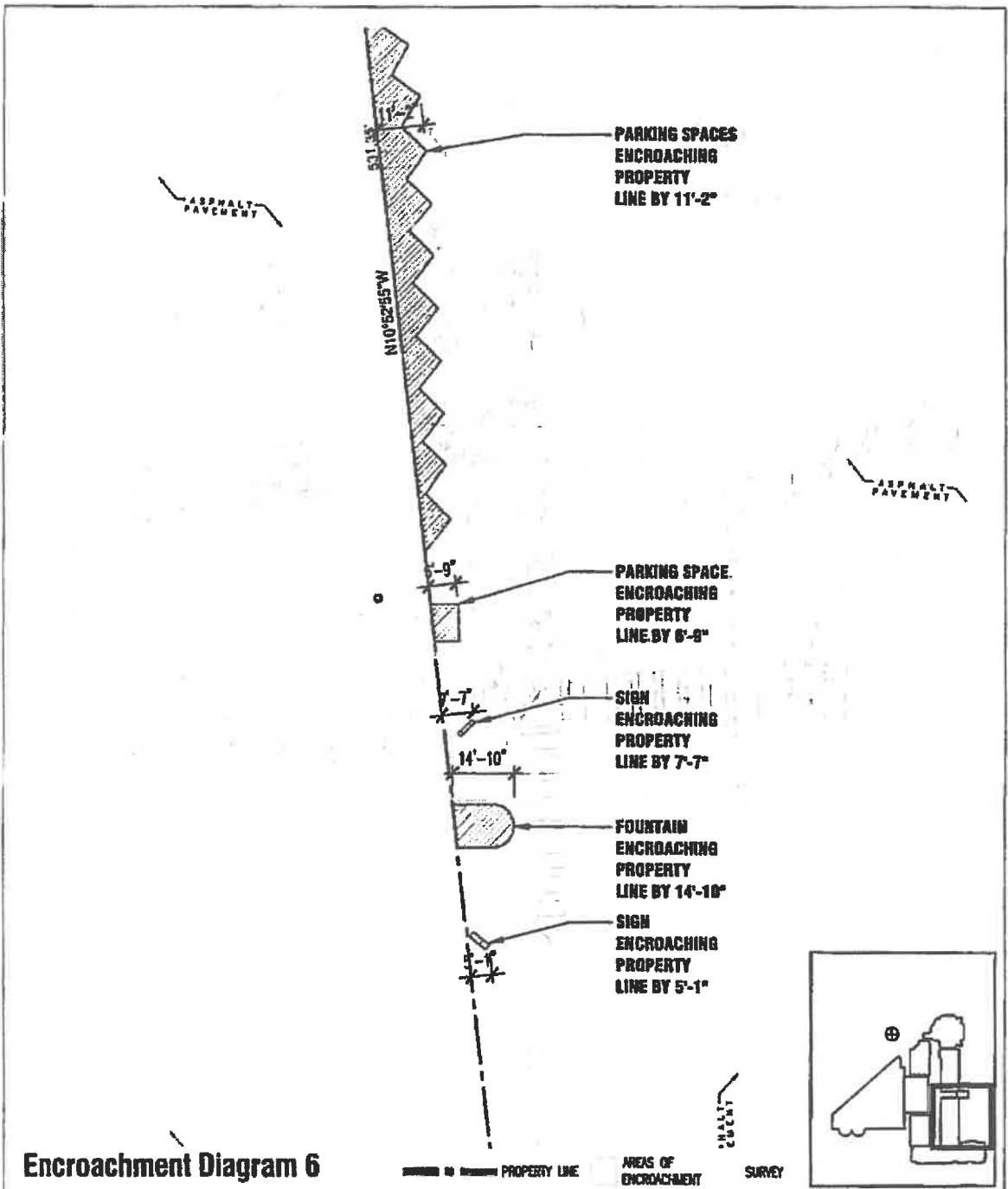
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Encroachment Diagram 6

1120-Bal Harbour Shops

1"=30'

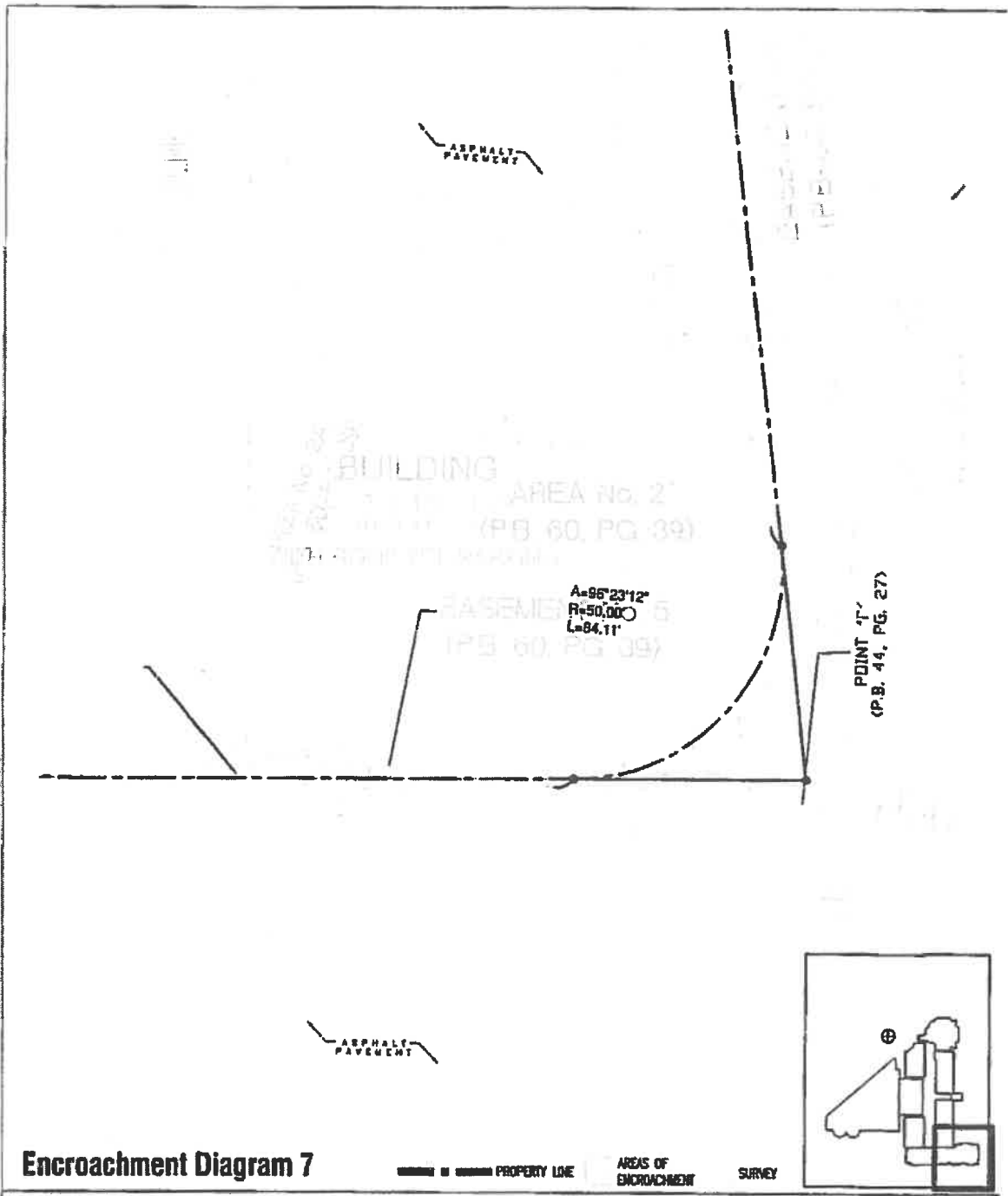
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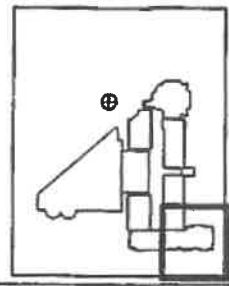
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**Encroachment Diagram 7**

PROPERTY LINE    AREAS OF ENCROACHMENT    SURVEY



**1120-Bal Harbour Shops**

1"=30'

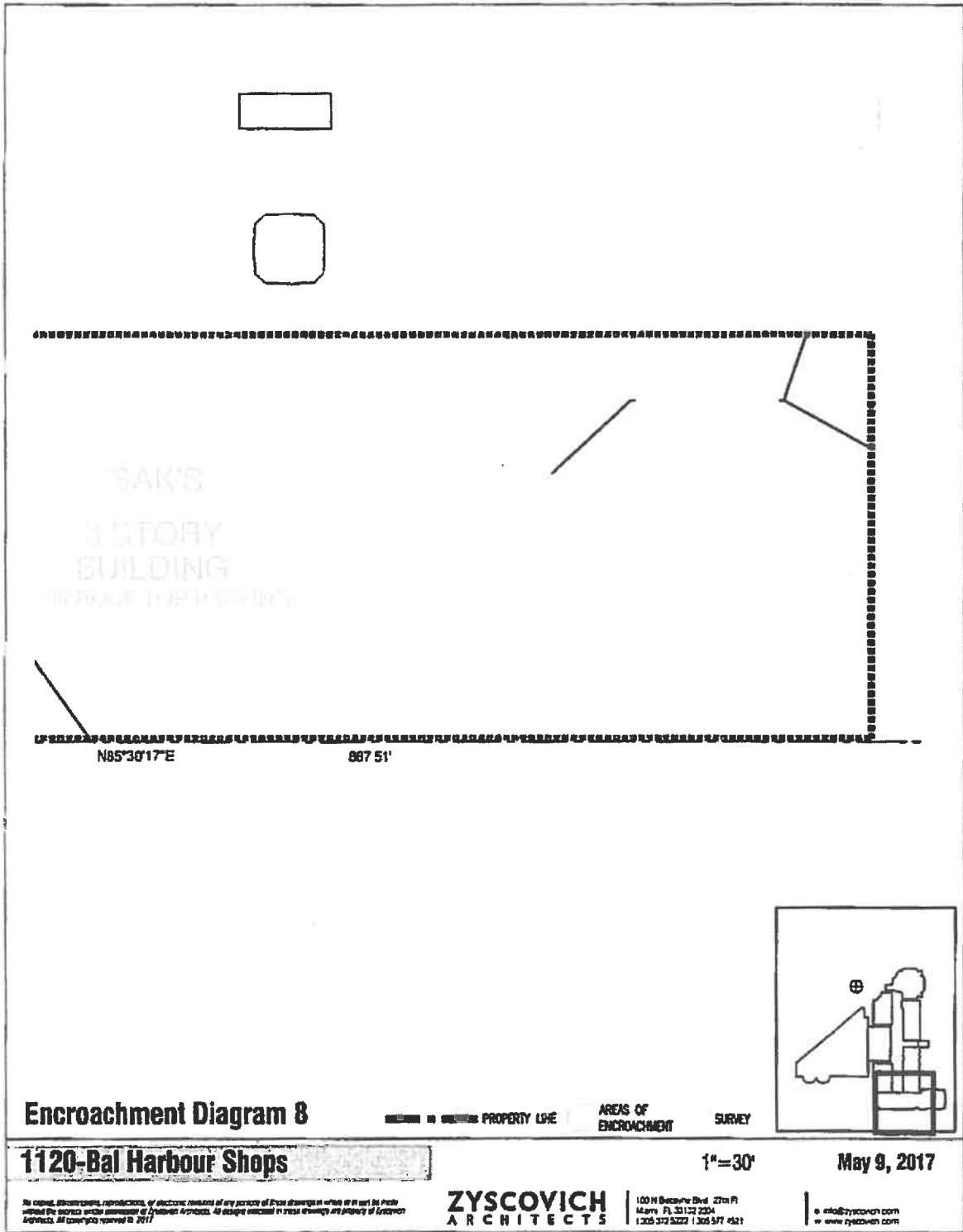
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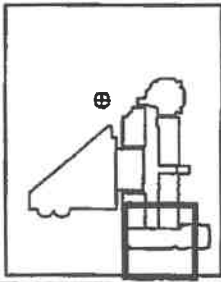
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**Encroachment Diagram 8**

SURVEY PROPERTY LINE    
  AREAS OF ENCROACHMENT    
 SURVEY



**1120-Bal Harbour Shops**

1"=30'

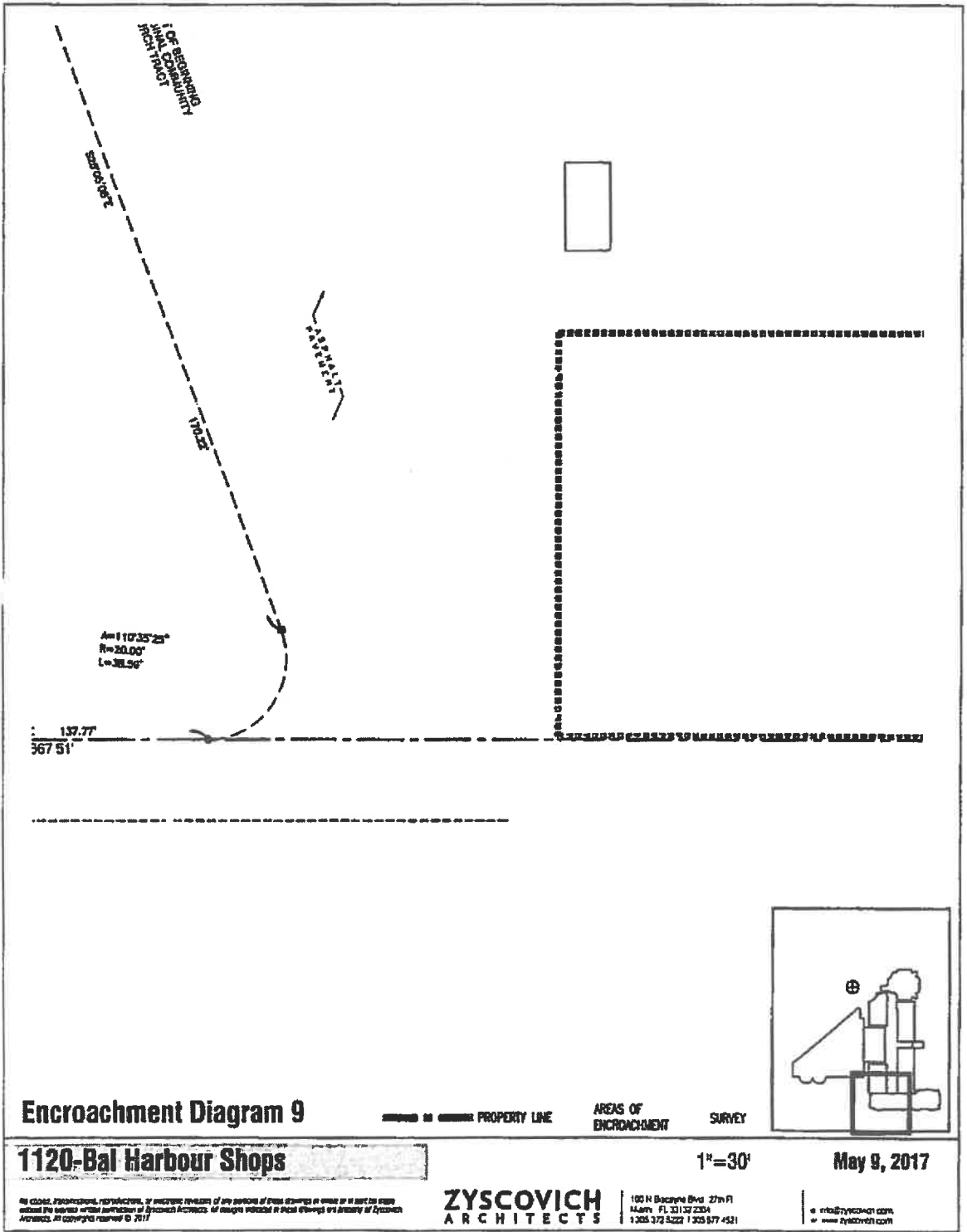
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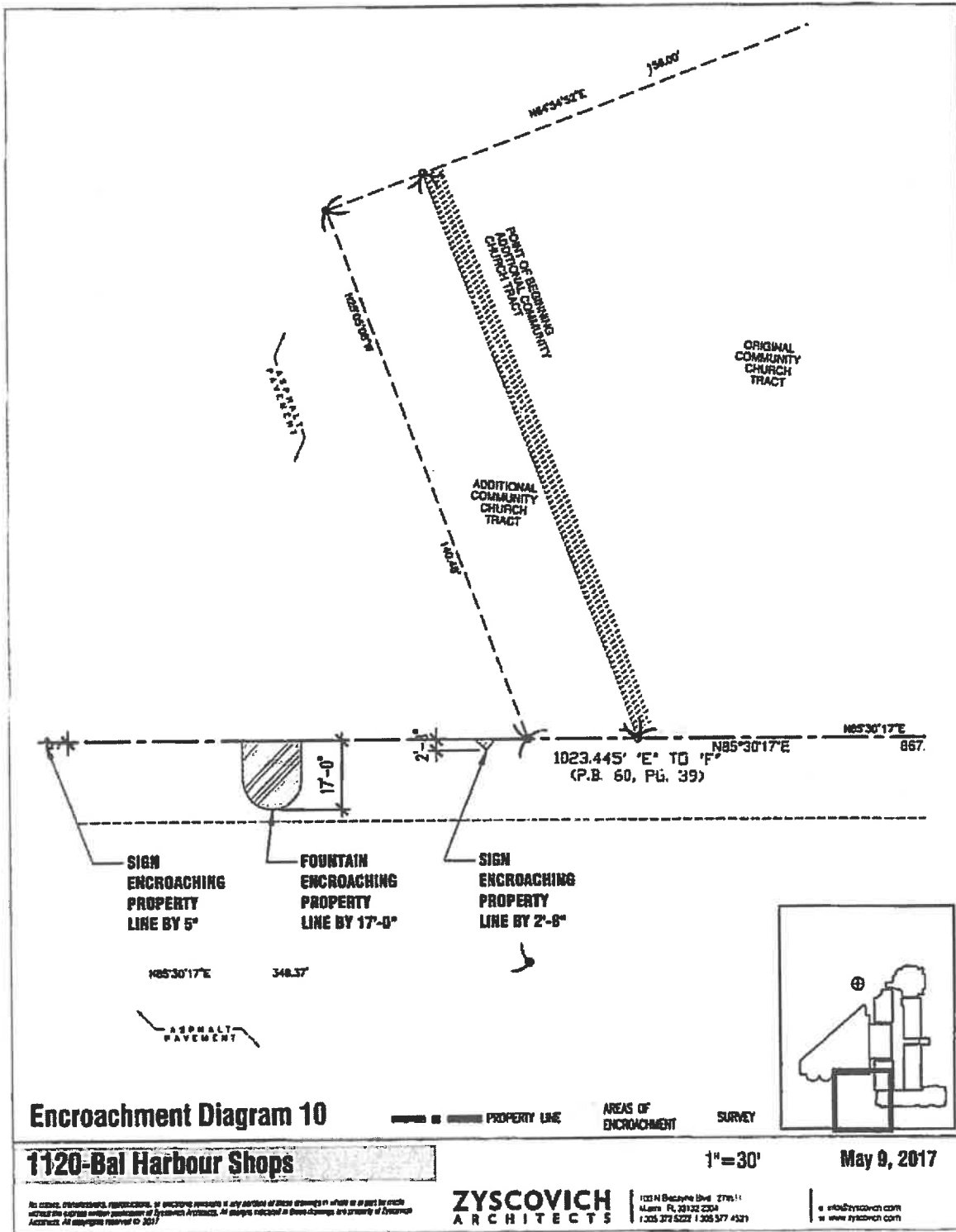
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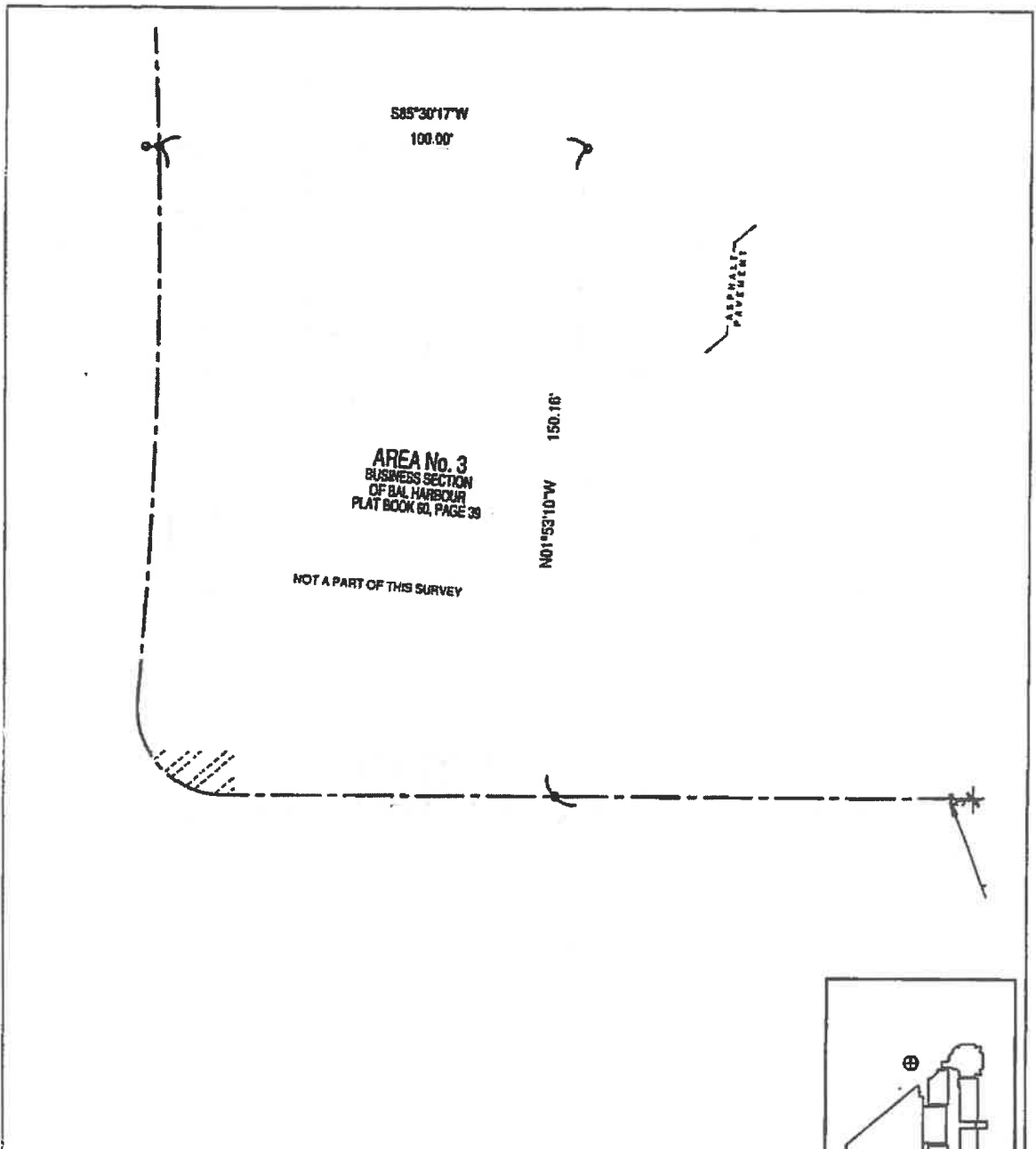
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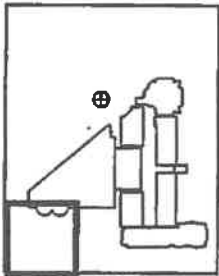






**Encroachment Diagram 11**

PROPERTY LINE     
  AREAS OF ENCROACHMENT     
 SURVEY



**1120-Bal Harbour Shops**

1"=30'

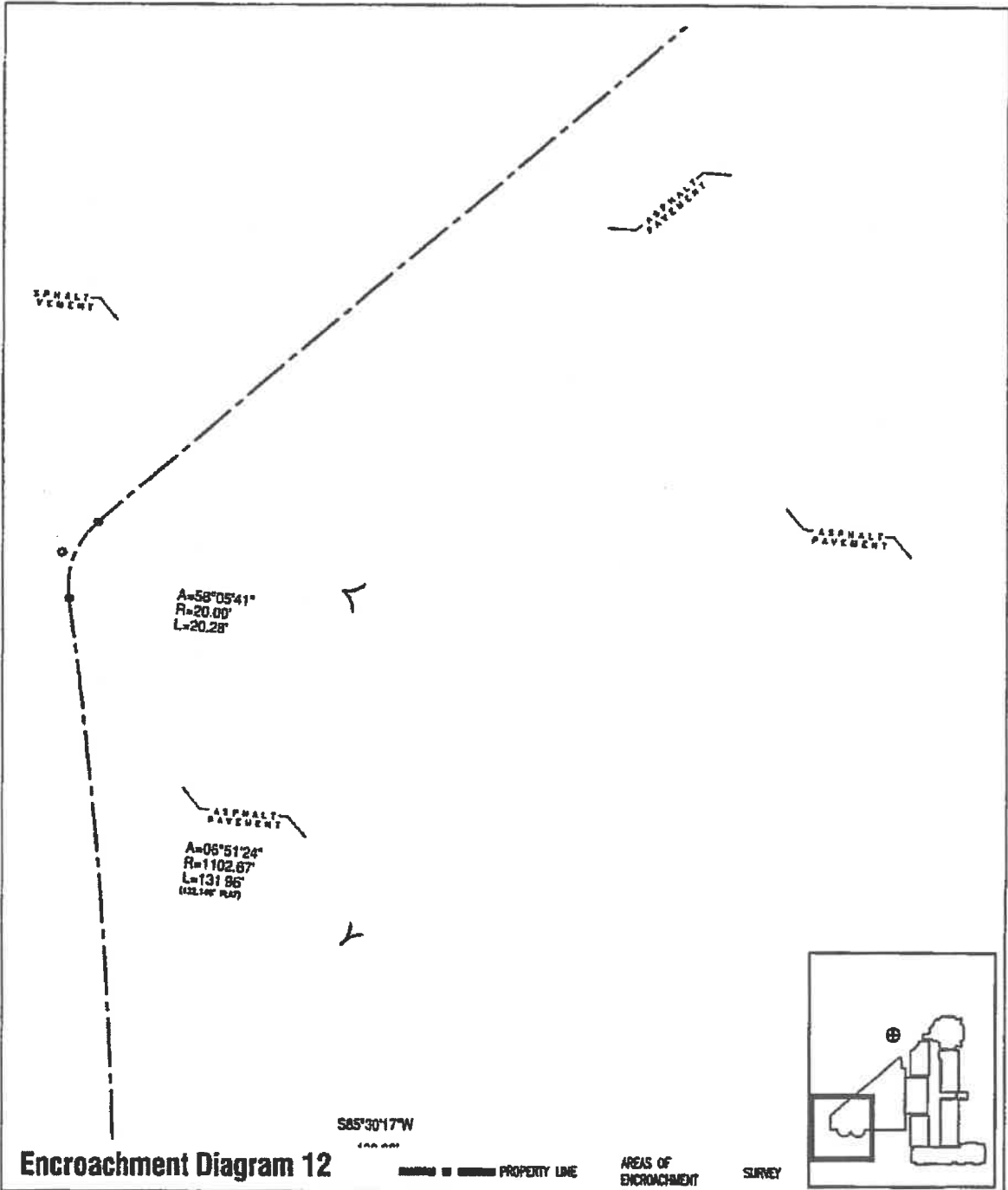
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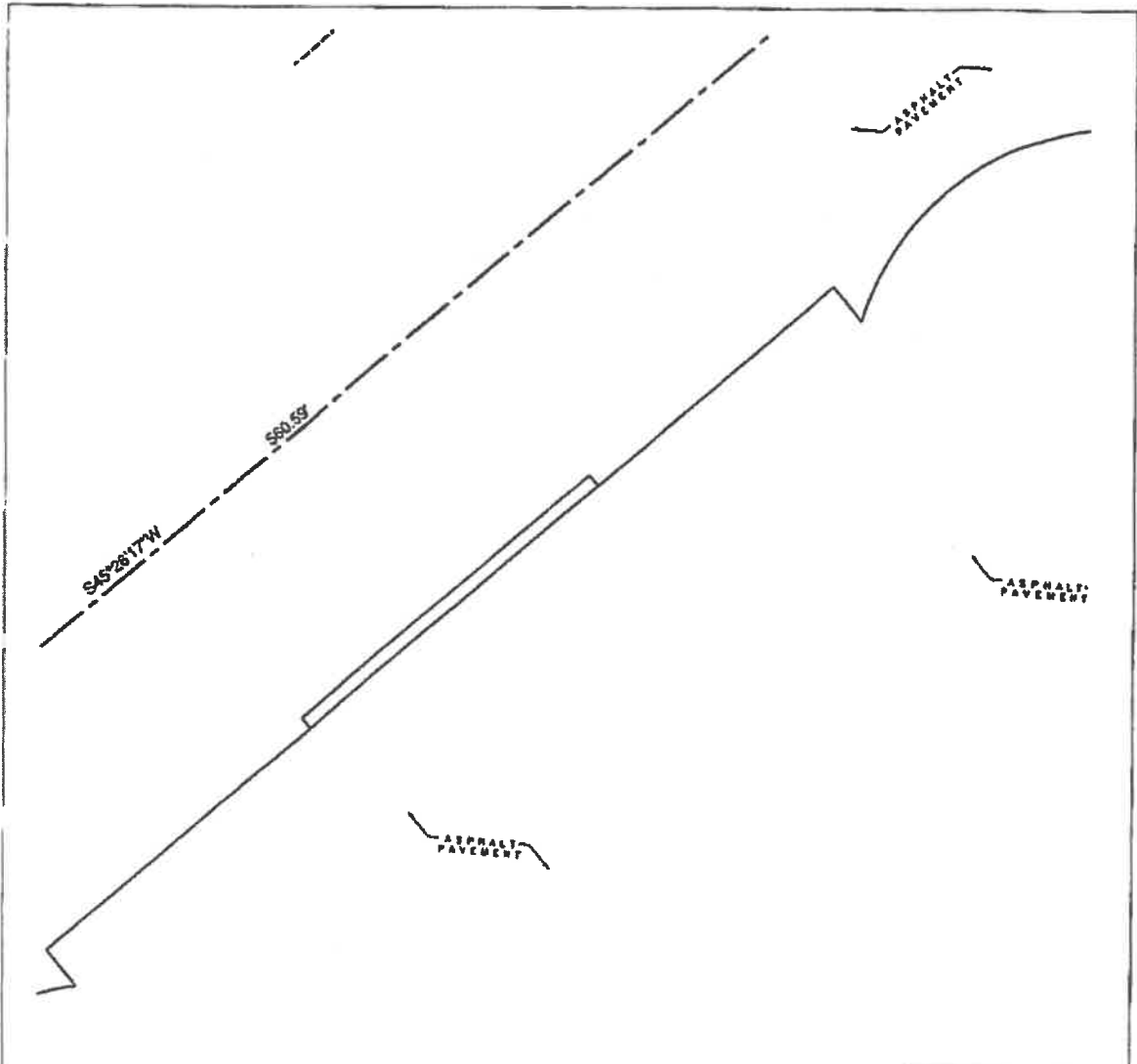
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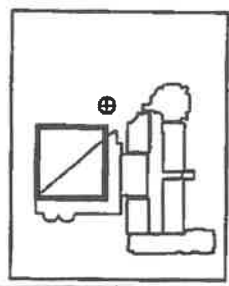
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**Encroachment Diagram 13**

PROPERTY LINE    AREAS OF ENCROACHMENT    SURVEY



**1120-Bal Harbour Shops**

1"=30'

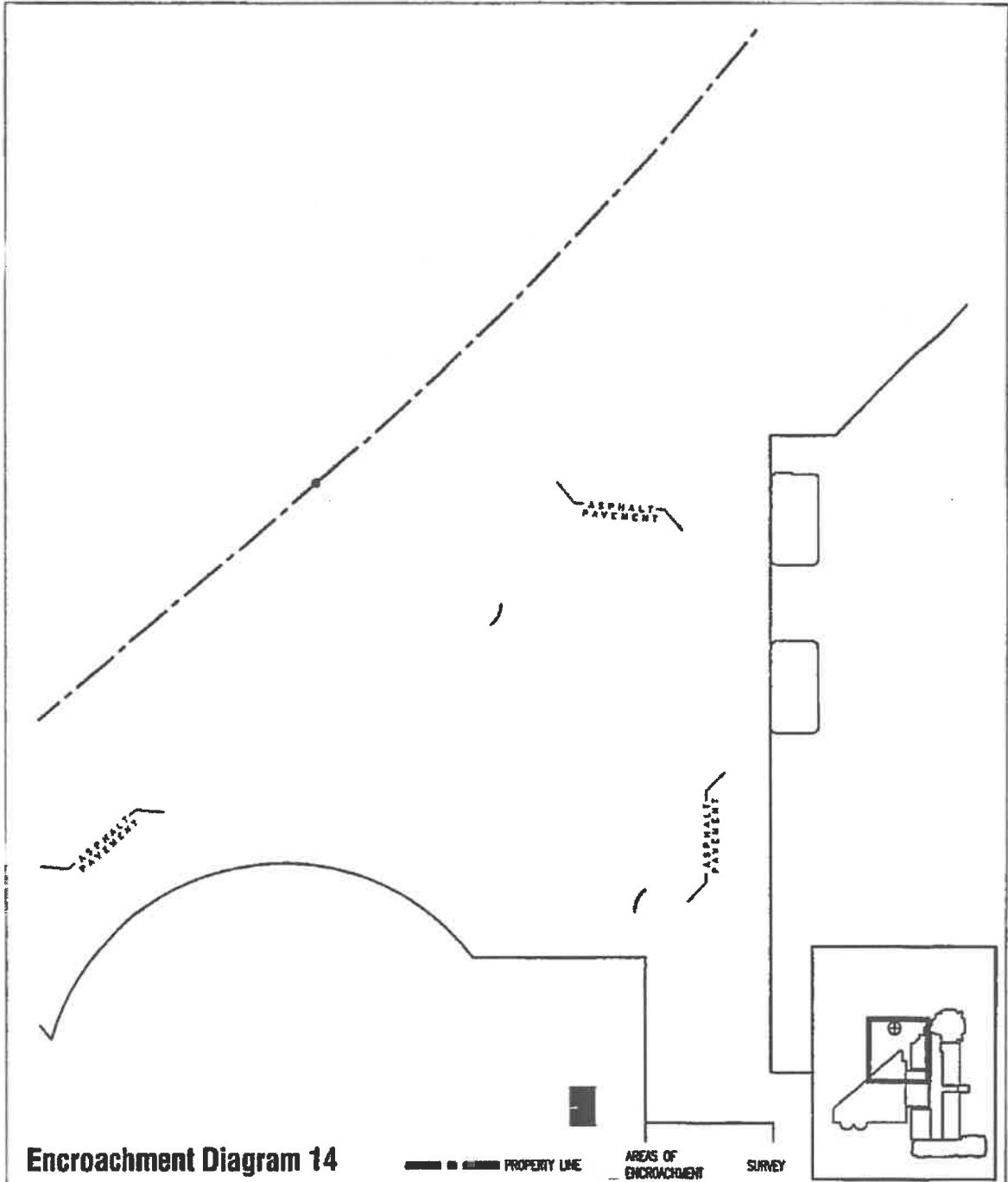
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**1120-Bal Harbour Shops**

1"=30'

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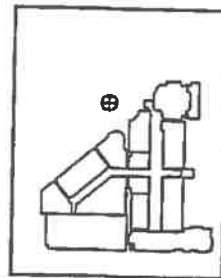
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# PROPOSED ENCROACHMENTS

PROPERTY LINE

AREAS OF ENCROACHMENT

SURVEY



**1120-Bal Harbour Shops**

1"=30'

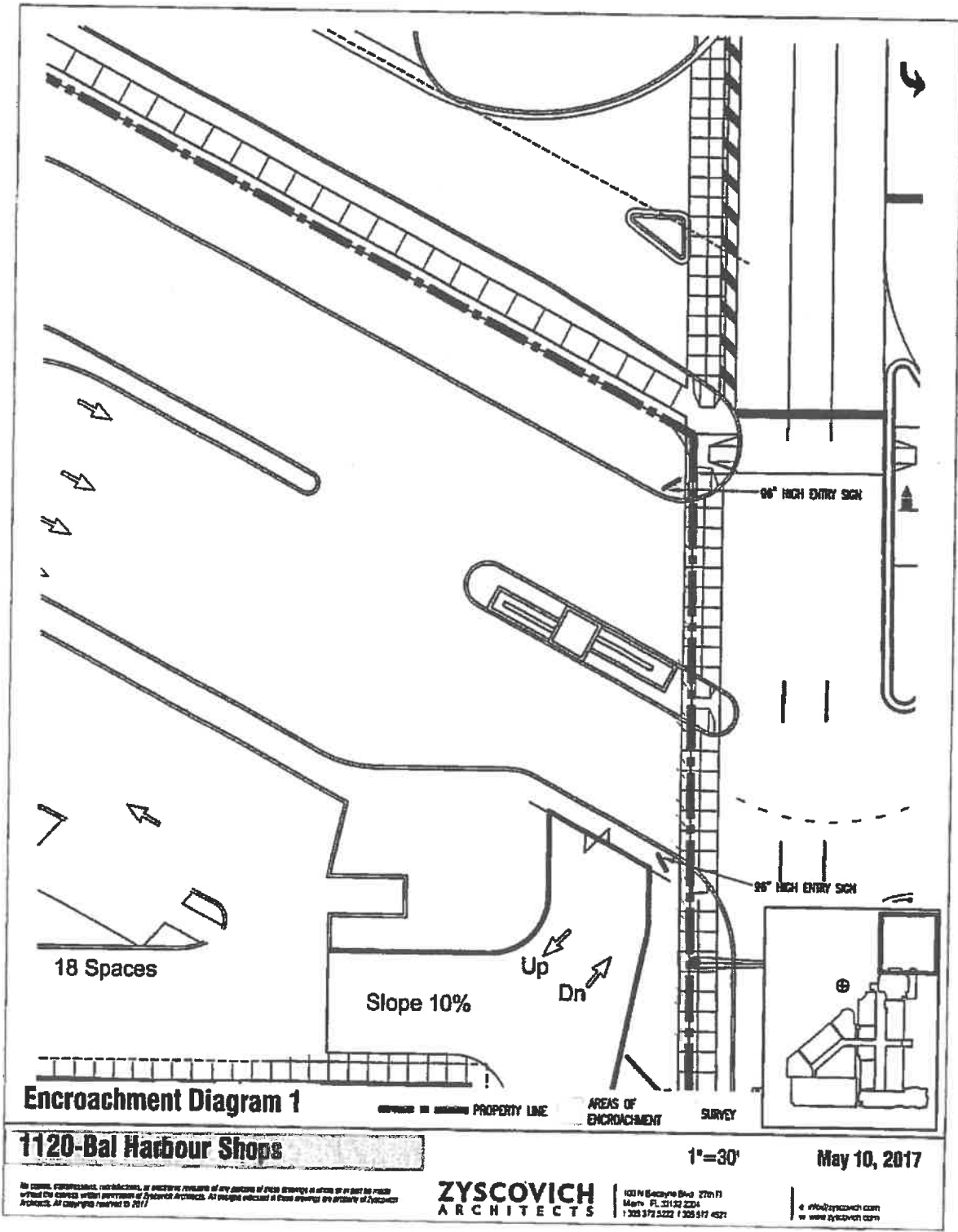
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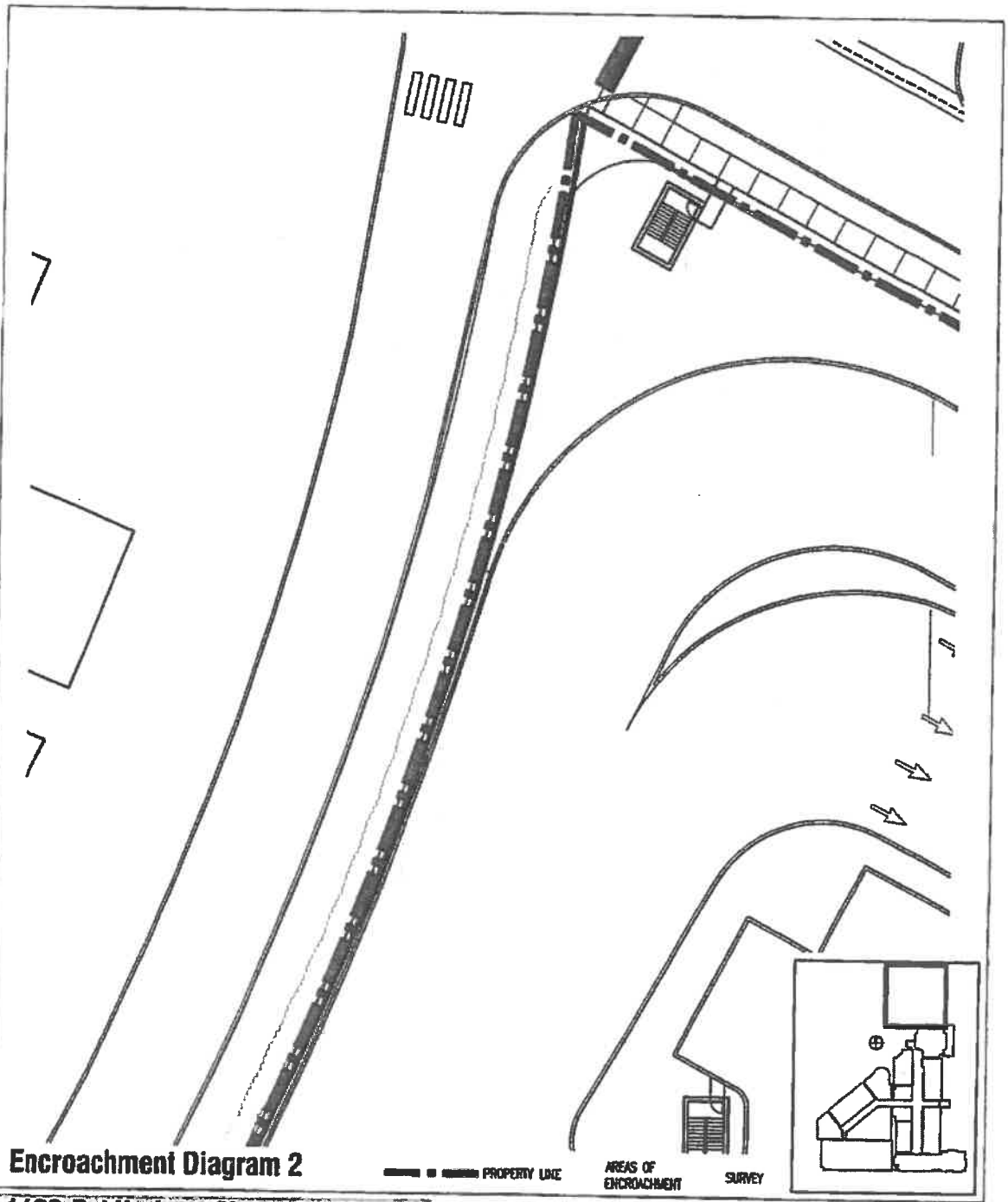
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**Encroachment Diagram 2**

**1120-Bal Harbour Shops**

--- PROPERTY LINE

... AREAS OF ENCROACHMENT

— SURVEY

1"=30'

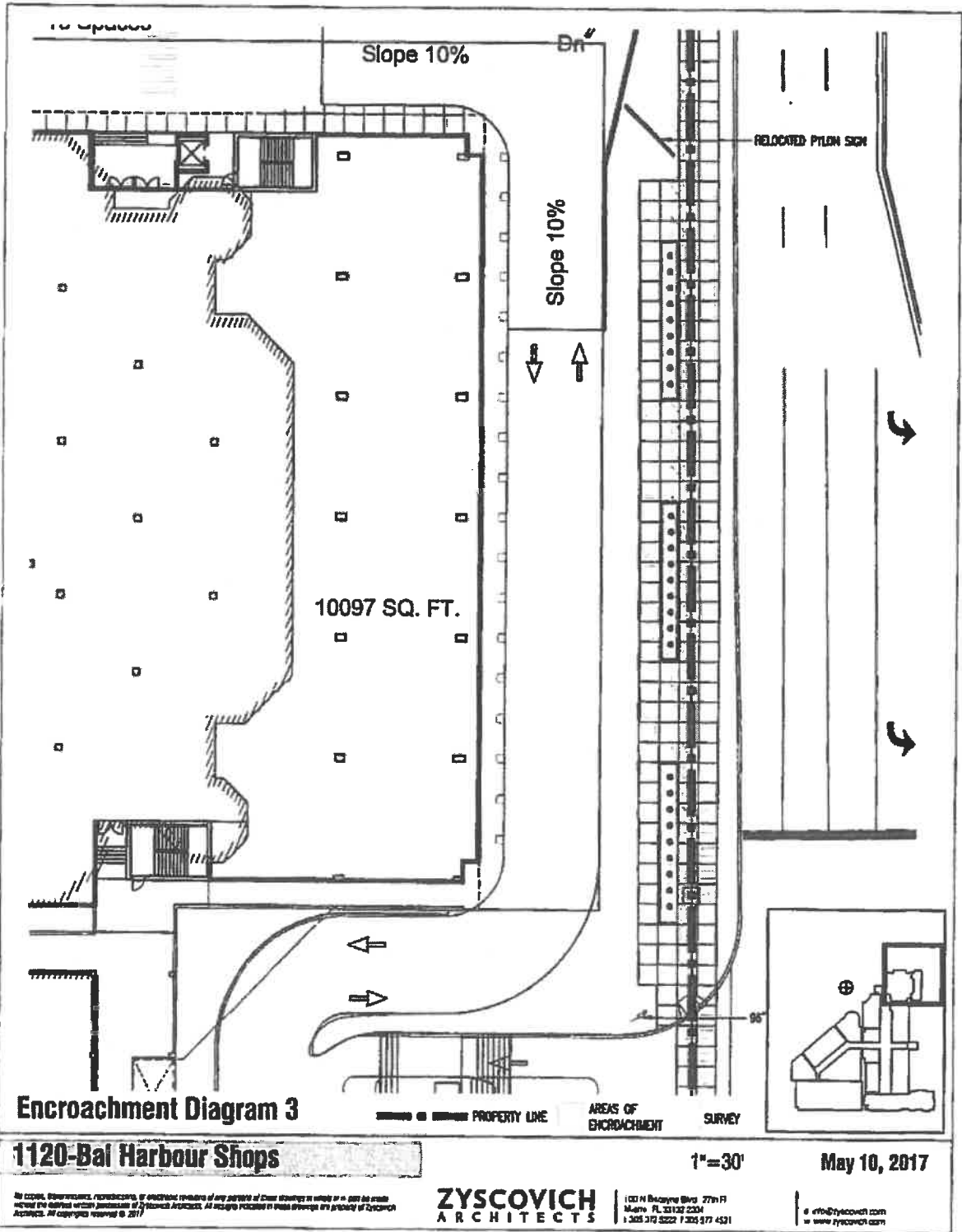
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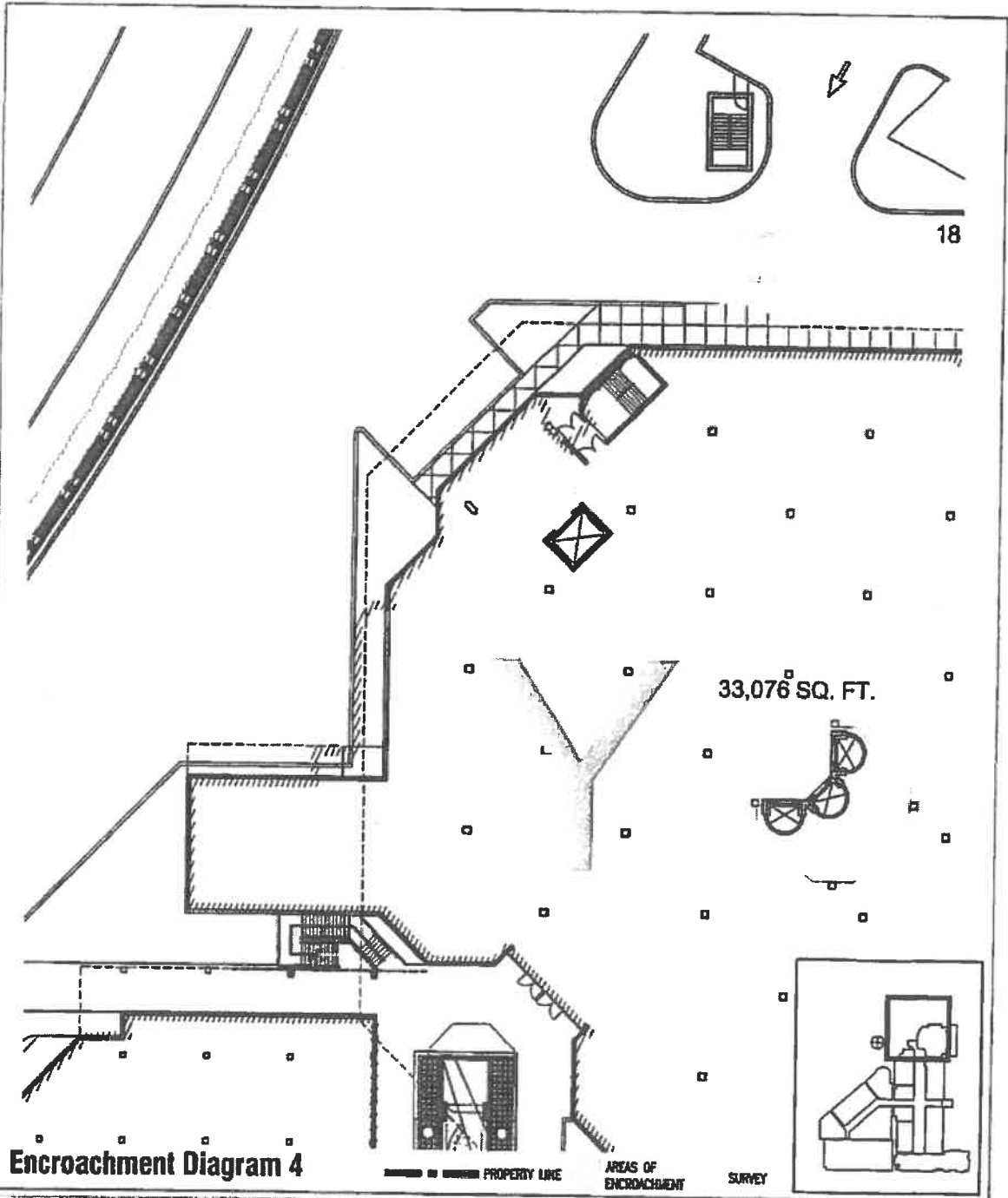
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**Encroachment Diagram 4**

**1120-Bal Harbour Shops**

1"=30'

