

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

CIRCUIT CIVIL 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. In 2023, the Florida Legislature boldly and decisively confronted one of our state’s most pressing issues – the rising cost of housing