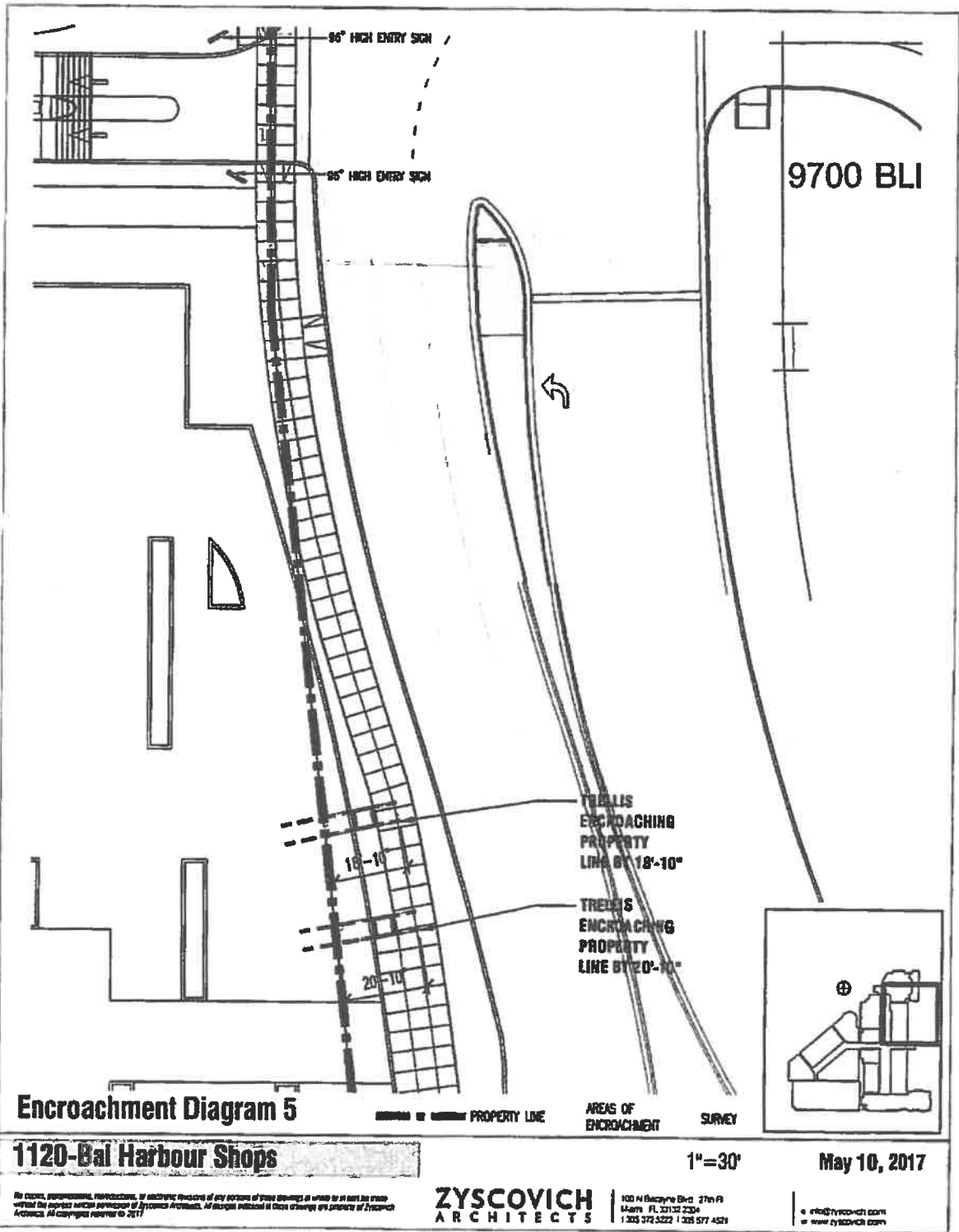
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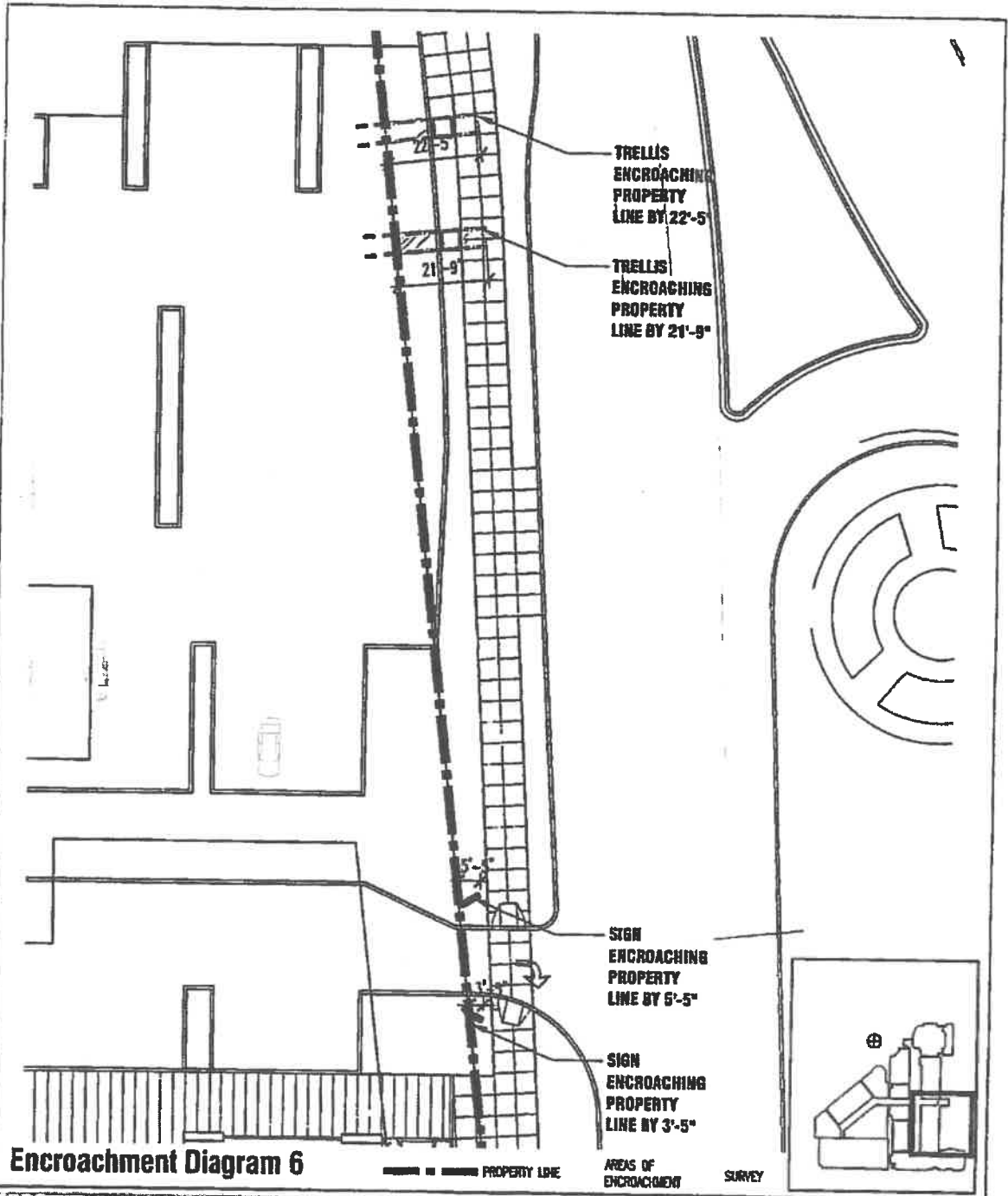
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**1120-Bal Harbour Shops**

1" = 30'

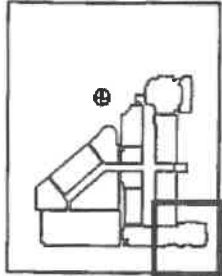
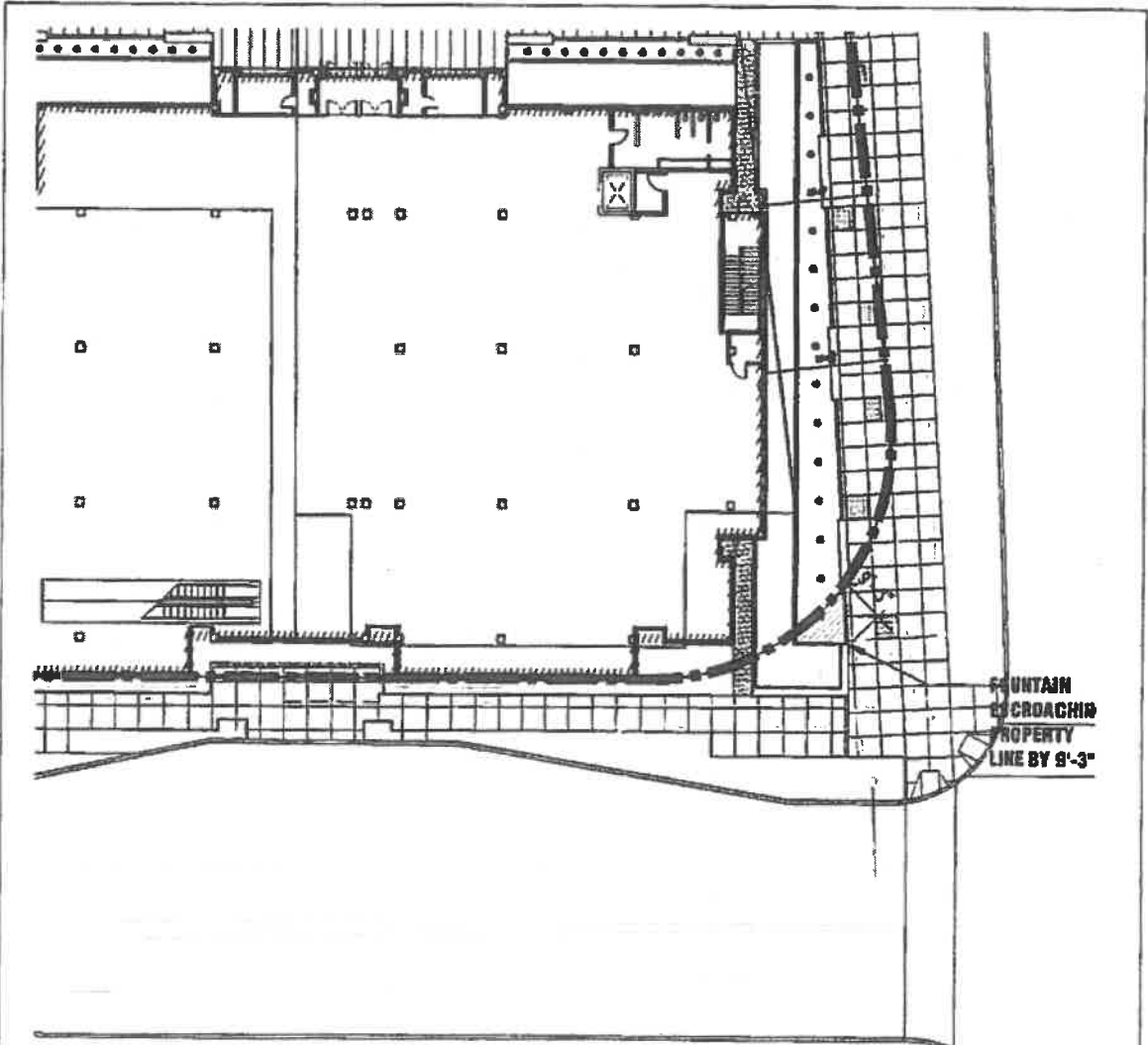
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**Encroachment Diagram 7**

**PROPERTY LINE**    **AREAS OF ENCROACHMENT**    **SURVEY**

**1120-Bal Harbour Shops**

1"=30'

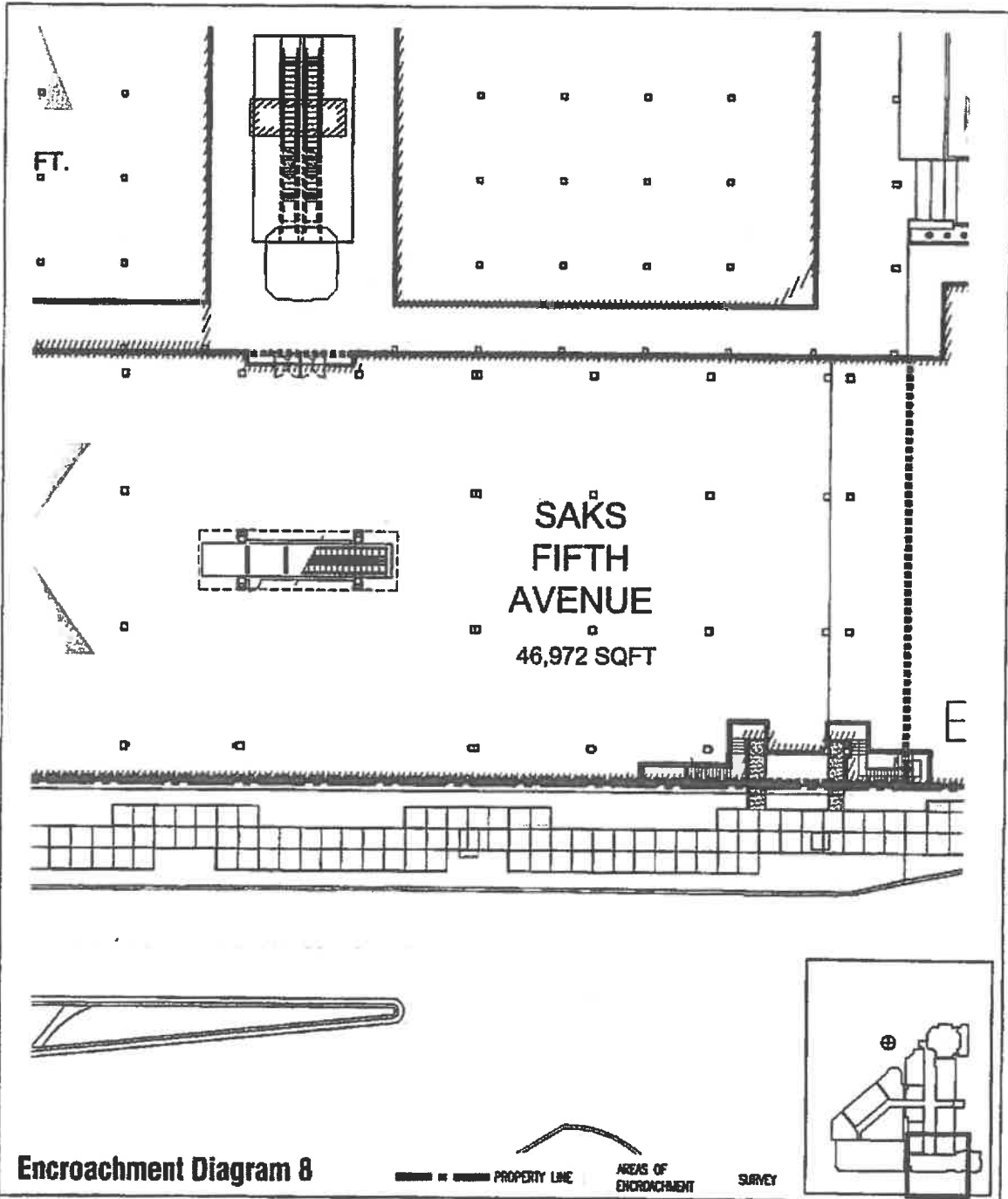
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**Encroachment Diagram 8**

**1120-Bal Harbour Shops**

1"=30'

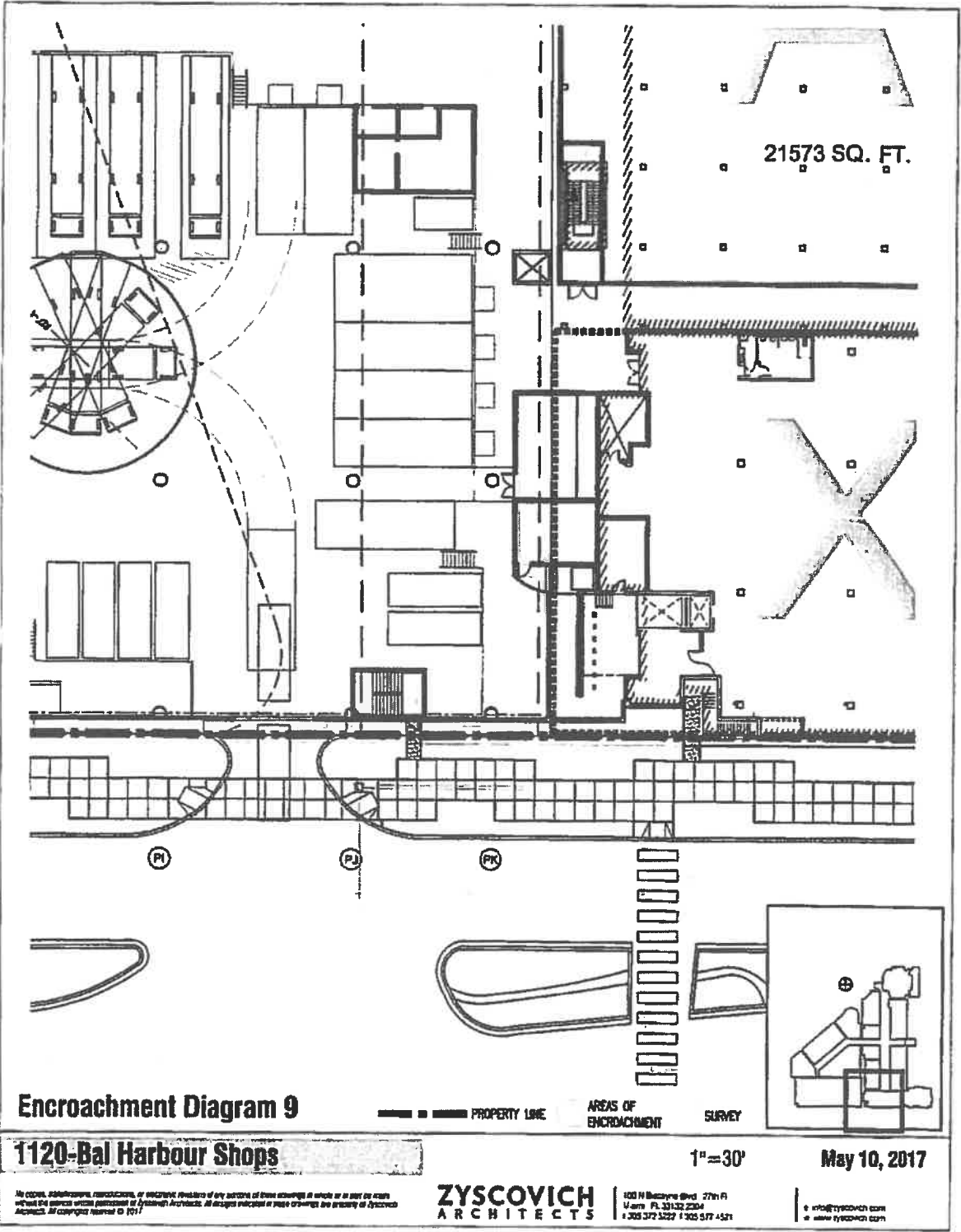
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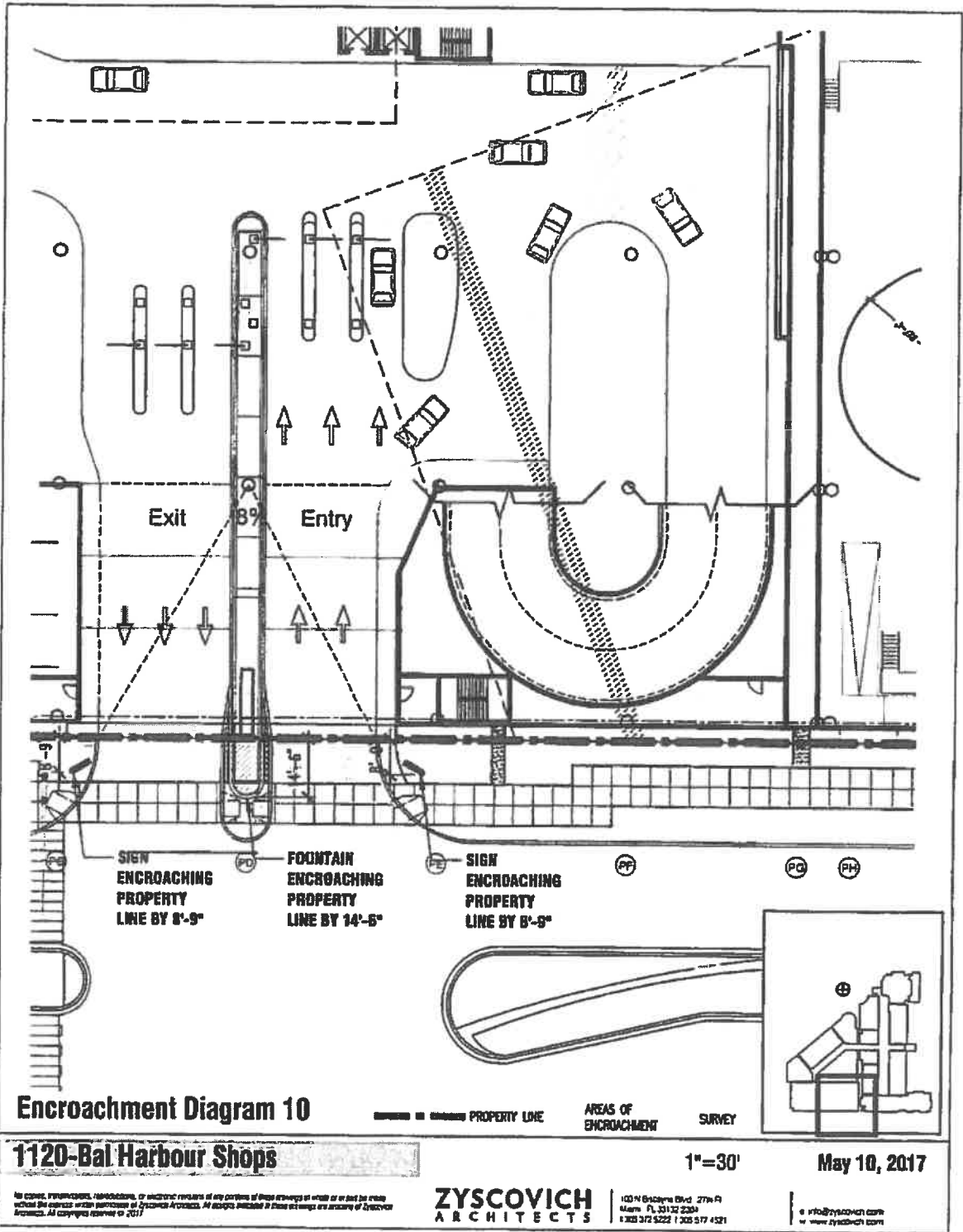
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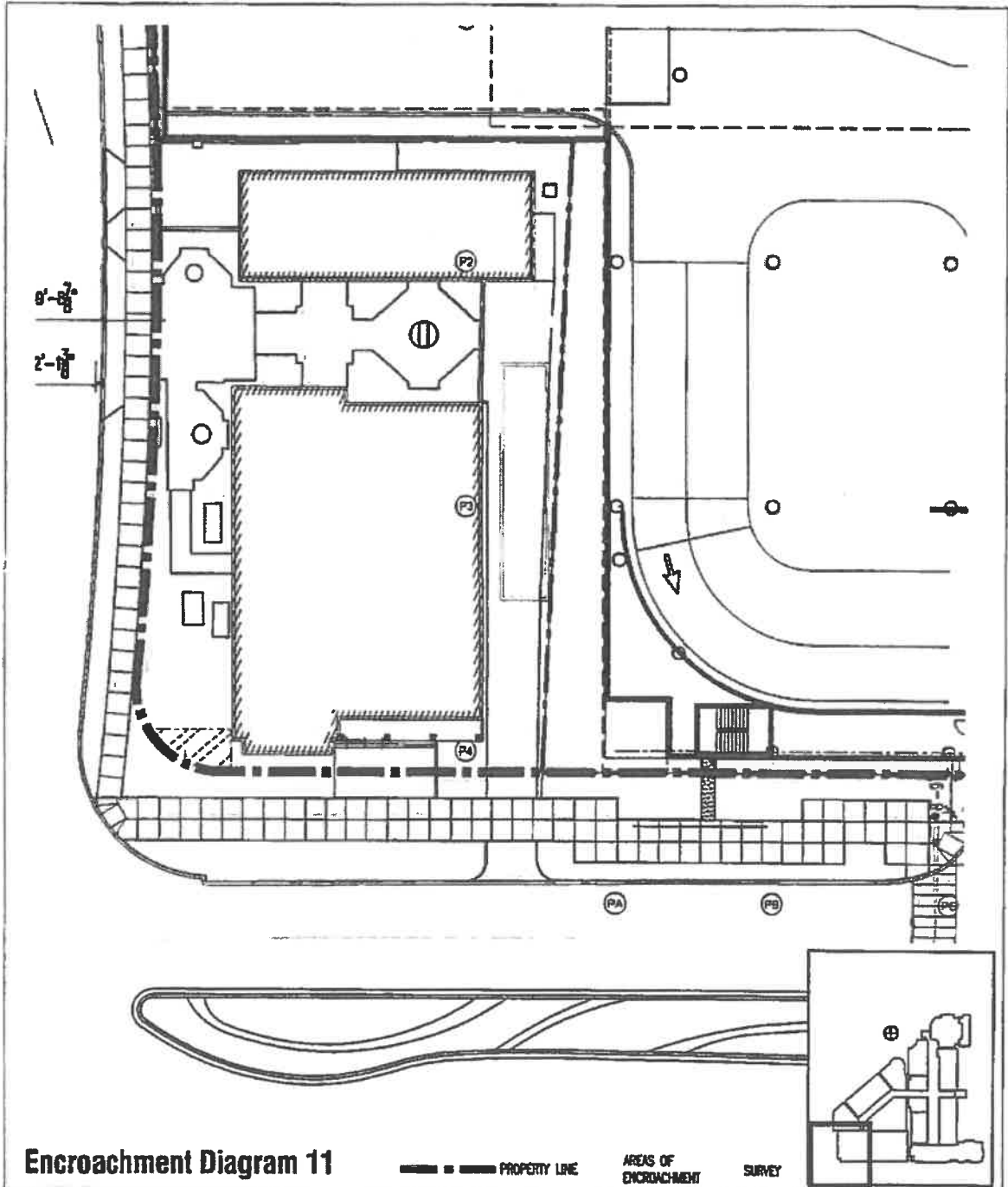
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**Encroachment Diagram 11**

PROPERTY LINE     
  AREAS OF ENCROACHMENT     
 ○ SURVEY

**1120-Bal Harbour Shops**

1"=30'

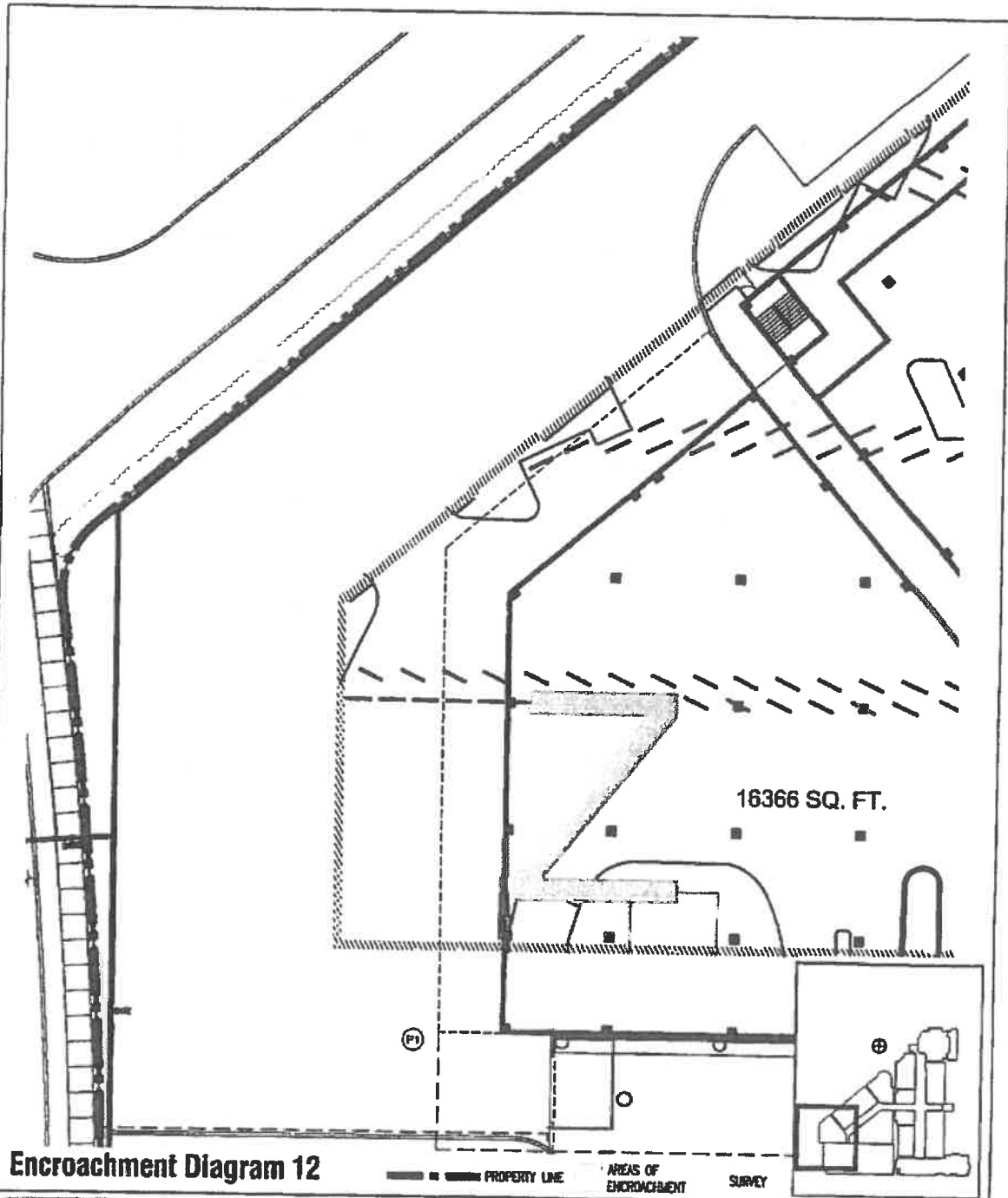
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**Encroachment Diagram 12**

**1120-Bal Harbour Shops**

1"=30'

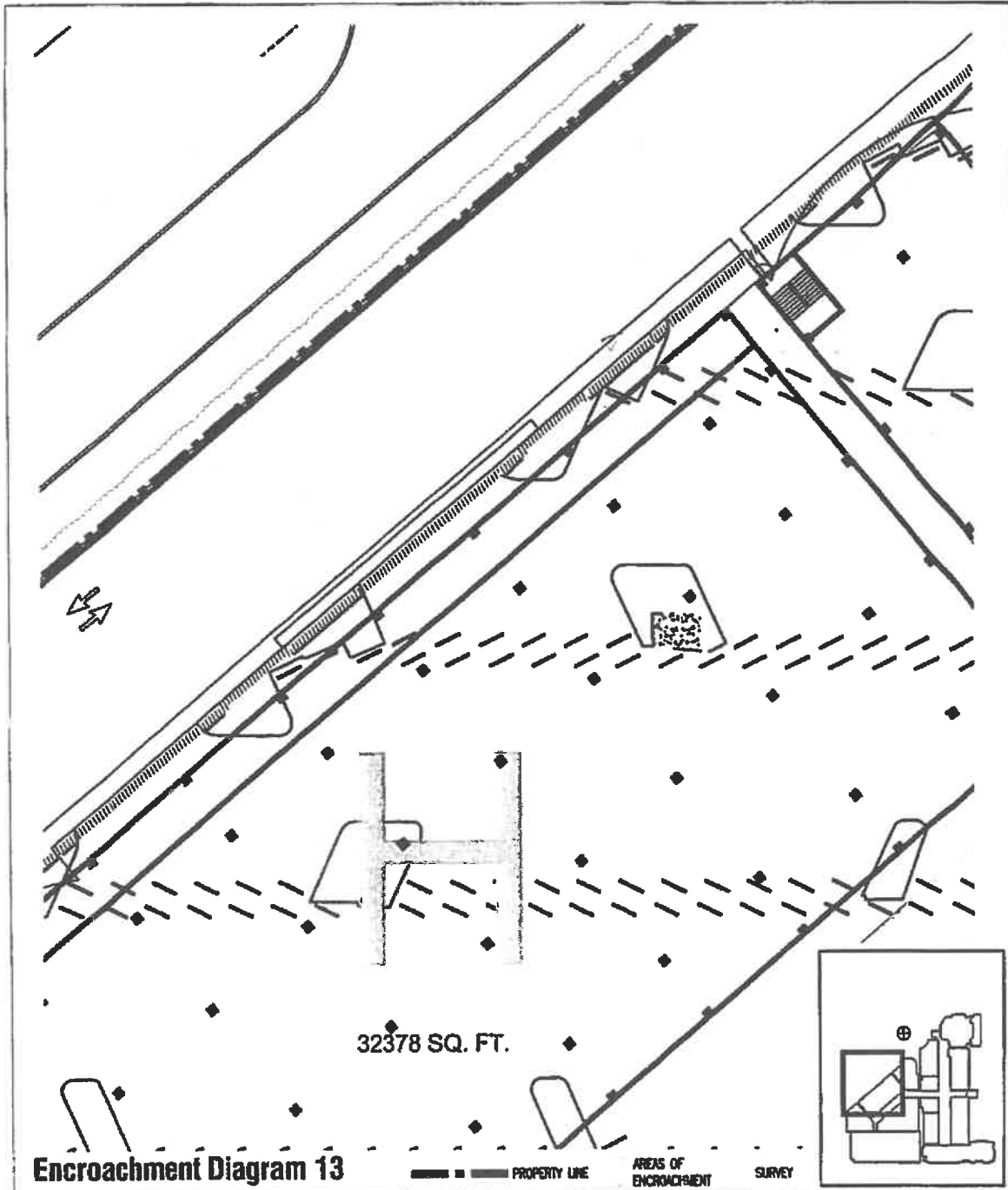
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**1120-Bal Harbour Shops**

1" = 30'

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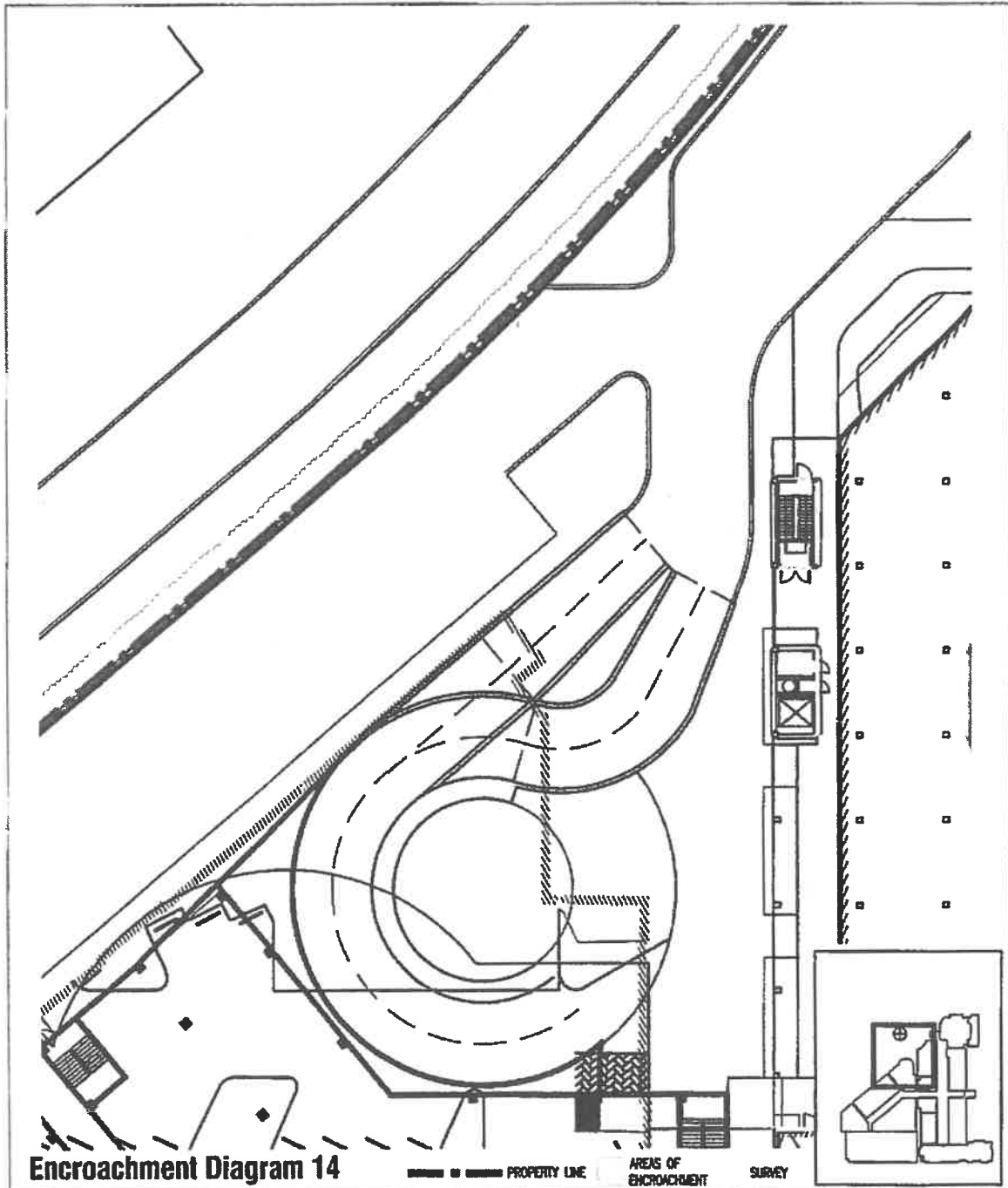
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**1120-Bal Harbour Shops**

1"=30'

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**Exhibit N**

**Park Drive Utility Easement**

**(see following pages)**

This instrument prepared by:

Gall 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)**



THENCE SOUTH 04°58'08" EAST ALONG SAID WEST LINE, A DISTANCE OF 83.07 FEET TO THE POINT ON THE ARC OF A NON-TANGENT CURVE (CONCAVE SOUTHWESTERLY) FROM WHOSE RADIUS POINT BEARS NORTH 85°01'54" EAST AND HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 61°38'47";

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 21.52 FEET TO A POINT ON THE SOUTH LINE OF BAL CROSS DRIVE ALSO THE NORTH LINE OF AREA No.5 OF SAID PLAT;

THENCE NORTH 66°36'53" WEST ALONG SAID LINE, A DISTANCE OF 237.98 FEET TO THE BEGINNING OF A TANGENT CURVE (CONCAVE SOUTHEASTERLY) HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 108°18'02";

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 37.80 FEET TO THE SOUTH LINE OF PARK DRIVE ALSO THE NORTH LINE OF SAID AREA No.5, AND THE BEGINNING OF A REVERSE CURVE (CONCAVE NORTHERLY) HAVING A RADIUS OF 798.00 FEET AND A CENTRAL ANGLE OF 40°21'12";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND SAID LINE, A DISTANCE OF 560.82 FEET;

THENCE SOUTH 45°26'17" WEST ALONG SAID LINE, A DISTANCE OF 560.59 TO THE BEGINNING OF A COMPOUND CURVE (CONCAVE EASTERLY) HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 58°03'42";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 20.28 FEET TO THE EAST LINE OF BAL BAY DRIVE AND THE WEST LINE OF AREA No.5, AND TO THE BEGINNING OF A REVERSE CURVE (CONCAVE WESTERLY) HAVING A RADIUS OF 1102.67 FEET AND A CENTRAL ANGLE OF 08°52'01";

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND SAID LINE, A DISTANCE OF 132.16 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE VILLAGE OF BAL HARBOUR, MIAMI-DADE COUNTY, FLORIDA CONTAINING 52,729 SQUARE FEET, MORE OR LESS.

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



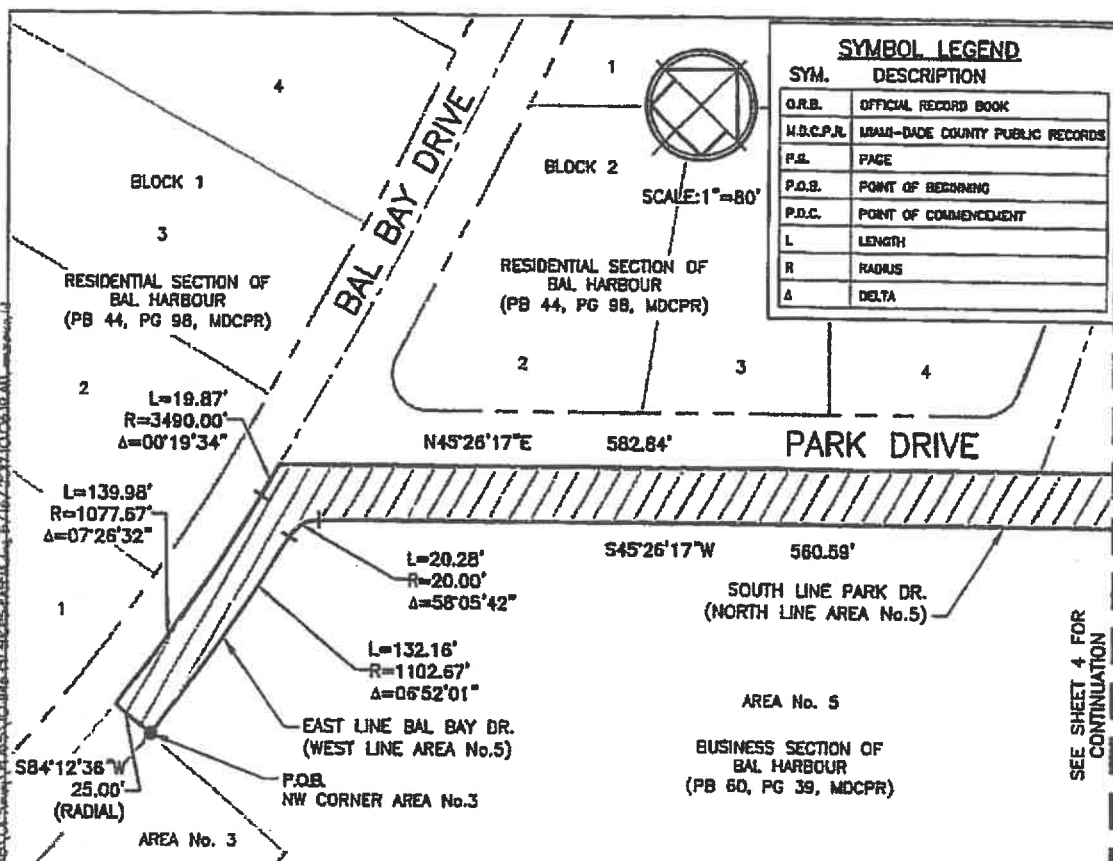
BAL HARBOUR SHOPS  
EASEMENT DESCRIPTION  
VILLAGE OF BAL HARBOUR, DADE COUNTY, FL

PROJECT NUMBER: 17-1148-0891

FILE NAME: 10-1148-BH-SHOPS-EASEM.dwg | SHEET 2 OF 8

SKETCH & DESCRIPTION	MM	05/12/17	H/A	PK
REVISION	OWN	DATE	FB/PG	CKD





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

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SEE SHEET 4 FOR CONTINUATION

**SURVEYOR'S NOTES:**

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2. BEARINGS SHOWN HEREON ARE RELATIVE TO THE SOUTH RIGHT OF WAY LINE OF BAL CROSS DRIVE, BUSINESS SECTION OF BAL HARBOUR, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 60, PAGE 39, 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**

**SURVEYORS CERTIFICATE:**

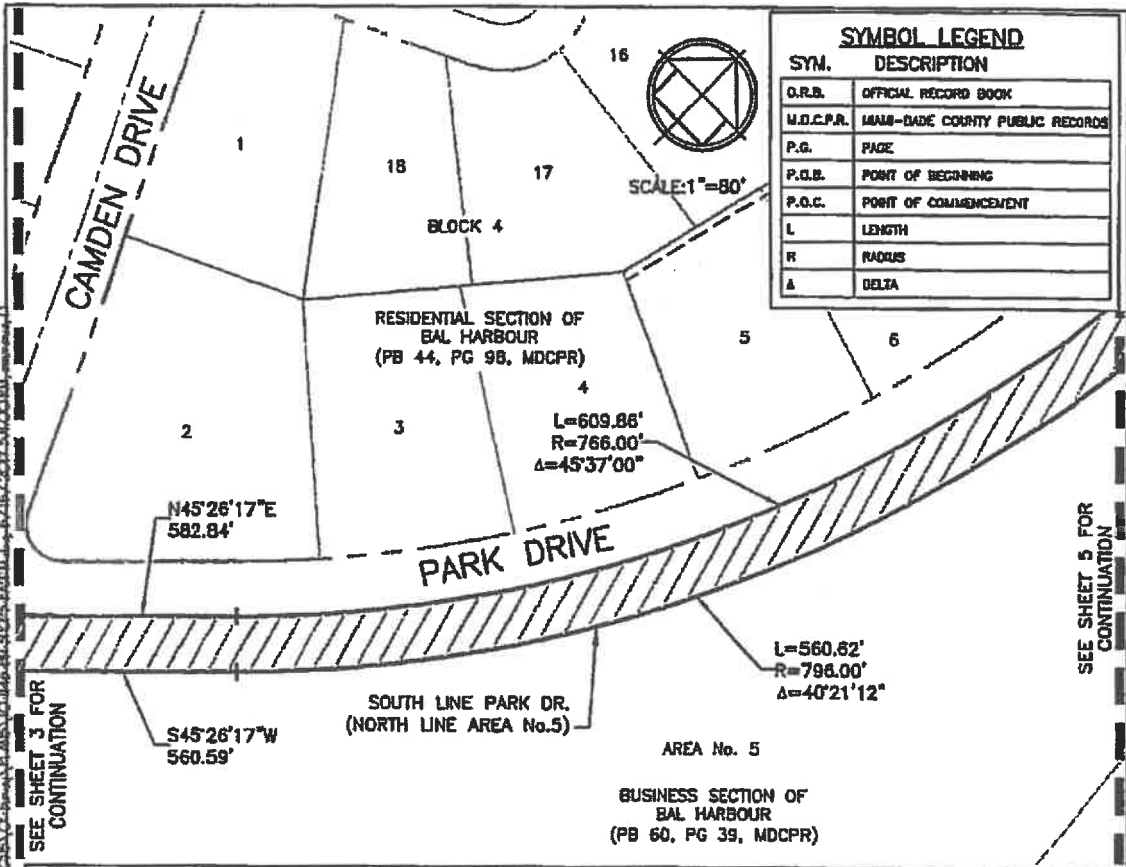
I HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 17S 34-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

FOR THE FIRM, \_\_\_\_\_  
 ROBERT D. KEENER  
 PROFESSIONAL SURVEYOR AND MAPPER #4846

SKETCH NO.	DESCRIPTION	DATE	BY	CHKD.
1		05/12/17	DWN	RDK
REVISION		DATE	FB/PG	CKD

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

**BAL HARBOUR SHOPS  
 EASEMENT DESCRIPTION  
 VILLAGE OF BAL HARBOUR, DADE COUNTY, FL**  
 PROJECT NUMBER: 17-1148-0691  
 FILE NAME: 10-1148-SHOPS-EASEL.dwg SHEET 3 OF 8

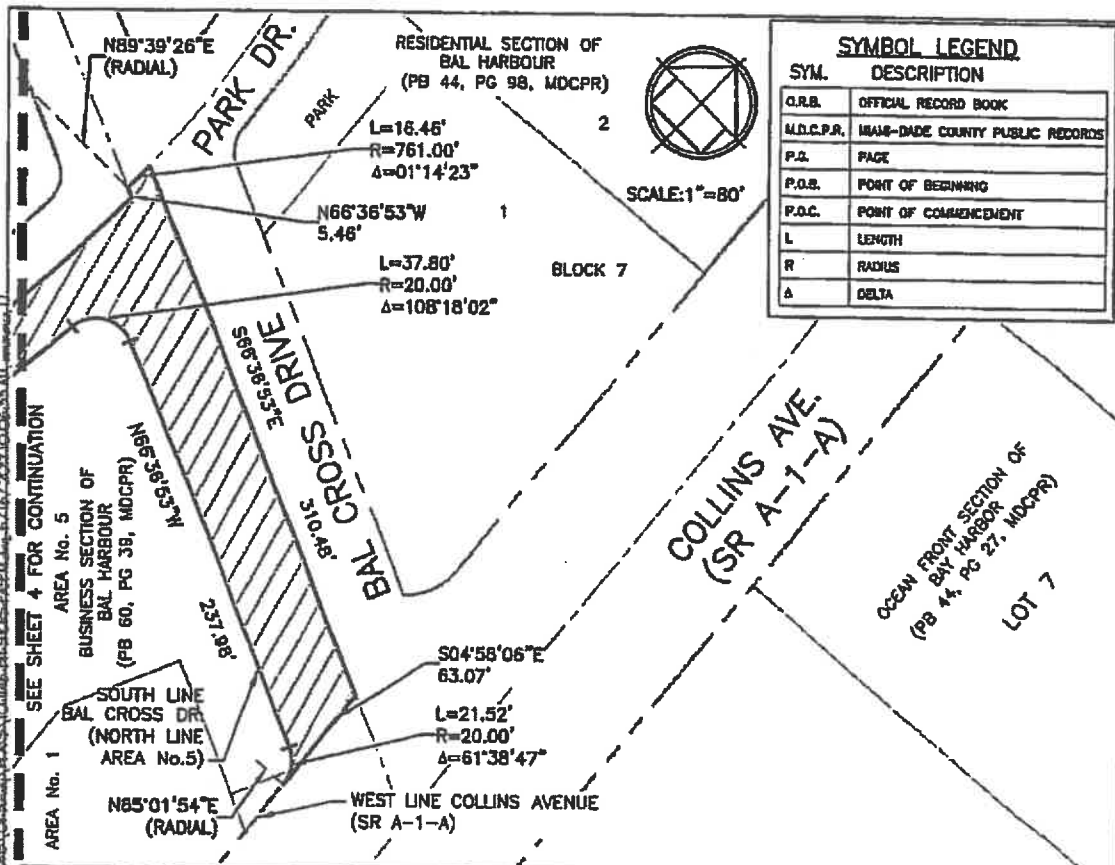


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<b>CRAIG A. SMITH &amp; ASSOCIATES</b> 7777 GLADES ROAD, SUITE 410 BOCA RATON, FLORIDA 33434 (561)791-9280 CERT. NO. LB0003110				
<b>BAL HARBOUR SHOPS</b> <b>EASEMENT DESCRIPTION</b> <b>VILLAGE OF BAL HARBOUR, DADE COUNTY, FL</b> PROJECT NUMBER: 17-1146-0691 FILE NAME: 10-1146-BH-SHOPS-EASDM.dwg      SHEET 4 OF 6				



**SYMBOL LEGEND**

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

SEE SHEET 4 FOR CONTINUATION  
 AREA No. 1  
 AREA No. 5  
 BUSINESS SECTION OF BAL HARBOUR (PB 60, PG 39, MDCPR)  
 SOUTH LINE BAL CROSS DR. (NORTH LINE AREA No.5)  
 WEST LINE COLLINS AVENUE (SR A-1-A)  
 OCEAN FRONT SECTION OF BAL HARBOUR (PB 44, PG 27, MDCPR)  
 LOT 7  
 BLOCK 7  
 RESIDENTIAL SECTION OF BAL HARBOUR (PB 44, PG 98, MDCPR)  
 PARK  
 PARK DR.  
 BAL CROSS DRIVE  
 COLLINS AVE. (SR A-1-A)

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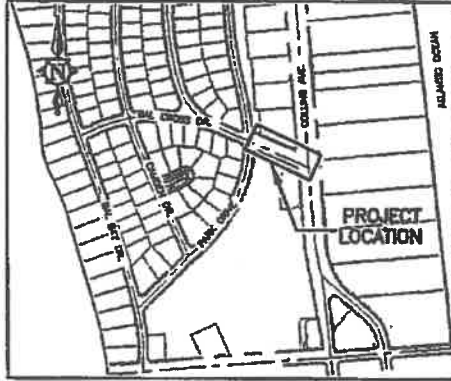
<p style="text-align: center;"><b>CRAIG A. SMITH &amp; ASSOCIATES</b></p> <p style="text-align: center;">7777 GLADES ROAD, SUITE 410 BOCA RATON, FLORIDA 33434 (561)791-9280 CERT. NO. LB0003110</p>	<p><b>BAL HARBOUR SHOPS EASEMENT DESCRIPTION VILLAGE OF BAL HARBOUR, DADE COUNTY, FL</b></p> <p>PROJECT NUMBER: 17-1146-0691</p>											
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>SKETCH &amp; DESCRIPTION</th> <th>DATE</th> <th>BY</th> <th>DATE</th> <th>BY</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>REVISION</td> <td>DWN</td> <td>DATE</td> <td>FB/PG</td> <td>CKD</td> <td></td> </tr> </tbody> </table>	SKETCH & DESCRIPTION	DATE	BY	DATE	BY	DATE	REVISION	DWN	DATE	FB/PG	CKD
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REVISION	DWN	DATE	FB/PG	CKD								
<p>FILE NAME: 10-1146-01-SHOPS-EASEM.dwg      SHEET 5 OF 5</p>												

**Exhibit B**

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

**LOCATION MAP**

SAID N.T.S.



**DESCRIPTION:**

THAT PORTION OF BAL CROSS DRIVE ADJOINING LOT 1, BLOCK 7, AS SHOWN ON THE RESIDENTIAL SECTION OF BAL HARBOUR, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 44, PAGE 98 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 7 OF SAID RESIDENTIAL SECTION OF BAL HARBOUR;

THENCE SOUTH 66°36'53" EAST ALONG THE SOUTH LINE OF SAID LOT 1 AND ALSO THE NORTH LINE OF BAL CROSS DRIVE, A DISTANCE OF 210.22 FEET TO THE POINT ON THE ARC OF A NON-TANGENT CURVE, (CONCAVE NORTHWESTERLY) FROM WHOSE RADIUS POINT BEARS SOUTH 43°38'46" EAST AND HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 51°19'20";

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 35.83 FEET TO A POINT ON THE WEST LINE OF COLLINS AVENUE (SR A-1-A);

THENCE SOUTH 04°58'08" EAST ALONG SAID WEST LINE, A DISTANCE OF 80.46 FEET;

THENCE NORTH 66°36'53" WEST, A DISTANCE OF 251.55 FEET;

THENCE NORTH 23°23'07" EAST, A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE VILLAGE OF BAL HARBOUR, MIAMI-DADE COUNTY, FLORIDA CONTAINING 10,976 SQUARE FEET, MORE OR LESS.

**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



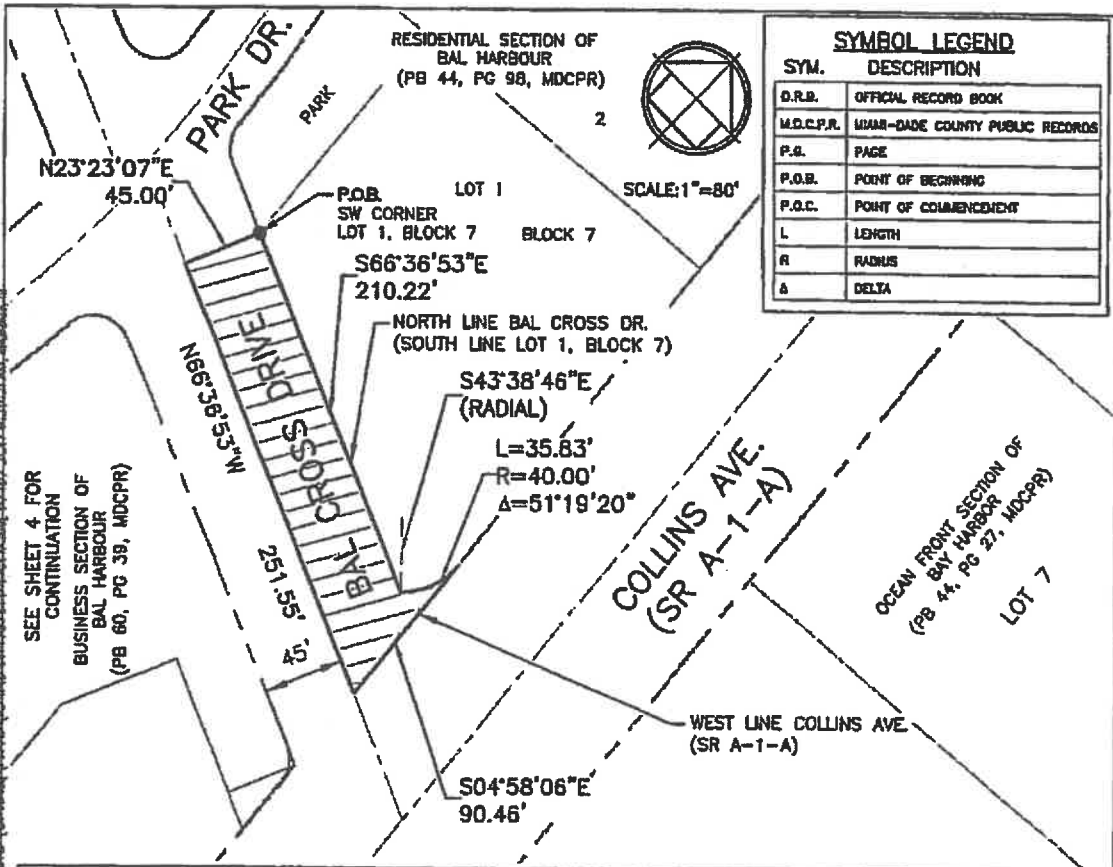
SKETCH & DESCRIPTION	BY	DATE	N/A	CHK
REVISION	DWN	DATE	FB/PG	CKD

FAIRFIELD MANOR CO-OP  
EASEMENT DESCRIPTION  
VILLAGE OF BAL HARBOUR, DADE COUNTY, FL

PROJECT NUMBER: 17-1145-0691

FILE NAME: 10-1148-BH-FAIRFIELD-EASEM.dwg | SHEET 1 OF 2

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SYMBOL LEGEND	
SYM.	DESCRIPTION
O.R.B.	OFFICIAL RECORD BOOK
M.D.C.P.R.	MIAMI-DADE COUNTY PUBLIC RECORDS
P.G.	PAGE
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P.O.C.	POINT OF COMMENCEMENT
L	LENGTH
R	RADIUS
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SKETCH & DESCRIPTION	MM	DD/MY/YY	N/A	CHK
REVISION	DWN	DATE	FB/PG	CKD

**CRAIG A. SMITH & ASSOCIATES**  
 7777 GLADES ROAD, SUITE 410  
 BOCA RATON, FLORIDA 33434  
 (561)791-9280  
 CERT. NO. LBDD03110

**FAIRFIELD MANOR CO-OP  
 EASEMENT DESCRIPTION  
 VILLAGE OF BAL HARBOUR, DADE COUNTY, FL**  
 PROJECT NUMBER: 17-1146-0691  
 FILE NAME: 10-1146-B1-FAIRFIELD-EASEM.dwg | SHEET 2 OF 2





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 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 ~~2.1~~ **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(q)(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)(i)~~ **(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, show~~ **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 <del>Project</del> <u>the second level of the last of Buildings F, G, H and Z.</u>
*NOTE: All amounts set forth in <del>Section 21.1</del> and in this table are estimates subject to adjustment as set forth in Section <u>21.1.4 and 21.1.6.</u>	

**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~~ Sections 21.1.1, 21.1.2 and 21.1.3 are estimates only. Prior to the issuance of the ~~first~~ first-respective building permit ~~permits~~ 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: [Handwritten Signature]  
Print name: Kristin Lazenby  
Signature: [Handwritten Signature]  
Print name: Seth E. Salvert

OWNER:  
**BAL HARBOUR SHOPS, LLLP**, a Florida limited liability limited partnership  
By: [Handwritten Signature]  
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



[Handwritten Signature]  
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

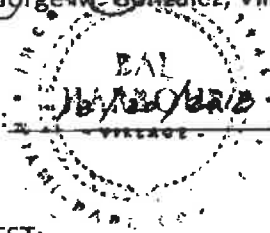
By:

Jorge M. Gonzalez, Village Manager

Signature:

Alex Cardelle

Date:



Print name:

ALEX CARDELLE

ATTEST:

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

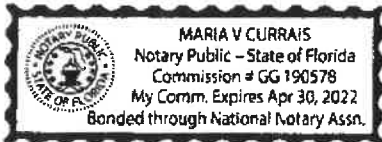
[Signature]  
Notary Public, State of Florida

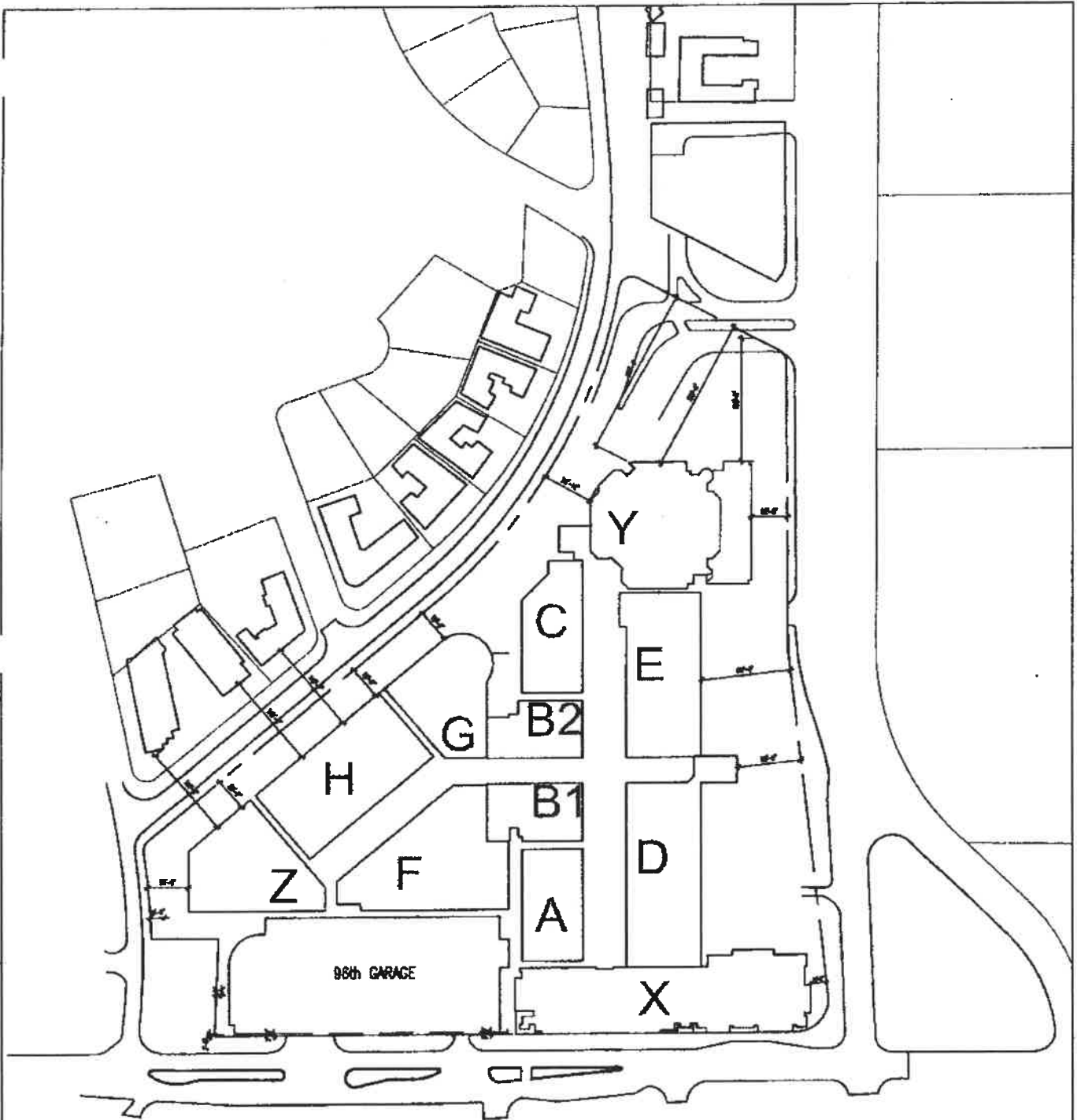
Print name:

Maria V. Currais

My commission expires:

4/30/22





**Exhibit E-Building Locations**

1"=200'

December 11, 2018

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| 305.572.5262 | 305.577.4321

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

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 27,933 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,382 SF

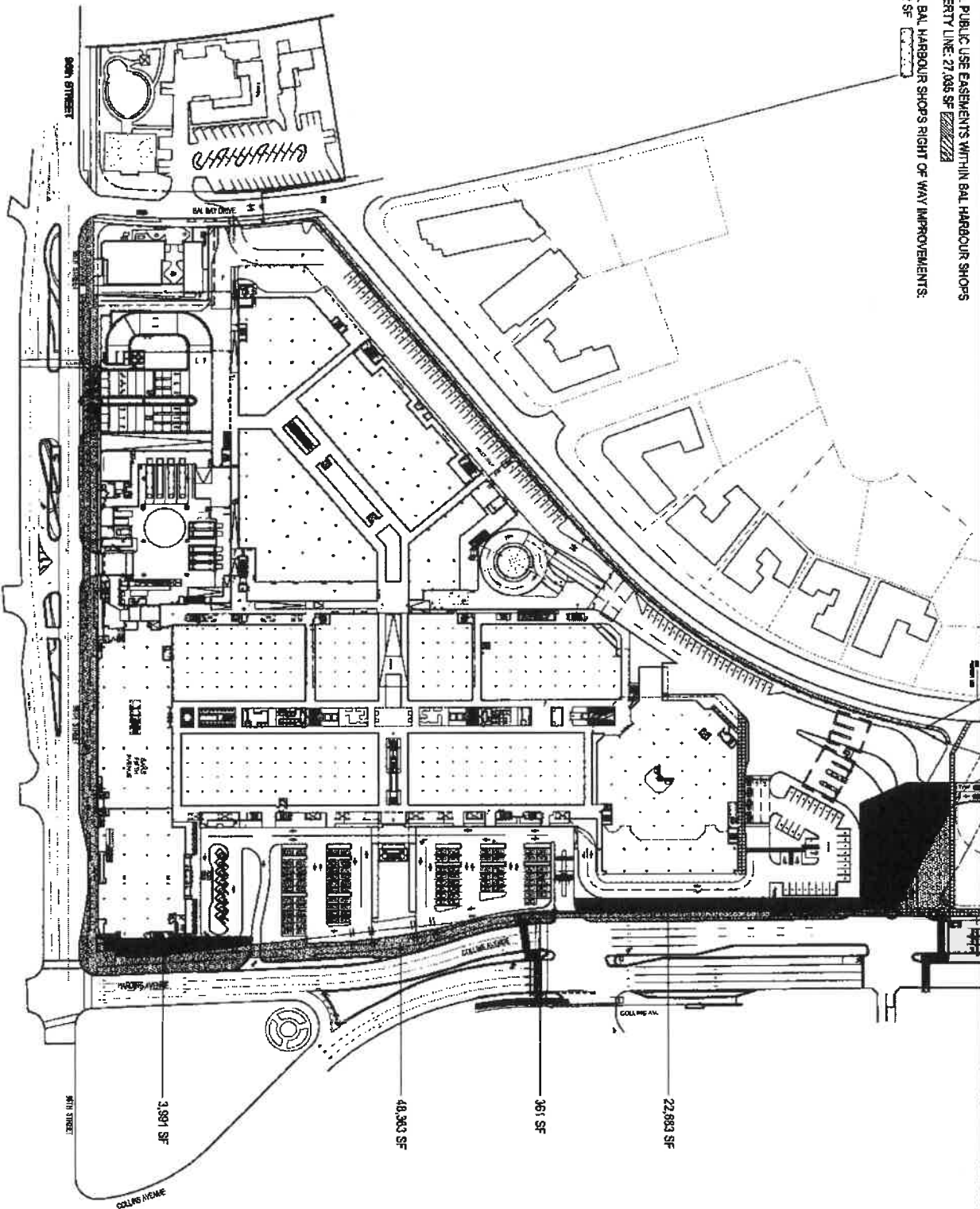
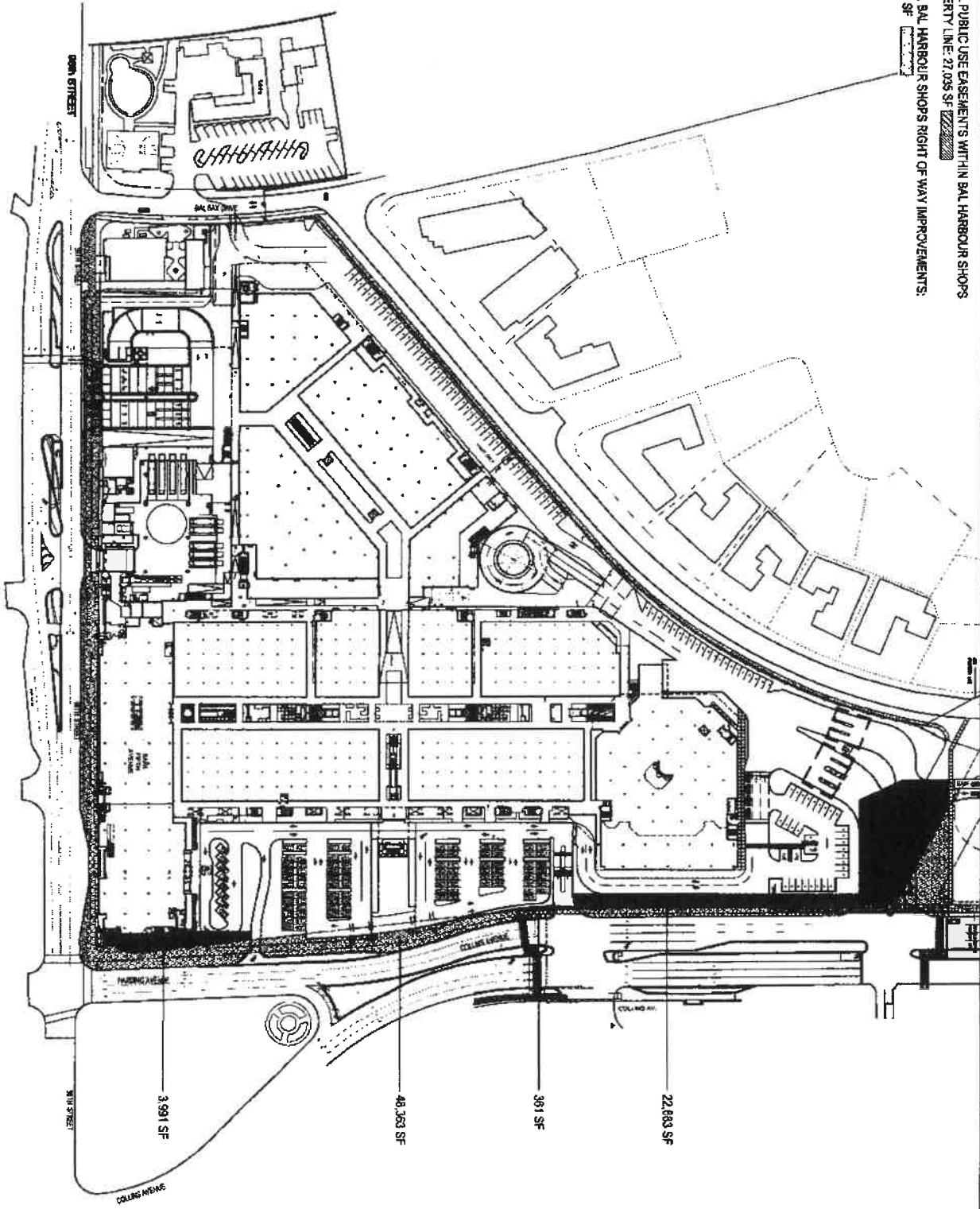


EXHIBIT L - PUBLIC USE AREAS

MINOR SITE PLAN APPLICATION

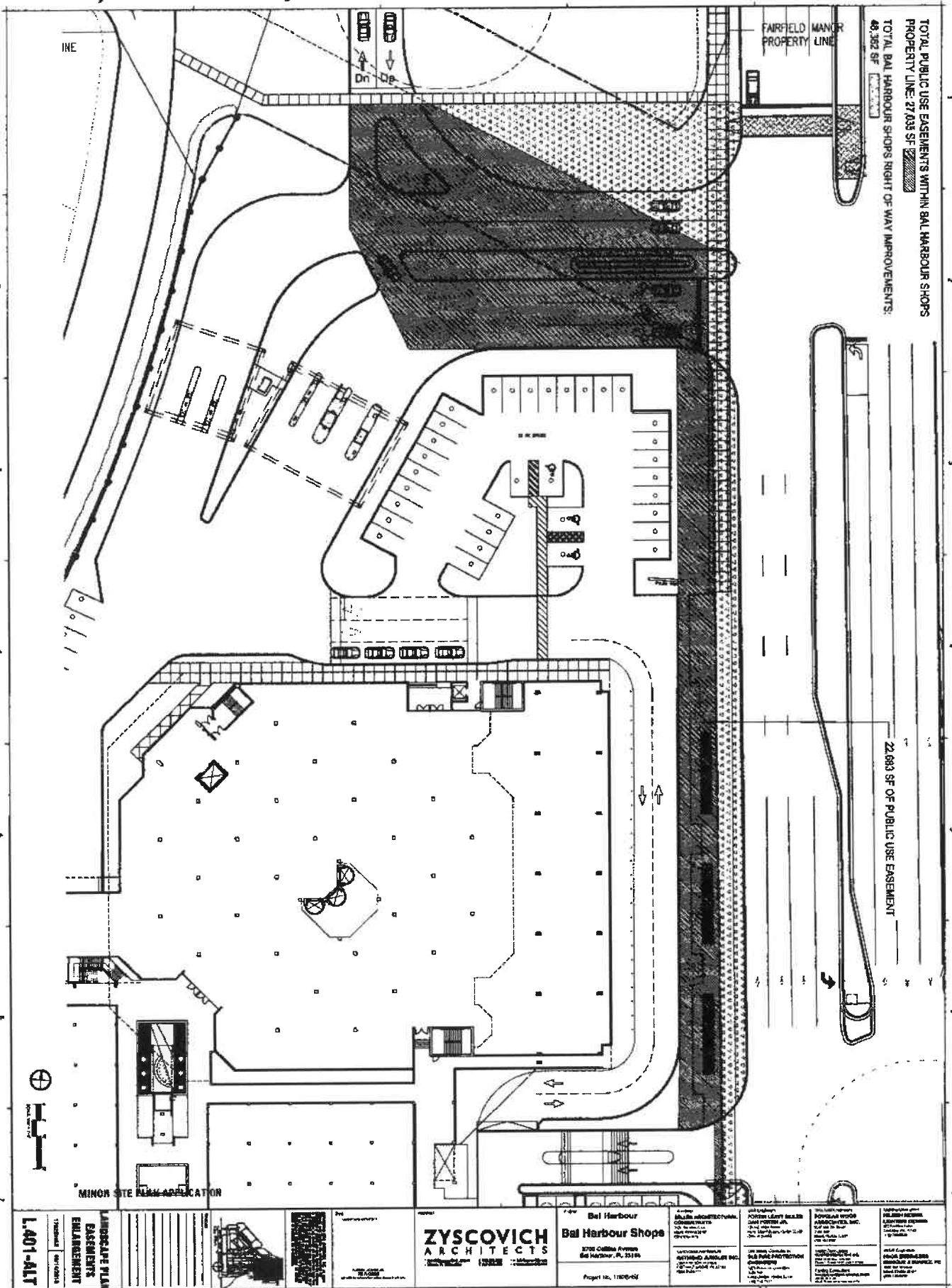
<b>L400-ALT</b> LANDSCAPE PLAN EASEMENTS OVERALL			<b>ZYSKOVICH ARCHITECTS</b> 6700 Collins Avenue Bal Harbour, FL 33124 Phone: 305.224.1111 Fax: 305.224.1112 www.zyskovich.com	Project: Bal Harbour Bal Harbour Shops 6700 Collins Avenue Bal Harbour, FL 33124 Project No. 17682-02	A. J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	C. J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com
				Project: Bal Harbour Bal Harbour Shops 6700 Collins Avenue Bal Harbour, FL 33124 Project No. 17682-02	A. J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	C. J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com	J. JAMES ARCHITECTURAL CONSULTANTS 2000 N. W. 10th Ave. Suite 100 Miami, FL 33136 Phone: 305.571.1111 Fax: 305.571.1112 www.ajjames.com

TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 21,025 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,362 SF



MINOR SITE PLAN APPLICATION

<p><b>L400-ALT</b></p> <p>LANDSCAPE PLAN EASEMENTS OVERALLS</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>7700 COLLING AVENUE BAL HARBOUR, FL 33154</p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>5700 COLLING AVENUE BAL HARBOUR, FL 33154</p>	<p>DESIGNER: <b>BAL HARBOUR ARCHITECTURAL CONSULTANTS</b></p> <p>11100 WINDY HILL DRIVE BAL HARBOUR, FL 33154</p>	<p>DATE: 08/11/15</p> <p>PROJECT NO: 1508-001</p>	<p>SCALE: 1/8" = 1'-0"</p>	<p>DATE: 08/11/15</p>	<p>PROJECT NO: 1508-001</p>	<p>DATE: 08/11/15</p>	<p>PROJECT NO: 1508-001</p>



TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS PROPERTY LINE: 27,033 SF

TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS: 48,362 SF

22,883 SF OF PUBLIC USE EASEMENT

FAIRFIELD MANOR PROPERTY LINE

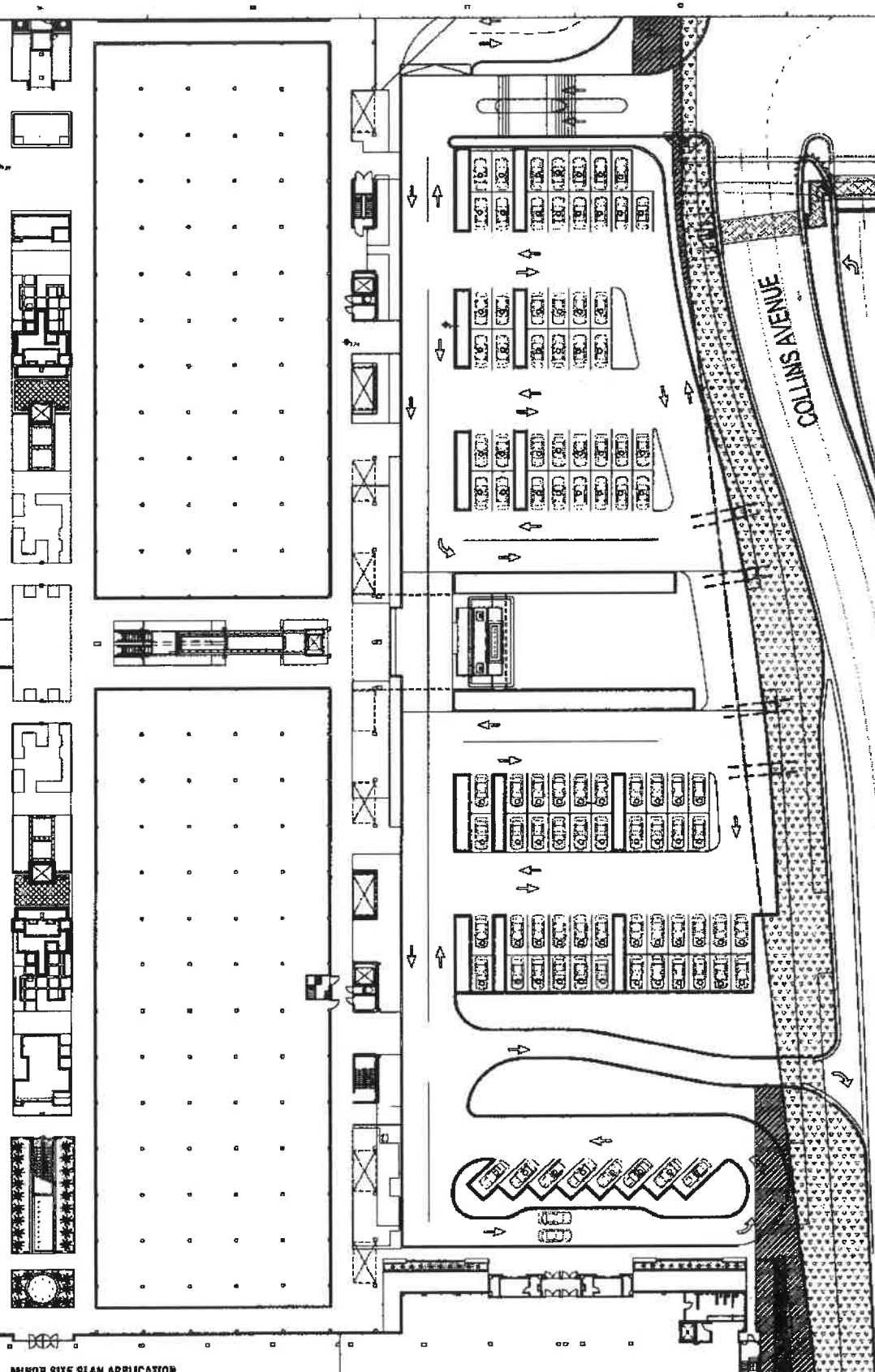


TOTAL PUBLIC USE EASEMENTS WITHIN BAL HARBOUR SHOPS  
 PROPERTY LINE: 27,055 SF  
 TOTAL BAL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 48,392 SF

381 SF OF PUBLIC USE EASEMENT

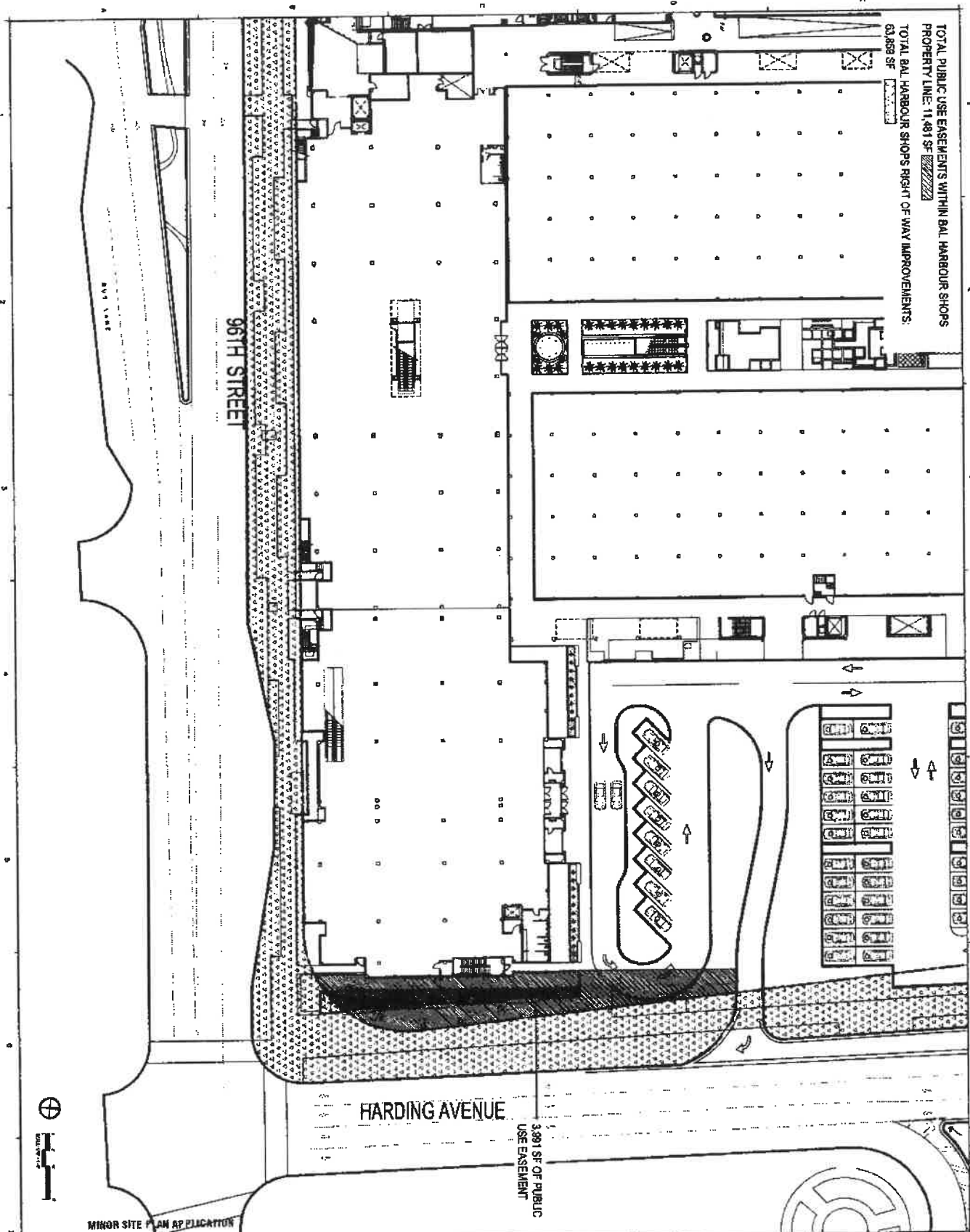
COLLINS AVENUE

ENUE



MINOR SITE PLAN APPLICATION

<p>L402-ALT</p> <p>LANDSCAPE PLAN EASEMENTS ENHANCEMENT</p>		<p><b>ZYSCOVICH</b> ARCHITECTS</p> <p>5759 Collins Avenue Bal Harbour, FL 33134</p>	<p>Project: Bal Harbour Bal Harbour Shops</p>	<p>Architect: ZYSCOVICH ARCHITECTS CONSULTANTS</p>	<p>Professional Engineer: MICHAEL J. BROWN MICHAEL J. BROWN ENGINEERING, LLC 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33134</p>	<p>Professional Engineer: MICHAEL J. BROWN MICHAEL J. BROWN ENGINEERING, LLC 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33134</p>	<p>Professional Engineer: MICHAEL J. BROWN MICHAEL J. BROWN ENGINEERING, LLC 10000 Collins Avenue, Suite 100 Bal Harbour, FL 33134</p>
			<p>Project No: 102804</p>	<p>Scale: 1/8" = 1'-0"</p>	<p>Date: 08/14/2018</p>	<p>Sheet No: 1 of 1</p>	

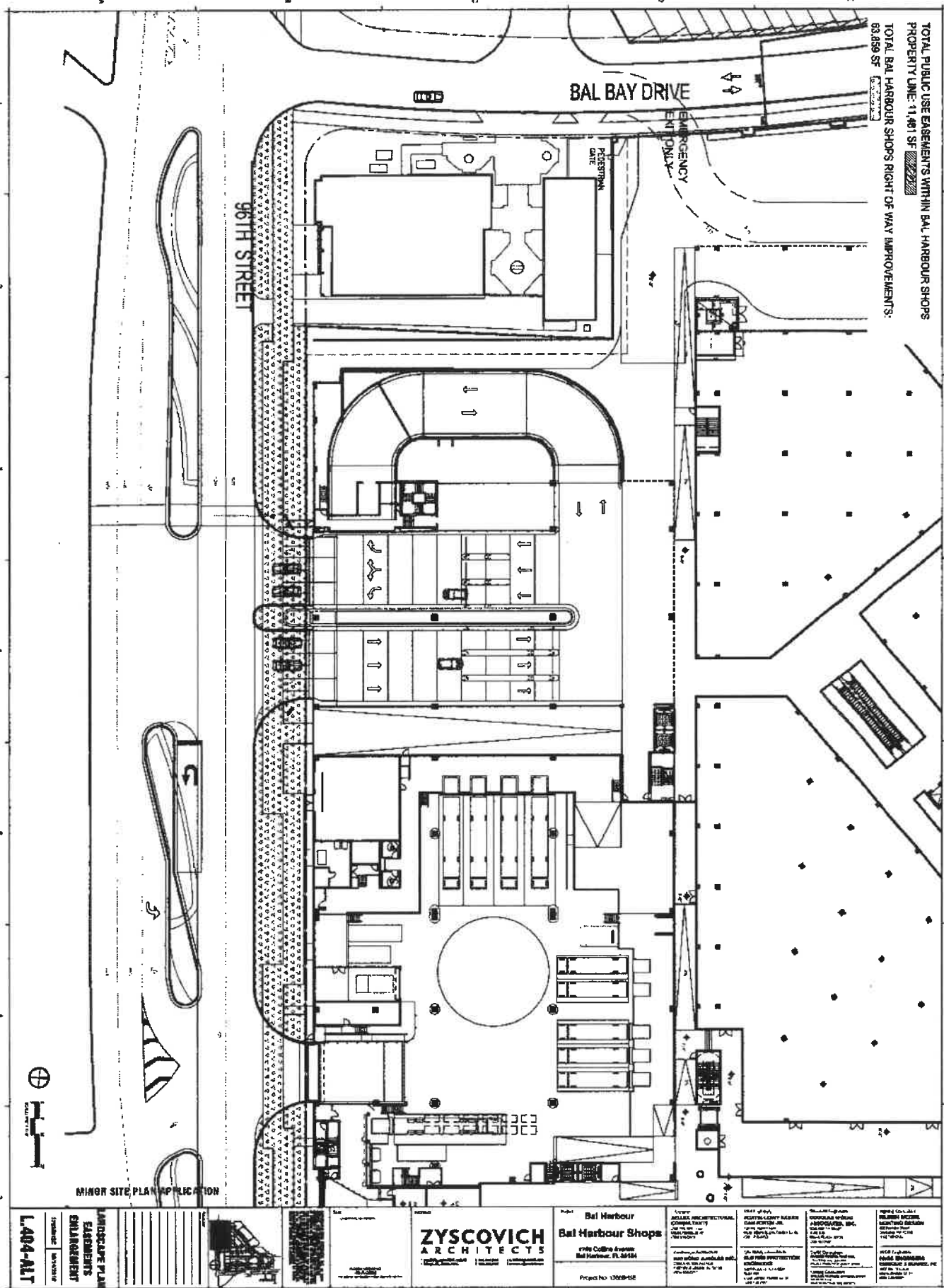


TOTAL PUBLIC USE EASEMENTS WITHIN BEL HARBOUR SHOPS  
 PROPERTY LINE: 11,481 SF  
 TOTAL BEL HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS:  
 63,853 SF

MINOR SITE PLAN APPLICATION



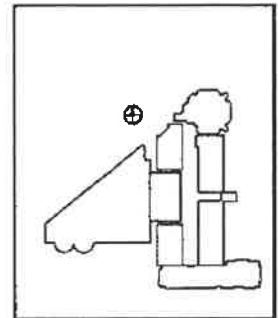
<b>L403-ALT</b> LANDSCAPE PLAN EASEMENTS ENLARGEMENT SCALE: AS SHOWN		<b>ZYSOVICH ARCHITECTS</b> 15000 6784 Collins Avenue Miami Beach, FL 33154	<b>Site</b> Bel Harbour Bel Harbour Shops 6784 Collins Avenue Miami Beach, FL 33154 Project No.: 1403-ALT	<b>Client</b> BEL HARBOUR SHOPPING CENTER, LLC 15000 6784 Collins Avenue Miami Beach, FL 33154	<b>Architect</b> ZYSOVICH ARCHITECTS, INC. 15000 6784 Collins Avenue Miami Beach, FL 33154	<b>Engineer</b> JAMES H. HARRIS, P.E. 15000 6784 Collins Avenue Miami Beach, FL 33154	<b>Other</b> JAMES H. HARRIS, P.E. 15000 6784 Collins Avenue Miami Beach, FL 33154	<b>Notes</b> 1. THIS PLAN IS A PART OF THE LANDSCAPE PLAN FOR THE BEL HARBOUR SHOPPING CENTER, LLC. ALL OTHERS ARE THE PROPERTY OF THE ARCHITECT.
			<b>Scale</b> AS SHOWN	<b>Notes</b> 1. THIS PLAN IS A PART OF THE LANDSCAPE PLAN FOR THE BEL HARBOUR SHOPPING CENTER, LLC. ALL OTHERS ARE THE PROPERTY OF THE ARCHITECT.	<b>Notes</b> 1. THIS PLAN IS A PART OF THE LANDSCAPE PLAN FOR THE BEL HARBOUR SHOPPING CENTER, LLC. ALL OTHERS ARE THE PROPERTY OF THE ARCHITECT.	<b>Notes</b> 1. THIS PLAN IS A PART OF THE LANDSCAPE PLAN FOR THE BEL HARBOUR SHOPPING CENTER, LLC. ALL OTHERS ARE THE PROPERTY OF THE ARCHITECT.		



# EXISTING ENCROACHMENTS

EXHIBIT M - Project Encroachments

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

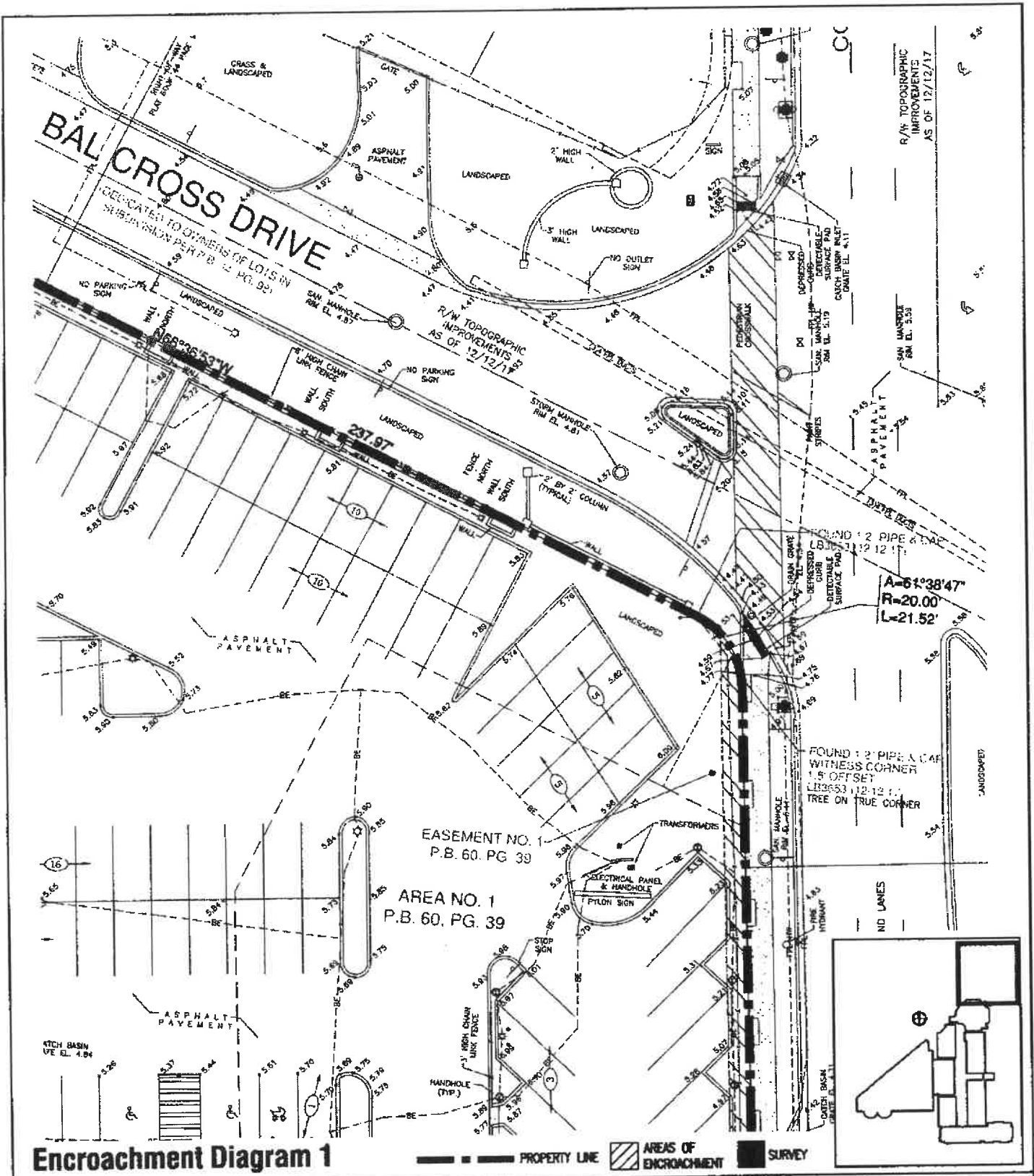


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**Encroachment Diagram 1**

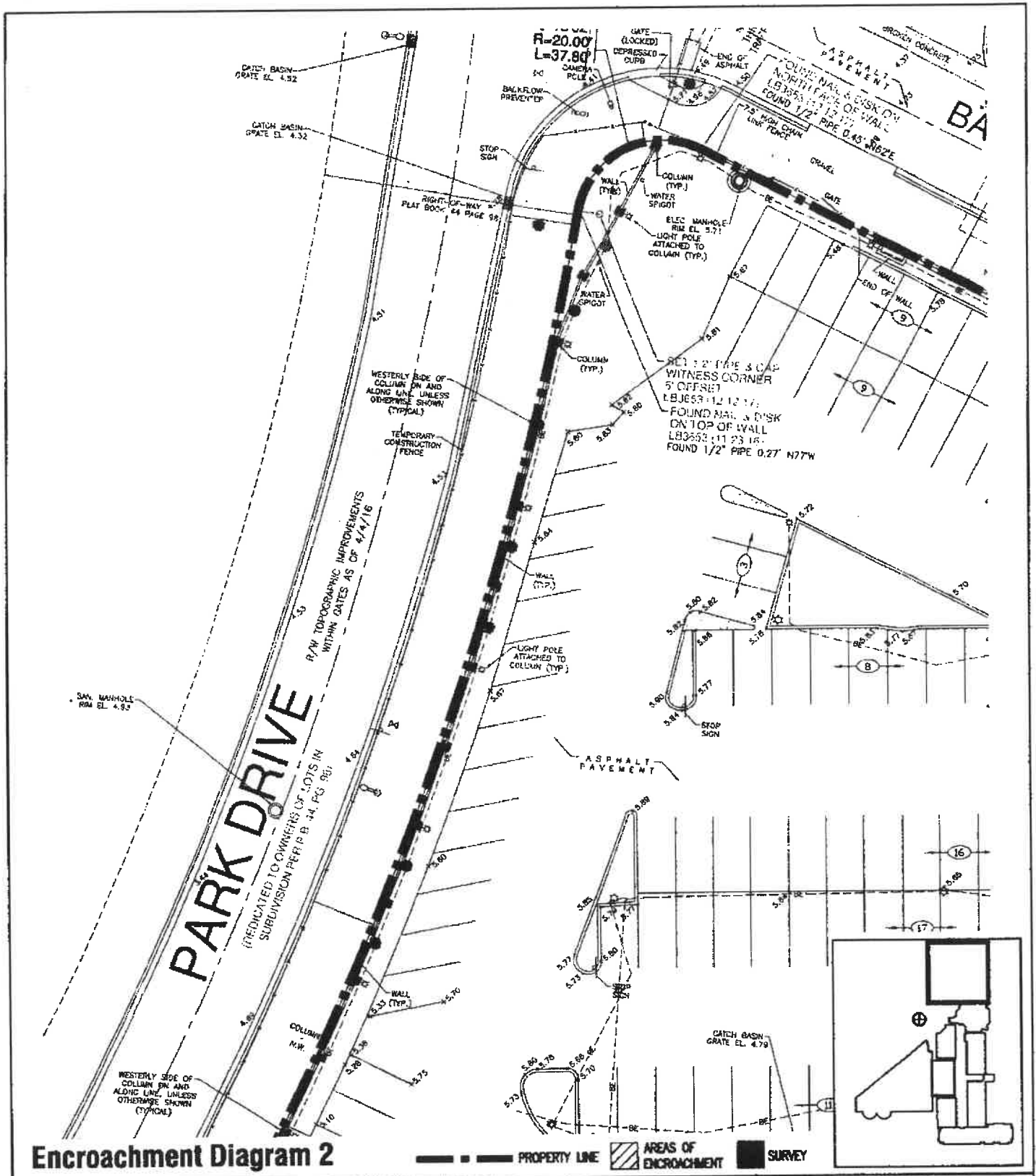
PROPERTY LINE   
  AREAS OF ENCROACHMENT   
  SURVEY

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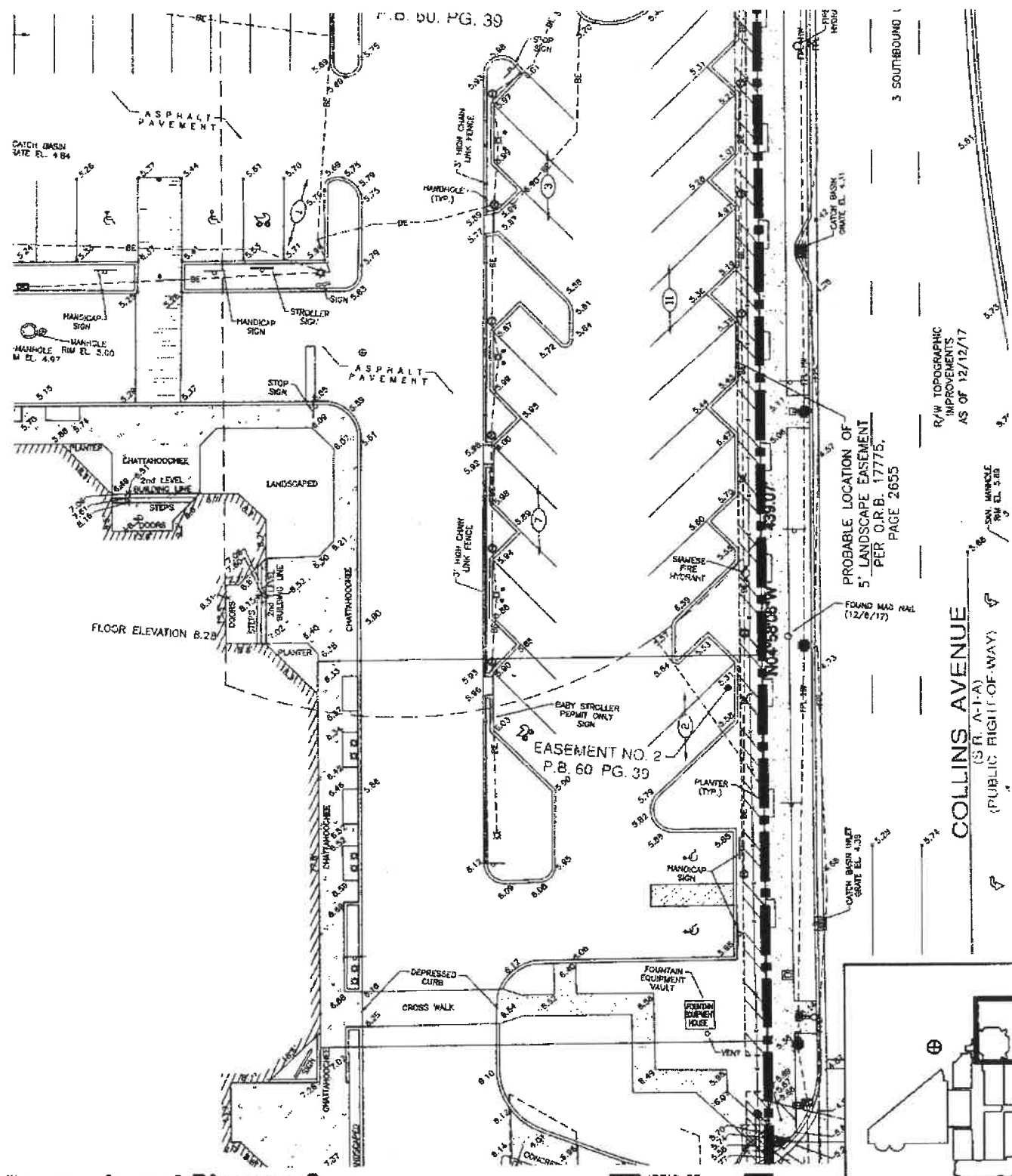


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**Encroachment Diagram 3**

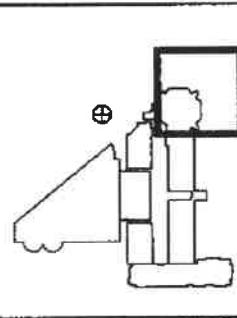
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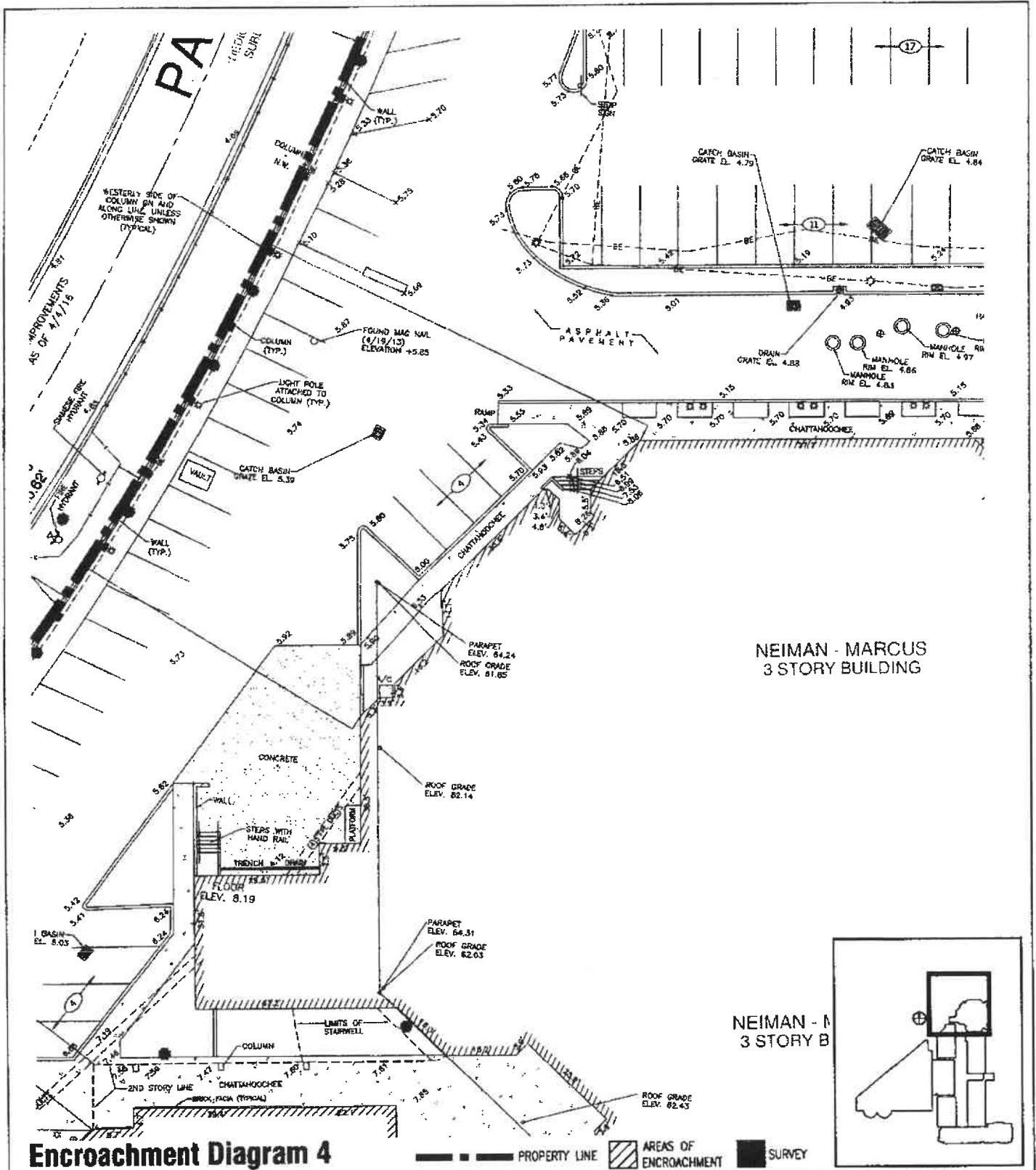
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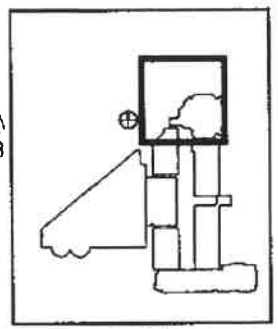


NEIMAN - MARCUS  
3 STORY BUILDING

NEIMAN - M  
3 STORY B

**Encroachment Diagram 4**

--- PROPERTY LINE    ▨ AREAS OF ENCROACHMENT    ■ SURVEY



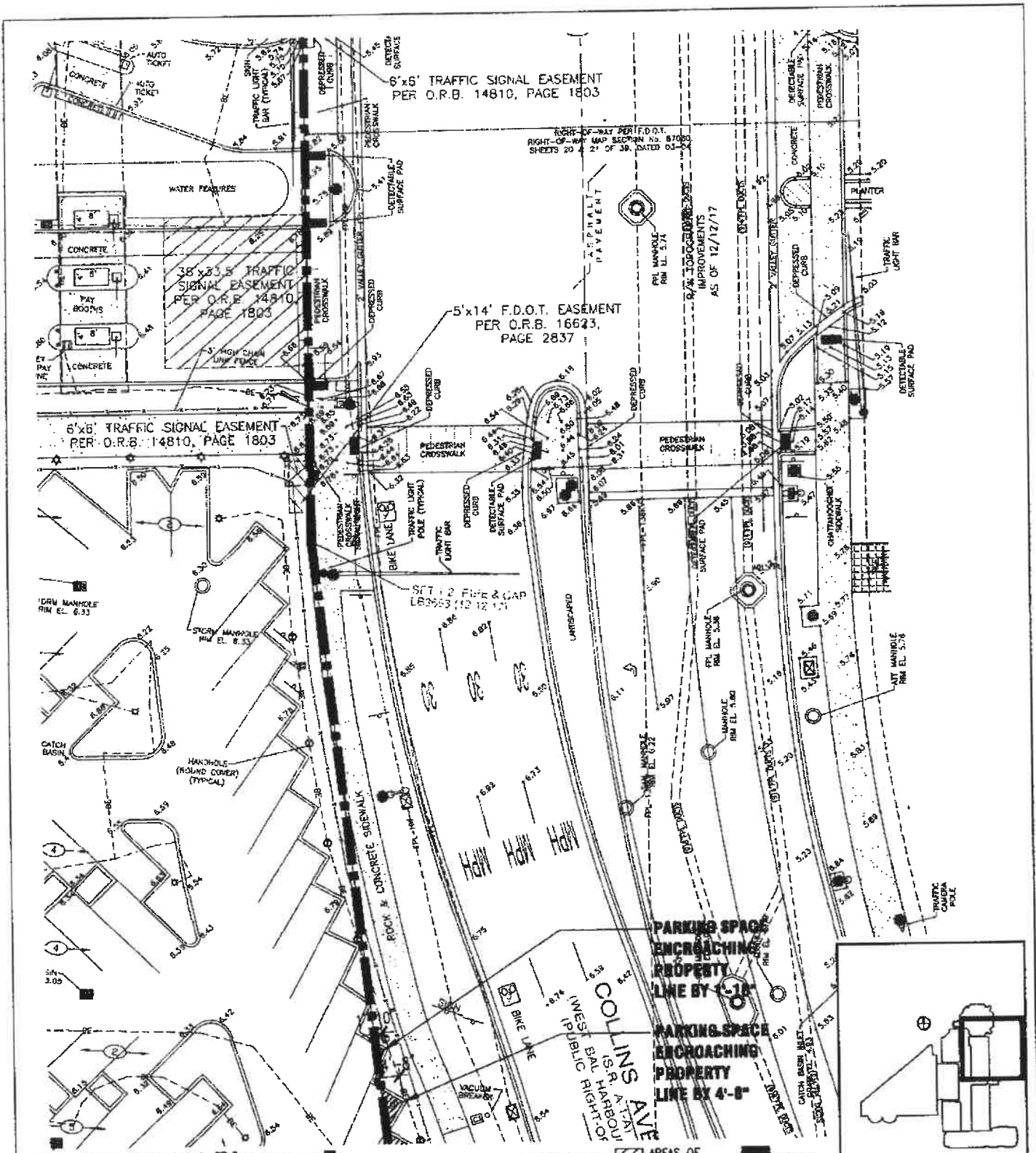
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**Encroachment Diagram 5**

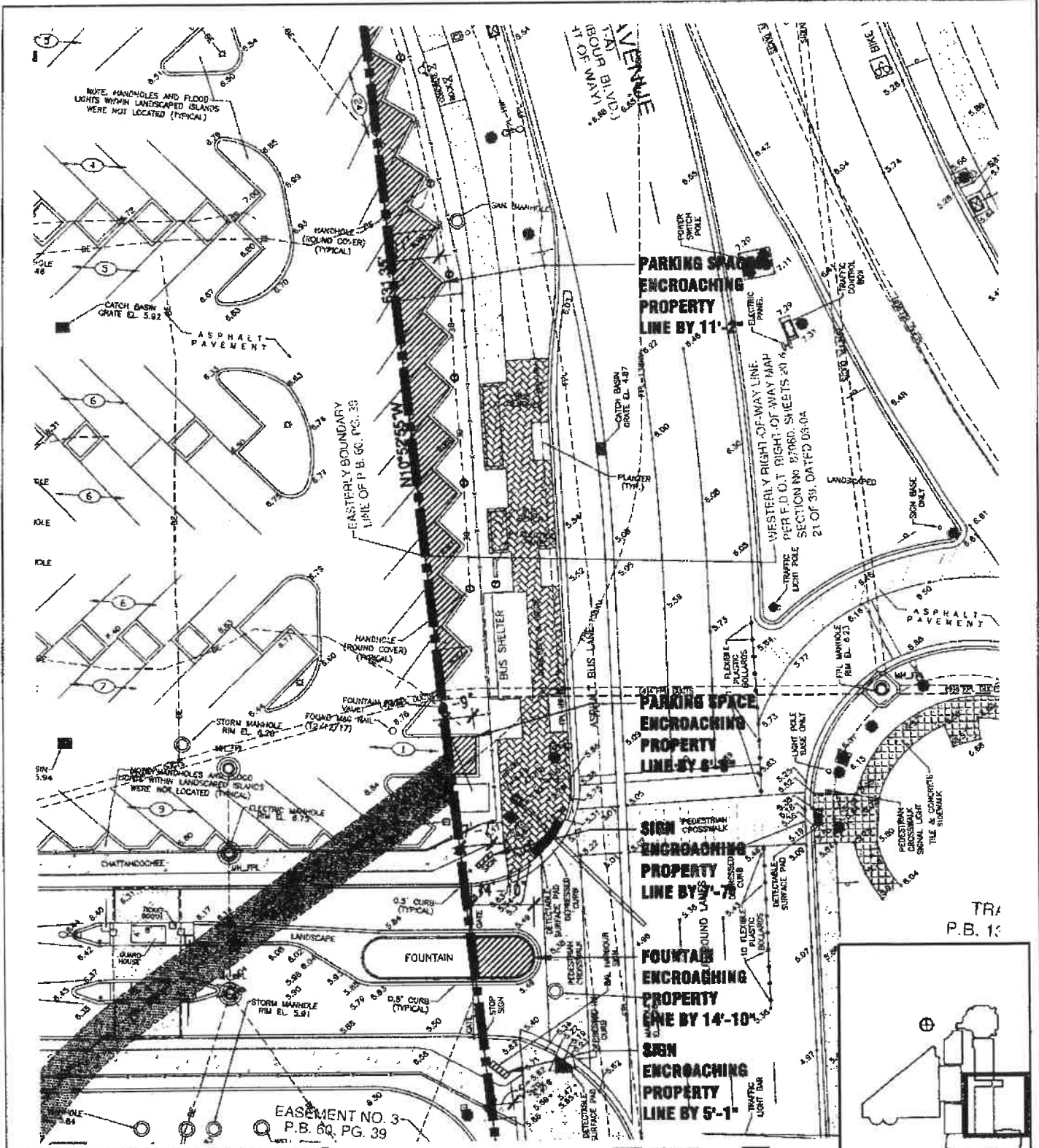
PROPERTY LINE  
 AREAS OF ENCROACHMENT  
 SURVEY

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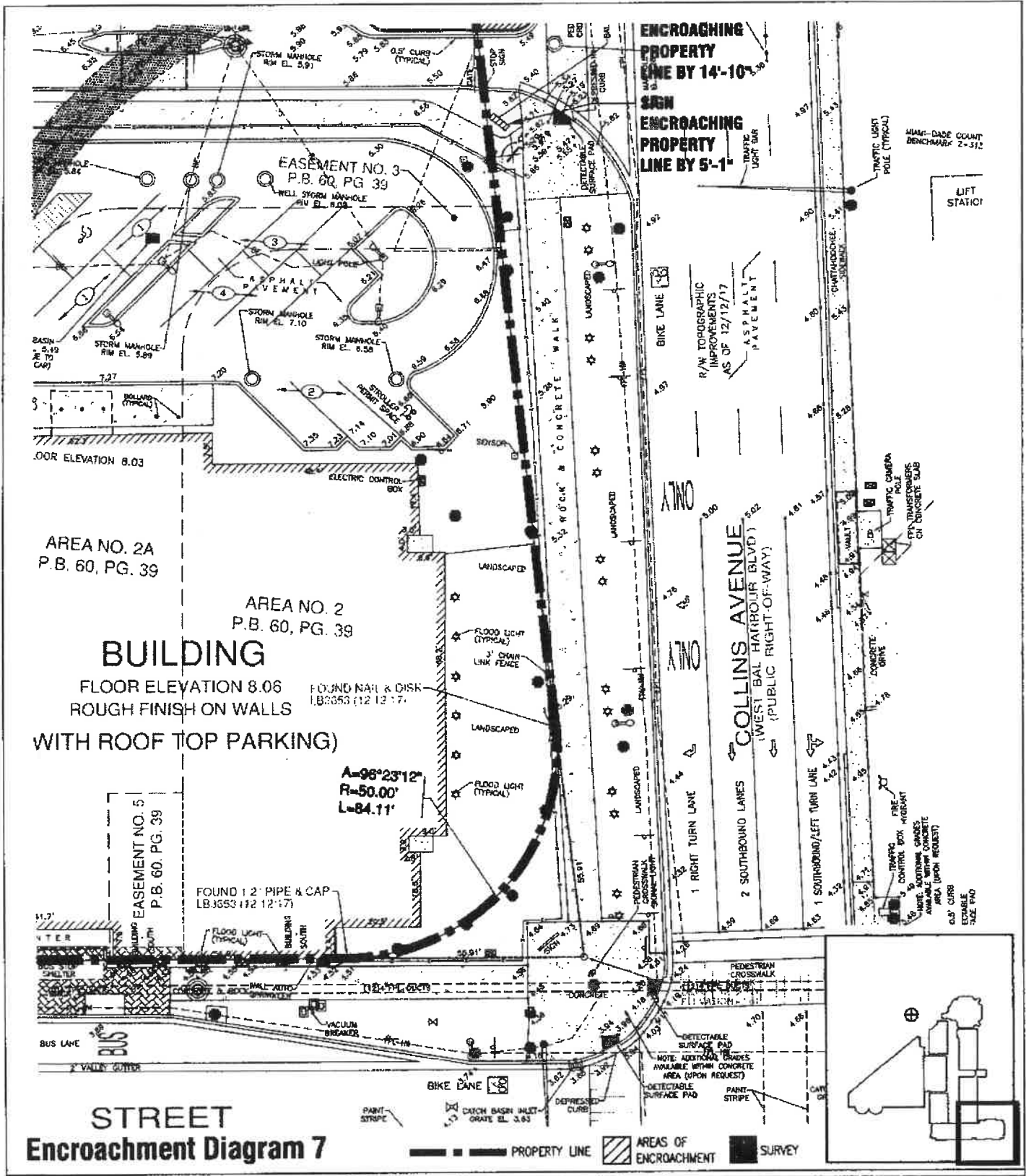
**Encroachment Diagram 6**

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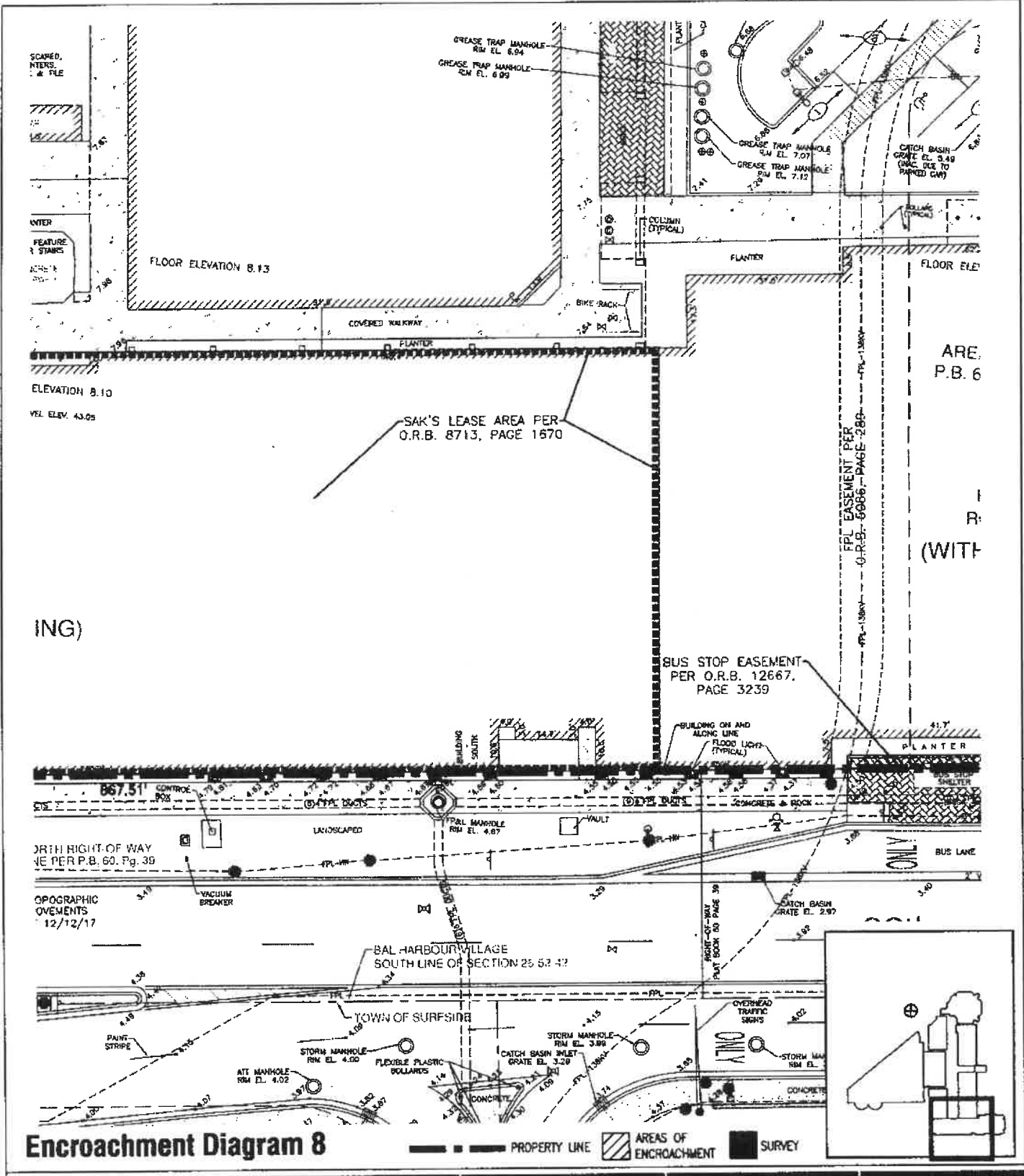


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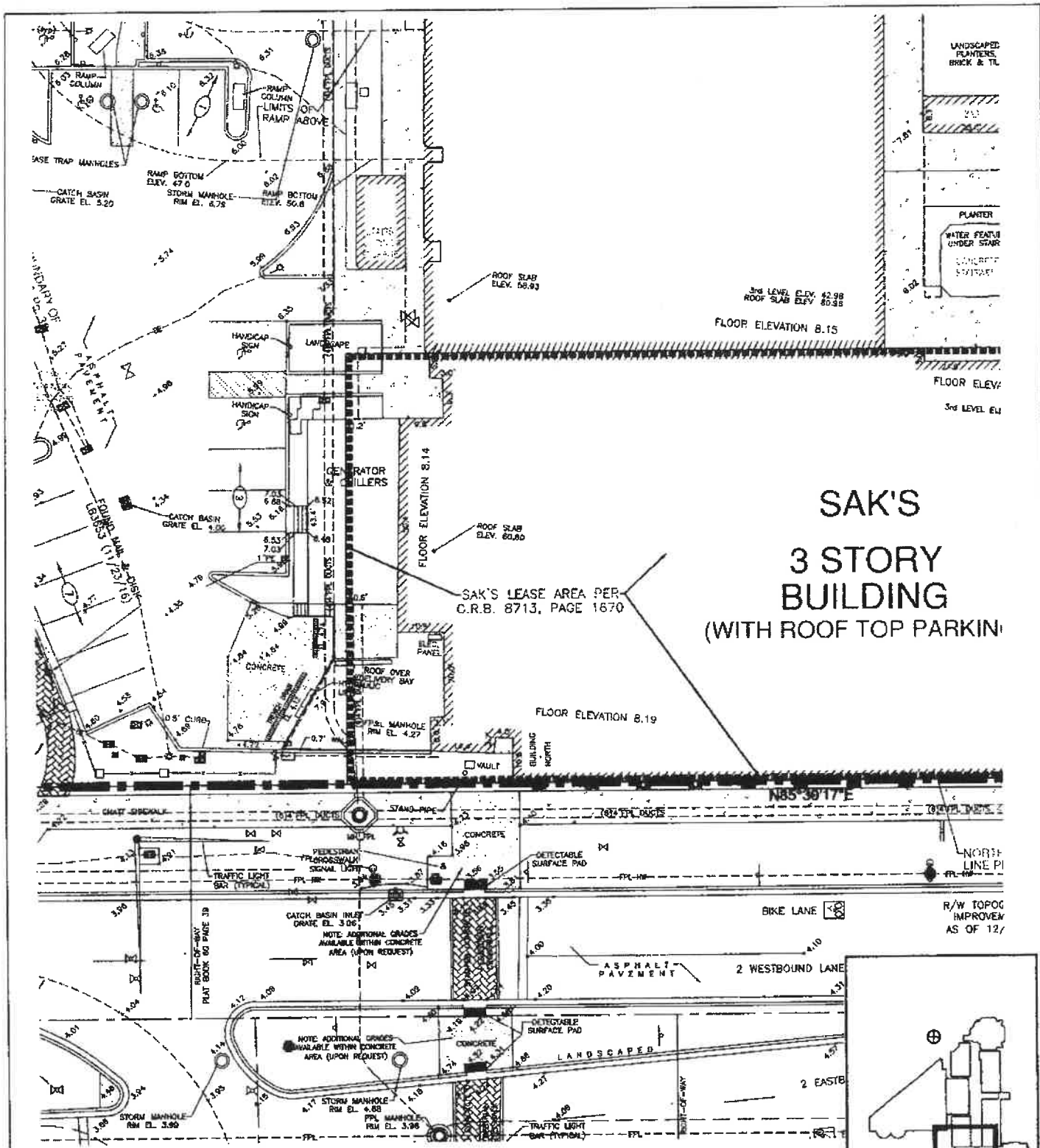


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**Encroachment Diagram 9**

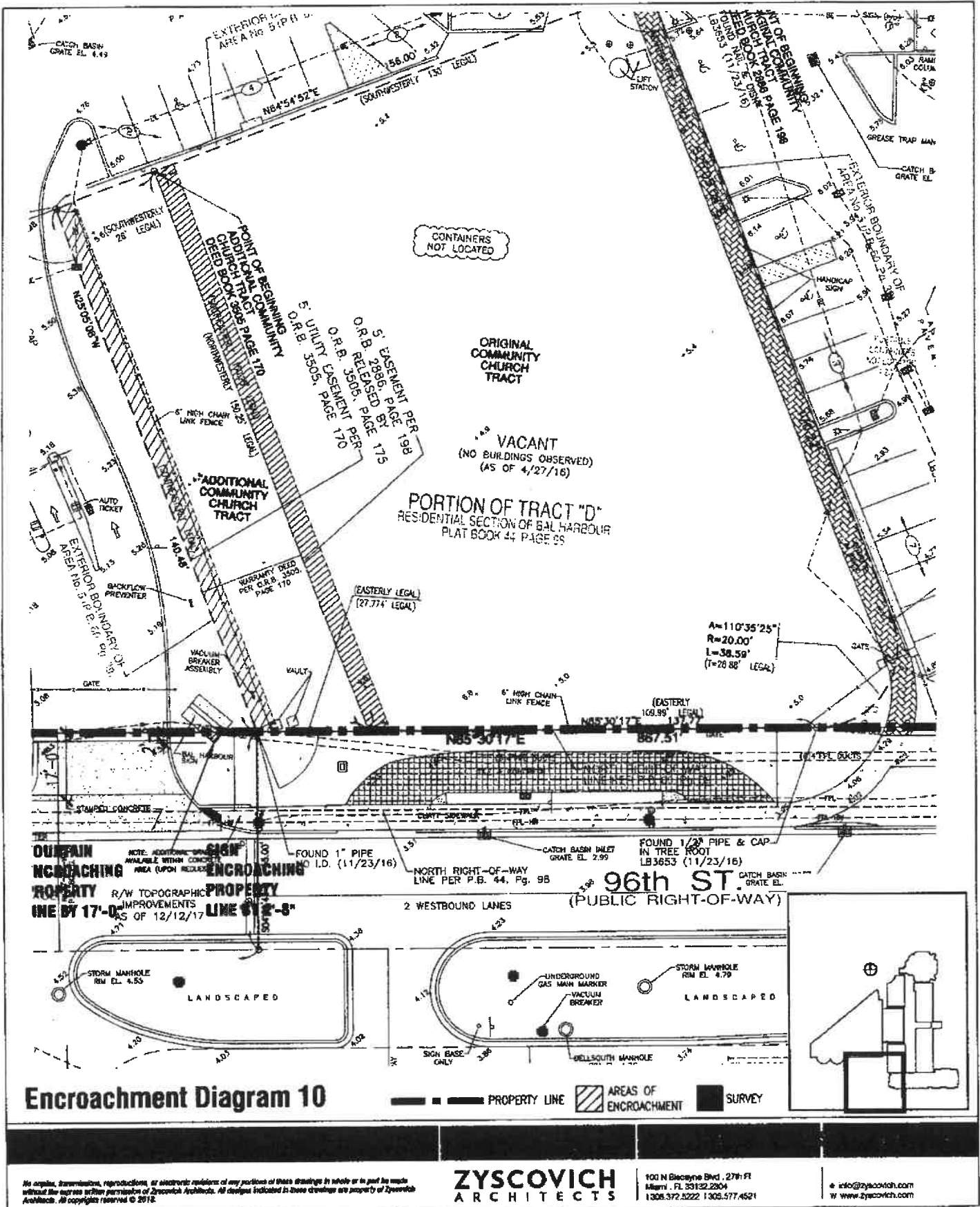
PROPERTY LINE    
  AREAS OF ENCROACHMENT    
  SURVEY

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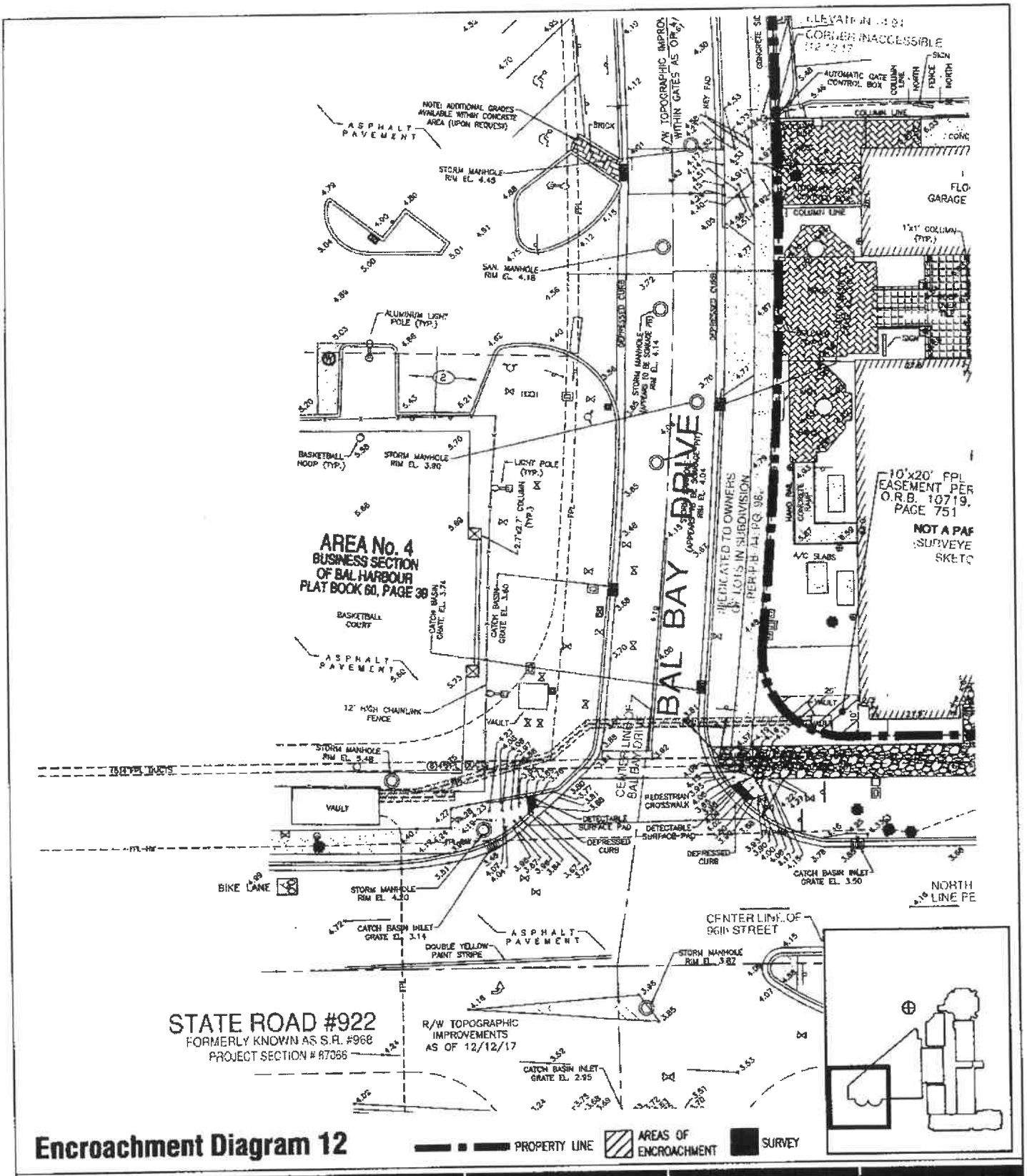
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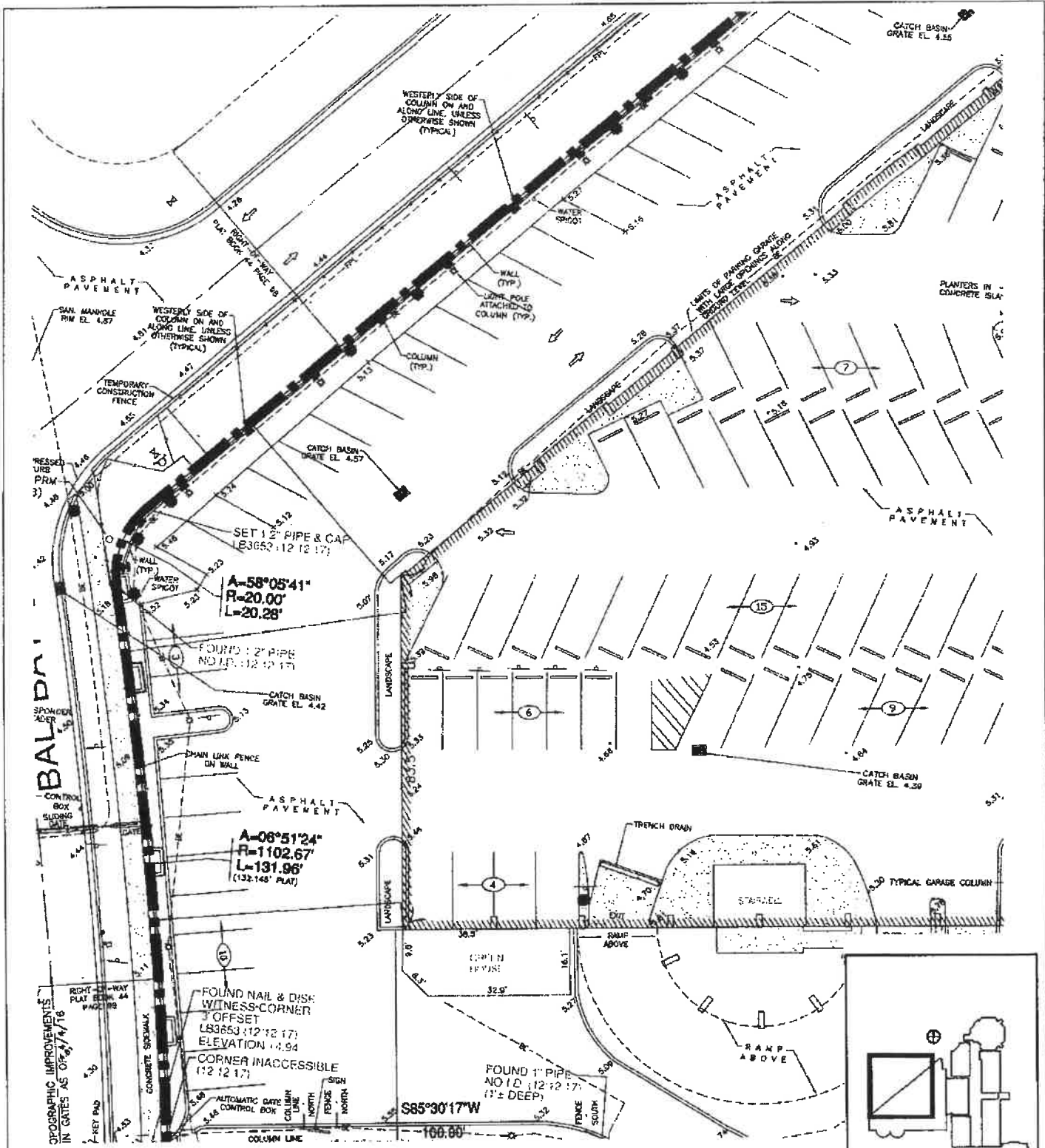
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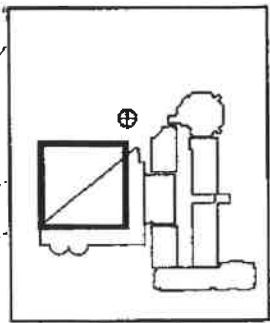
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### Encroachment Diagram 13

PROPERTY LINE    
  AREAS OF ENCROACHMENT    
  SURVEY

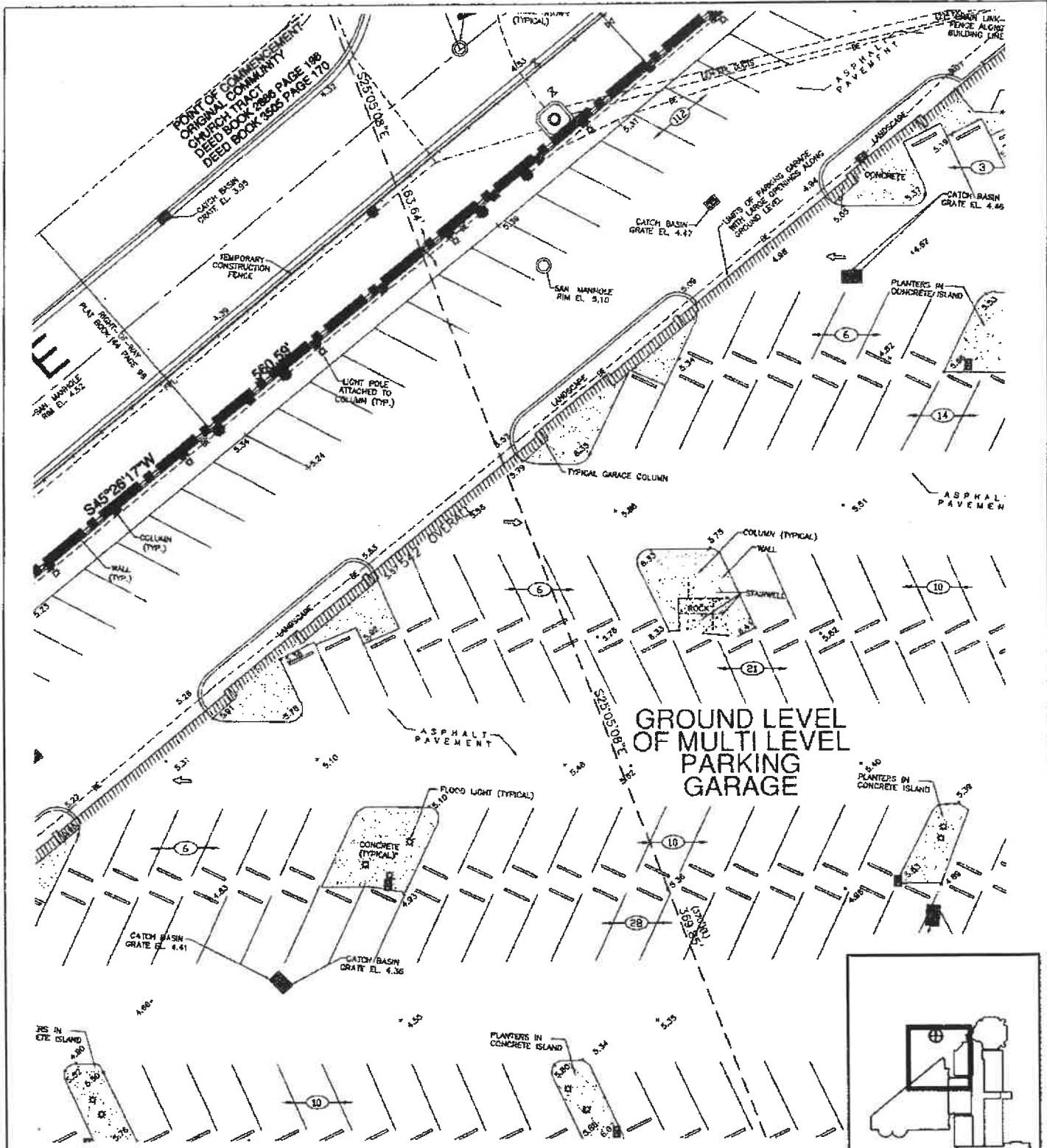


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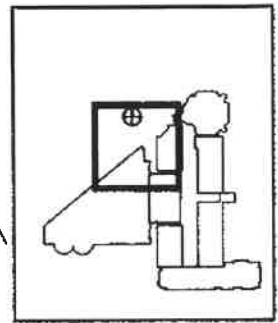
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**GROUND LEVEL OF MULTI LEVEL PARKING GARAGE**

**Encroachment Diagram 14**

PROPERTY LINE  
 AREAS OF ENCROACHMENT  
 SURVEY

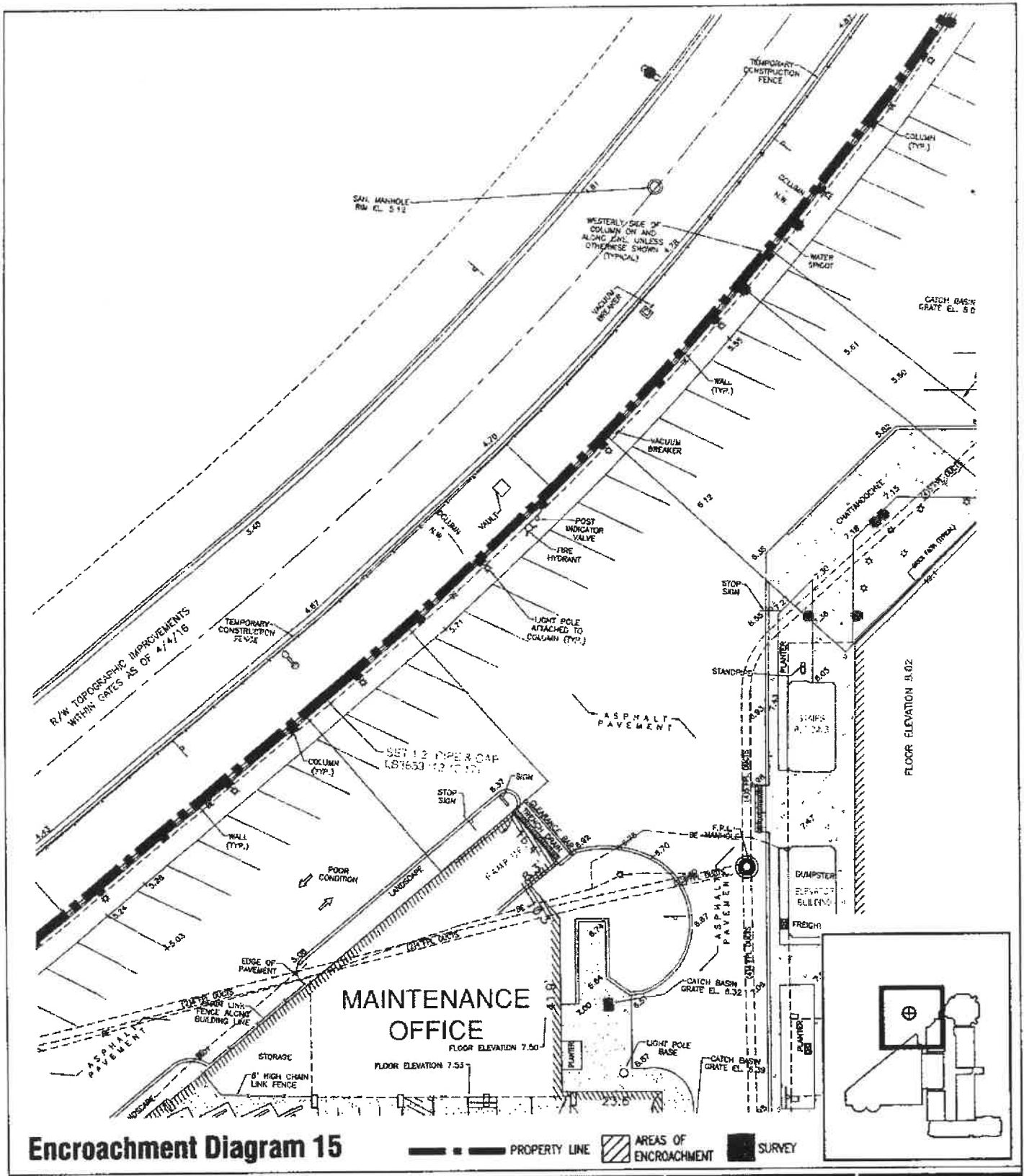


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**RESOLUTION NO. 2018-1202**

**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.



INCORPORATED 1954  
BAL HARBOUR VILLAGE  
INDEPENDENCE 1890

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



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

# BAL HARBOUR SHOPS PLANS MINOR SITE PLAN APPLICATION

9700 COLLINS AVENUE, BAL HARBOUR, FL. 33154

MODEL LIST

No.	Description	Quantity	Notes
1	1/2" x 1/2" x 1/2" Brick	1000	
2	1/2" x 1/2" x 1/2" Brick	1000	
3	1/2" x 1/2" x 1/2" Brick	1000	
4	1/2" x 1/2" x 1/2" Brick	1000	
5	1/2" x 1/2" x 1/2" Brick	1000	
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97	1/2" x 1/2" x 1/2" Brick	1000	
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99	1/2" x 1/2" x 1/2" Brick	1000	
100	1/2" x 1/2" x 1/2" Brick	1000	

MINOR SITE PLAN APPLICATION

COVER SHEET  
INDEX LIST

GN-001



**ZYSCOVICH**  
ARCHITECTS

Bal Harbour  
Bal Harbour Shops

9700 Collins Ave  
Bal Harbour, FL 33154

Phone No. 305.940.0000

Project: BAL HARBOUR SHOPS  
9700 COLLINS AVE  
BAL HARBOUR, FL 33154

Architect: ZYSCOVICH ARCHITECTS  
9700 COLLINS AVE  
BAL HARBOUR, FL 33154  
Phone No. 305.940.0000

Scale: AS SHOWN

Date: 11/11/11

Sheet No. 001 of 001

**EXHIBIT P - Site Plan Amendment**

# BAL HARBOUR SHOPS DATA SHEET

GENERAL NOTES	
1.	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
2.	SEE ELECTRICAL DRAWINGS FOR LIGHTING FIXTURES AND SWITCHES.
3.	SEE MECHANICAL DRAWINGS FOR HVAC SYSTEMS AND VENTILATION.
4.	SEE CIVIL DRAWINGS FOR SITE GRADING AND UTILITY LOCATIONS.
5.	SEE STRUCTURAL DRAWINGS FOR FOUNDATIONS AND BEAMS.
6.	SEE EXTERIOR FINISHES FOR PAINTS AND STAINING.
7.	SEE INTERIOR FINISHES FOR WALLS, FLOORS, AND CEILING.
8.	SEE LANDSCAPE ARCHITECTURE FOR PLANTING AND HARDSCAPE.
9.	SEE SIGNAGE DRAWINGS FOR EXTERIOR AND INTERIOR MARKING.
10.	SEE SCHEDULES FOR MATERIALS AND FINISHES.

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CEILING TILES	1000	SQ FT	1.50	1500.00
2	FLOORING	2000	SQ FT	2.00	4000.00
3	WALLS	1000	SQ FT	1.00	1000.00
4	DOORS	10	EA	100.00	1000.00
5	WINDOWS	20	EA	50.00	1000.00
6	MECHANICAL	10	EA	100.00	1000.00
7	ELECTRICAL	10	EA	100.00	1000.00
8	LANDSCAPE	100	EA	10.00	1000.00
9	SIGNAGE	10	EA	100.00	1000.00
10	TOTAL				13000.00

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CEILING TILES	1000	SQ FT	1.50	1500.00
2	FLOORING	2000	SQ FT	2.00	4000.00
3	WALLS	1000	SQ FT	1.00	1000.00
4	DOORS	10	EA	100.00	1000.00
5	WINDOWS	20	EA	50.00	1000.00
6	MECHANICAL	10	EA	100.00	1000.00
7	ELECTRICAL	10	EA	100.00	1000.00
8	LANDSCAPE	100	EA	10.00	1000.00
9	SIGNAGE	10	EA	100.00	1000.00
10	TOTAL				13000.00

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CEILING TILES	1000	SQ FT	1.50	1500.00
2	FLOORING	2000	SQ FT	2.00	4000.00
3	WALLS	1000	SQ FT	1.00	1000.00
4	DOORS	10	EA	100.00	1000.00
5	WINDOWS	20	EA	50.00	1000.00
6	MECHANICAL	10	EA	100.00	1000.00
7	ELECTRICAL	10	EA	100.00	1000.00
8	LANDSCAPE	100	EA	10.00	1000.00
9	SIGNAGE	10	EA	100.00	1000.00
10	TOTAL				13000.00

MINOR SITE PLAN APPLICATION

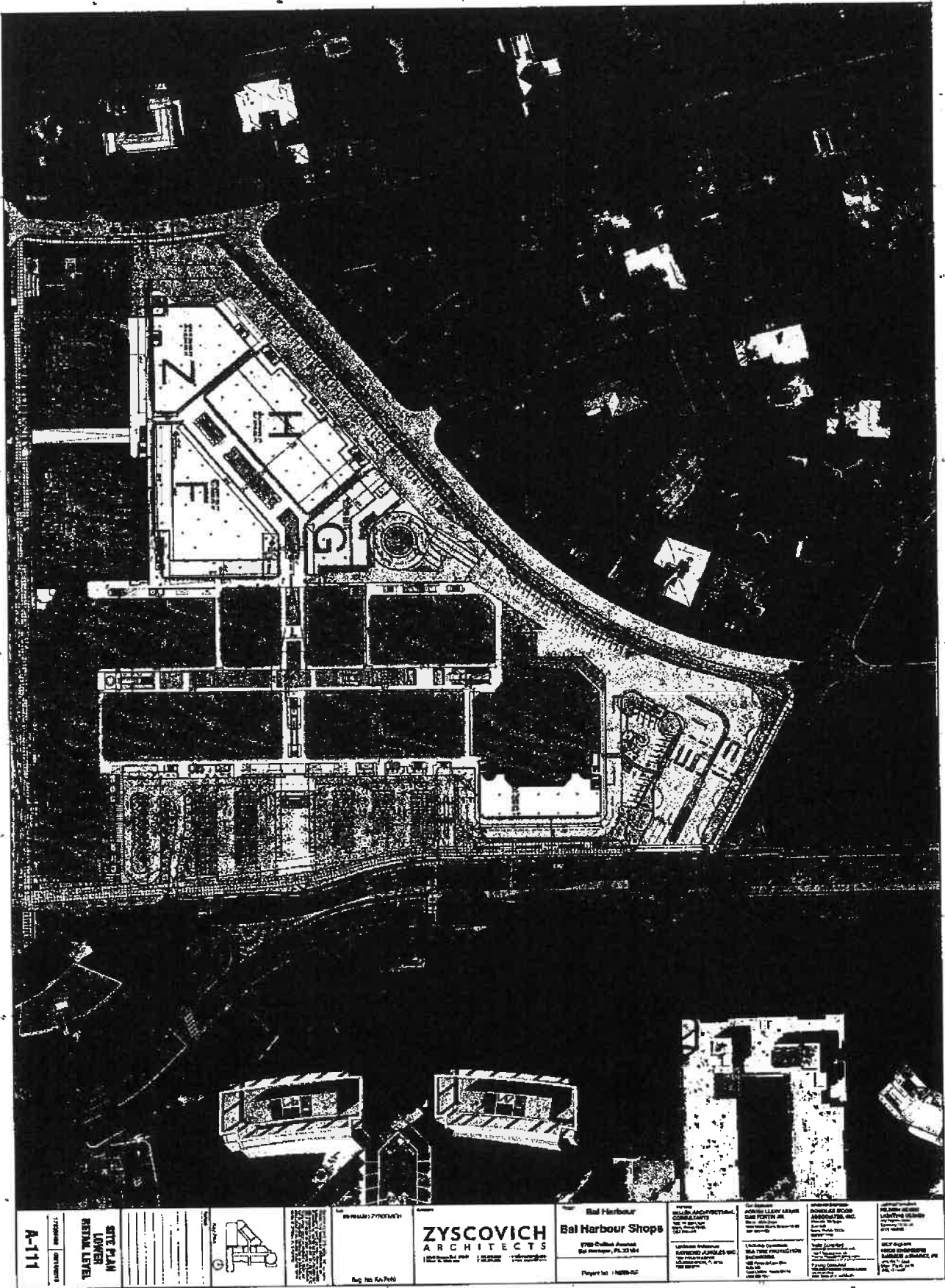
<b>DM-002-ALT</b> DATA SHEET DRAWING ANALYSIS AND REVISIONS PLANNING MATERIALS PREPARED BY:		PROJECT NO. 17288-02 BAL HARBOUR SHOPS	<b>ZYSCOVICH ARCHITECTS</b> 6750 Collins Avenue Bal Harbour, FL 33154 Phone: 305-444-1111 Fax: 305-444-1112 www.zyscovich.com	PROJECT NO. 17288-02 BAL HARBOUR SHOPS	PROJECT NO. 17288-02 BAL HARBOUR SHOPS	PROJECT NO. 17288-02 BAL HARBOUR SHOPS	PROJECT NO. 17288-02 BAL HARBOUR SHOPS	PROJECT NO. 17288-02 BAL HARBOUR SHOPS	PROJECT NO. 17288-02 BAL HARBOUR SHOPS

# BAL HARBOUR SHOPS DATA SHEET

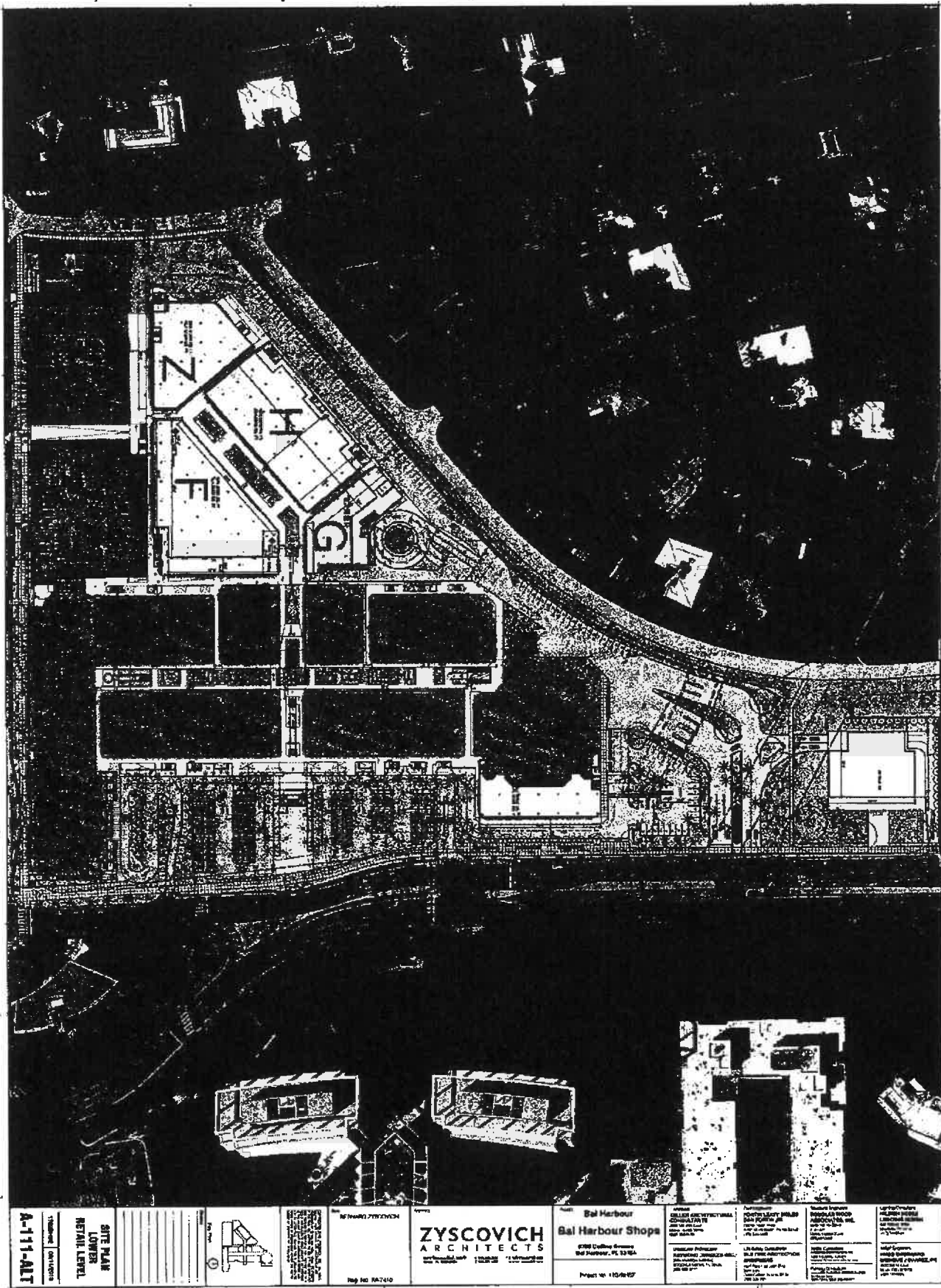
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MINOR SITE PLAN APPLICATION

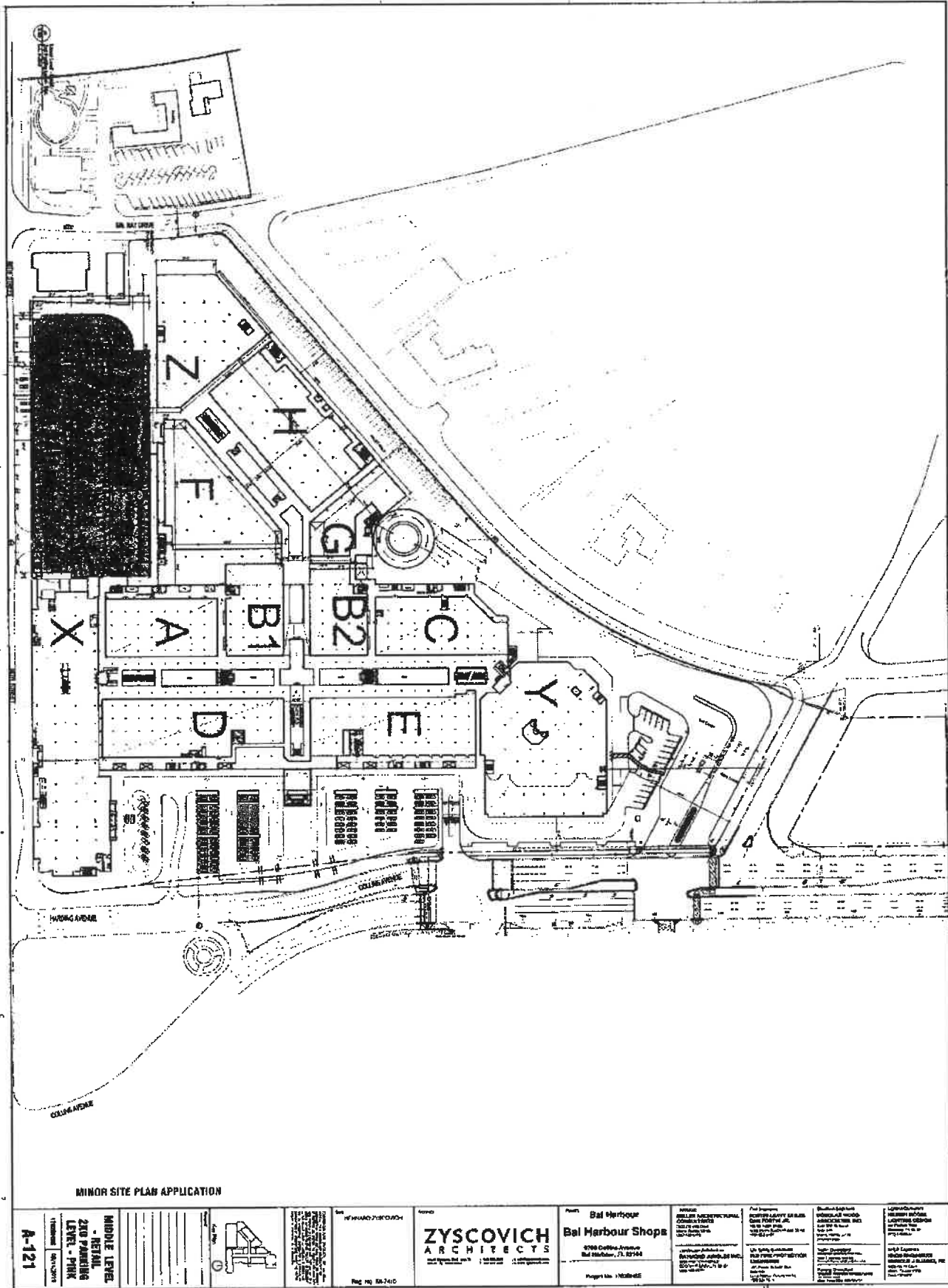
<b>DATA SHEET</b> ZYSCOVICH ARCHITECTS 1000 WEST 10TH AVENUE DENVER, CO 80202 PHONE: 303.733.1111 FAX: 303.733.1112 WWW.ZYSCOVICH.COM		DESIGNED BY ZYSCOVICH No. 10-00740	<b>ZYSCOVICH ARCHITECTS</b> 1000 WEST 10TH AVENUE DENVER, CO 80202 PHONE: 303.733.1111 FAX: 303.733.1112 WWW.ZYSCOVICH.COM	Project: <b>Bal Harbour Shops</b> 1700 Collins Avenue Bal Harbour, FL 33154 Project No. 162016	Client: <b>THE BAL HARBOUR SHOPPING CENTER, INC.</b> 1700 COLLINS AVENUE BAL HARBOUR, FL 33154 PHONE: 305.224.1111 FAX: 305.224.1112 WWW.BALHARBORSHOPPINGCENTER.COM	City of Miami Planning Department 3311 N.W. 27th Avenue Miami, FL 33109 PHONE: 305.259.3333 FAX: 305.259.3334 WWW.CITYOFMIAMI.GOV	City of Miami Planning Department 3311 N.W. 27th Avenue Miami, FL 33109 PHONE: 305.259.3333 FAX: 305.259.3334 WWW.CITYOFMIAMI.GOV
		PREPARED BY ZYSCOVICH No. 10-00740	City of Miami Planning Department 3311 N.W. 27th Avenue Miami, FL 33109 PHONE: 305.259.3333 FAX: 305.259.3334 WWW.CITYOFMIAMI.GOV				



<p><b>A-111</b></p>	<p><b>SITE PLAN</b> LOWER RENTAL LEVEL</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p>Bal Harbour 5750 Collins Avenue Bridlewood, FL 33156</p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p>	<p>Architect <b>ZYSCOVICH ARCHITECTS</b> 1100 Brickell Avenue Miami, FL 33131</p>	<p>Structural Engineer <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>	<p>MECHANICAL ENGINEER <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>	<p>ELECTRICAL ENGINEER <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>	<p>PLUMBING ENGINEER <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>	<p>MECHANICAL ENGINEER <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>	<p><b>MECHANICAL ENGINEER</b> <b>JOHN J. LEWIS ENGINEERS</b> 3100 N.W. 75th Ave. Miami, FL 33150</p>
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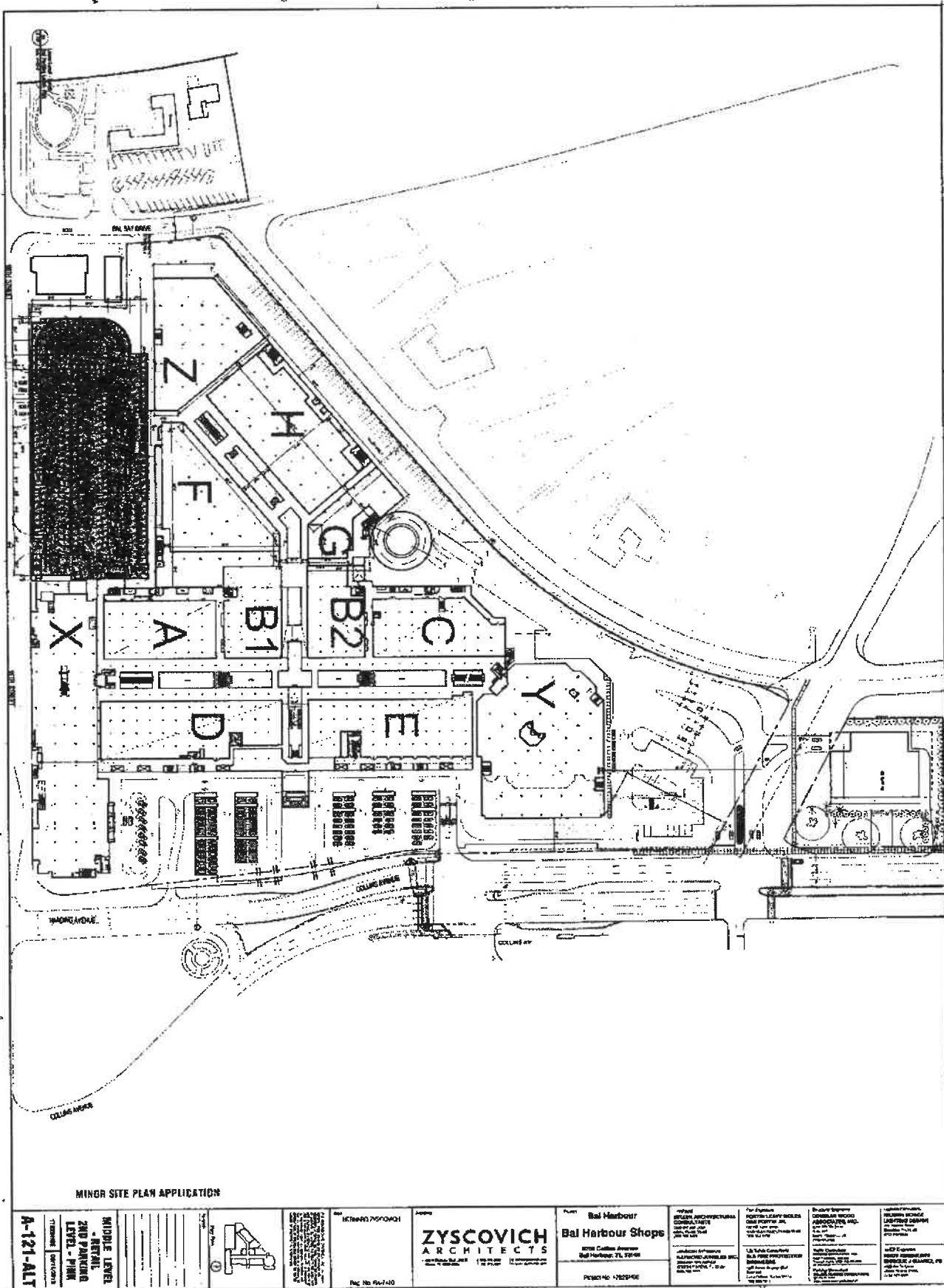


<p><b>A-111-ALT</b></p>	<p><b>SITE PLAN</b> <b>LOWER</b> <b>RETAIL LEVEL</b></p>		<p>PROJECT NO. 110/4647</p>	<p><b>ZYSCOVICH</b> <b>ARCHITECTS</b></p> <p>11000 Park Road Miami Beach, FL 33156 Tel: 305.673.1234 Fax: 305.673.1235</p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>6760 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 110/4647</p>	<p><b>CLIENT ARCHITECTURE</b> COURTESY OF THE BAL HARBOUR SHOP BAL HARBOUR, FL</p> <p><b>DESIGNED BY</b> ZYSKOVICH ARCHITECTS 11000 PARK ROAD MIAMI BEACH, FL 33156</p>	<p><b>ARCHITECT</b> ZYSKOVICH ARCHITECTS 11000 PARK ROAD MIAMI BEACH, FL 33156</p> <p><b>DATE</b> 11/10/07</p>	<p><b>DATE</b> 11/10/07</p>	<p><b>DATE</b> 11/10/07</p>
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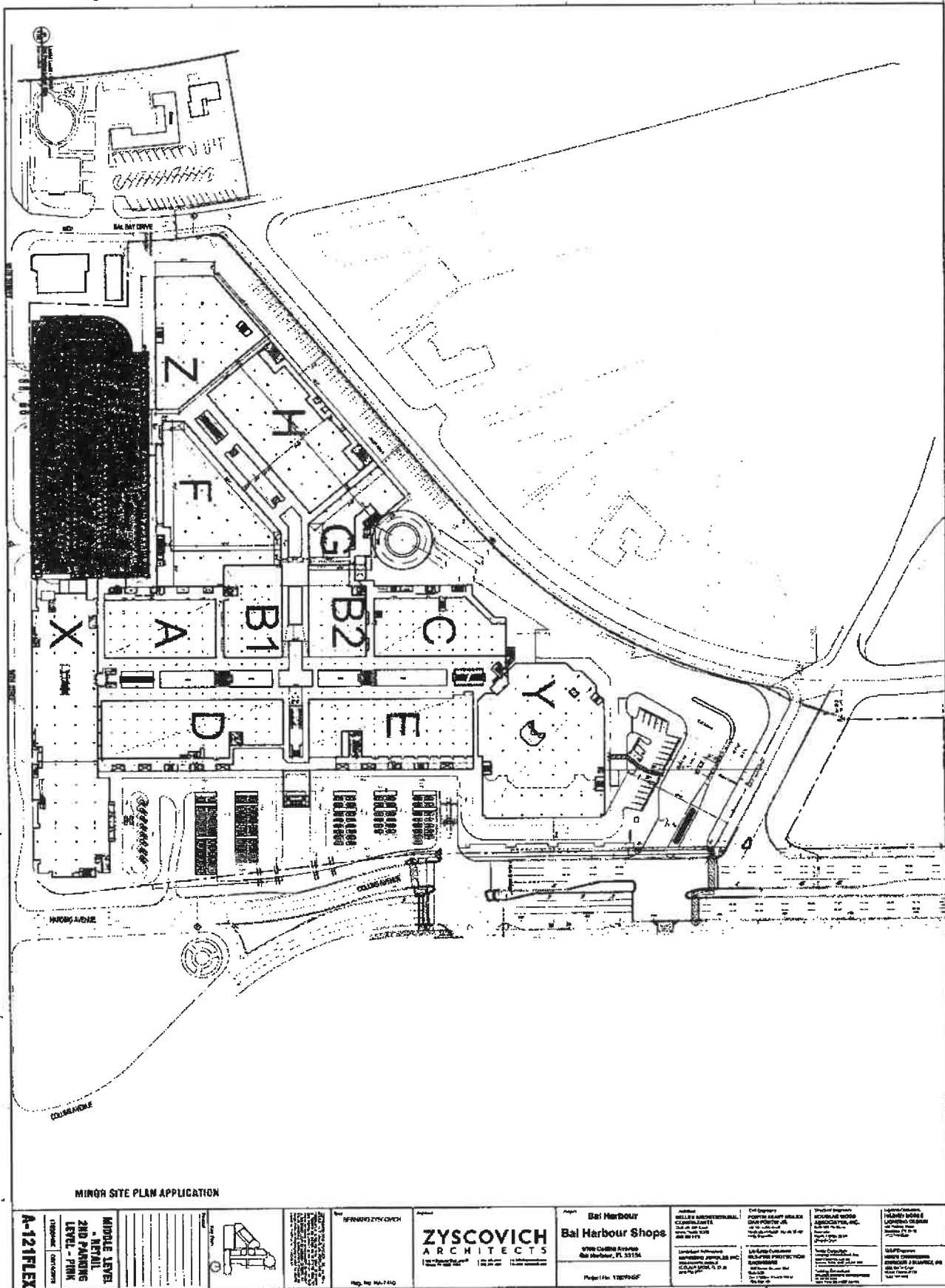


MINOR SITE PLAN APPLICATION

<p>A-121</p>	<p>MIDDLE LEVEL - RETAIL 2ND PARKING LEVEL - PARK</p>		<p>Reg No 16-7410</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p>Project: <b>Bal Harbour Shops</b> Bal Harbour Shops 2768 Collins Avenue Bal Harbour, FL 33154</p>	<p>Architect: <b>ZYSCOVICH ARCHITECTS</b> 2768 Collins Avenue Bal Harbour, FL 33154 Tel: 305.234.1111</p>	<p>Professional Engineer: <b>DAVID J. BROWN</b> 11111 Collins Avenue Suite 100 Bal Harbour, FL 33154 Tel: 305.234.1111</p>	<p>Professional Surveyor: <b>DAVID J. BROWN</b> 11111 Collins Avenue Suite 100 Bal Harbour, FL 33154 Tel: 305.234.1111</p>	<p>Professional Landscape Architect: <b>DAVID J. BROWN</b> 11111 Collins Avenue Suite 100 Bal Harbour, FL 33154 Tel: 305.234.1111</p>
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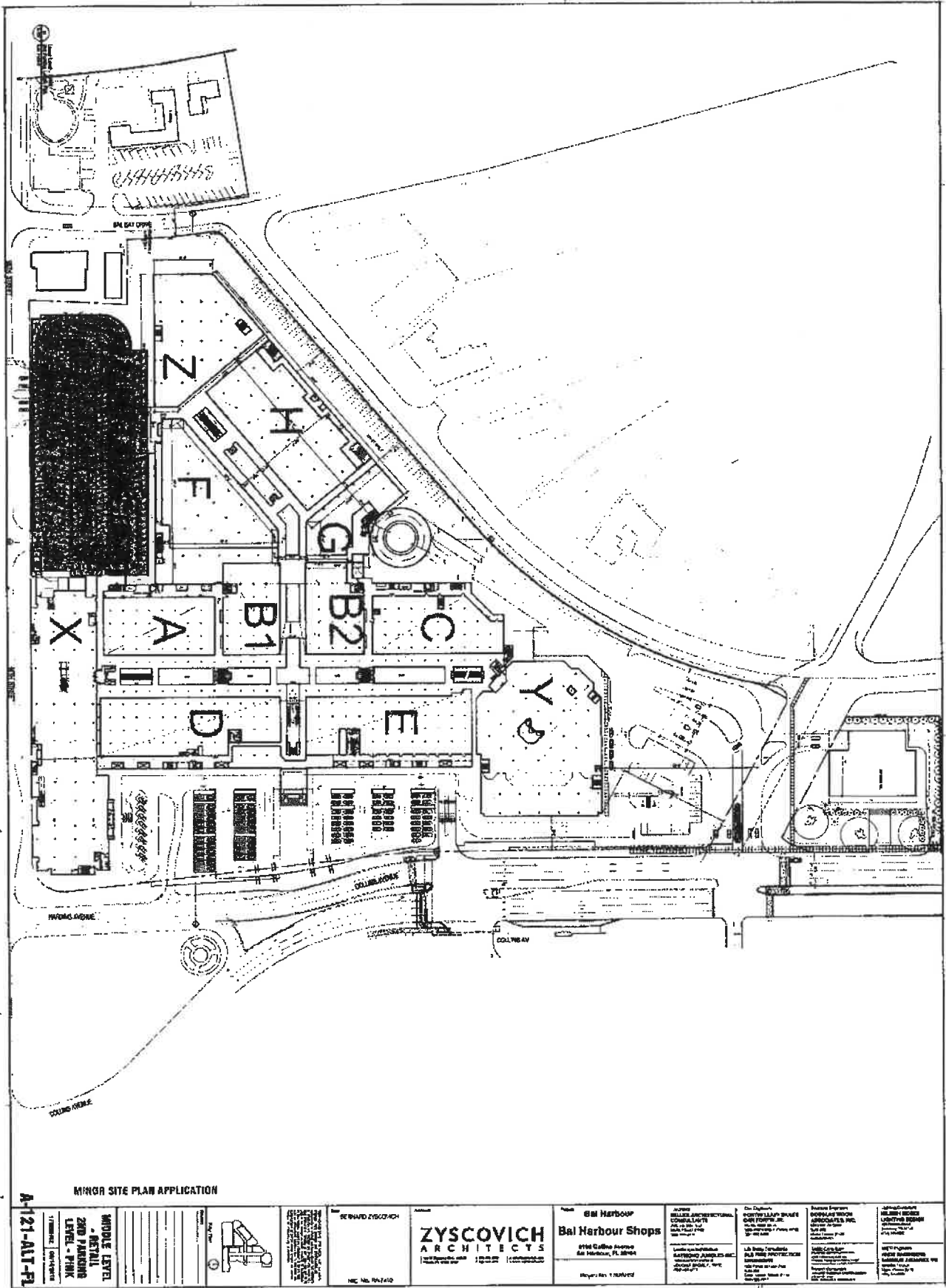






MINOR SITE PLAN APPLICATION

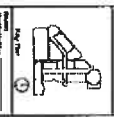
<p>A-121FLEX</p>	<p>MIDDLE LEVEL - RETAIL 2ND PARKING LEVEL - PINK TERRACE - GREEN</p>		<p>Prepared by: ZYSCOVICH ARCHITECTS Reg. No. 94-7142</p>	<p><b>ZYSCOVICH ARCHITECTS</b> 1000 MacArthur Blvd Bal Harbour, FL 33154</p>	<p>Project: Bal Harbour <b>Bal Harbour Shops</b> 5700 Collins Avenue Bal Harbour, FL 33154 Project No. 120790F</p>	<p>Architect: ZYSCOVICH ARCHITECTS 1000 MacArthur Blvd Bal Harbour, FL 33154 Tel: 305-224-1100 Fax: 305-224-1101</p>	<p>City Engineer: ROBERT J. HARRIS County Engineer: JAMES J. HARRIS State Engineer: JAMES J. HARRIS</p>	<p>Professional Engineer: JAMES J. HARRIS Professional Engineer: JAMES J. HARRIS Professional Engineer: JAMES J. HARRIS</p>
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**MINOR SITE PLAN APPLICATION**

**A-121-ALT-PLX**

<p><b>MIDDLE LEVEL - DETAIL</b>  <b>2000 PARKING</b>  <b>1 LEVEL - PINK</b></p>	
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**REWARD ZYSCOVICH**  
 ARCHITECT  
 INC. No. 147410

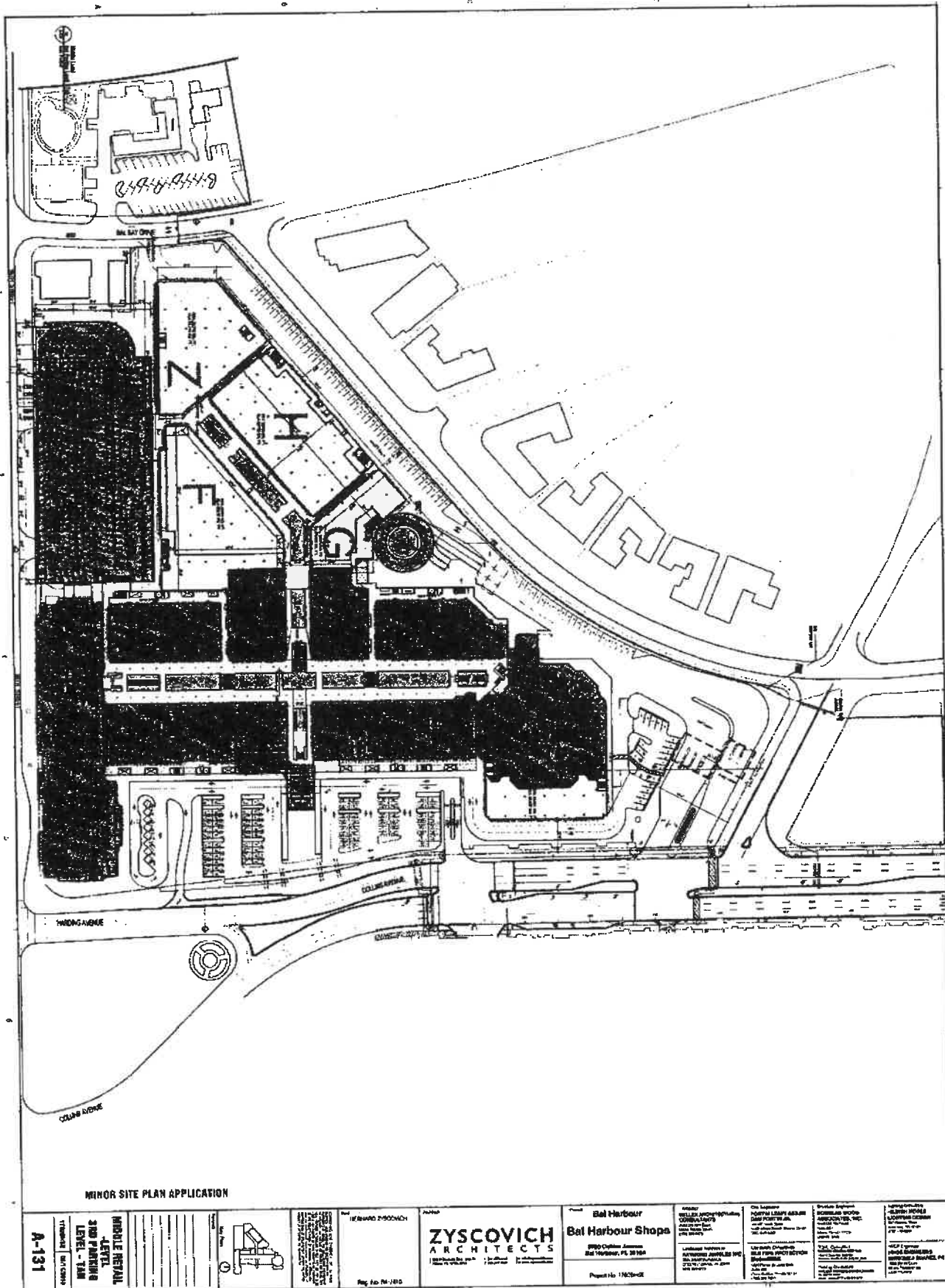
**ZYSCOVICH**  
**ARCHITECTS**  
 6750 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

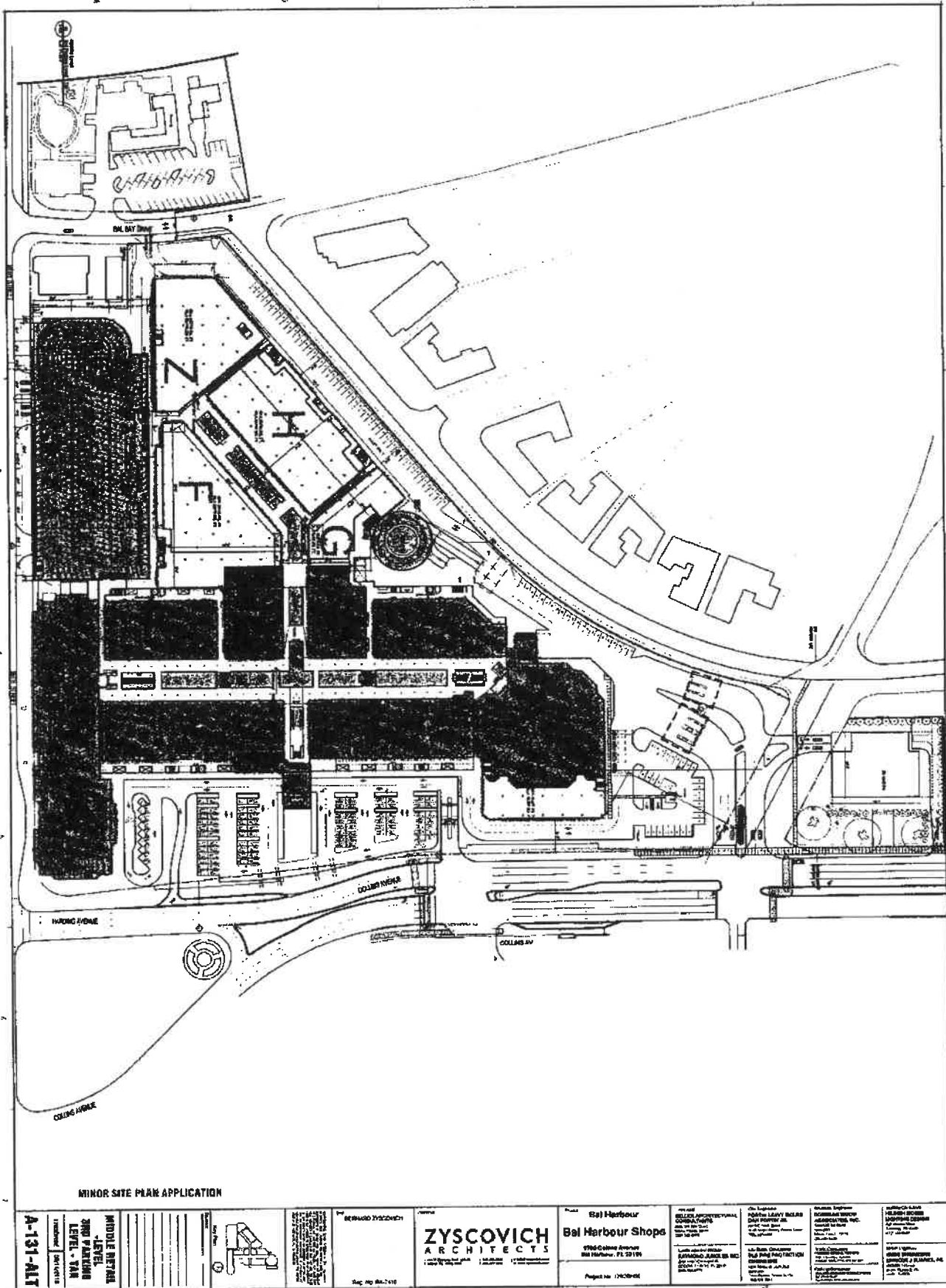
**Bal Harbour**  
**Bal Harbour Shops**  
 6750 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 178492

**Client:**  
 HILLIER ARCHITECTURAL  
 CONSULTANTS, INC.  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

**Site Engineer:**  
 MICHAEL J. WOOD  
 MICHAEL J. WOOD  
 ENGINEERING, INC.  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154

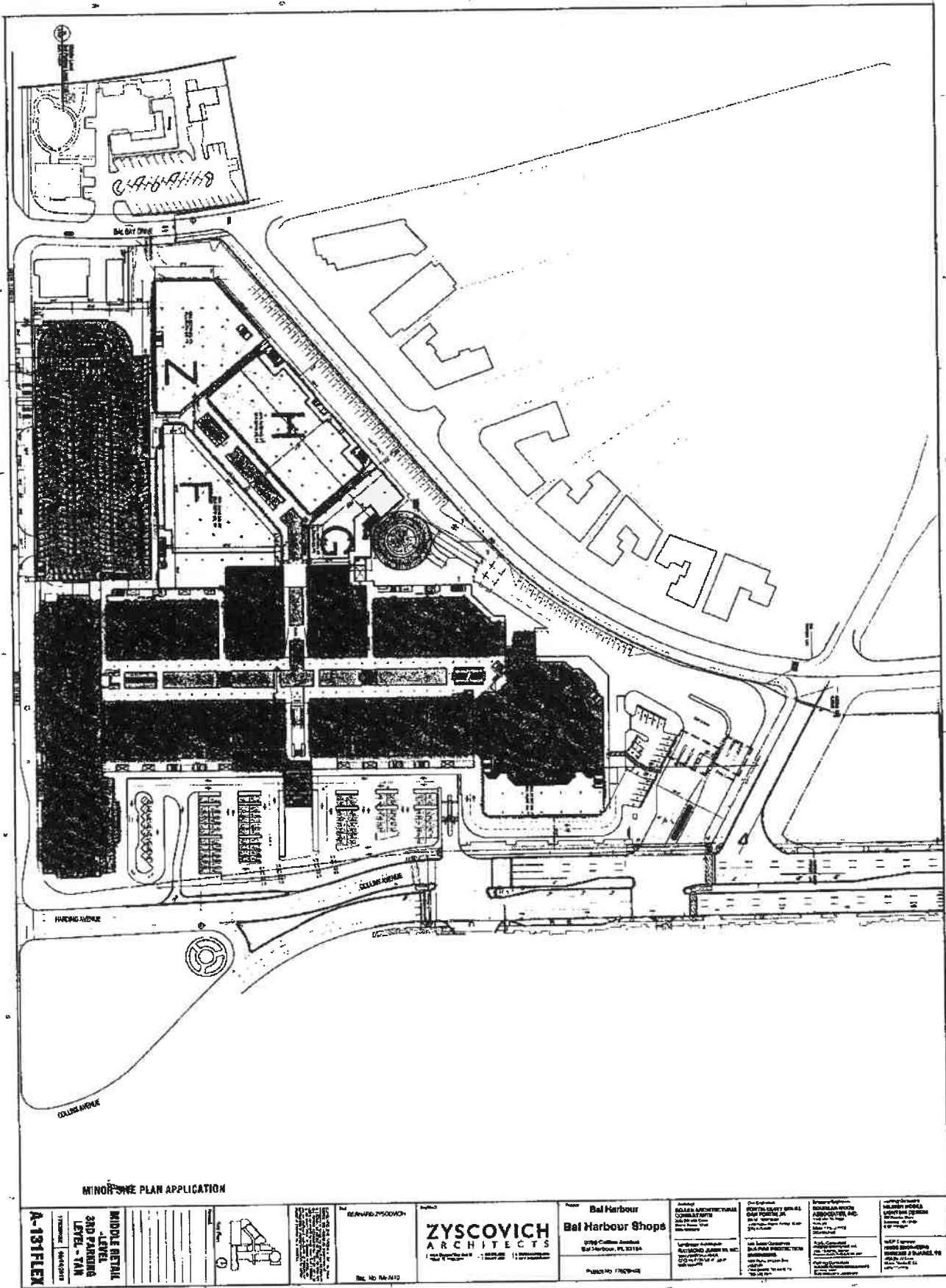
**Professional Engineer:**  
 MICHAEL J. WOOD  
 MICHAEL J. WOOD  
 ENGINEERING, INC.  
 10000 Collins Avenue  
 Suite 1000  
 Bal Harbour, FL 33154





MINOR SITE PLAN APPLICATION

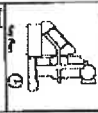
<p>A-131-ALT</p>	<p>MIDDLE RETAIL -LEVEL AND PARKING LEVEL - VAN</p>		<p>BY: <b>ZYSCOVICH ARCHITECTS</b></p> <p>Reg. No. 06,710</p>	<p>Project: <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 4760 Collins Avenue Bal Harbour, FL 33109</p> <p>Project No. 1762806</p>	<p>Architect: <b>ZYSCOVICH ARCHITECTURAL CONSULTING</b> 4760 Collins Avenue Bal Harbour, FL 33109 Tel: 305.224.1100</p>	<p>City Engineer: <b>DAVID LEVY BAKER</b> City Engineer 4760 Collins Avenue Bal Harbour, FL 33109 Tel: 305.224.1100</p>	<p>Records Engineer: <b>ROBERTA WOOD</b> Records Engineer 4760 Collins Avenue Bal Harbour, FL 33109 Tel: 305.224.1100</p>
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MINOR SITE PLAN APPLICATION

A-181 FLEX

MIDDLE RETAIL  
LEVEL  
3RD FLOOR  
LEVEL - TAN



REVISIONS  
NO. DATE DESCRIPTION  
1 01/15/10

**ZYSCOVICH ARCHITECTS**  
1000 Collins Avenue  
Miami Beach, FL 33139  
Tel: 305.673.1111

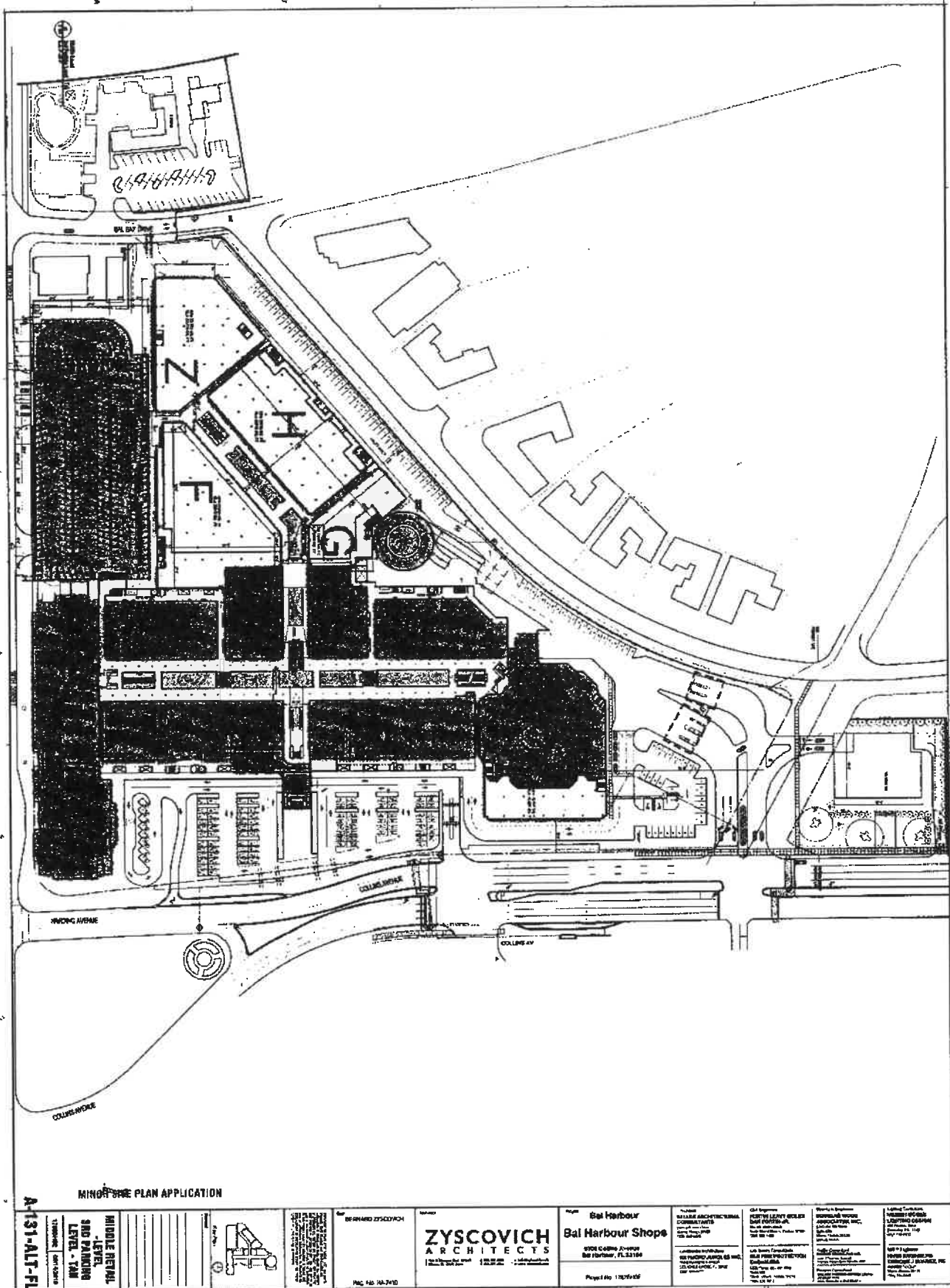
Project: **Bel Harbour**  
**Bel Harbour Shops**  
6796 Collins Avenue  
Miami Beach, FL 33136  
PLANNING NUMBER

Architect:  
**ZYSCOVICH ARCHITECTS**  
1000 Collins Avenue  
Miami Beach, FL 33139  
Tel: 305.673.1111

Site Engineer:  
**ROBERT M. GIBSON, P.E.**  
1000 Collins Avenue  
Miami Beach, FL 33139  
Tel: 305.673.1111

Professional Engineer:  
**ROBERT M. GIBSON, P.E.**  
1000 Collins Avenue  
Miami Beach, FL 33139  
Tel: 305.673.1111

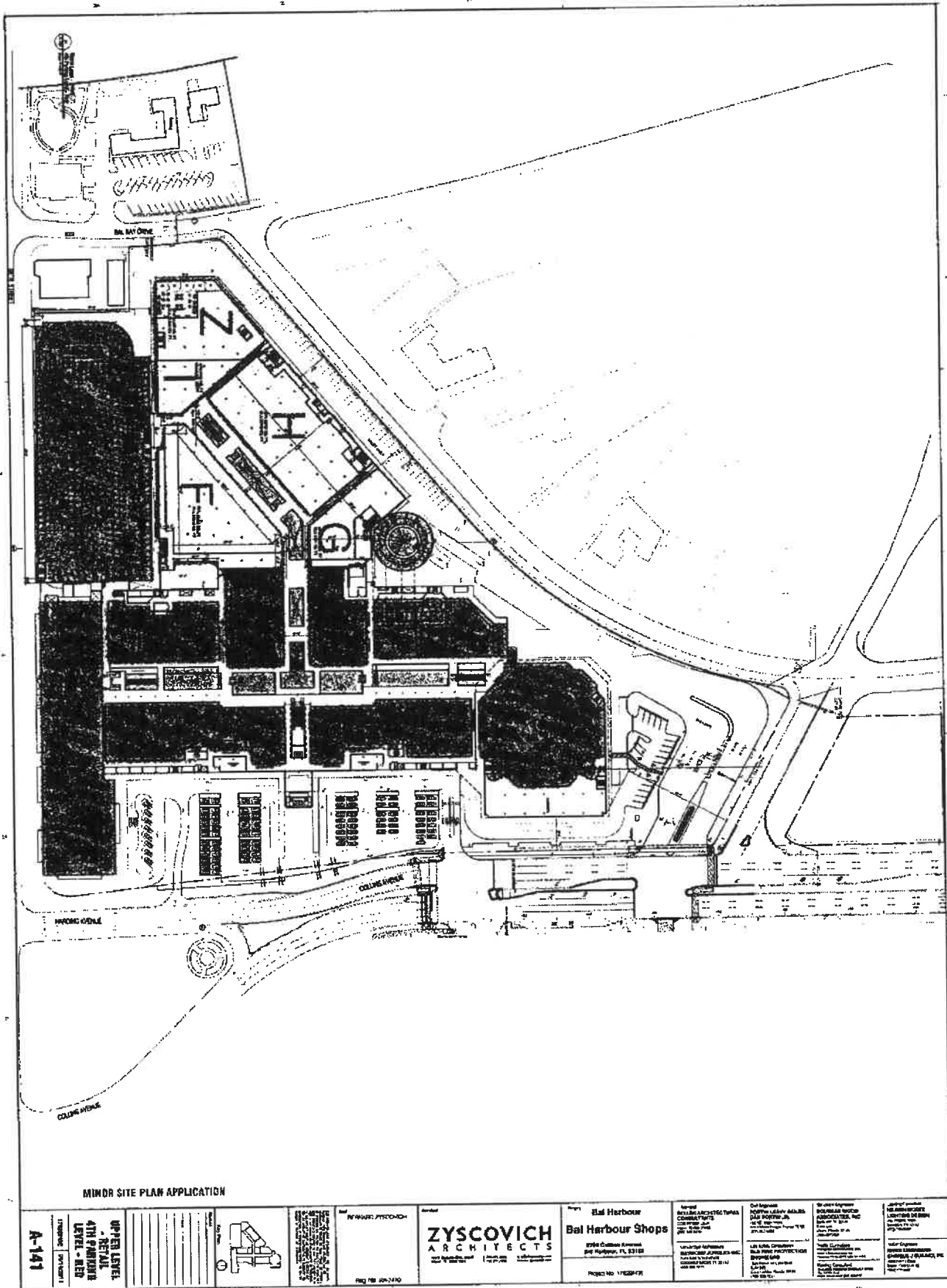
Professional Engineer:  
**ROBERT M. GIBSON, P.E.**  
1000 Collins Avenue  
Miami Beach, FL 33139  
Tel: 305.673.1111

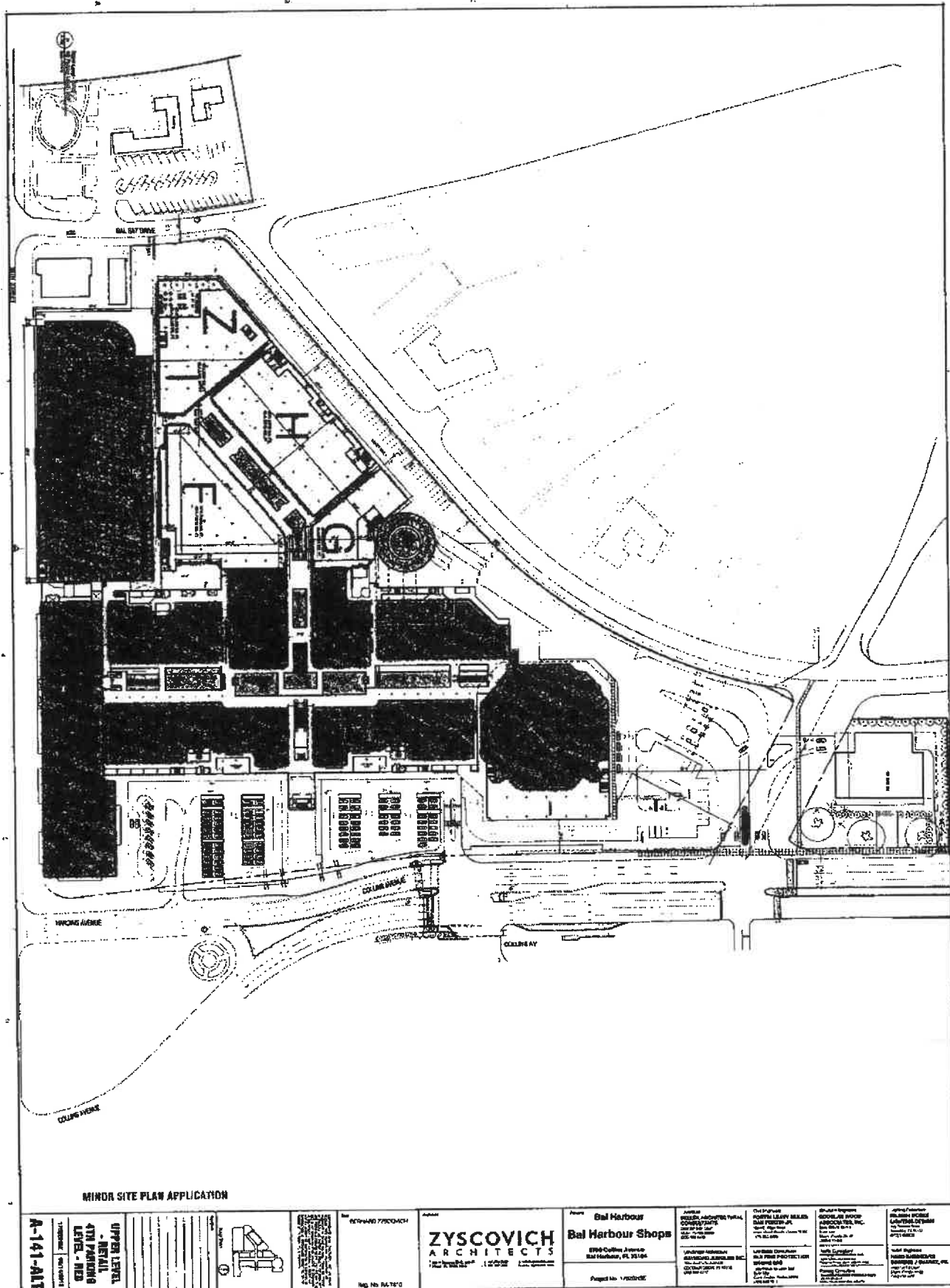


MINOR SITE PLAN APPLICATION

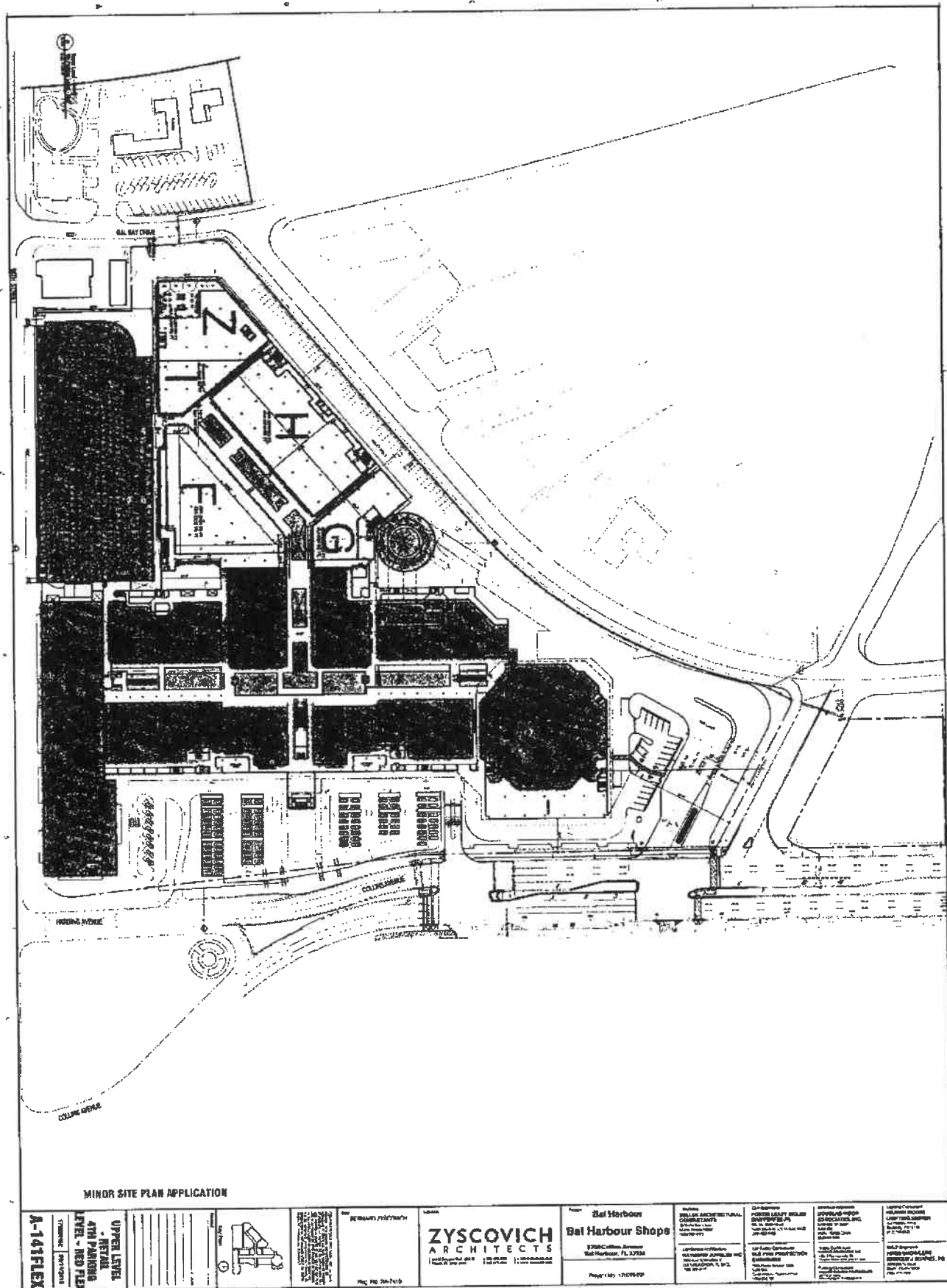
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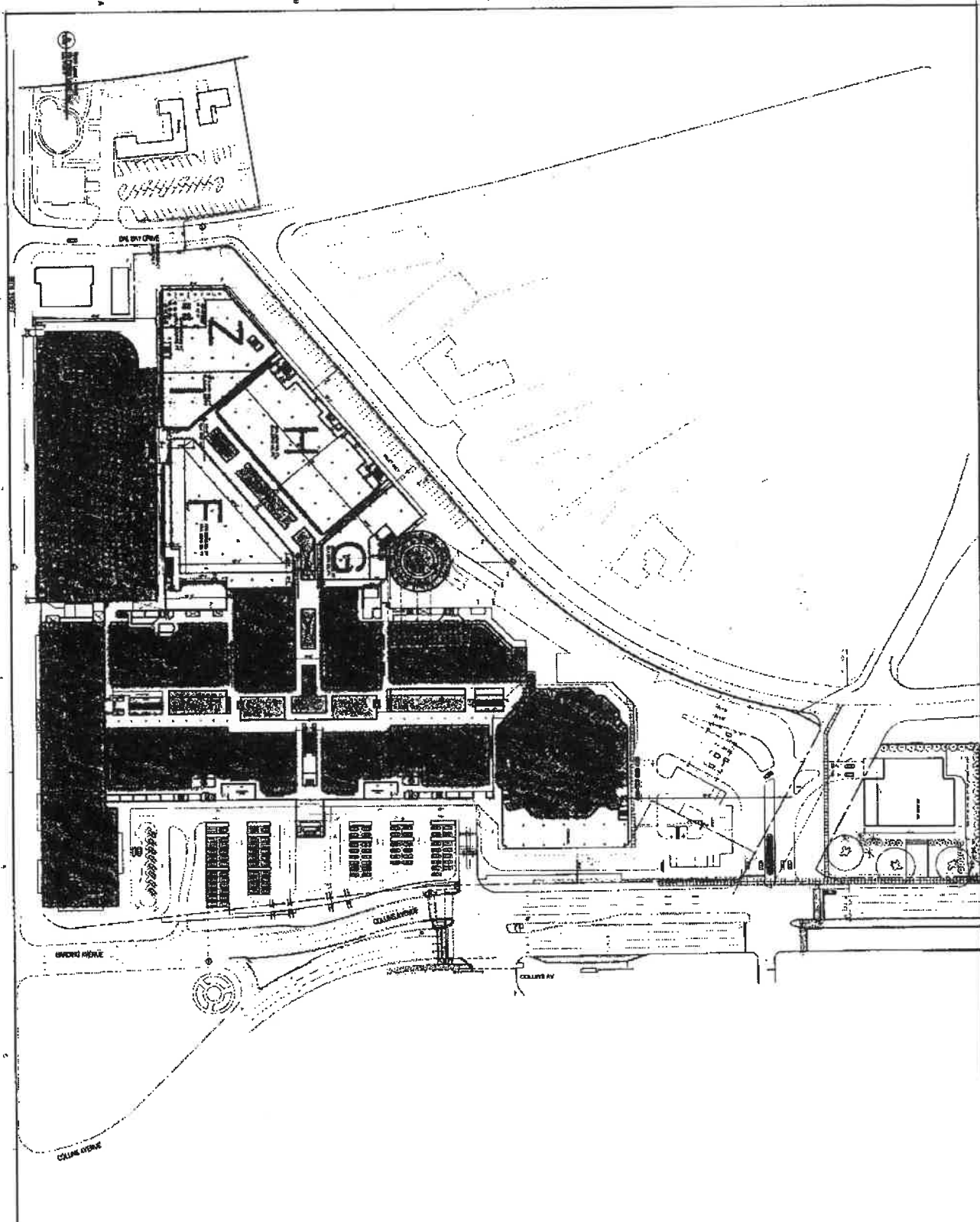
<p>MINOR SITE PLAN APPLICATION</p> <p>PROJECT: A-131-ALT-FLEX</p> <p>DATE: 11/27/09</p>	<p>OWNER: BAL HARBOUR SHOPS</p> <p>DESIGNER: ZYSCOVICH ARCHITECTS</p> <p>DATE: 11/27/09</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1100 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p> <p>Phone: 305.238.1100 Fax: 305.238.1101 www.zyscovich.com</p>	<p>Project: Bal Harbour Shops</p> <p>5700 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 11070-09</p>	<p>Engineer: BERNARD ZYSCOVICH</p> <p>Professional Engineer, No. 12750, State of Florida</p>	<p>Architect: ZYSCOVICH ARCHITECTS</p> <p>1100 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p>	<p>Site Engineer: ESTER LEVAY WILES</p> <p>Professional Engineer, No. 12750, State of Florida</p>	<p>Professional Engineer: BERNARD ZYSCOVICH</p> <p>1100 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p>	<p>Professional Engineer: BERNARD ZYSCOVICH</p> <p>1100 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p>
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MINOR SITE PLAN APPLICATION

A-131-ALT-FLEX

UPPER LEVEL  
- RETAIL  
4TH FLOOR  
LEVEL - RED FLEX



BY: RICHARD ZYSCOVICH  
**ZYSCOVICH ARCHITECTS**  
1100 Collins Avenue  
Bal Harbour, FL 33154  
Tel: 305.255.1100  
Fax: 305.255.1101  
www.zyscovich.com

Project: **Bal Harbour**  
**Bal Harbour Shops**  
1100 Collins Avenue  
Bal Harbour, FL 33154  
Project No: 17094V

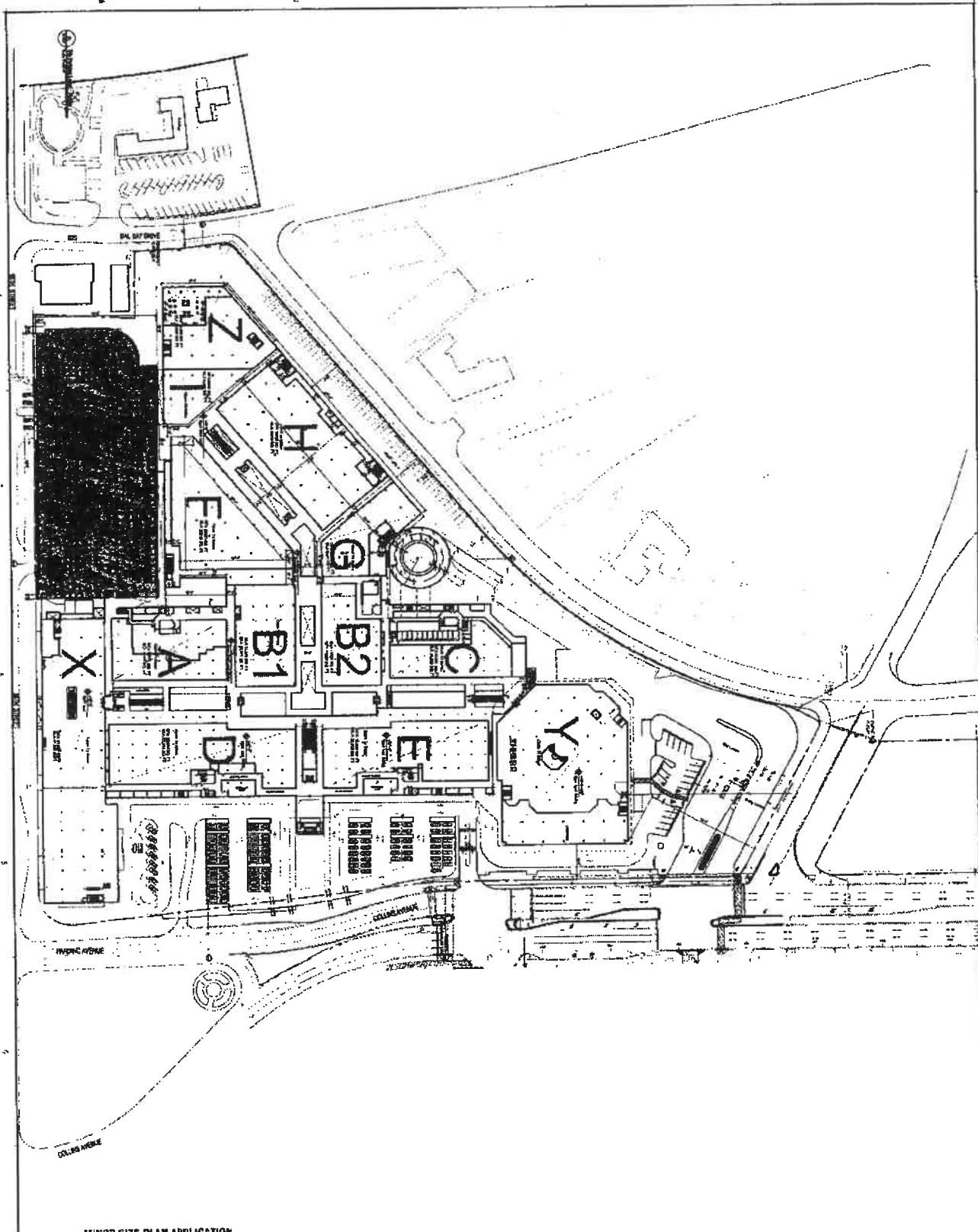
OWNER: BAL HARBOUR SHOPPING CENTER, INC.  
1100 Collins Avenue  
Bal Harbour, FL 33154  
Tel: 305.255.1100  
Fax: 305.255.1101  
www.balharbour.com

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SCALE: AS SHOWN  
DRAWN BY: RZ  
CHECKED BY: RZ

DATE: 08/14/2018  
SCALE: AS SHOWN  
DRAWN BY: RZ  
CHECKED BY: RZ

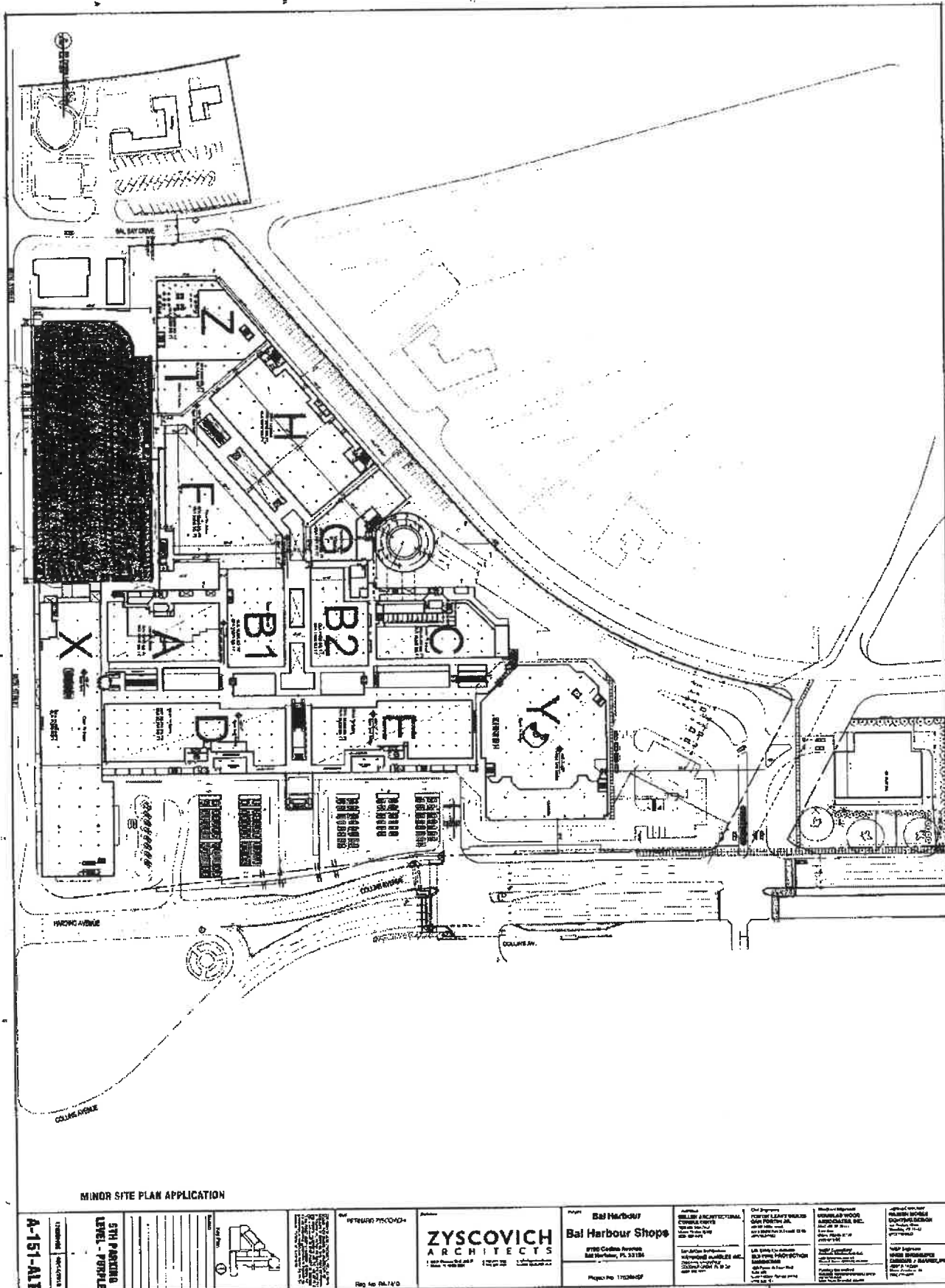
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DATE: 08/14/2018  
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DRAWN BY: RZ  
CHECKED BY: RZ



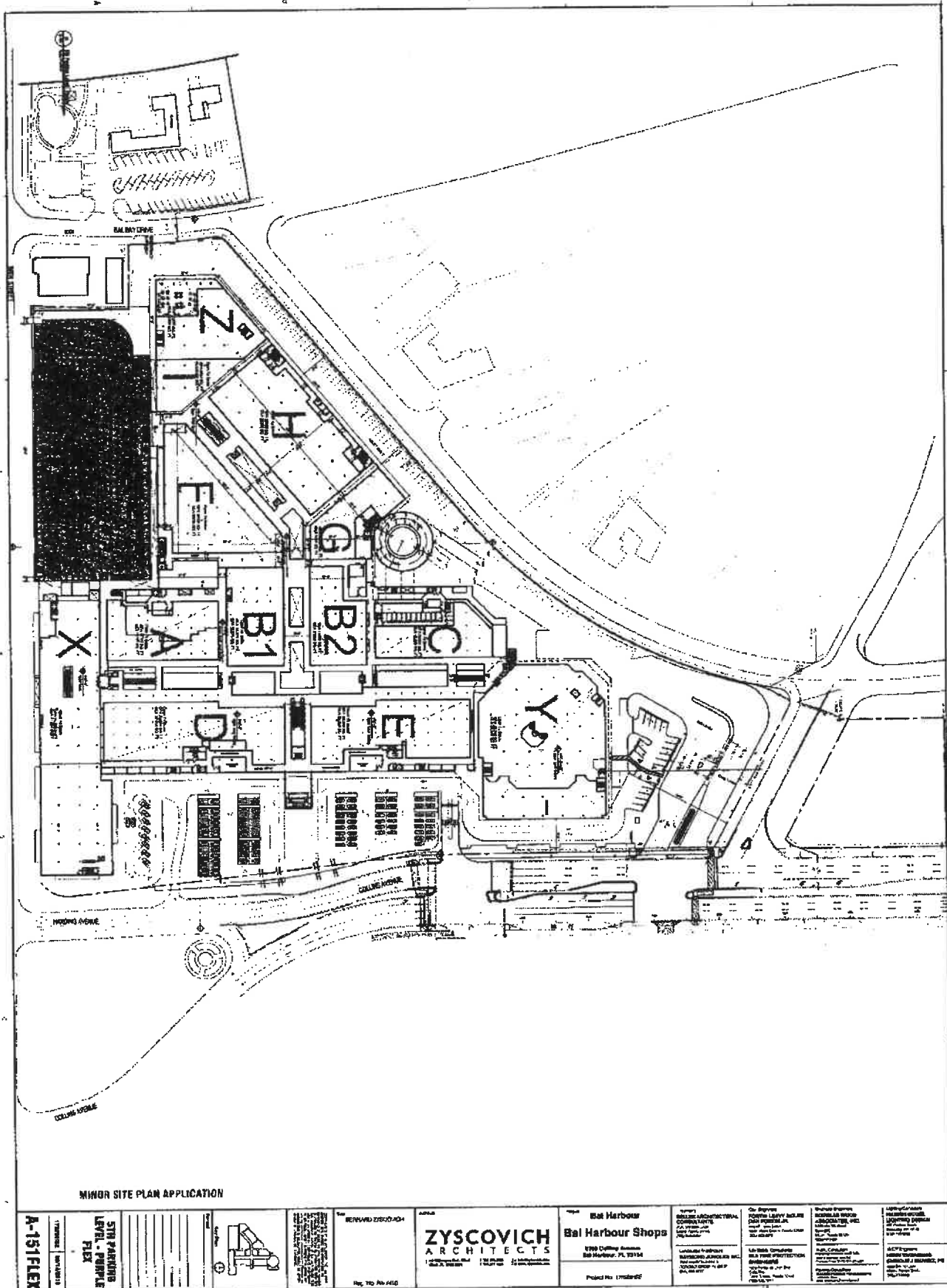
MINOR SITE PLAN APPLICATION

<p>Tracked   Approved</p> <p><b>A-151</b></p>	<p><b>STN PARKING LEVEL - POINTE</b></p>		<p>BY <b>ZYSCOVICH ARCHITECTS</b></p> <p>6108 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 14024614</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>6108 Collins Avenue Bal Harbour, FL 33154</p>	<p>Project: <b>Bal Harbour Shops</b></p> <p>6108 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 14024614</p>	<p>OWNER: <b>REDA ARCHITECTURAL CONSULTANTS</b></p> <p>3301 NE 136th St Aventura, FL 33160</p>	<p>DESIGNER: <b>REDA ARCHITECTURAL CONSULTANTS</b></p> <p>3301 NE 136th St Aventura, FL 33160</p>	<p>DATE: 08/20/2014</p> <p>SCALE: AS SHOWN</p>	<p>APPROVED: <b>PLANNING DEPARTMENT</b></p> <p>DATE: 08/20/2014</p>
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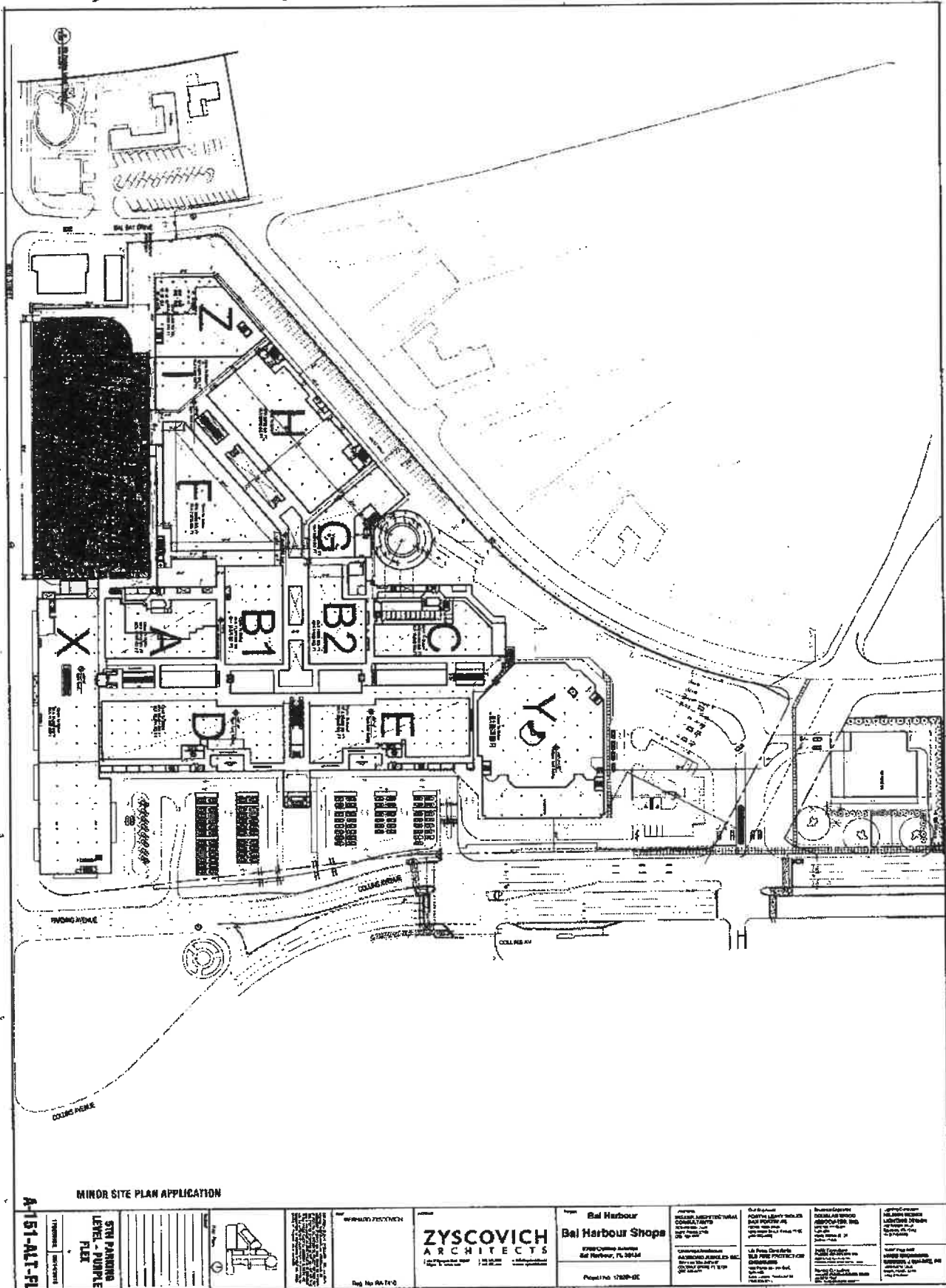
MINOR SITE PLAN APPLICATION

<p><b>A-151-AIT</b></p> <p>3TH FLOOR LEVEL - PARKING</p>		<p>1978009775000-0</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1000 Collins Avenue Bal Harbour, FL 33126</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>8700 Collins Avenue Bal Harbour, FL 33126</p> <p>Project No. 11528-02</p>	<p>Architect <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p> <p>Architectural Engineer <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p>	<p>Site Engineer <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p>	<p>Professional Engineer <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p>	<p>Professional Engineer <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p>	<p>Professional Engineer <b>WILLIAM J. ARCHITECTURAL CONSULTANTS</b> 1000 Collins Avenue Bal Harbour, FL 33126</p>



MINOR SITE PLAN APPLICATION

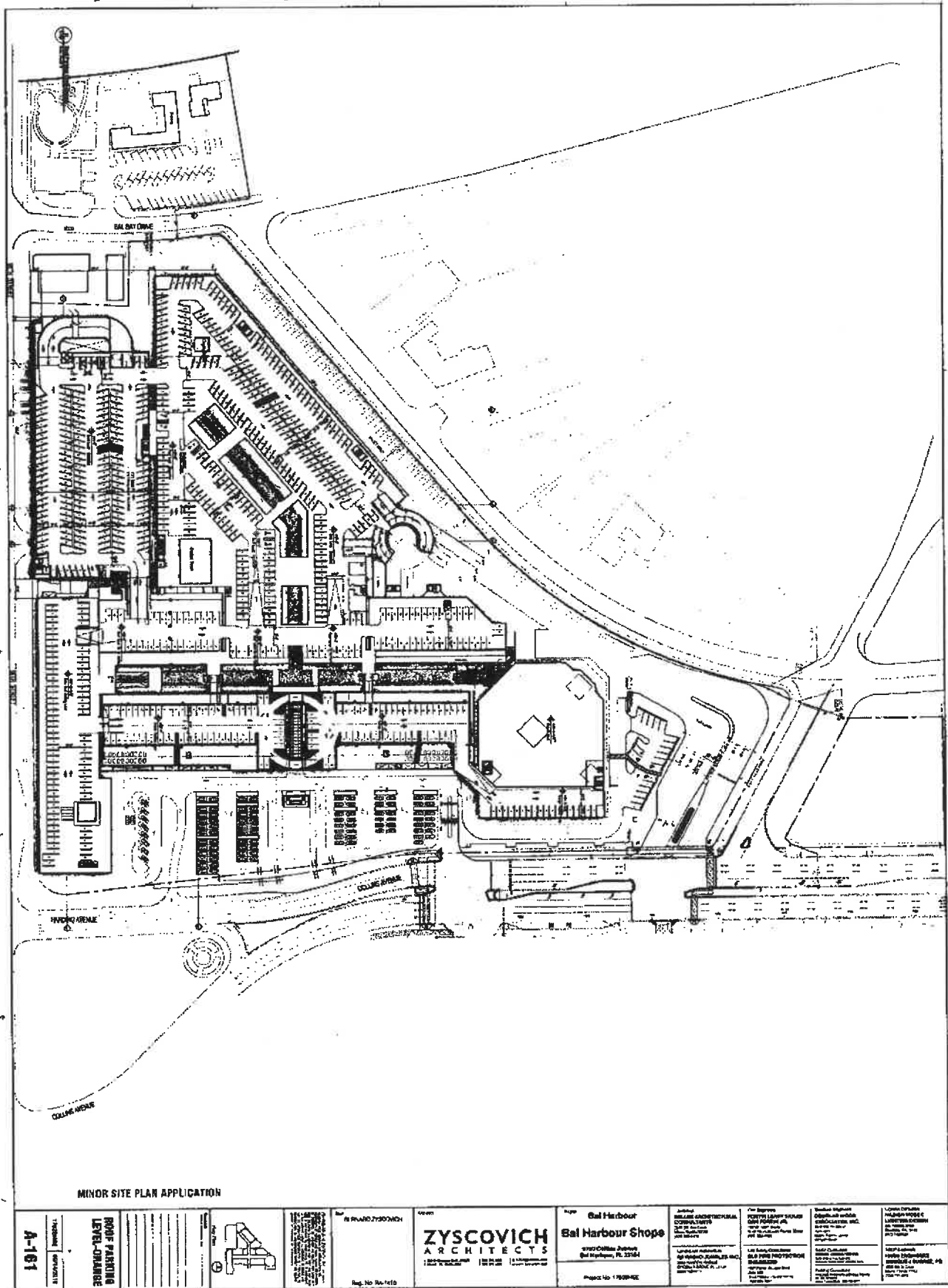
<p><b>A-1S1FLEX</b></p>	<p>5TH PARKING LEVEL - PARKLE FLEX</p>		<p>RECEIVED 02/27/2014</p> <p><b>ZYSKOVICH ARCHITECTS</b></p> <p>1000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p> <p>Phone: 305.441.1111</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>1700 Collins Avenue, Bal Harbour, FL 33154</p> <p>Project No. 17028002</p>	<p>Project: 17028002</p> <p>Client: Bal Harbour Shops</p> <p>Architect: Zyskovich Architects</p> <p>Site: Bal Harbour Shops, Bal Harbour, FL</p>	<p>Site: Bal Harbour Shops, Bal Harbour, FL</p> <p>Project: 17028002</p>	<p>Site: Bal Harbour Shops, Bal Harbour, FL</p> <p>Project: 17028002</p>
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**MINOR SITE PLAN APPLICATION**

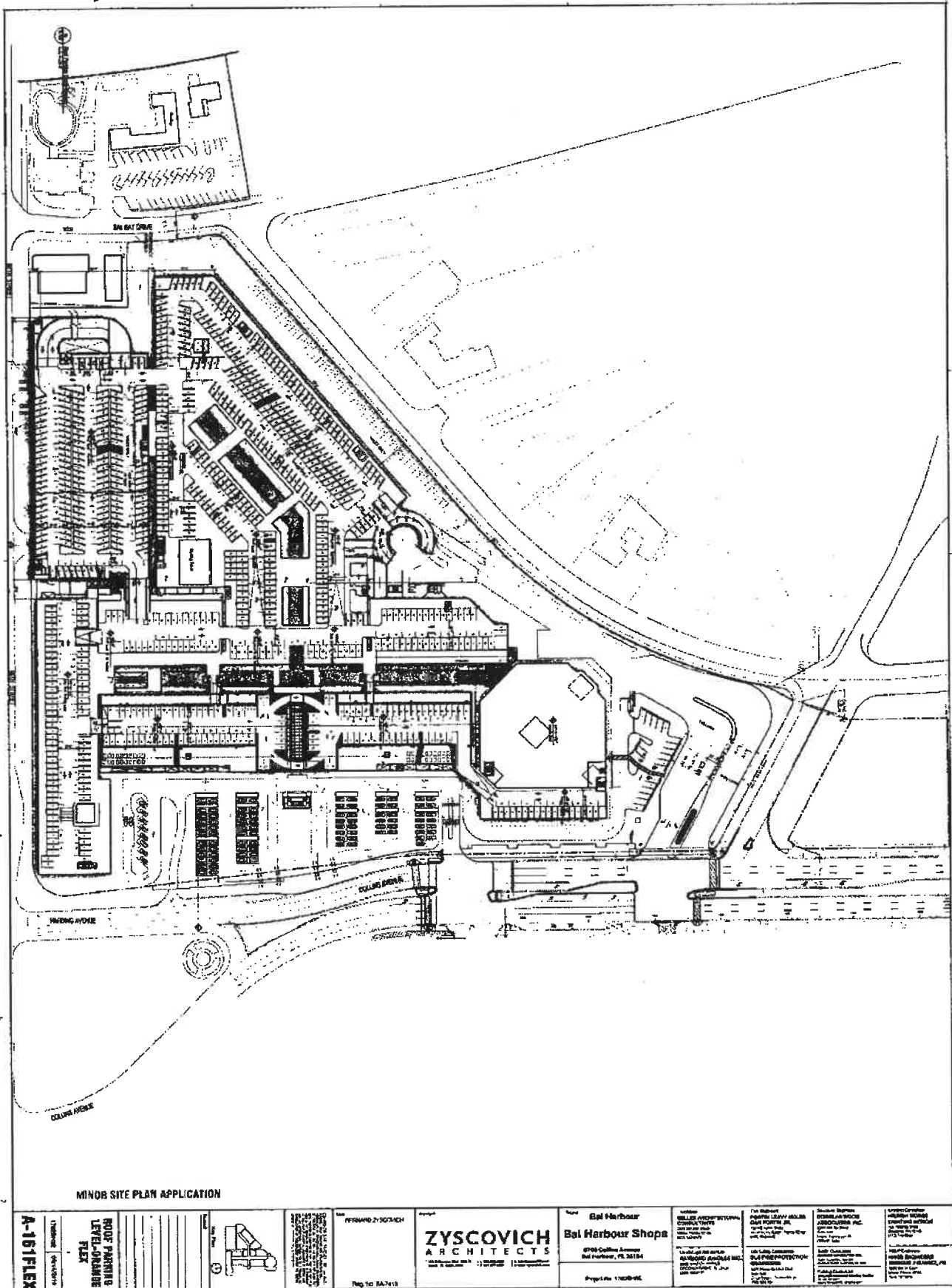
**A-151-ALT-FLEX**

<p>STN PARKING LEVEL - PURPLE FLEX</p>		<p>APPROVED ARCHITECT</p> <p><b>ZYSKOVICH ARCHITECTS</b></p> <p>1200 Collins Avenue, Suite 1000, Bal Harbour, FL 33154 Tel: 305.261.1100</p> <p>Reg. No. 06170</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>1790 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17829-02</p>	<p>OWNER</p> <p><b>REDAK DEVELOPMENT COMPANY</b></p> <p>1790 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p> <p>Contract/Reference</p> <p><b>REDAK DEVELOPMENT COMPANY</b></p> <p>1790 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p>	<p>City of Miami</p> <p><b>PLANNING DEPARTMENT</b></p> <p>1300 Biscayne Blvd., Suite 1000 Miami, FL 33132</p> <p>City of Miami</p> <p><b>PLANNING DEPARTMENT</b></p> <p>1300 Biscayne Blvd., Suite 1000 Miami, FL 33132</p>	<p>Business Owner</p> <p><b>REDAK DEVELOPMENT COMPANY</b></p> <p>1790 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p> <p>Project No. 17829-02</p>	<p>APPROVED ARCHITECT</p> <p><b>ZYSKOVICH ARCHITECTS</b></p> <p>1200 Collins Avenue, Suite 1000, Bal Harbour, FL 33154 Tel: 305.261.1100</p> <p>Reg. No. 06170</p>
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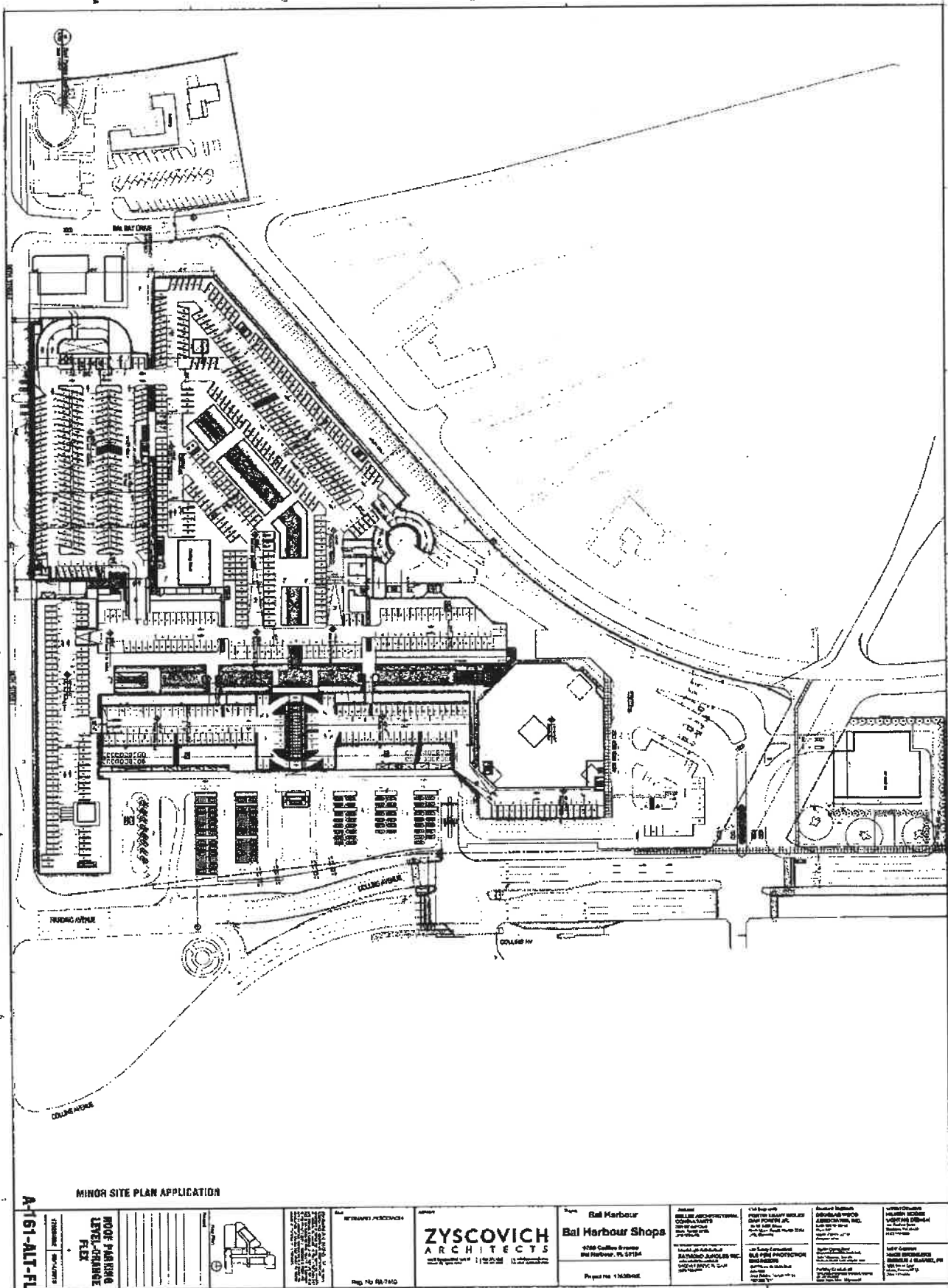






**MINOR SITE PLAN APPLICATION**

<p><b>A-18/FLEX</b></p>	<p>ROOF PARKING LEVEL-DORMER FLEX</p>		<p>DATE: FEBRUARY 2, 2024</p> <p>REG. NO. BA-7413</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1999 Collins Avenue Bal Harbour, FL 33134</p> <p>Project No. 17028-06</p>	<p>Name: <b>Bal Harbour</b> <b>Bal Harbour Shops</b></p>	<p>Address: 1999 Collins Avenue Bal Harbour, FL 33134</p>	<p>For Approval: <b>AGRICULTURE, LAND USE, AND PLANNING</b></p>	<p>Submitted By: <b>JOHN J. WOOD</b> JOHN J. WOOD ARCHITECTS, INC.</p>	<p>Project No. 17028-06</p>
	<p>Scale: 1/8" = 1'-0"</p>								



MINOR SITE PLAN APPLICATION

A-161-ALT-FLEX

ROOF PARKING  
LEVEL - CHANGE  
FLEX



BY ZYSCOVICH ARCHITECTS  
REG. NO. 887840

**ZYSCOVICH  
ARCHITECTS**

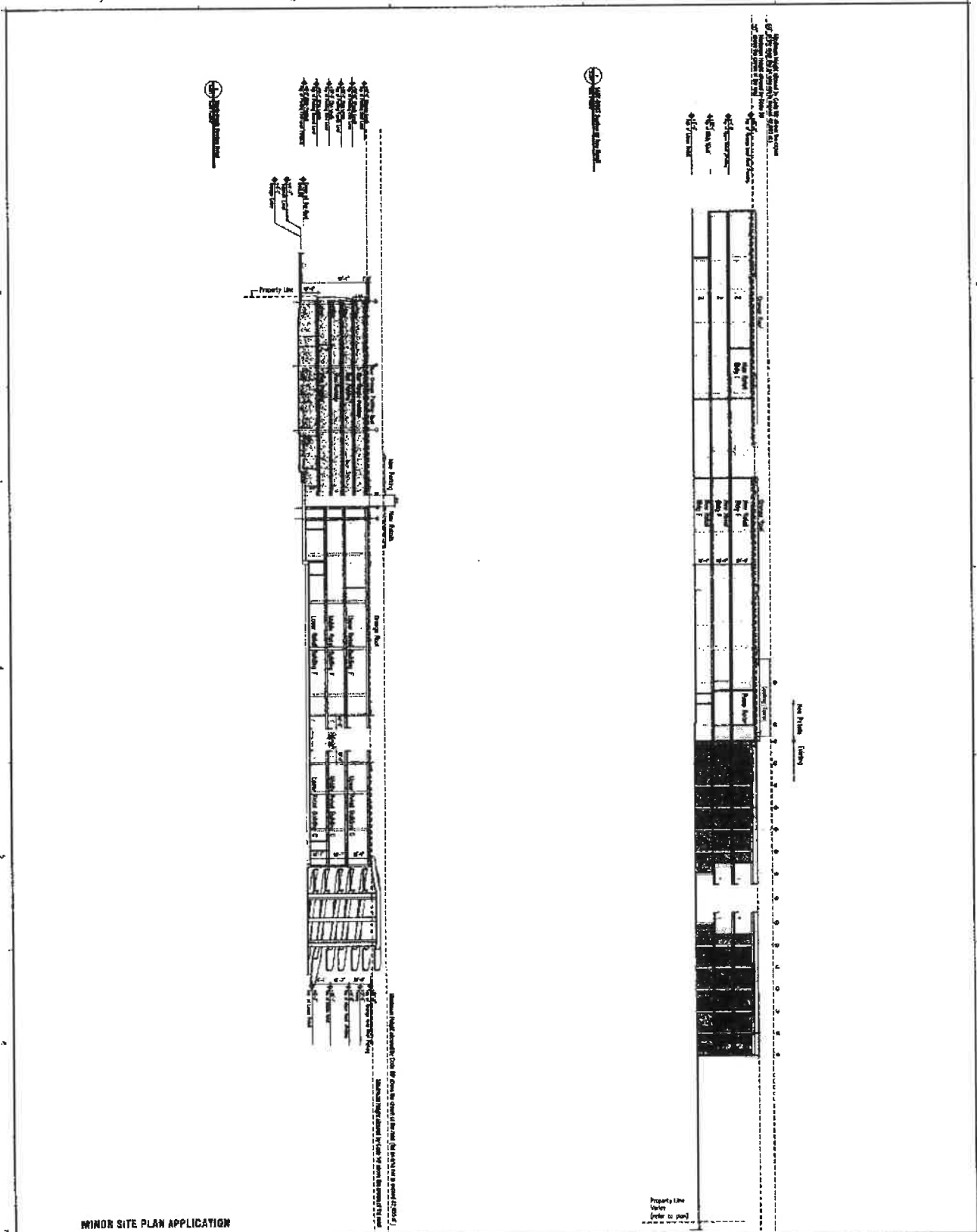
**Bal Harbour**  
**Bal Harbour Shops**  
4750 Collins Avenue  
Bal Harbour, FL 33154  
Project No. 1508005

DESIGNED BY  
Zysoyich Architects  
4750 Collins Avenue  
Bal Harbour, FL 33154  
Tel: 305.224.1100  
Fax: 305.224.1101

DATE OF ISSUE  
10/20/11

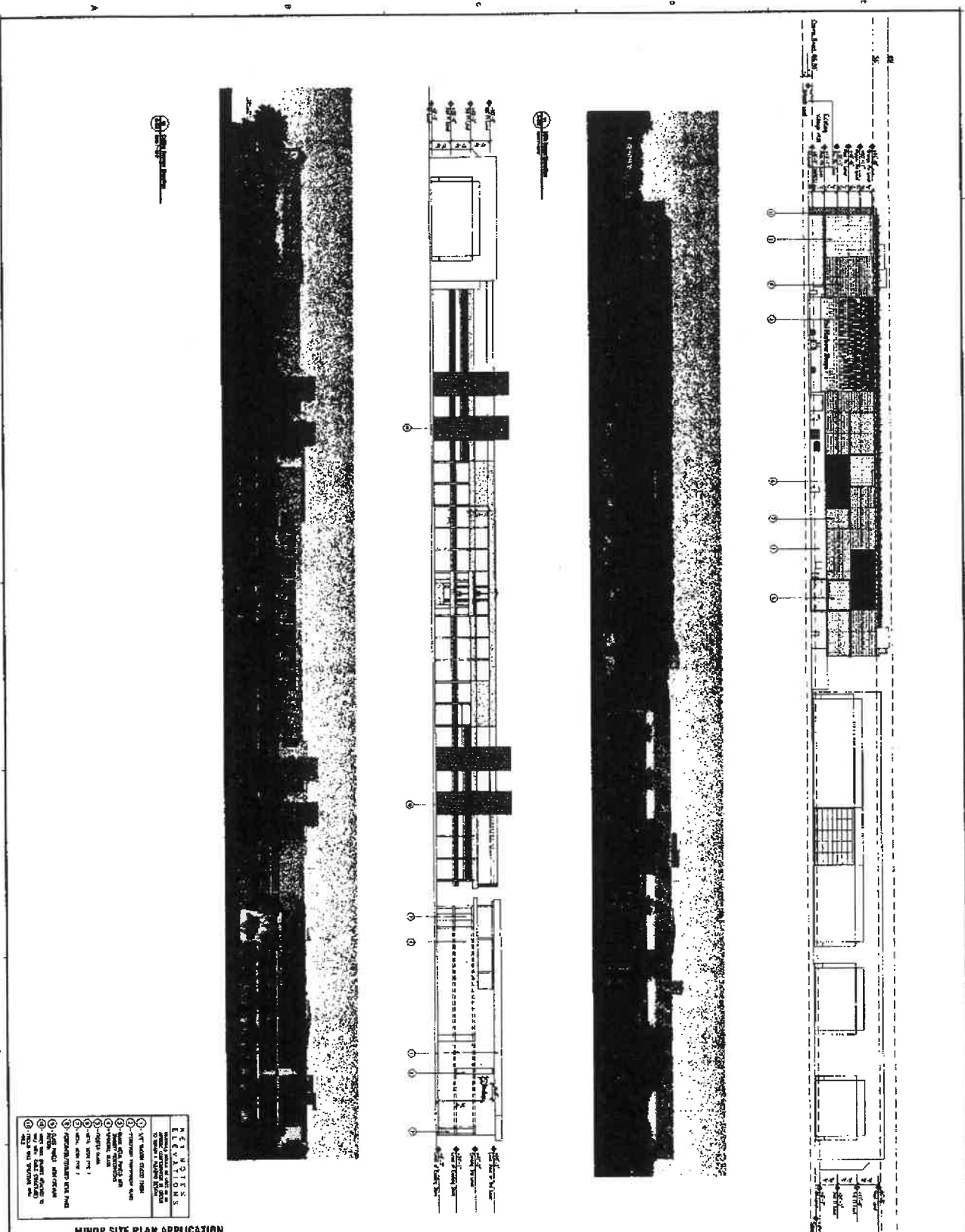
PROJECT NO.  
1508005

DATE OF ISSUE  
10/20/11



MINOR SITE PLAN APPLICATION

<p><b>A-311</b></p> <p>THRESHOLD SURVEY</p>	<p><b>OVERALL SECTIONS</b></p>		<p>FOR: <b>ZYSCOVICH</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p>Project: <b>Bal Harbour Shops</b></p>	<p>Client: <b>REXEL SUPERSTRUCTURAL CORP. A-311</b></p>	<p>Site Location: <b>2700 Collins Avenue, Bal Harbour, FL 33104</b></p>	<p>Scale: <b>1" = 100'</b></p>	<p>Professional Engineer: <b>JOHN J. ...</b></p>	<p>Professional Surveyor: <b>...</b></p>	<p>Professional Architect: <b>...</b></p>	<p>Professional Engineer: <b>...</b></p>	<p>Professional Surveyor: <b>...</b></p>	<p>Professional Architect: <b>...</b></p>



- ELEVATIONS**
- 1 - EAST ELEVATION
  - 2 - WEST ELEVATION
  - 3 - NORTH ELEVATION
  - 4 - SOUTH ELEVATION
  - 5 - SECTION 1-1
  - 6 - SECTION 2-2
  - 7 - SECTION 3-3
  - 8 - SECTION 4-4
  - 9 - SECTION 5-5
  - 10 - SECTION 6-6
  - 11 - SECTION 7-7
  - 12 - SECTION 8-8
  - 13 - SECTION 9-9
  - 14 - SECTION 10-10
  - 15 - SECTION 11-11
  - 16 - SECTION 12-12
  - 17 - SECTION 13-13
  - 18 - SECTION 14-14
  - 19 - SECTION 15-15
  - 20 - SECTION 16-16
  - 21 - SECTION 17-17
  - 22 - SECTION 18-18
  - 23 - SECTION 19-19
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  - 25 - SECTION 21-21
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  - 32 - SECTION 28-28
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  - 37 - SECTION 33-33
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  - 100 - SECTION 96-96
  - 101 - SECTION 97-97
  - 102 - SECTION 98-98
  - 103 - SECTION 99-99
  - 104 - SECTION 100-100

**MINOR SITE PLAN APPLICATION**

<p><b>A-411</b></p>	<p><b>ELEVATIONS</b></p>		<p><b>REVISIONS</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p>	<p><b>Architect</b> Zysovic Architects 10000 Bay Street Suite 100 Bal Harbour, FL 33154</p>	<p><b>Contractor</b> L. J. ... ...</p>	<p><b>Engineer</b> ...</p>	<p><b>Surveyor</b> ...</p>
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**MINOR SITE PLAN APPLICATION**

**ELEVATIONS**

**NOTES:**

1. SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
2. SEE ARCHITECTURAL DRAWINGS FOR LIGHTING FIXTURES AND PLACEMENT.
3. SEE ARCHITECTURAL DRAWINGS FOR SIGNAGE AND PLACEMENT.
4. SEE ARCHITECTURAL DRAWINGS FOR LANDSCAPE AND PLANTING.
5. SEE ARCHITECTURAL DRAWINGS FOR UTILITY LOCATIONS AND DEPT. APPROVALS.
6. SEE ARCHITECTURAL DRAWINGS FOR FENCE AND GATE.
7. SEE ARCHITECTURAL DRAWINGS FOR DRIVEWAY AND PAVEMENT.
8. SEE ARCHITECTURAL DRAWINGS FOR SIDEWALK AND CURB.
9. SEE ARCHITECTURAL DRAWINGS FOR STAIRS AND RAMP.
10. SEE ARCHITECTURAL DRAWINGS FOR ADA COMPLIANCE.

**REVISIONS**

NO.	DATE	DESCRIPTION
1	01/15/12	ISSUED FOR PERMIT
2	02/15/12	REVISED PER CITY COMMENTS
3	03/15/12	REVISED PER CITY COMMENTS
4	04/15/12	REVISED PER CITY COMMENTS
5	05/15/12	REVISED PER CITY COMMENTS
6	06/15/12	REVISED PER CITY COMMENTS
7	07/15/12	REVISED PER CITY COMMENTS
8	08/15/12	REVISED PER CITY COMMENTS
9	09/15/12	REVISED PER CITY COMMENTS
10	10/15/12	REVISED PER CITY COMMENTS
11	11/15/12	REVISED PER CITY COMMENTS
12	12/15/12	REVISED PER CITY COMMENTS

**PROJECT INFORMATION**

**Project Name:** Bel Harbour Shops

**Address:** 2700 Collins Avenue, Bel Harbour, FL 33514

**Project No.:** 1700002

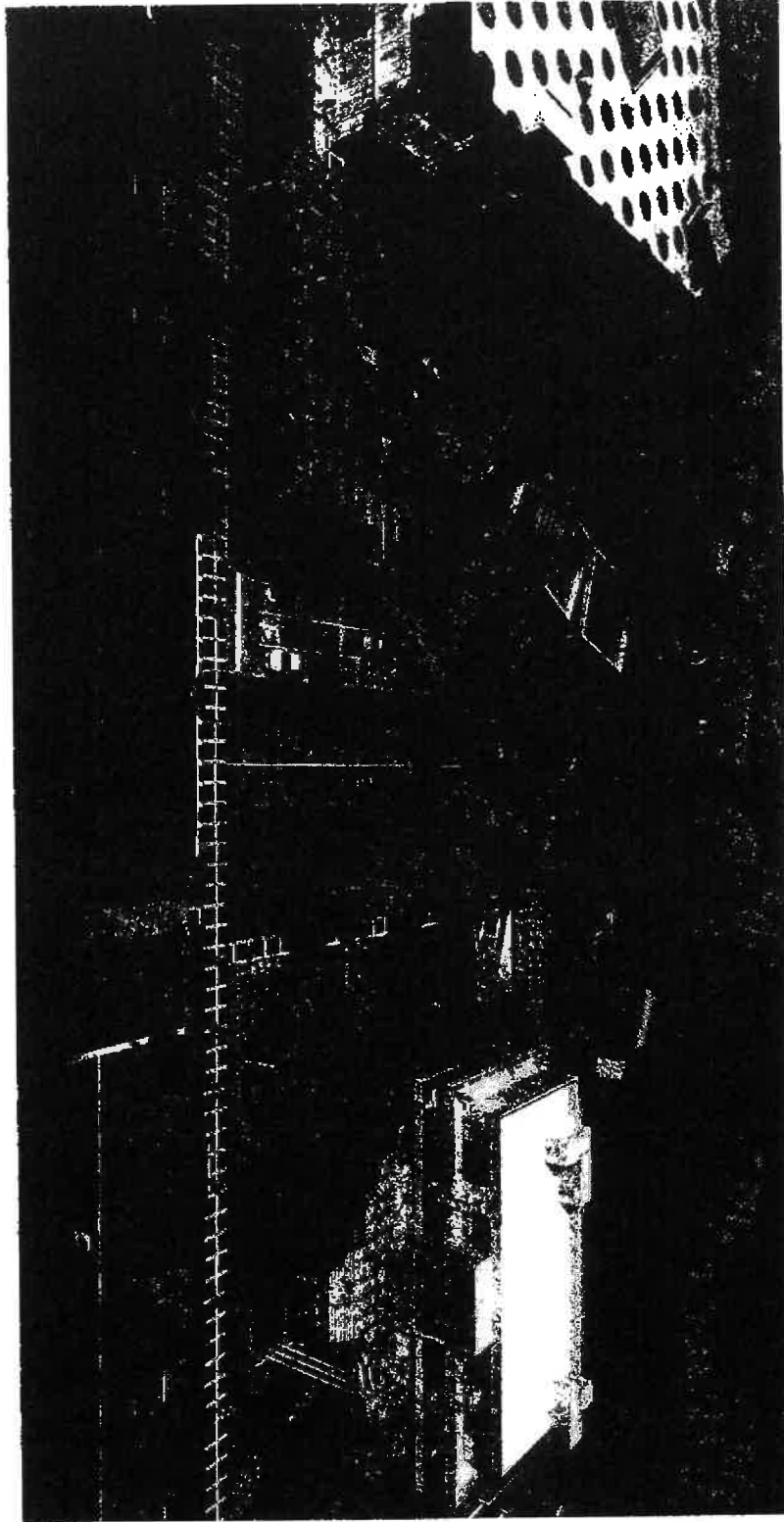
**Architect:** ZYSCOVICH ARCHITECTS

**Site Plan No.:** 1700002

**Scale:** 1/8" = 1'-0"

**North Arrow:** [Symbol]

© 2011 Zyscovich Architects



A-509-ALT

RENDERINGS  
DATE: 11/20/10  
BY: J. ALTY



STUDIO ZYSCOVICH  
11111  
Reg. No. 1120805

**ZYSCOVICH ARCHITECTS**  
11111  
11111

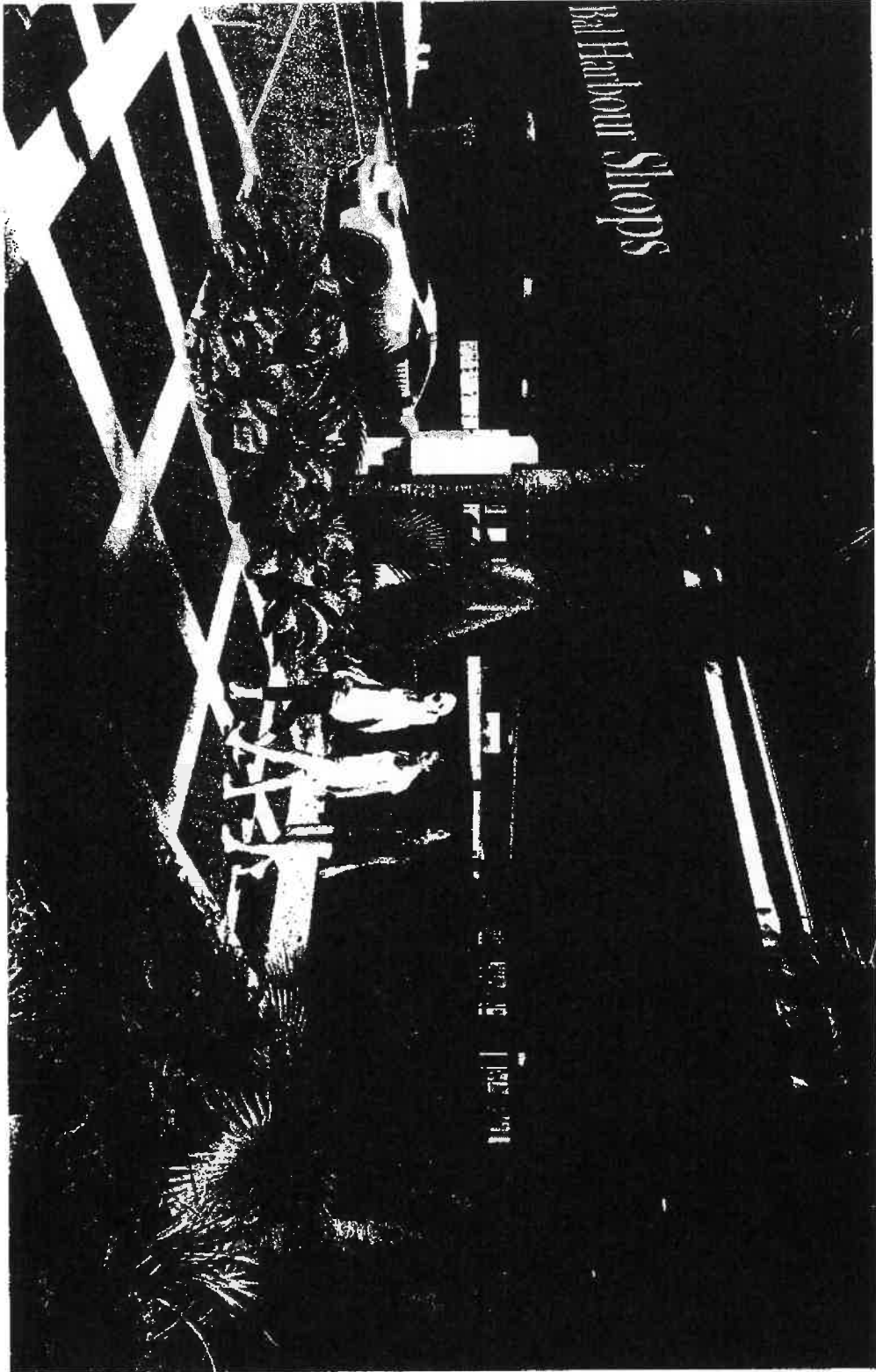
**Bal Harbour**  
**Bal Harbour Shops**  
3750 Collins Avenue  
Bal Harbour, FL 33144  
Project No. 1120805

Professional Seal  
Professional Seal  
Professional Seal

Professional Seal  
Professional Seal  
Professional Seal

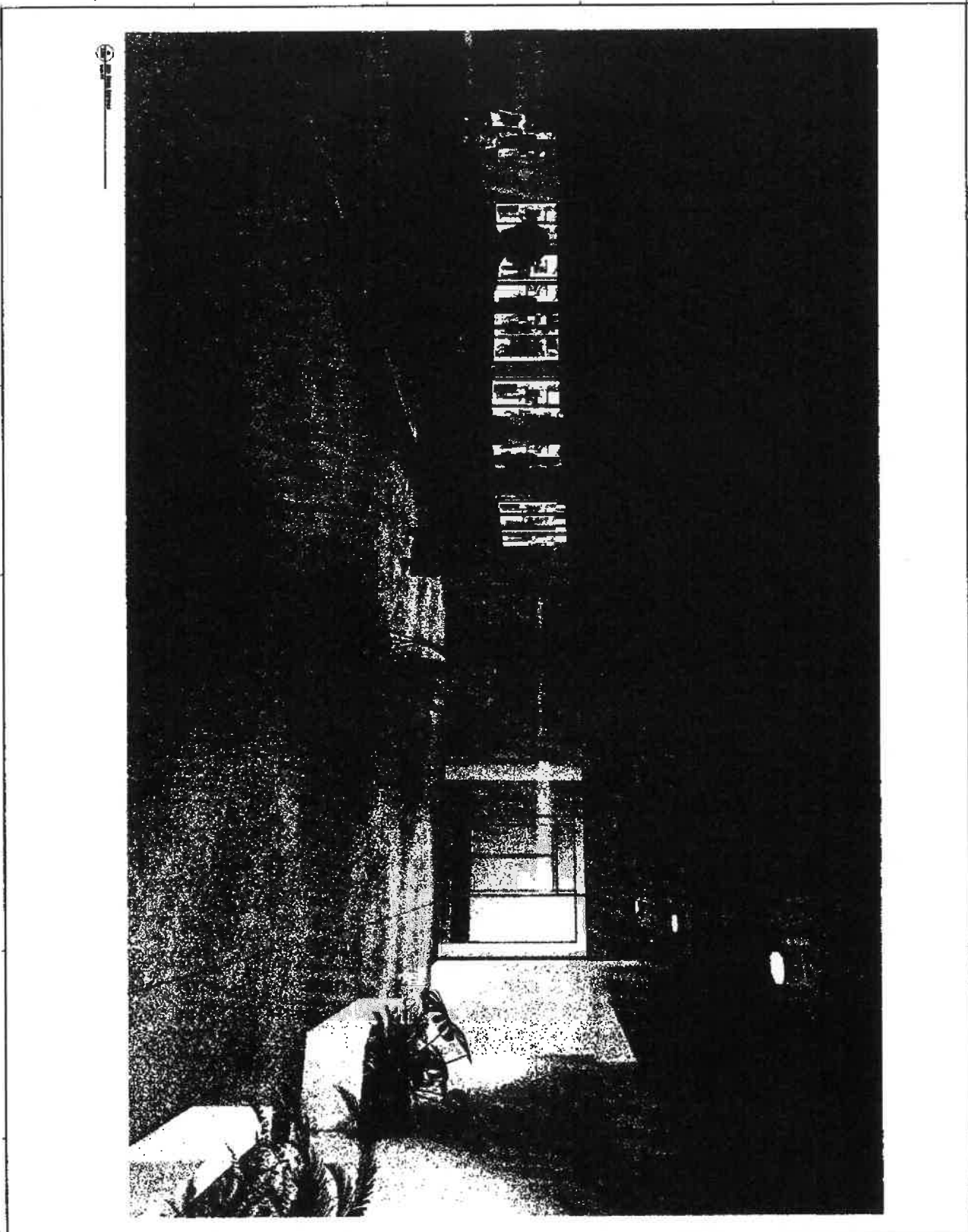
Professional Seal  
Professional Seal  
Professional Seal

Professional Seal  
Professional Seal  
Professional Seal



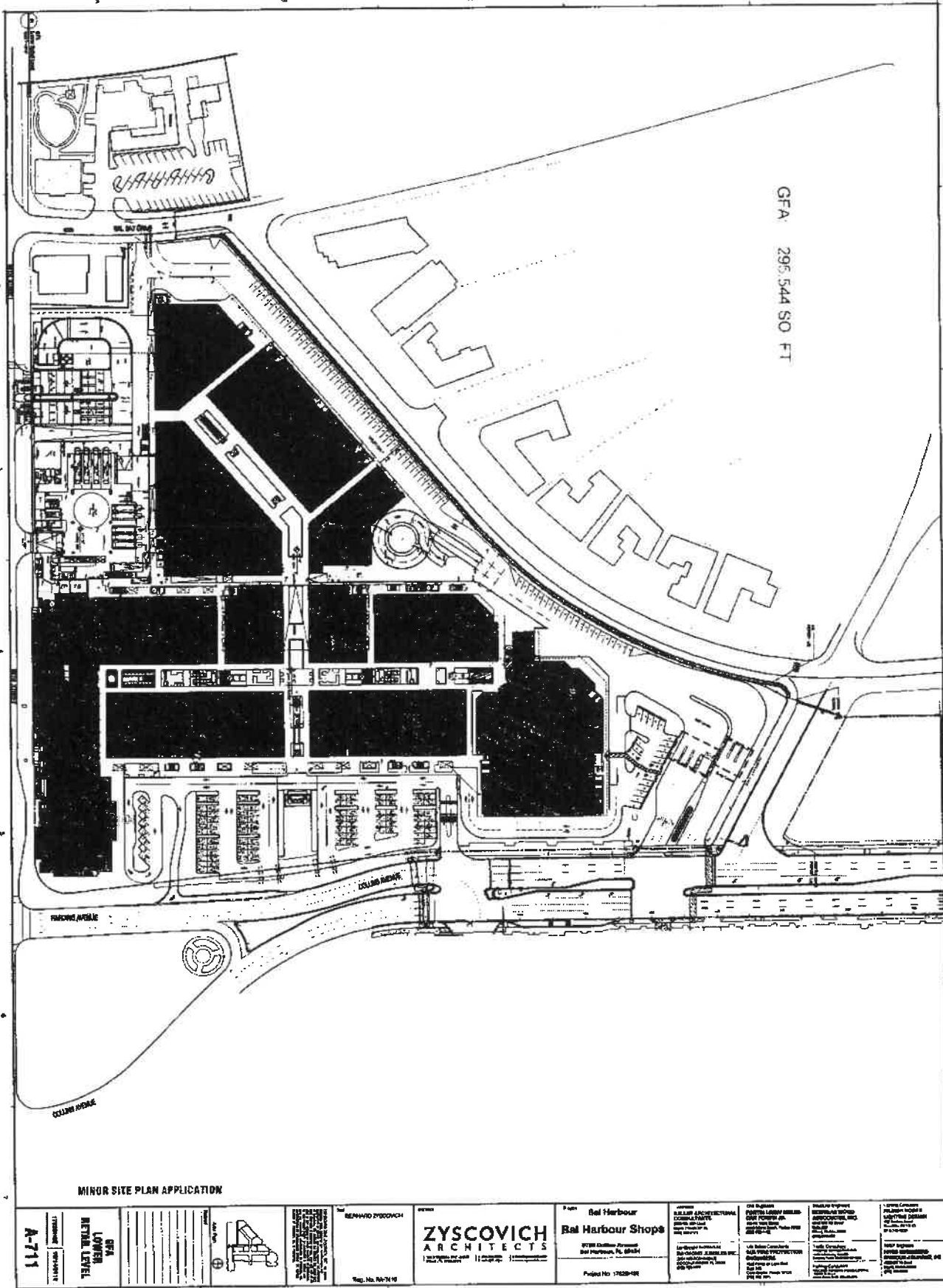
Bel Harbour Shops

<b>A-515-ALT</b> <small>DATE: 11/12/08</small> <small>SCALE: 1/8" = 1'-0"</small> <small>PROJECT: BEL HARBOUR SHOPS</small> <small>ARCHITECT: ZYSCOVICH ARCHITECTS</small> <small>ENGINEER: RICHARD J. ZYSCOVICH</small> <small>REG. NO. PA 1710</small>		<b>ARCHITECT</b> <b>ZYSCOVICH ARCHITECTS</b> <small>1100 GULF BEACH BLVD., SUITE 100</small> <small>MIAMI BEACH, FL 33139</small> <small>TEL: 305.531.1100</small> <small>FAX: 305.531.1101</small> <small>WWW.ZYSCOVICHARCHITECTS.COM</small>	<b>OWNER</b> <b>Bel Harbour</b> <b>Bel Harbour Shops</b> <small>2700 Collins Avenue</small> <small>Bel Harbour, FL 33594</small>	<b>PROJECT</b> <small>ARCHITECTURAL AND STRUCTURAL</small> <small>DESIGN FOR THE</small> <small>RENOVATION AND</small> <small>RECONSTRUCTION OF</small> <small>THE</small> <small>EXISTING</small> <small>WALKWAY</small> <small>AND</small> <small>BRIDGE</small> <small>STRUCTURE</small> <small>AT</small> <small>THE</small> <small>BEL HARBOUR SHOPS</small> <small>IN</small> <small>MIAMI BEACH, FL</small> <small>NO. 11000108</small>	<b>DATE</b> <small>11/12/08</small>	<b>SCALE</b> <small>1/8" = 1'-0"</small>	<b>PROJECT NO.</b> <small>11000108</small>	<b>DATE</b> <small>11/12/08</small>
		<small>THIS DOCUMENT IS THE PROPERTY OF ZYSCOVICH ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF ZYSCOVICH ARCHITECTS.</small>	<small>THESE DOCUMENTS ARE THE PROPERTY OF ZYSCOVICH ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF ZYSCOVICH ARCHITECTS.</small>	<small>THESE DOCUMENTS ARE THE PROPERTY OF ZYSCOVICH ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF ZYSCOVICH ARCHITECTS.</small>	<small>THESE DOCUMENTS ARE THE PROPERTY OF ZYSCOVICH ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF ZYSCOVICH ARCHITECTS.</small>			



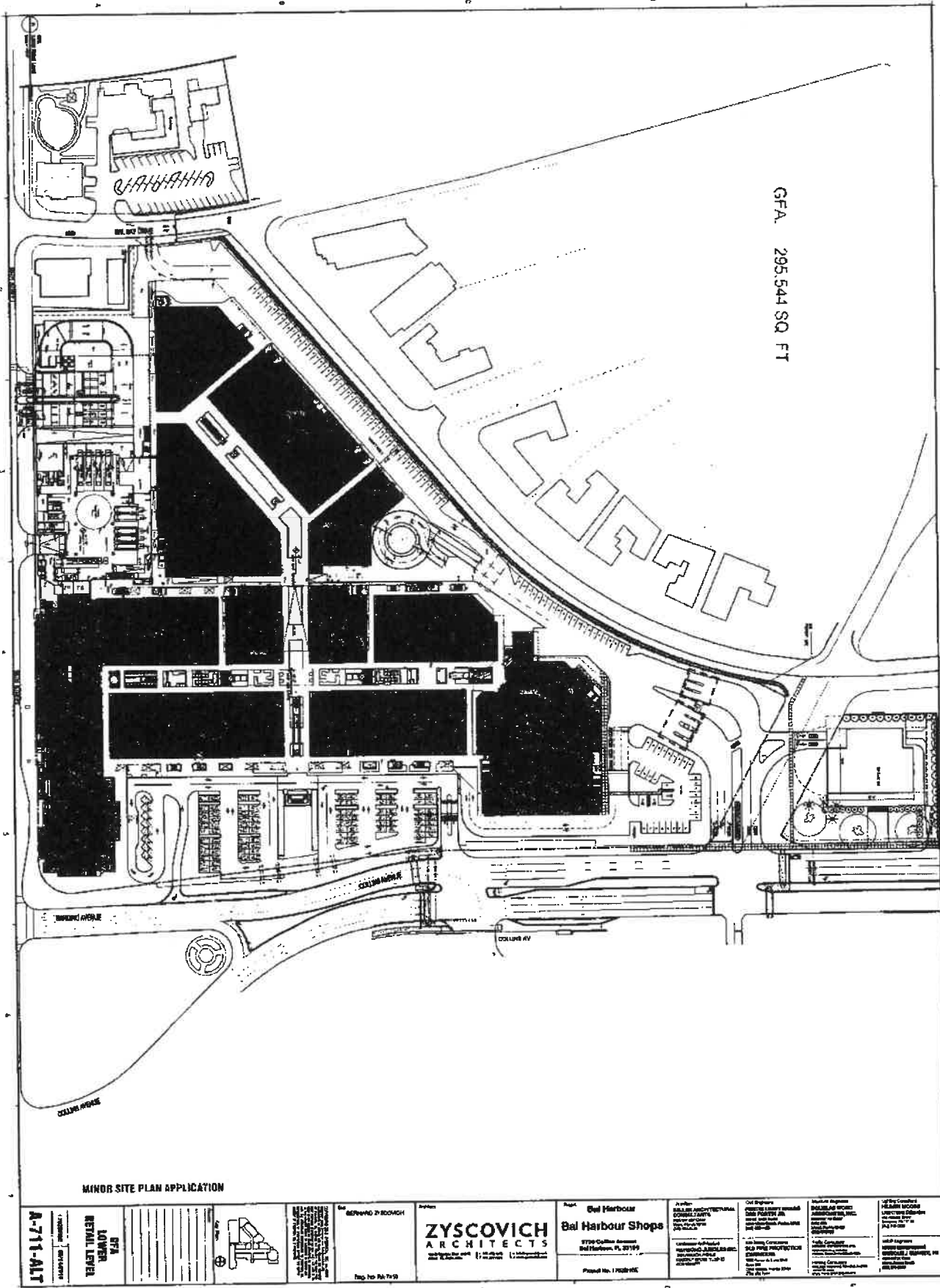
<p><b>A-516-ALT</b></p>	<p><b>RENDERING</b></p>		<p><b>ALANARD WYSCOVICH</b></p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> Bal Harbour Shops</p> <p>4700 Collins Avenue Bal Harbour, FL 33109</p>	<p><b>Call Express</b> PHOTOGRAPHY MANAGEMENT, INC.</p>	<p><b>Interior Design</b> WALTER PUSCINO</p>	<p><b>Lighting Consultant</b> ROBERT MOORE LIGHTING CONSULTANTS</p>
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MINOR SITE PLAN APPLICATION

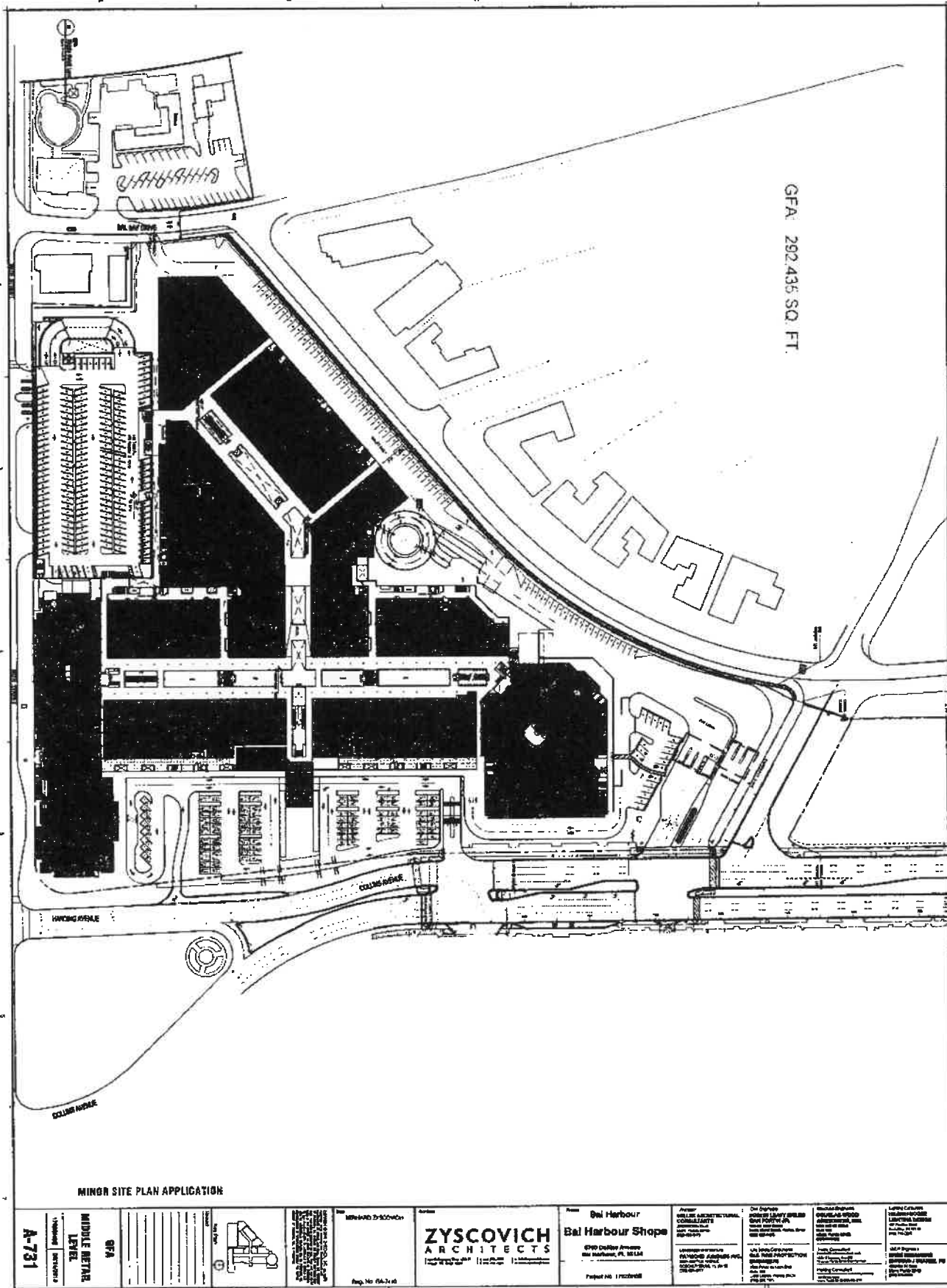
<p>PROJECT: A-711</p> <p>DATE: 08/11/11</p> <p>SCALE: AS SHOWN</p> <p>DATE: 08/11/11</p>		<p>BY: BENJAMIN PRODOCH</p> <p>DATE: 08/11/11</p> <p>REG. NO. 847410</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>11000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p> <p>Phone: 305.234.1100</p> <p>Fax: 305.234.1101</p> <p>www.zyscovich.com</p>	<p>Project: Bal Harbour</p> <p><b>Bal Harbour Shops</b></p> <p>11000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p> <p>Phone: 305.234.1100</p> <p>Fax: 305.234.1101</p> <p>www.zyscovich.com</p>	<p>Professional Engineer</p> <p>BRUCE L. BROWN</p> <p>BRUCE L. BROWN ARCHITECTS, INC.</p> <p>11000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p> <p>Phone: 305.234.1100</p> <p>Fax: 305.234.1101</p> <p>www.zyscovich.com</p>	<p>Professional Engineer</p> <p>BRUCE L. BROWN</p> <p>BRUCE L. BROWN ARCHITECTS, INC.</p> <p>11000 Collins Avenue, Suite 1000, Bal Harbour, FL 33154</p> <p>Phone: 305.234.1100</p> <p>Fax: 305.234.1101</p> <p>www.zyscovich.com</p>
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GFA 295,544 SQ FT

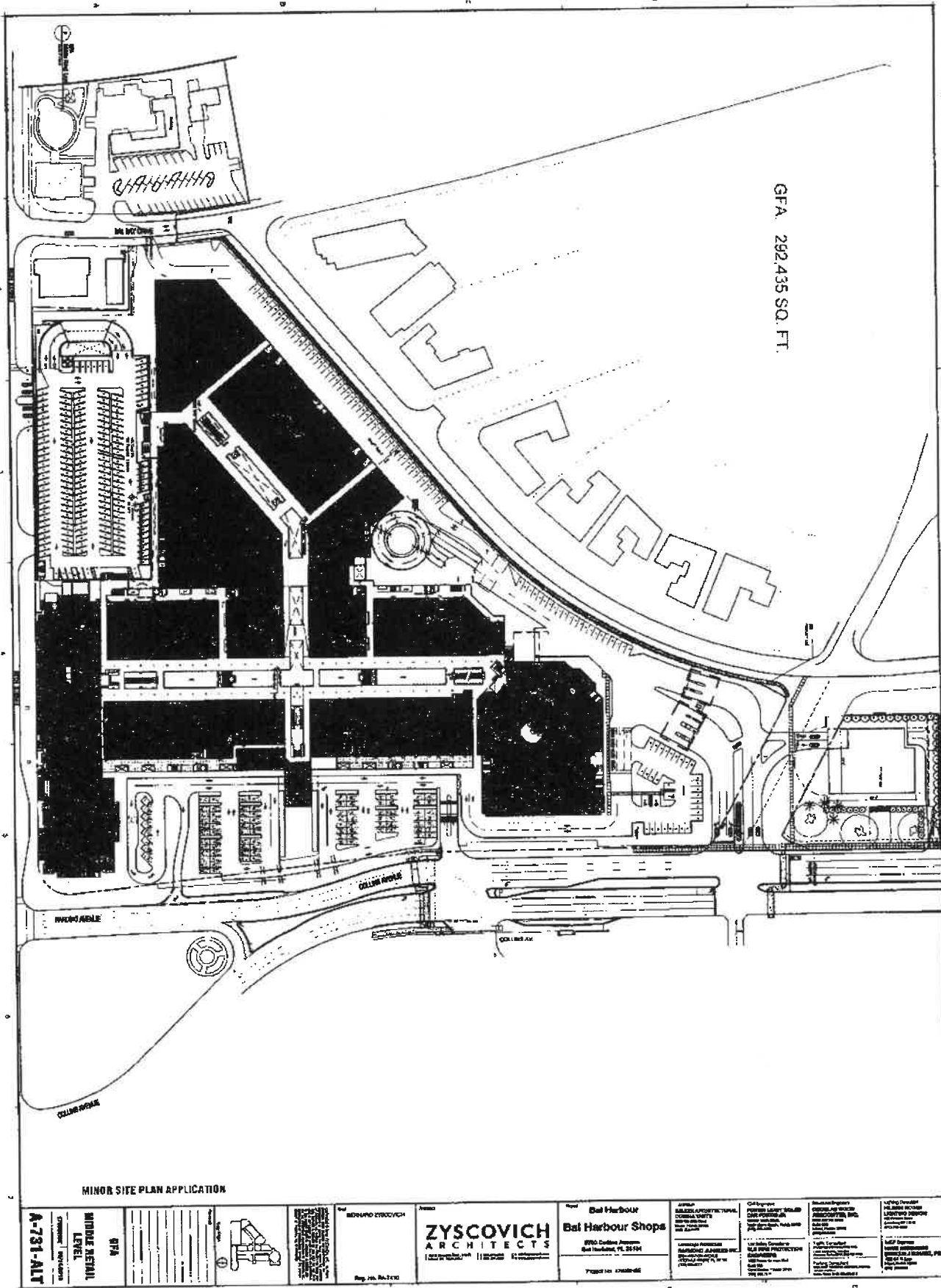
MINOR SITE PLAN APPLICATION

<p><b>A-711-ALT</b></p>	<p>DETAILED LOWER RETAIL LEVEL</p>		<p>FOR: <b>BAL HARBOUR SHOPS</b></p> <p>Prepared by: <b>ZYSCOVICH ARCHITECTS</b></p> <p>Top. No. BA 711</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>Architects and Planners</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>3729 Collins Avenue Bal Harbour, FL 33159</p> <p>Phone No. 1-305-856-1111</p>	<p><b>As Shown</b></p> <p>ALL WORK SHOWN HEREON IS THE PROPERTY OF ZYSCOVICH ARCHITECTS AND IS NOT TO 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.</p>	<p><b>City Engineer</b></p> <p>FOR THE CITY OF MIAMI BEACH</p> <p>DATE: 08/11/11</p> <p>BY: [Signature]</p>	<p><b>County Engineer</b></p> <p>FOR THE COUNTY OF DADE</p> <p>DATE: 08/11/11</p> <p>BY: [Signature]</p>	<p><b>City of Miami Beach</b></p> <p>PLANNING DEPARTMENT</p> <p>DATE: 08/11/11</p> <p>BY: [Signature]</p>
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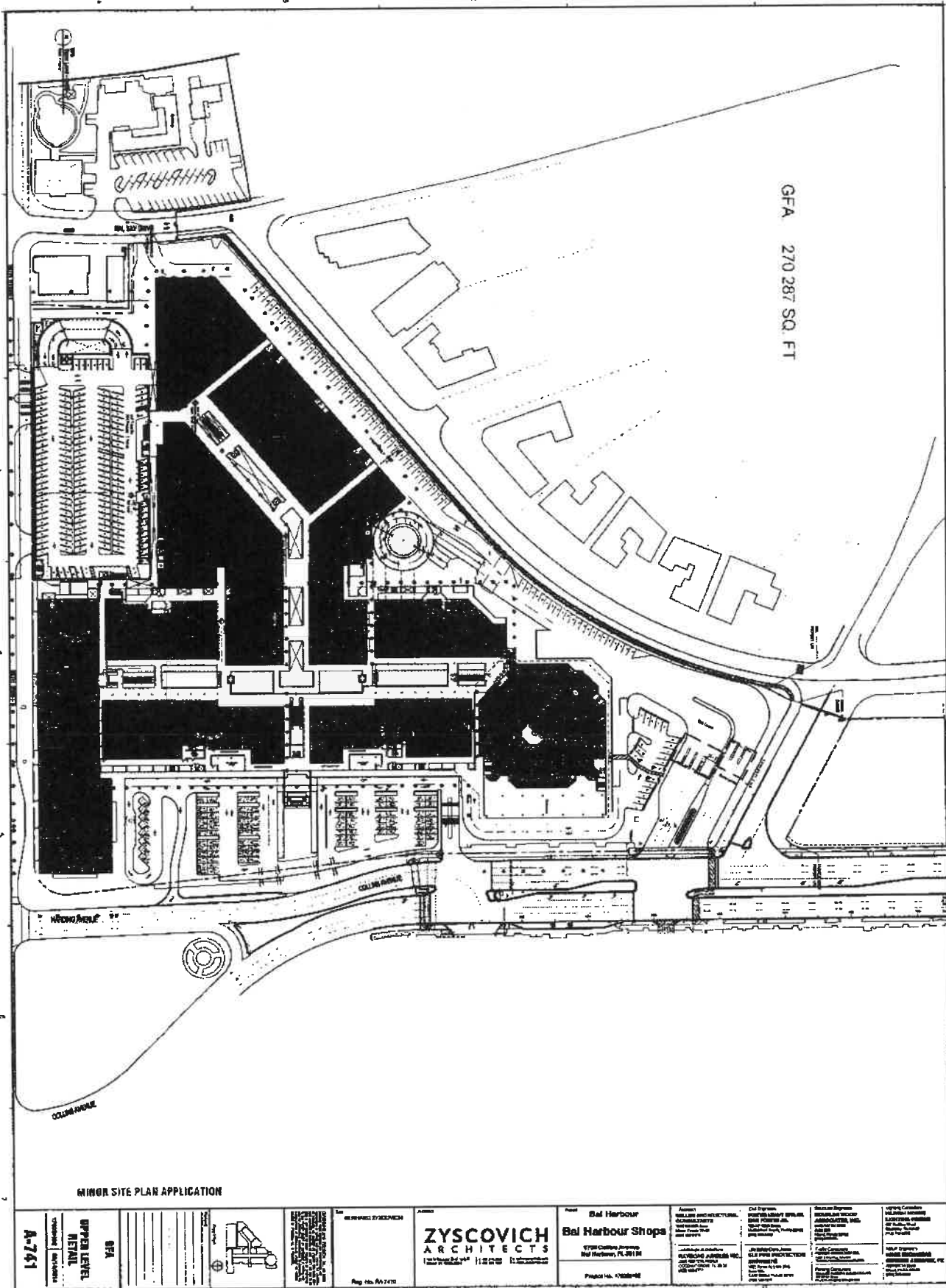
MINOR SITE PLAN APPLICATION

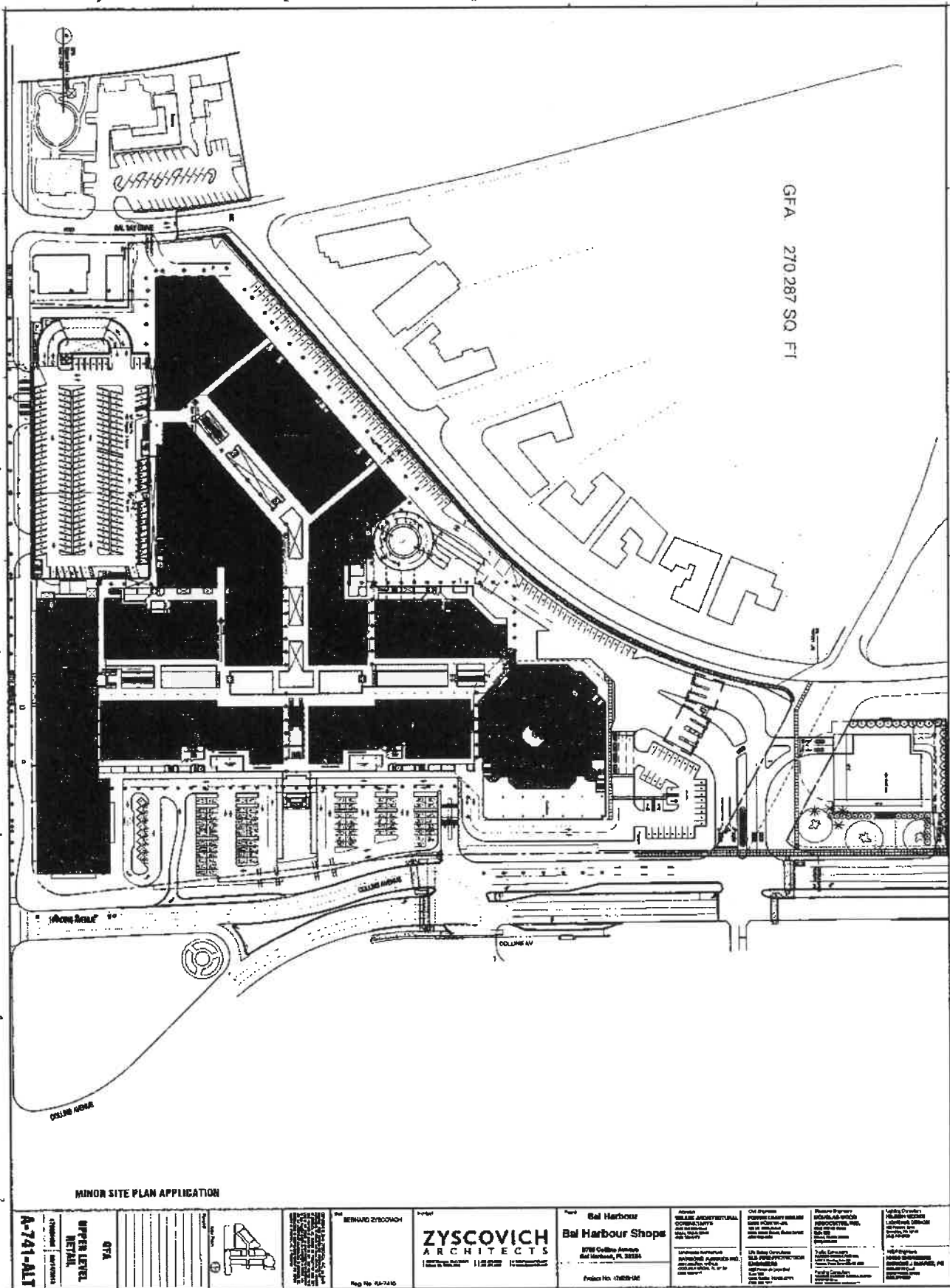
<p><b>A-731</b></p> <p>SEAL</p> <p><b>MIDDLE SETBACK</b></p> <p><b>LEVEL</b></p> <p>DATE: _____</p> <p>BY: _____</p>		<p>Michael Zyscovich Professional Engineer No. 12508 State of Florida</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>12500 SW 11th St Miami, FL 33150</p> <p>Reg. No. 06-74-01</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>6740 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 17022008</p>	<p>Author: MICHAEL ARCHITECTURAL CONSULTANTS DATE: 08/20/08 SCALE: AS SHOWN</p> <p>Checked/Reviewed: MICHAEL ARCHITECTURAL CONSULTANTS DATE: 08/20/08 SCALE: AS SHOWN</p>	<p>City Engineer: DAVID J. HARRIS DATE: 08/20/08 SCALE: AS SHOWN</p> <p>City Engineer: DAVID J. HARRIS DATE: 08/20/08 SCALE: AS SHOWN</p>	<p>City Engineer: DAVID J. HARRIS DATE: 08/20/08 SCALE: AS SHOWN</p> <p>City Engineer: DAVID J. HARRIS DATE: 08/20/08 SCALE: AS SHOWN</p>
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MINOR SITE PLAN APPLICATION

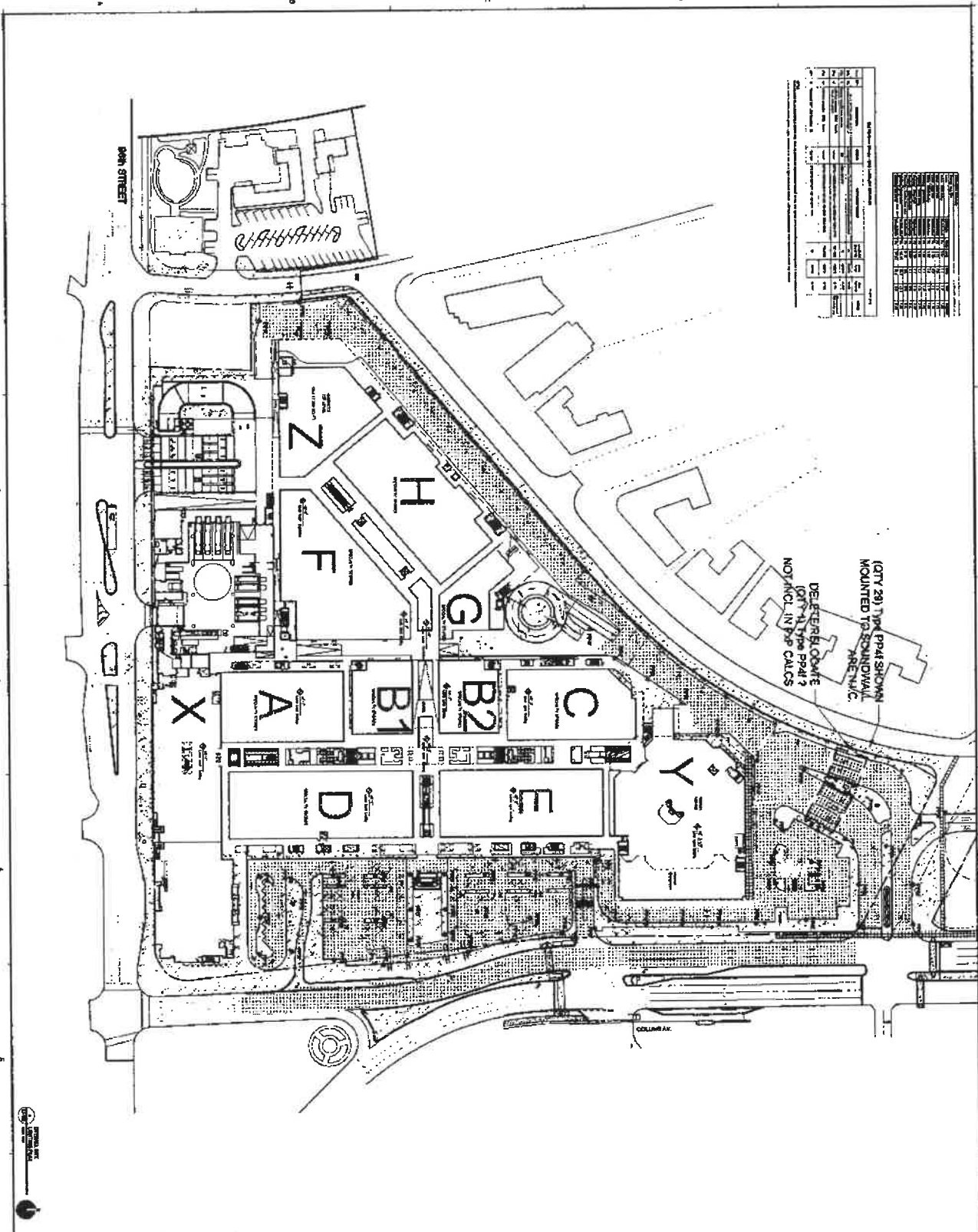
<p><b>A-731-ALT</b></p> <p>MINOR SITE PLAN APPLICATION</p> <p>DATE: 07/14</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PREPARED BY: ZYSCOVICH ARCHITECTS</p>		<p>BY: <b>BERNARD ZYSCOVICH</b></p> <p>REGISTERED PROFESSIONAL ARCHITECT</p> <p>NO. 10000</p> <p>Exp. 07/14</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>10000 BAYVIEW BLVD., SUITE 1000</p> <p>MIAMI BEACH, FL 33154</p> <p>TEL: 305.531.1111</p> <p>FAX: 305.531.1112</p> <p>WWW.ZYSCOVICH.COM</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>2700 Collins Avenue</p> <p>Bal Harbour, FL 33154</p> <p>Project No. 17000000</p>	<p>OWNER: <b>RETAIL DEVELOPMENT GROUP, INC.</b></p> <p>10000 BAYVIEW BLVD., SUITE 1000</p> <p>MIAMI BEACH, FL 33154</p> <p>TEL: 305.531.1111</p> <p>FAX: 305.531.1112</p> <p>WWW.ZYSCOVICH.COM</p>	<p>DATE: 07/14</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PREPARED BY: ZYSCOVICH ARCHITECTS</p> <p>NO. 10000</p> <p>Exp. 07/14</p>	<p>DATE: 07/14</p> <p>PROJECT: BAL HARBOUR SHOPS</p> <p>PREPARED BY: ZYSCOVICH ARCHITECTS</p> <p>NO. 10000</p> <p>Exp. 07/14</p>
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MINOR SITE PLAN APPLICATION

<p>A-741-ALT</p>	<p>OPEN LEVEL METAL REINFORCED CONCRETE</p>		<p>BY: BERNARD ZYSCOVICH</p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1125 SOUTH MIAMI AVENUE, SUITE 1000, MIAMI, FL 33130</p> <p>REG. NO. 62-7410</p>	<p>Site: Bal Harbour</p> <p>Project: Bal Harbour Shops</p> <p>3750 Collins Avenue Bal Harbour, FL 33124</p> <p>Project No. 17859-02</p>	<p>ALSO SEE: ARCHITECTURAL CONTRACTS</p> <p>DATE: 10/15/10</p> <p>SCALE: AS SHOWN</p> <p>DATE: 10/15/10</p>	<p>Old System: EXISTING</p> <p>New System: EXISTING</p> <p>DATE: 10/15/10</p>	<p>Structure Primary: EXISTING</p> <p>Structure Secondary: EXISTING</p> <p>DATE: 10/15/10</p>	<p>Lighting Criteria: EXISTING</p> <p>Lighting System: EXISTING</p> <p>DATE: 10/15/10</p>
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Item	Quantity	Unit	Notes
1	1	Sheet	Overall Site Plan
2	1	Sheet	Site Plan - Building Footprints
3	1	Sheet	Site Plan - Landscaping
4	1	Sheet	Site Plan - Utilities
5	1	Sheet	Site Plan - Access
6	1	Sheet	Site Plan - Other

(QTY 28) TYP EPA SHOWN  
MOUNTED TO SOUNDWALL  
DETERIOCRATE  
(QTY 11) TYP PA1 ?  
NOT INCL IN P.P. CALCS

**MINOR SITE PLAN APPLICATION**

<p>LT-100-ALT</p> <p>Overall Site Landing Plan</p>		<p>REWARD ZYSCOVICH</p> <p>Reg. No. RA-710</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1700 Collins Avenue Ball Harbour, FL 33154</p> <p>Phone No. 561-988-6611</p>	<p>Ball Harbour Ball Harbour Shops</p> <p>1700 Collins Avenue Ball Harbour, FL 33154</p> <p>Project No. 1700-011</p>	<p>Architect <b>SEAN ARCHITECTURAL</b> 2000 S.W. 10th Ave. Miami, FL 33135 Phone No. 305-375-1111</p> <p>Architectural Engineer <b>SEYMOUR JAMES INC.</b> 2000 S.W. 10th Ave. Miami, FL 33135 Phone No. 305-375-1111</p>	<p>City Engineer <b>DAVID P. HARRIS</b> 1000 N.W. 10th St. Miami, FL 33136 Phone No. 305-375-1111</p>	<p>Professional Engineer <b>DAVID P. HARRIS</b> 1000 N.W. 10th St. Miami, FL 33136 Phone No. 305-375-1111</p>	<p>City Engineer <b>DAVID P. HARRIS</b> 1000 N.W. 10th St. Miami, FL 33136 Phone No. 305-375-1111</p>

**BAL HARBOUR SHOPS PLANS  
 MINOR SITE PLAN APPLICATION - PHASE 1 ADDITIONAL SHEETS  
 9700 COLLINS AVENUE, BAL HARBOUR, FL. 33154**

MINOR SITE PLAN APPLICATION

<p>MINOR SITE PLAN APPLICATION</p> <p>AM-001</p>	<p>OWNER SHEET INDEX LIST</p>		<p>REG. NO. PA-110</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour Shops</b></p> <p>6700 Collins Avenue        Bal Harbour, FL 33154</p> <p>Project No. D28306</p>	<p>OWNER: <b>BAL HARBOUR SHOPS</b></p> <p>DESIGNER: <b>ZYSCOVICH ARCHITECTS</b></p>	<p>DATE: 08/15/2018</p> <p>SCALE: AS SHOWN</p>	<p>PROJECT NO. D28306</p> <p>DATE: 08/15/2018</p>
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# BAL HARBOUR SHOPS DATA SHEET - PHASE

PROPERTY GENERAL INFO	
1	2
3	4
5	6
7	8
9	10
11	12
13	14
15	16
17	18
19	20
21	22
23	24
25	26
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89	90
91	92
93	94
95	96
97	98
99	100

PROPERTY GENERAL INFO	
1	2
3	4
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11	12
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83	84
85	86
87	88
89	90
91	92
93	94
95	96
97	98
99	100

MINOR SITE PLAN APPLICATION

<p><b>DATA SHEET</b></p> <p>ZONING MAPS</p> <p>AREA MAPS</p> <p>PLANNING MAPS</p> <p>STREETS</p> <p>UTILITIES</p> <p>ENVIRONMENTAL</p> <p>TRAVEL</p> <p>LANDSCAPE</p> <p>ARCHITECTURE</p> <p>MECHANICAL</p> <p>ELECTRICAL</p> <p>PLUMBING</p> <p>HAZARDOUS WASTE</p> <p>ASBESTOS</p> <p>LEAD</p> <p>PCB</p> <p>OTHER</p>		<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>11111 11111</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>3200 Collins Avenue</p> <p>Bal Harbour, FL 33154</p> <p>Project No: 11111-01</p>	<p><b>Author:</b> BAL HARBOUR SHOPS DEVELOPMENT COMPANY</p> <p><b>License:</b> ARCHITECTURAL</p> <p><b>Professional Seal:</b> [Seal]</p>	<p><b>City Program:</b> BAL HARBOUR</p> <p><b>County:</b> DADE</p> <p><b>State:</b> FL</p>	<p><b>Project:</b> BAL HARBOUR SHOPS</p> <p><b>Phase:</b> PHASE 1</p>	<p><b>Site:</b> 3200 Collins Avenue</p> <p><b>Area:</b> 1.2 AC</p>	<p><b>Map:</b> 11111-01</p>	<p><b>Scale:</b> 1" = 100'</p>	<p><b>Date:</b> 11/11/11</p>

# BAL HARBOUR SHOPS DATA SHEET - PHASE

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CONCRETE	100	YD	100.00	100.00
2	CEMENT	200	YD	200.00	200.00
3	STEEL	50	YD	50.00	50.00
4	BRICK	1000	YD	1000.00	1000.00
5	ROOFING	50	YD	50.00	50.00
6	PAINT	100	YD	100.00	100.00
7	GLASS	200	YD	200.00	200.00
8	WOOD	100	YD	100.00	100.00
9	ELECTRICAL	50	YD	50.00	50.00
10	MECHANICAL	50	YD	50.00	50.00
11	PLUMBING	50	YD	50.00	50.00
12	LANDSCAPE	50	YD	50.00	50.00
13	CONCRETE	100	YD	100.00	100.00
14	CEMENT	200	YD	200.00	200.00
15	STEEL	50	YD	50.00	50.00
16	BRICK	1000	YD	1000.00	1000.00
17	ROOFING	50	YD	50.00	50.00
18	PAINT	100	YD	100.00	100.00
19	GLASS	200	YD	200.00	200.00
20	WOOD	100	YD	100.00	100.00
21	ELECTRICAL	50	YD	50.00	50.00
22	MECHANICAL	50	YD	50.00	50.00
23	PLUMBING	50	YD	50.00	50.00
24	LANDSCAPE	50	YD	50.00	50.00
25	CONCRETE	100	YD	100.00	100.00
26	CEMENT	200	YD	200.00	200.00
27	STEEL	50	YD	50.00	50.00
28	BRICK	1000	YD	1000.00	1000.00
29	ROOFING	50	YD	50.00	50.00
30	PAINT	100	YD	100.00	100.00
31	GLASS	200	YD	200.00	200.00
32	WOOD	100	YD	100.00	100.00
33	ELECTRICAL	50	YD	50.00	50.00
34	MECHANICAL	50	YD	50.00	50.00
35	PLUMBING	50	YD	50.00	50.00
36	LANDSCAPE	50	YD	50.00	50.00
37	CONCRETE	100	YD	100.00	100.00
38	CEMENT	200	YD	200.00	200.00
39	STEEL	50	YD	50.00	50.00
40	BRICK	1000	YD	1000.00	1000.00
41	ROOFING	50	YD	50.00	50.00
42	PAINT	100	YD	100.00	100.00
43	GLASS	200	YD	200.00	200.00
44	WOOD	100	YD	100.00	100.00
45	ELECTRICAL	50	YD	50.00	50.00
46	MECHANICAL	50	YD	50.00	50.00
47	PLUMBING	50	YD	50.00	50.00
48	LANDSCAPE	50	YD	50.00	50.00
49	CONCRETE	100	YD	100.00	100.00
50	CEMENT	200	YD	200.00	200.00
51	STEEL	50	YD	50.00	50.00
52	BRICK	1000	YD	1000.00	1000.00
53	ROOFING	50	YD	50.00	50.00
54	PAINT	100	YD	100.00	100.00
55	GLASS	200	YD	200.00	200.00
56	WOOD	100	YD	100.00	100.00
57	ELECTRICAL	50	YD	50.00	50.00
58	MECHANICAL	50	YD	50.00	50.00
59	PLUMBING	50	YD	50.00	50.00
60	LANDSCAPE	50	YD	50.00	50.00
61	CONCRETE	100	YD	100.00	100.00
62	CEMENT	200	YD	200.00	200.00
63	STEEL	50	YD	50.00	50.00
64	BRICK	1000	YD	1000.00	1000.00
65	ROOFING	50	YD	50.00	50.00
66	PAINT	100	YD	100.00	100.00
67	GLASS	200	YD	200.00	200.00
68	WOOD	100	YD	100.00	100.00
69	ELECTRICAL	50	YD	50.00	50.00
70	MECHANICAL	50	YD	50.00	50.00
71	PLUMBING	50	YD	50.00	50.00
72	LANDSCAPE	50	YD	50.00	50.00
73	CONCRETE	100	YD	100.00	100.00
74	CEMENT	200	YD	200.00	200.00
75	STEEL	50	YD	50.00	50.00
76	BRICK	1000	YD	1000.00	1000.00
77	ROOFING	50	YD	50.00	50.00
78	PAINT	100	YD	100.00	100.00
79	GLASS	200	YD	200.00	200.00
80	WOOD	100	YD	100.00	100.00
81	ELECTRICAL	50	YD	50.00	50.00
82	MECHANICAL	50	YD	50.00	50.00
83	PLUMBING	50	YD	50.00	50.00
84	LANDSCAPE	50	YD	50.00	50.00
85	CONCRETE	100	YD	100.00	100.00
86	CEMENT	200	YD	200.00	200.00
87	STEEL	50	YD	50.00	50.00
88	BRICK	1000	YD	1000.00	1000.00
89	ROOFING	50	YD	50.00	50.00
90	PAINT	100	YD	100.00	100.00
91	GLASS	200	YD	200.00	200.00
92	WOOD	100	YD	100.00	100.00
93	ELECTRICAL	50	YD	50.00	50.00
94	MECHANICAL	50	YD	50.00	50.00
95	PLUMBING	50	YD	50.00	50.00
96	LANDSCAPE	50	YD	50.00	50.00
97	CONCRETE	100	YD	100.00	100.00
98	CEMENT	200	YD	200.00	200.00
99	STEEL	50	YD	50.00	50.00
100	BRICK	1000	YD	1000.00	1000.00

01-002-ALT-PM

MINDR SITE PLAN APPLICATION

DATA SHEET  
 EXISTING MATERIALS  
 NEW MATERIALS  
 PROPOSED MATERIALS



REWARD PROVOCH  
 REG. NO. RA7170

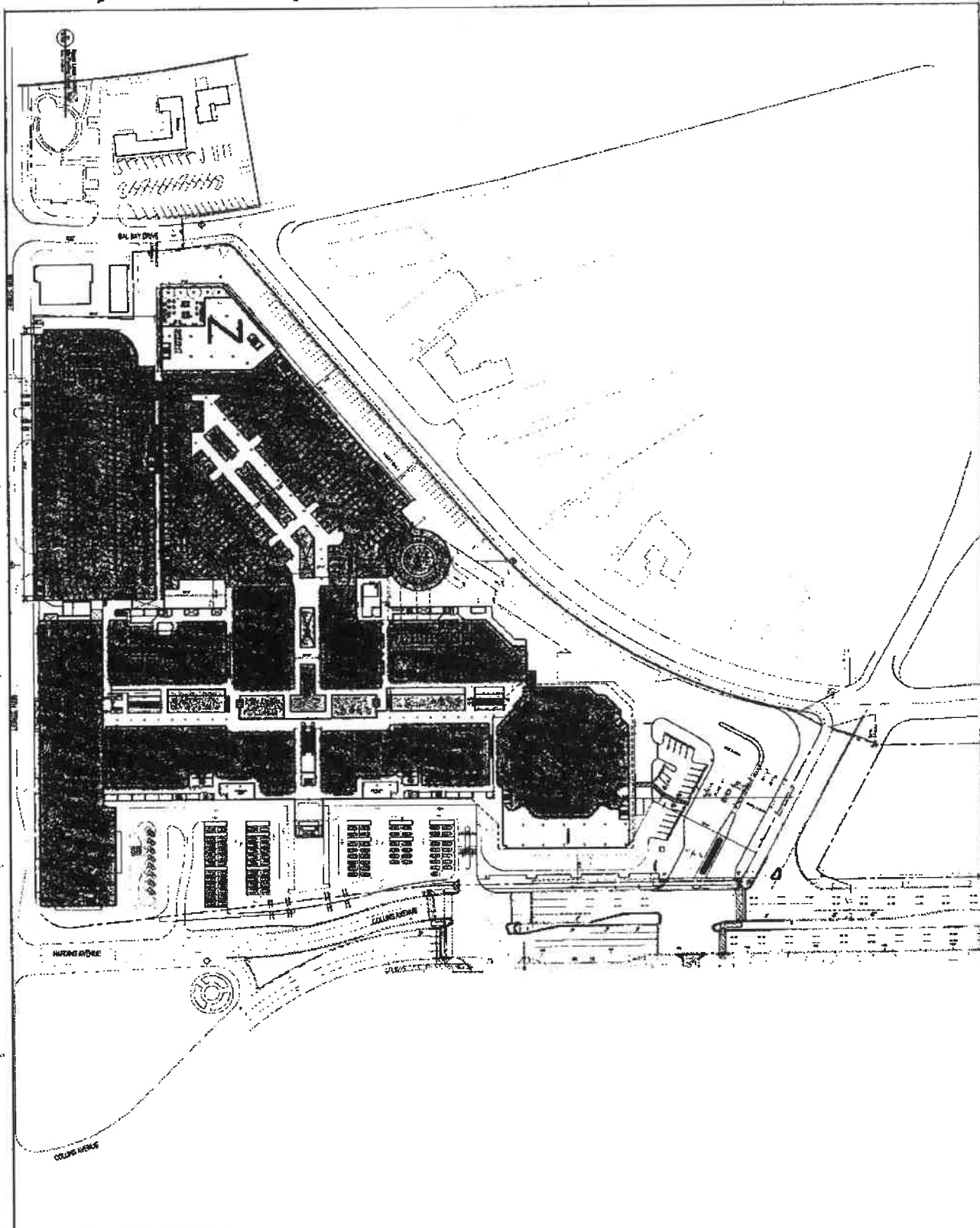
**ZYSCOVICH ARCHITECTS**  
 1000 Collins Avenue  
 Suite 1000  
 Miami Beach, FL 33139  
 Tel: 305.673.1111  
 Fax: 305.673.1112  
 www.zyscovich.com

Bal Harbour  
 Bal Harbour Shops  
 2900 Collins Avenue  
 Bal Harbour, FL 33154  
 Project No. 170582

OWNER  
 BAL HARBOUR SHOPPING CENTER  
 2900 Collins Avenue  
 Bal Harbour, FL 33154  
 Tel: 305.673.1111  
 Fax: 305.673.1112  
 www.zyscovich.com

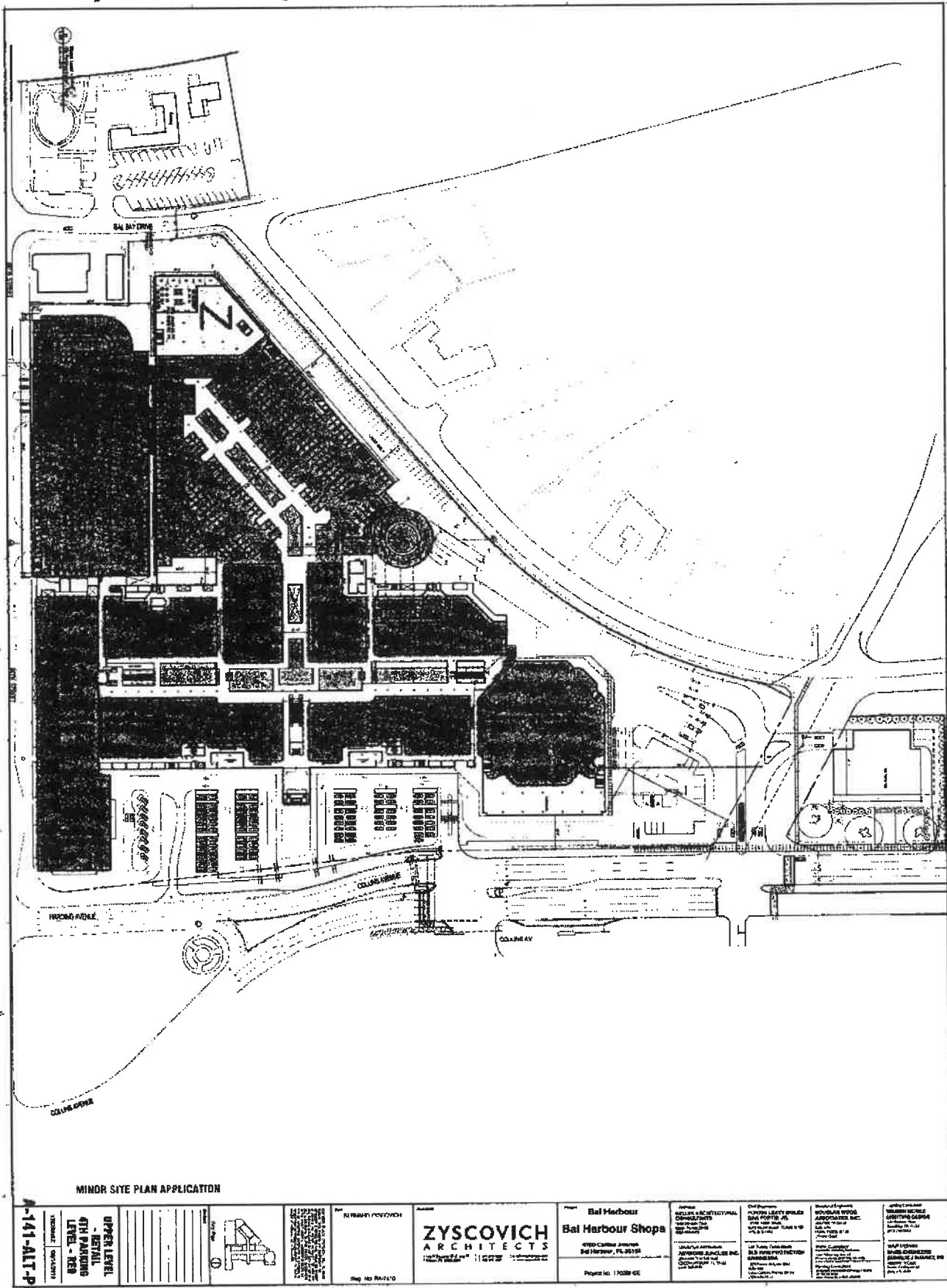
DATE  
 01/15/11  
 DRAWN  
 J. ZYSCOVICH  
 CHECKED  
 J. ZYSCOVICH  
 PROJECT MANAGER  
 J. ZYSCOVICH

Professional Engineer  
 License No. 10000  
 State of Florida  
 J. ZYSCOVICH  
 1000 Collins Avenue  
 Suite 1000  
 Miami Beach, FL 33139  
 Tel: 305.673.1111  
 Fax: 305.673.1112  
 www.zyscovich.com



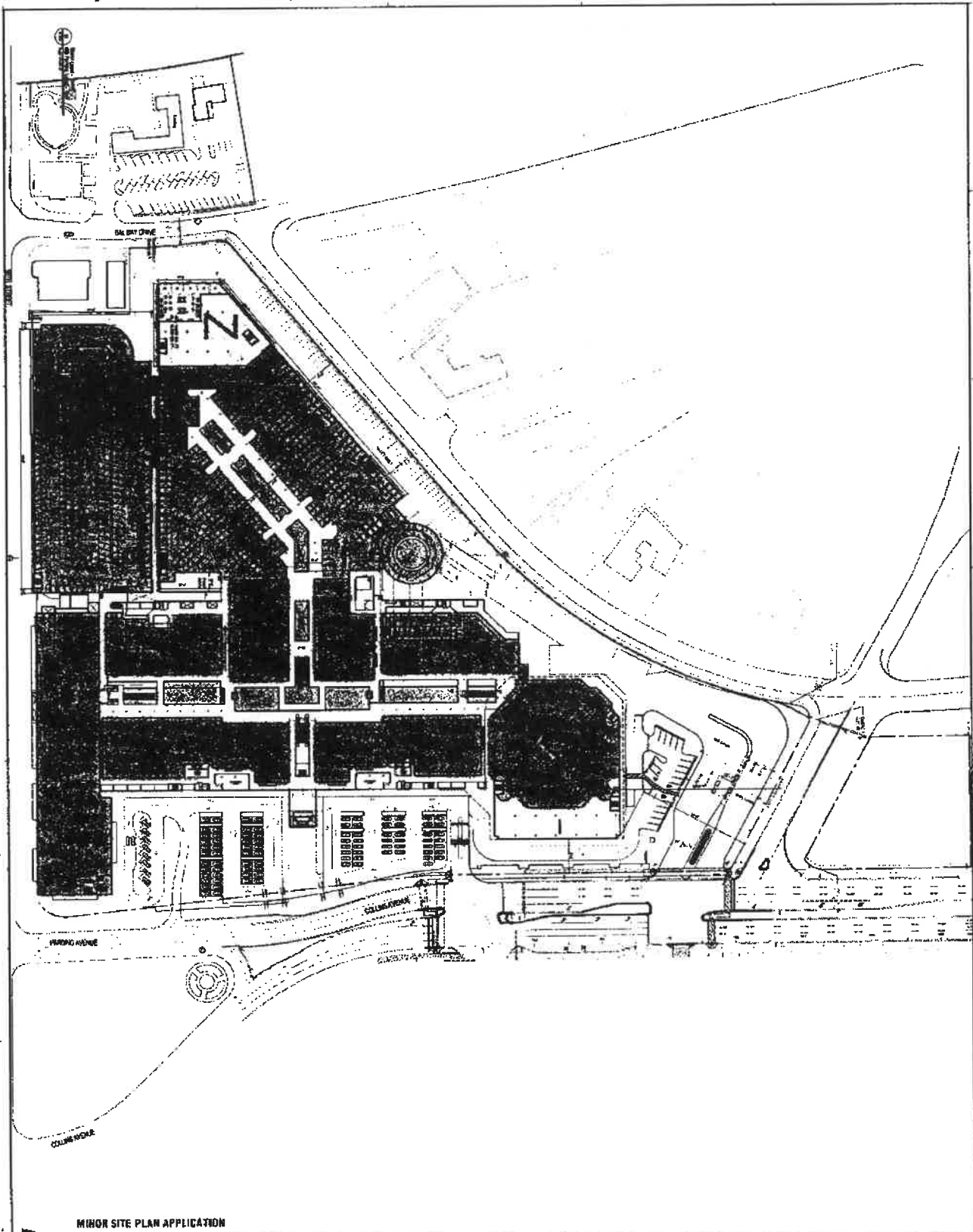
MINOR SITE PLAN APPLICATION

<p><b>A-141-PH</b></p> <p>DATE: 05/18/2018</p> <p>SCALE: AS SHOWN</p>	<p><b>UPPER LEVEL</b></p> <p>- RETAIL</p> <p>4TH FLOOR</p> <p>LEVEL - NEW</p>		<p>DATE: 05/18/2018</p> <p>SCALE: AS SHOWN</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>2900 Collins Avenue Bellaire, FL 33434</p> <p>Phone: 561-993-1100</p>	<p><b>Bel Harbour</b></p> <p><b>Bel Harbour Shops</b></p> <p>2900 Collins Avenue Bellaire, FL 33434</p> <p>Project No. 17528-02</p>	<p><b>OWNER</b></p> <p>WELLS FARGO BANK</p> <p>1000 BANKERS BUILDING</p> <p>MIAMI, FL 33133</p>	<p><b>DESIGNER</b></p> <p>WELLS FARGO BANK</p> <p>1000 BANKERS BUILDING</p> <p>MIAMI, FL 33133</p>	<p><b>REVISIONS</b></p> <p>NO. 1</p> <p>DATE</p> <p>DESCRIPTION</p>
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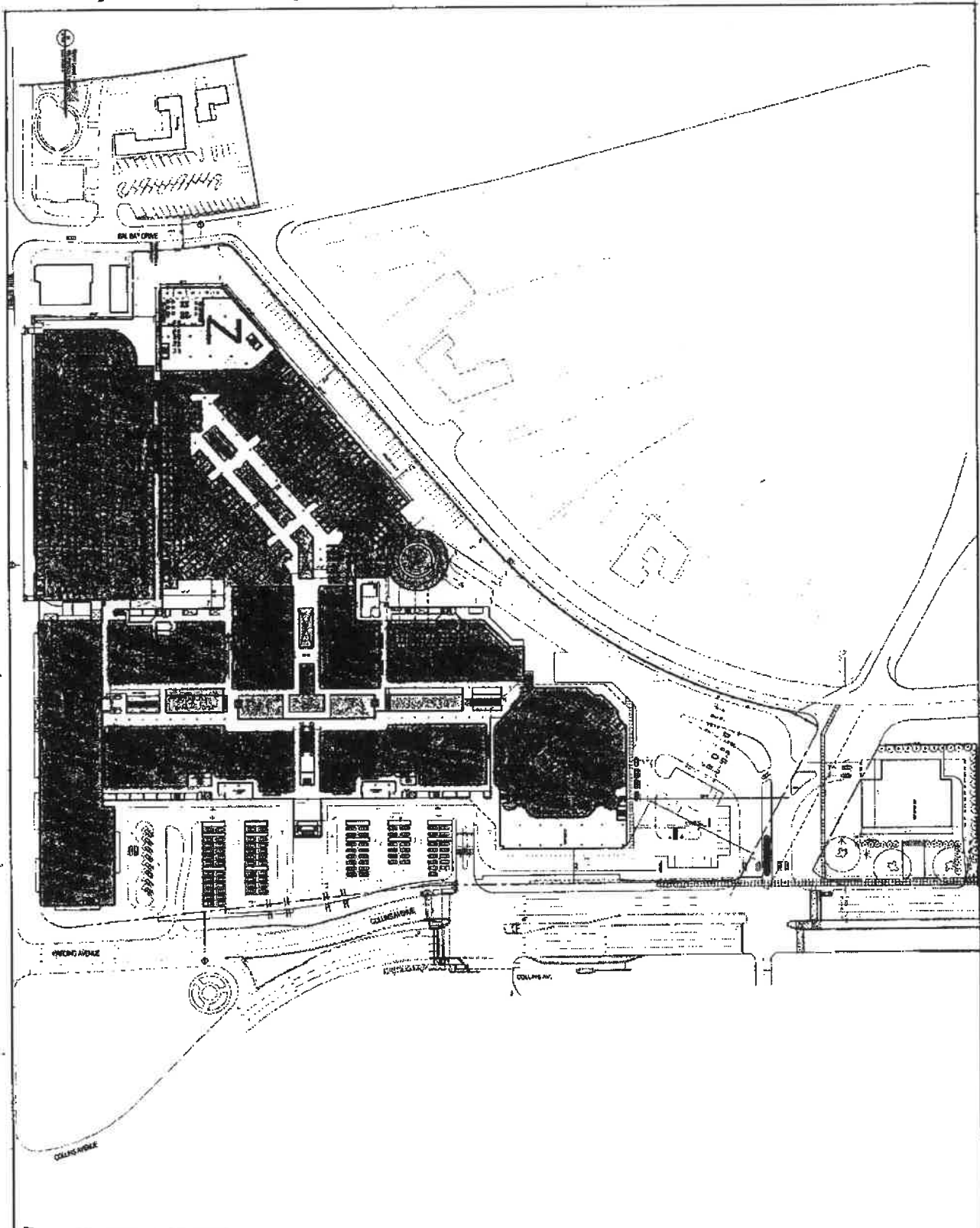
MINDR SITE PLAN APPLICATION

<p><b>A-141-ALT-PH</b></p> <p>REVISIONS</p> <p>DATE</p> <p>DESCRIPTION</p>		<p>PROJECT NO. 10288-02</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>4700 Collins Avenue Bal Harbour, FL 33155</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>4700 Collins Avenue Bal Harbour, FL 33155</p> <p>Project No. 10288-02</p>	<p>OWNER</p> <p><b>REGENCY DEVELOPMENT GROUP</b></p> <p>10000 Collins Avenue Suite 1000 Bal Harbour, FL 33155</p>	<p>DESIGNER</p> <p><b>REGENCY DEVELOPMENT GROUP</b></p> <p>10000 Collins Avenue Suite 1000 Bal Harbour, FL 33155</p>	<p>ENGINEER</p> <p><b>REGENCY DEVELOPMENT GROUP</b></p> <p>10000 Collins Avenue Suite 1000 Bal Harbour, FL 33155</p>	<p>ARCHITECT</p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>4700 Collins Avenue Bal Harbour, FL 33155</p>	<p>DATE</p> <p>NOVEMBER 2011</p>



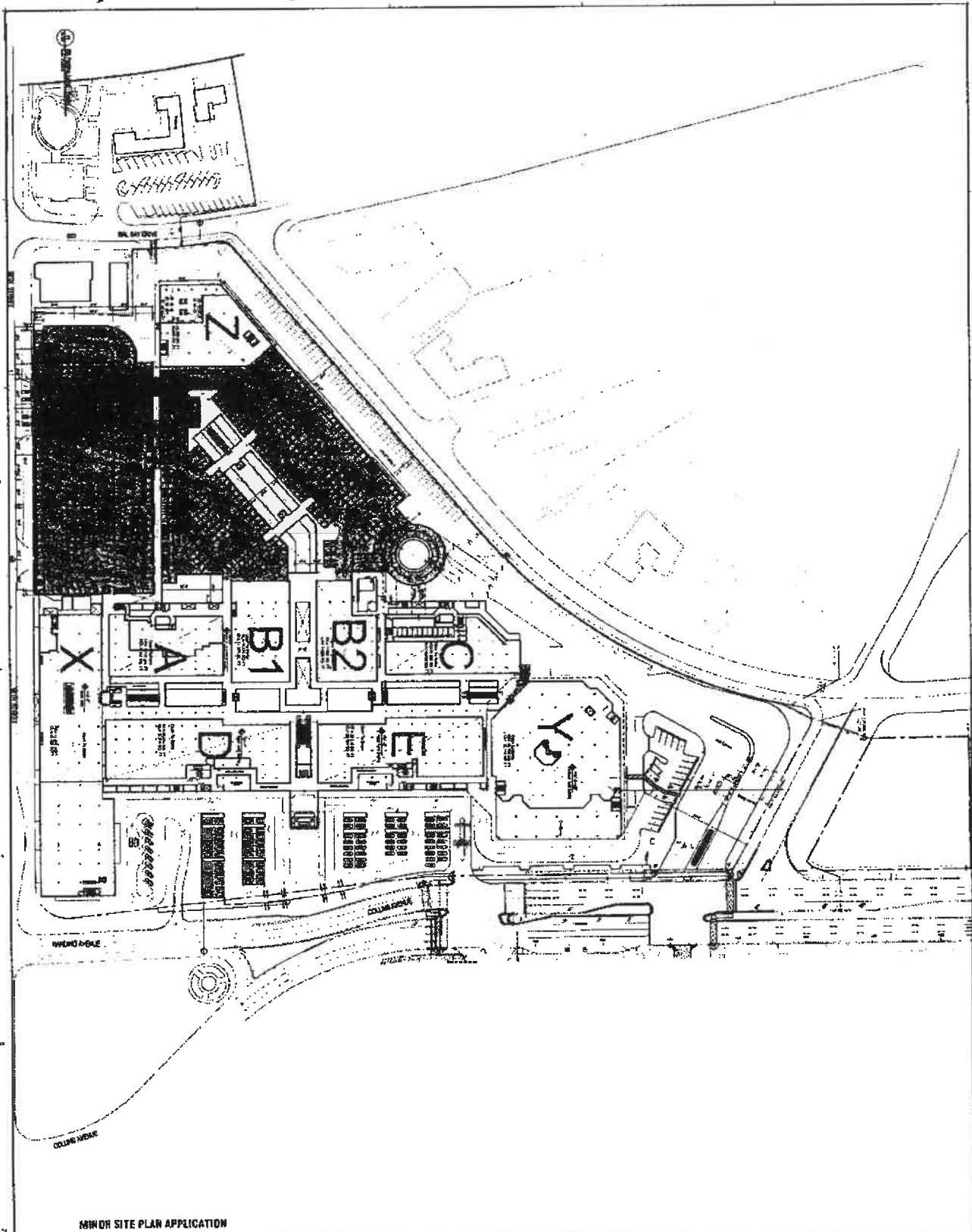
**MINOR SITE PLAN APPLICATION**

<p><b>A-141-PH-FLEX</b></p>	<p><b>UPPER LEVEL</b> - METAL - 4TH FLOOR - LEVEL - NEW FLEX</p>		<p>PRINCE ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p> <p>4700 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 1498006</p>	<p><b>ARCHITECT</b> Zysoyich Architects 4700 Collins Avenue Bal Harbour, FL 33154 Tel: 305.224.1111 Fax: 305.224.1112</p>	<p><b>ENGINEER</b> MANNING JACOBS INC. 10000 Collins Avenue Miami Beach, FL 33154 Tel: 305.351.1111 Fax: 305.351.1112</p>	<p><b>DATE</b> 11/11/2011</p> <p><b>SCALE</b> AS SHOWN</p>
	<p>DATE: 11/11/2011</p>	<p>SCALE: AS SHOWN</p>	<p>PROJECT: BAL HARBOUR SHOPS</p>	<p>REVISIONS:</p>	<p>DATE: 11/11/2011</p>	<p>SCALE: AS SHOWN</p>	<p>PROJECT: BAL HARBOUR SHOPS</p>	<p>DATE: 11/11/2011</p>



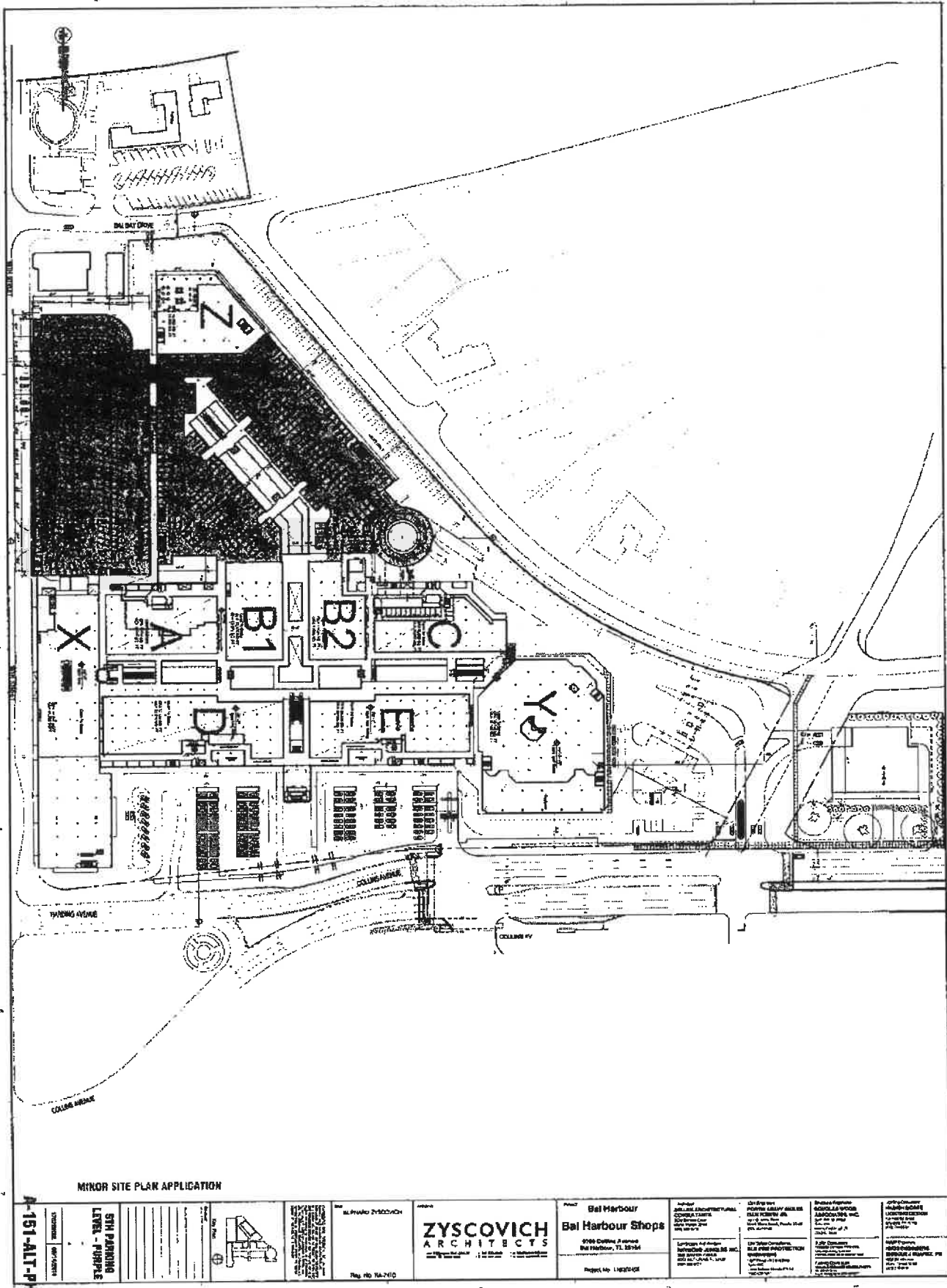
MINOR SITE PLAN APPLICATION

<p>A-1-1-ALT-PH-FLEX</p>	<p>UPPER LEVEL - RETAIL 4TH FLOOR LEVEL - RED FIELD</p>		<p>Reg No. 86710</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p>	<p>Professional Seal</p>	<p>Professional Seal</p>	<p>Professional Seal</p>
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MINOR SITE PLAN APPLICATION

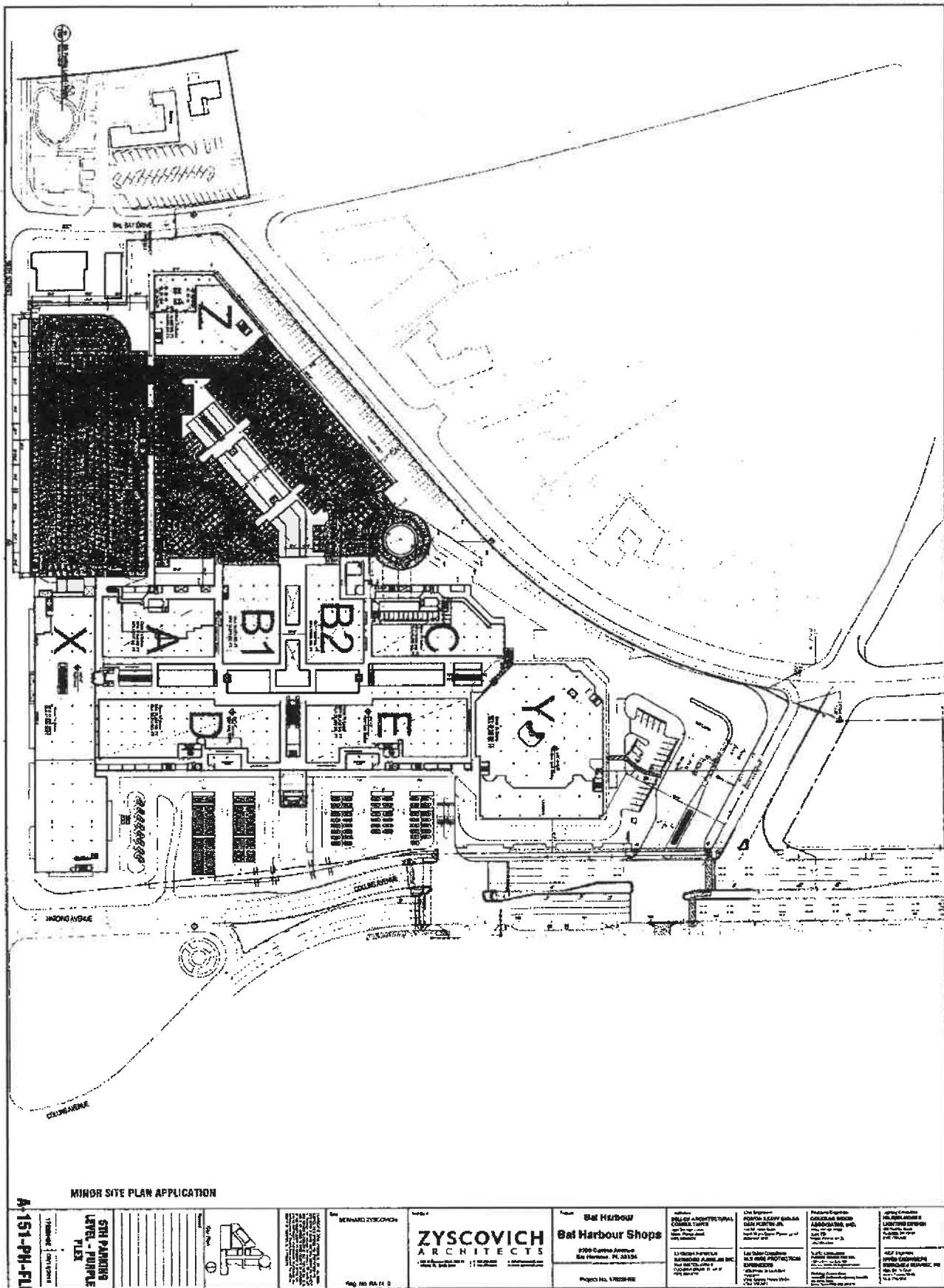
<p><b>A-151-PH</b></p>	<p><b>STP PARKING LEVEL - PURPLE</b></p>		<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b> <b>Bal Harbour Shops</b></p>	<p><b>OUR LICENSE</b> Professional Engineer State of Florida No. 12345 Exp. 12/31/2025</p>	<p><b>OUR LICENSE</b> Professional Engineer State of Florida No. 12345 Exp. 12/31/2025</p>	<p><b>OUR LICENSE</b> Professional Engineer State of Florida No. 12345 Exp. 12/31/2025</p>
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MINOR SITE PLAN APPLICATION

<p><b>A-151-ALT-P1</b></p> <p>DATE: 11/15/11</p> <p>SCALE: AS SHOWN</p> <p>5TH FLOOR LEVEL - PURPLE</p>		<p>BY: ALPHAVIO ZYSCOVICH</p> <p>Reg. No. 76-710</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1000 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p> <p>Phone: (305) 234-1100 Fax: (305) 234-1101 www.zyscovich.com</p>	<p>PROJECT: <b>Bal Harbour Shops</b></p> <p>5700 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No. 11021402</p>	<p>ARCHITECT: <b>ZYSCOVICH ARCHITECTS</b></p> <p>1000 Collins Avenue, Suite 1000 Bal Harbour, FL 33154</p> <p>Phone: (305) 234-1100 Fax: (305) 234-1101 www.zyscovich.com</p>	<p>ENGINEER: <b>PERKINS+WILL</b></p> <p>300 North Dearborn Street Chicago, IL 60610</p> <p>Phone: (312) 279-2000 Fax: (312) 279-2001 www.perkinswill.com</p>	<p>LANDSCAPE ARCHITECT: <b>PERKINS+WILL</b></p> <p>300 North Dearborn Street Chicago, IL 60610</p> <p>Phone: (312) 279-2000 Fax: (312) 279-2001 www.perkinswill.com</p>	<p>PLANNING: <b>PERKINS+WILL</b></p> <p>300 North Dearborn Street Chicago, IL 60610</p> <p>Phone: (312) 279-2000 Fax: (312) 279-2001 www.perkinswill.com</p>	<p>CONSTRUCTION MANAGER: <b>PERKINS+WILL</b></p> <p>300 North Dearborn Street Chicago, IL 60610</p> <p>Phone: (312) 279-2000 Fax: (312) 279-2001 www.perkinswill.com</p>





MINOR SITE PLAN APPLICATION

A-151-PH-FLEX

**STPA PARKING**  
LAYER - PARKING  
TEXT

STPA No. 151-PH-FLEX

By: **BERNARD ZYSCOVICH**

**ZYSCOVICH ARCHITECTS**

1100 Central Avenue  
St. Dennis, FL 33134

Page No. 05.14.0

**8at Harbour Shops**

1100 Central Avenue  
St. Dennis, FL 33134

Project No. 17028-00

**8at Harbour Shops**

1100 Central Avenue  
St. Dennis, FL 33134

Project No. 17028-00

**8at Harbour Shops**

1100 Central Avenue  
St. Dennis, FL 33134

Project No. 17028-00

**8at Harbour Shops**

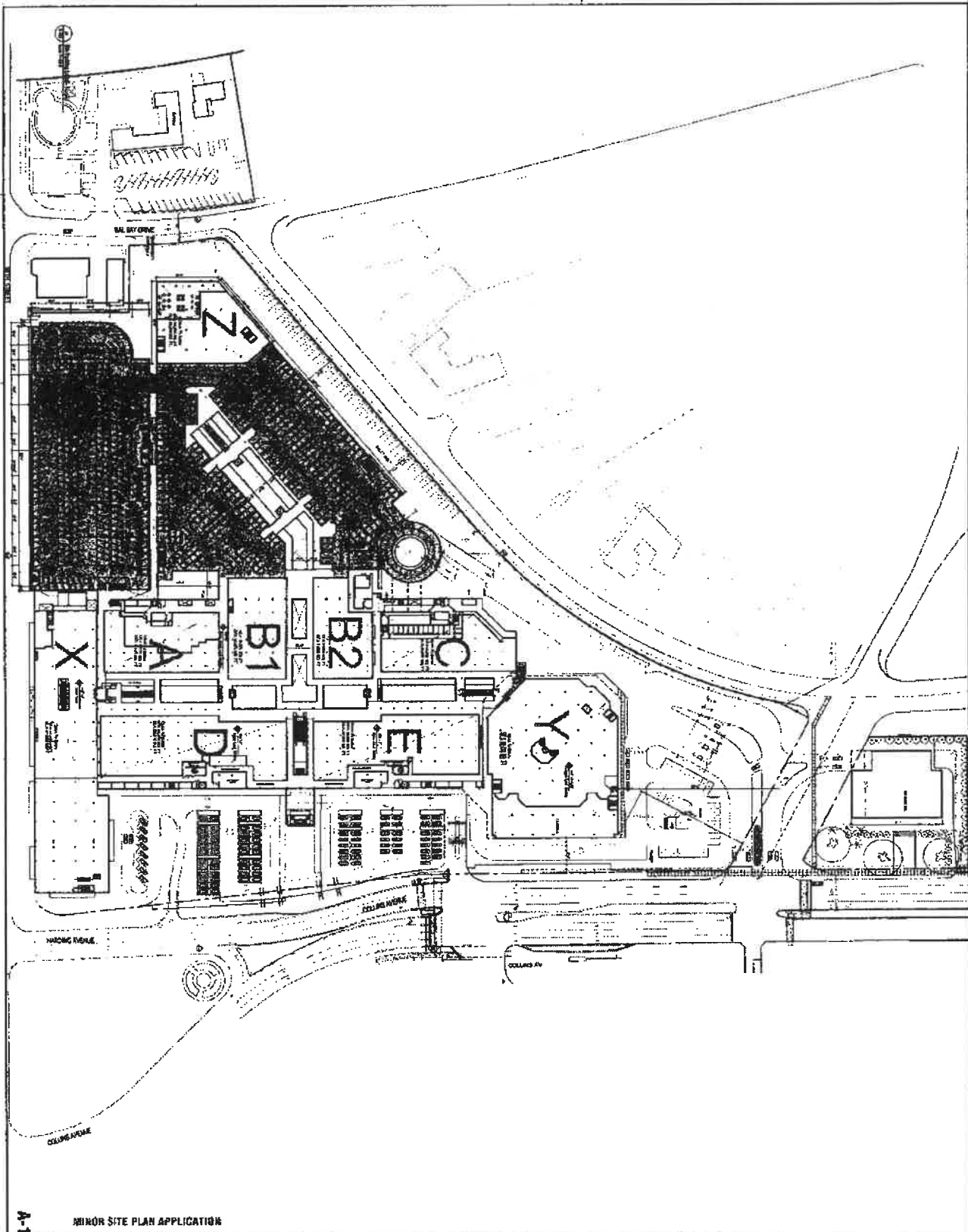
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Project No. 17028-00

**8at Harbour Shops**

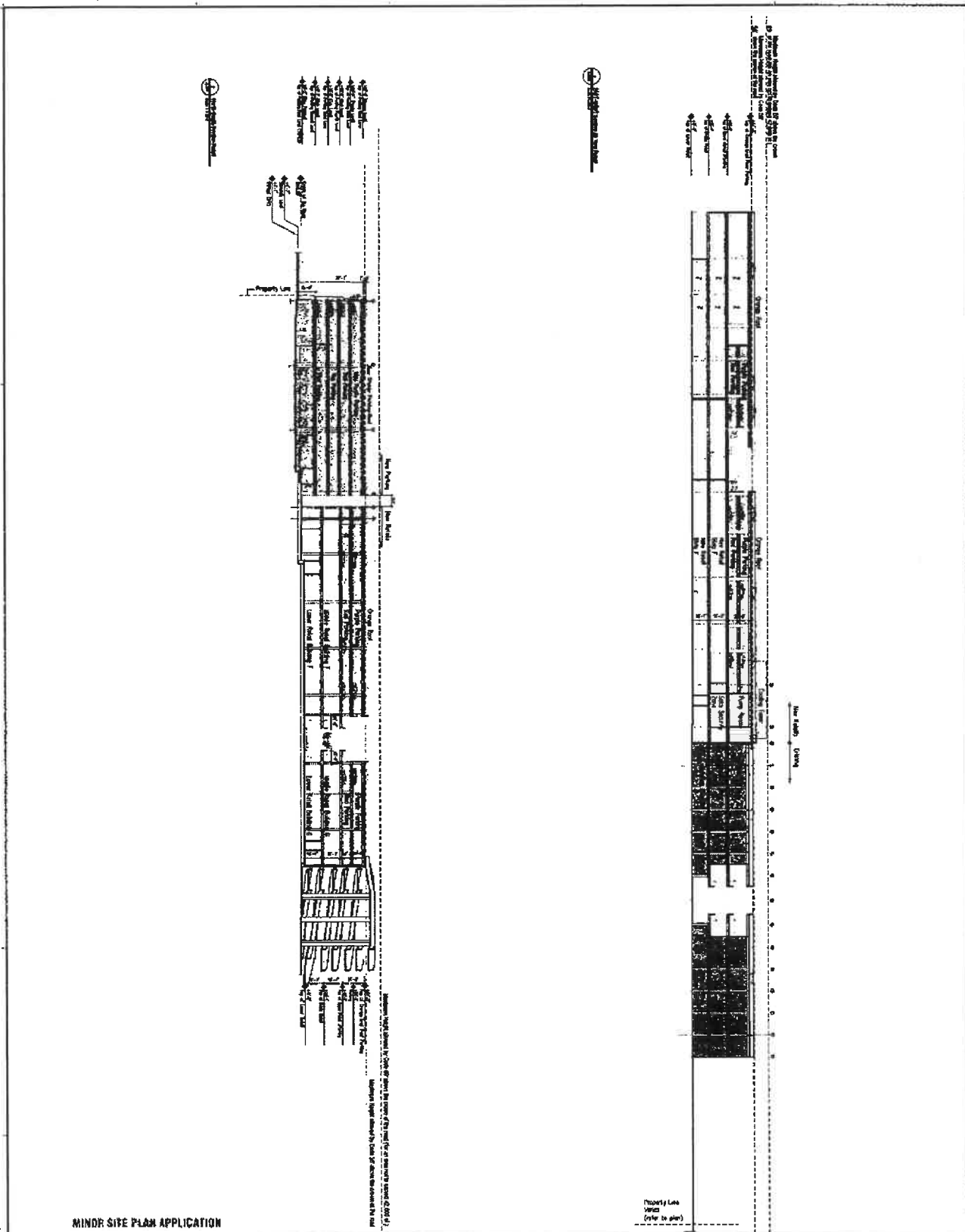
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Project No. 17028-00



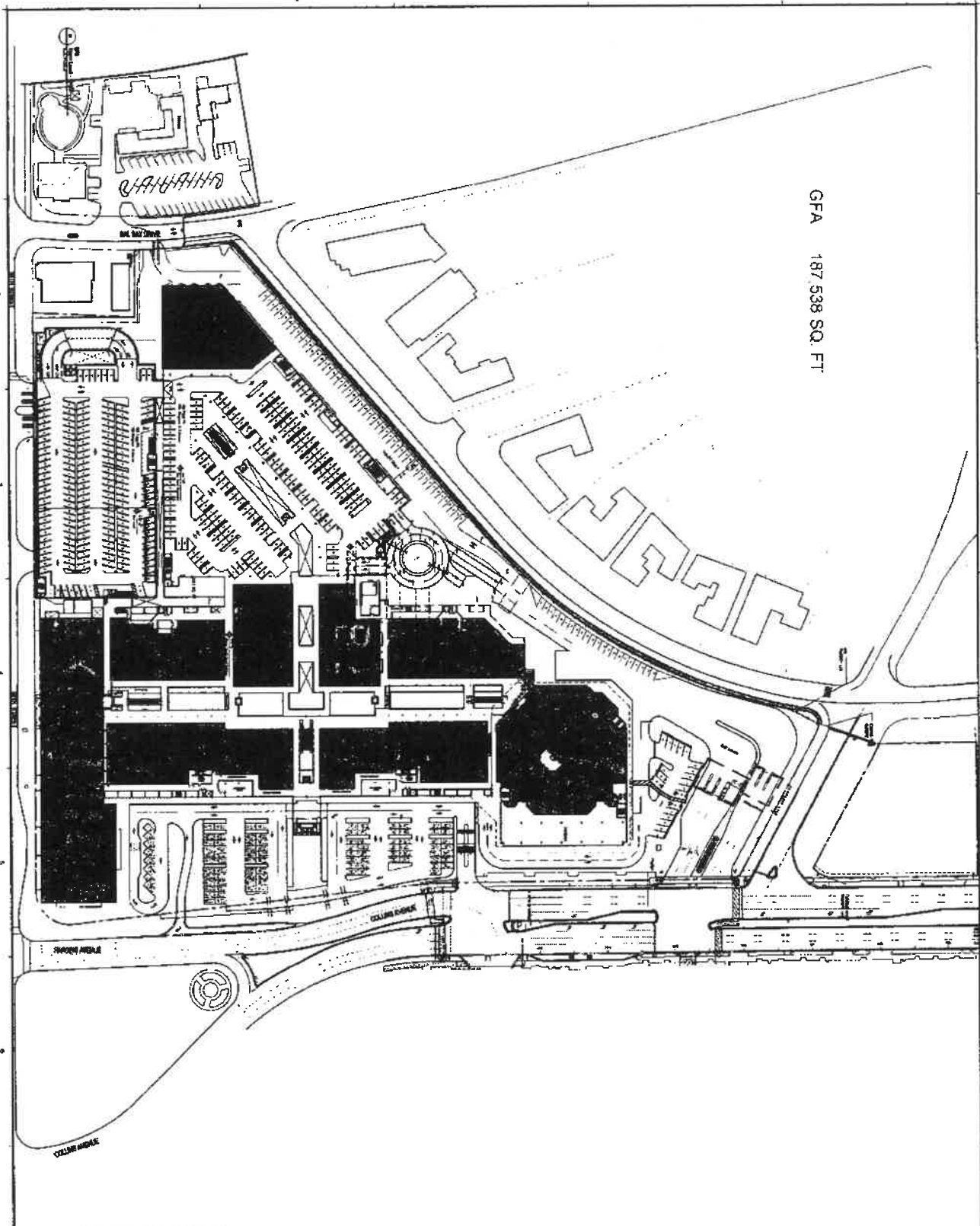
A-151-ALT-PH-FLEX  
 MINOR SITE PLAN APPLICATION

<p>STYL PARKING          LEVEL - PARKING          FLEX</p>		<p>BERNARD ZYSCOVICH</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p>	<p><b>Bal Harbour</b>  <b>Bal Harbour Shops</b></p>	<p>OWNER          BAL HARBOUR SHOPS          1000 COLLINS AVENUE          BAL HARBOUR, FL 33154</p>	<p>DESIGNER          PORTER LINTY BAKER          CONSULTANTS, INC.          1000 COLLINS AVENUE          BAL HARBOUR, FL 33154</p>	<p>ARCHITECT          BERNARD ZYSCOVICH          1000 COLLINS AVENUE          BAL HARBOUR, FL 33154</p>	<p>DATE          11/20/2014</p>
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MINDR SITE PLAN APPLICATION

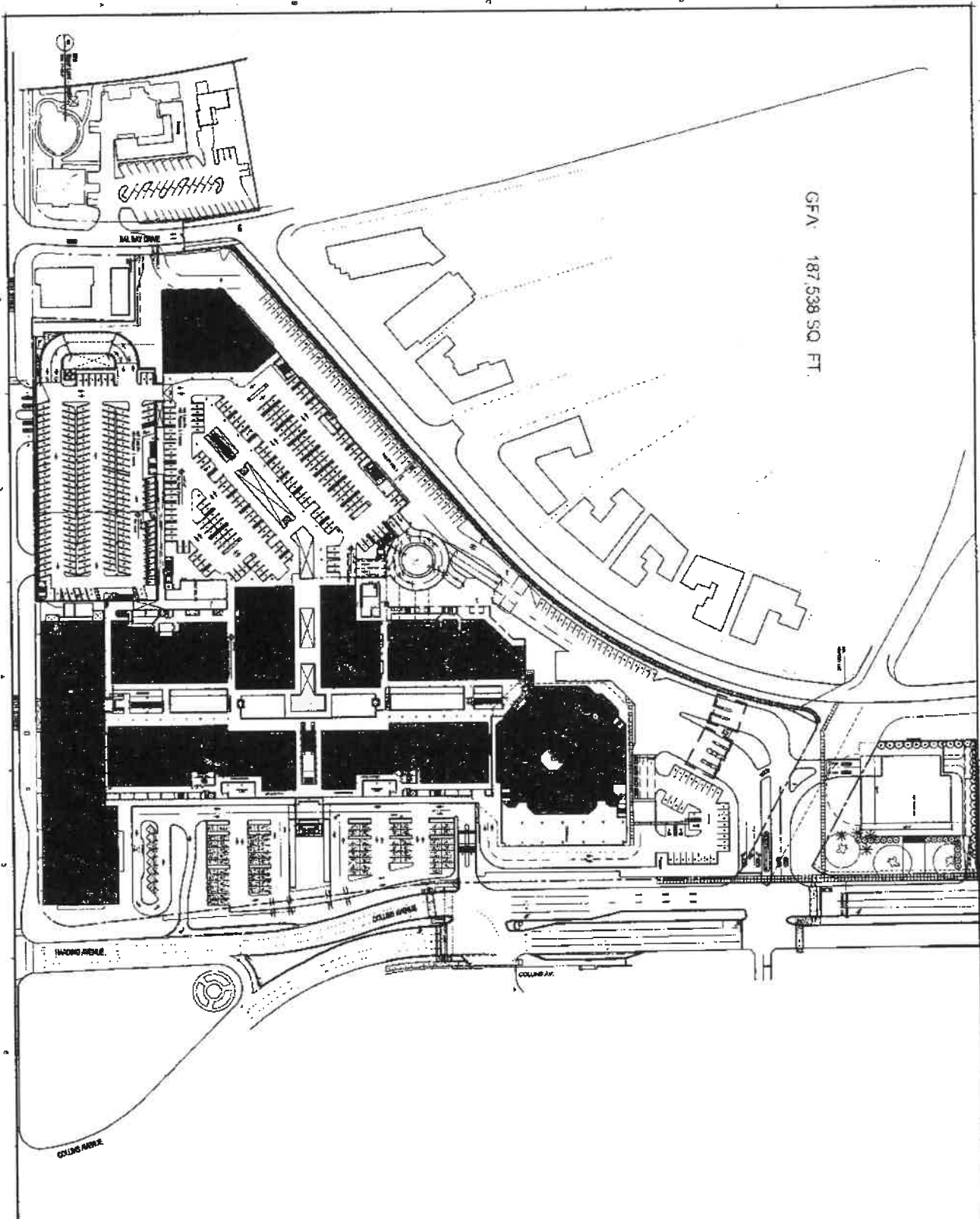
<b>A-311-PH</b> TITLE SHEET ARCHITECTS		SHEET NO. 100740 PROJECT NO. 100740	<b>ZYSCOVICH ARCHITECTS</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	PROJECT <b>Bal Harbour</b> <b>Bal Harbour Shops</b> 3700 Collins Avenue Bal Harbour, FL 33154 PROJECT NO. 100740	ARCHITECT <b>BELES ARCHITECTURAL ASSOCIATES</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	FIRE PROTECTION ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	STRUCTURAL ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	MECHANICAL ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	ELECTRICAL ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	PLUMBING ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	MECHANICAL ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	ELECTRICAL ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100	PLUMBING ENGINEER <b>DR. JOHN J. COVATTA</b> 1000 Bay Street Miami Beach, FL 33139 (305) 531-1100



GFA 187,538 SQ. FT.

MINOR SITE PLAN APPLICATION

<p><b>A-741-PH</b></p> <p>UPPER LEVEL DETAIL</p> <p>DATE: 08/15/18</p>		<p>Prep: BENJAMIN ZYSCOVICH</p> <p><b>ZYSCOVICH ARCHITECTS</b></p> <p>10000 W. 11th St., Suite 100 Miami Beach, FL 33154</p> <p>Phone: 305.673.1100</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>3748 Collins Avenue Bal Harbour, FL 33154</p> <p>Project No: 11828-02</p>	<p>OWNER: Bal Harbour Shops, Inc. 10000 W. 11th St., Suite 100 Miami Beach, FL 33154</p>	<p>DESIGNER: Zyscovich Architects 10000 W. 11th St., Suite 100 Miami Beach, FL 33154</p>	<p>DATE: 08/15/18</p> <p>SCALE: AS SHOWN</p>	<p>PLANNING DEPARTMENT 10000 W. 11th St., Suite 100 Miami Beach, FL 33154</p>	<p>PLANNING DEPARTMENT 10000 W. 11th St., Suite 100 Miami Beach, FL 33154</p>
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MINOR SITE PLAN APPLICATION

<p>741-ALT-PH</p> <p>UPPER LEVEL METALL</p> <p>741-ALT-PH</p>		<p>REWARD Z'PROVISION</p> <p>643 NO. 28-748</p>	<p><b>ZYSCOVICH ARCHITECTS</b></p> <p>1100 BAYVIEW BLVD. SUITE 1000</p> <p>MIAMI BEACH, FL 33139</p> <p>PH: 305.673.1100</p>	<p><b>Bal Harbour</b></p> <p><b>Bal Harbour Shops</b></p> <p>7700 Collins Avenue</p> <p>Bal Harbour, FL 33154</p> <p>Project No. 11028490</p>	<p>ARCHITECTURAL CONSULTANTS</p> <p>2017 Collins Ave</p> <p>MIAMI BEACH, FL 33139</p> <p>PH: 305.673.1100</p>	<p>THE PROPERTY IS BEING DEVELOPED BY BAL HARBOUR SHOPS, INC. (A FLORIDA CORPORATION) AND IS BEING DEVELOPED BY BAL HARBOUR SHOPS, INC. (A FLORIDA CORPORATION).</p> <p>LANDSCAPE ARCHITECT</p> <p>PAUL J. JACOBI, INC.</p> <p>1100 BAYVIEW BLVD. SUITE 1000</p> <p>MIAMI BEACH, FL 33139</p> <p>PH: 305.673.1100</p>	<p>ENGINEER</p> <p>JOHN J. BROWN, INC.</p> <p>1100 BAYVIEW BLVD. SUITE 1000</p> <p>MIAMI BEACH, FL 33139</p> <p>PH: 305.673.1100</p>	<p>GENERAL CONTRACTOR</p> <p>WILLIAMS BROS. CONSTRUCTION, INC.</p> <p>1100 BAYVIEW BLVD. SUITE 1000</p> <p>MIAMI BEACH, FL 33139</p> <p>PH: 305.673.1100</p>

**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.

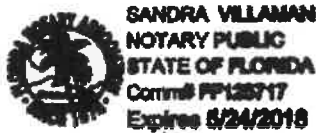
5. **MISCELLANEOUS:** (i) Time is of the essence; (ii) this Interim Modification may be signed in separate counterparts and delivered electronically, each of which, when taken together, shall constitute one and the same instrument; (iii) the provisions hereof shall be binding upon and inure to the benefit 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] Suzanne Parry  
[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: \_\_\_\_\_  
Is: General Partner

TENANT:

BAL HARBOUR VILLAGE,  
a municipality

By: [Signature]  
Jorge M. Gonzalez, Village Manager

Attest: [Signature]  
village attorney

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]



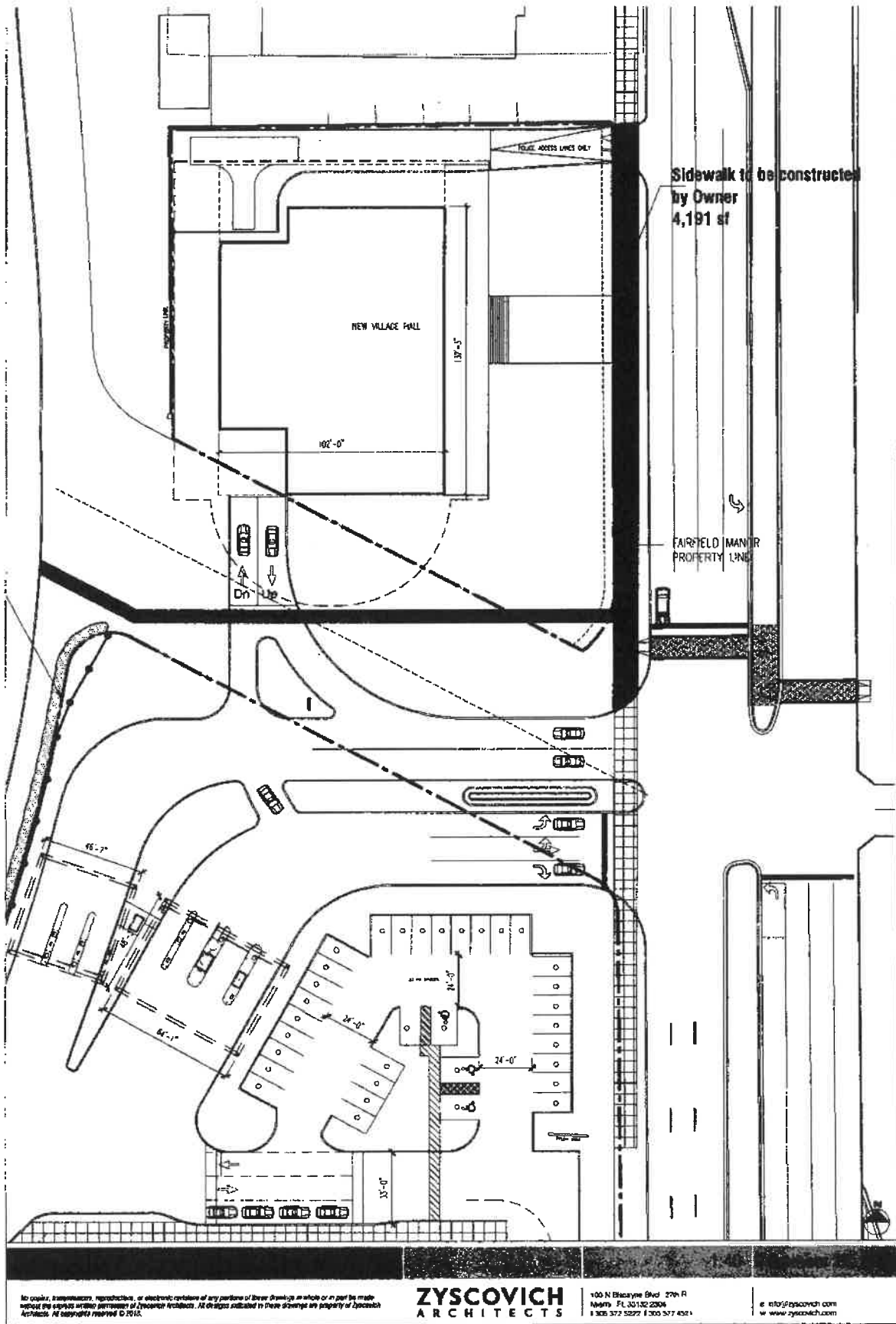


EXHIBIT R - VILLAGE HALL SIDEWALKS

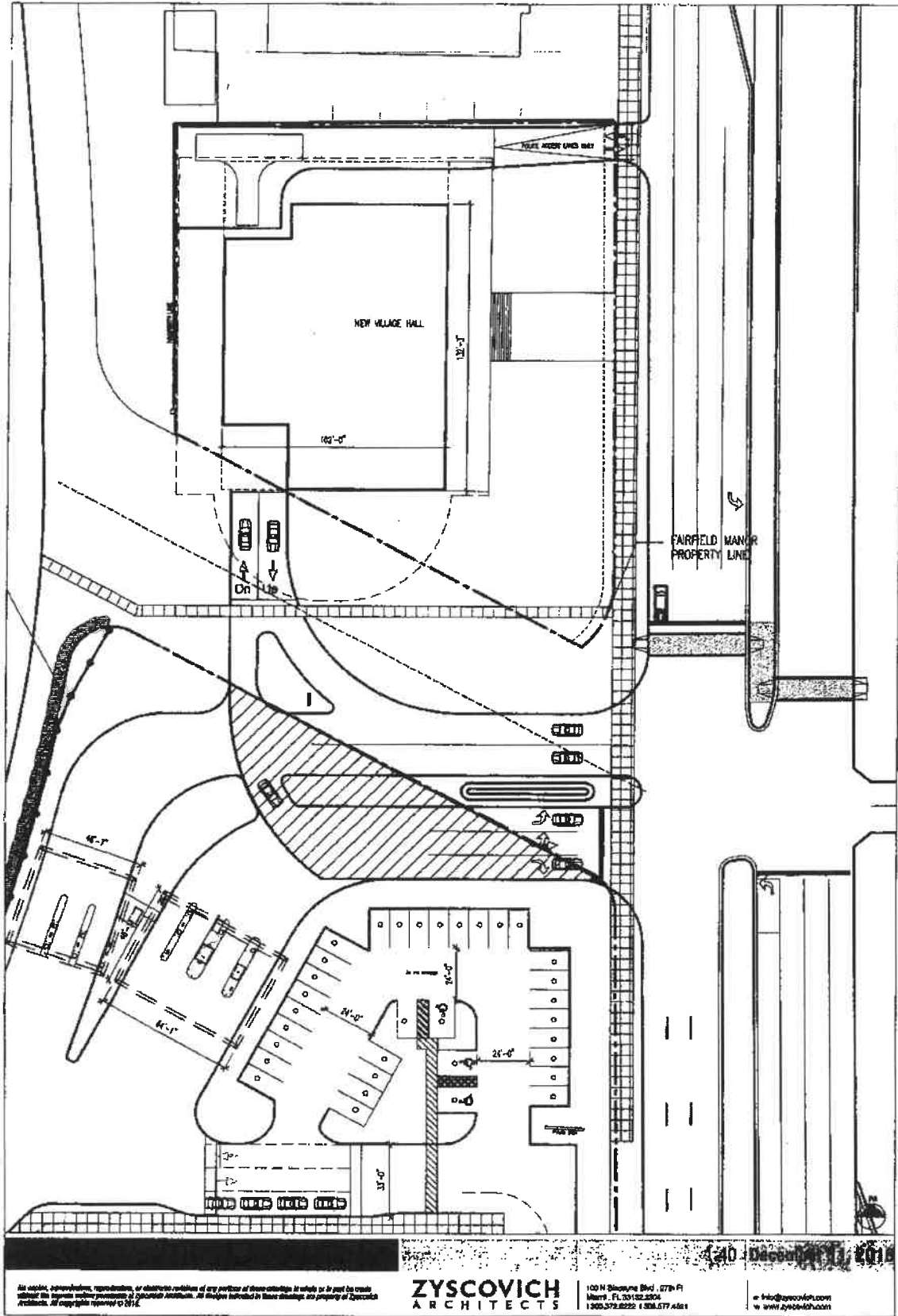


EXHIBIT S- ALTERNATIVE NORTH ENTRANCE

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" 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 [Handwritten Signature]

Print name: Jennifer Faeth

Signature: [Handwritten Signature]

Print name: Ivor Nikolas Masser

OWNER:

BAL HARBOUR SHOPS, LLC, a Delaware limited liability company

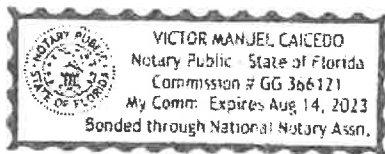
By WHITMAN FAMILY PROPERTIES, LLLP

By: [Handwritten Signature]  
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



[Handwritten 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]*  
Susan L. Swarthen

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

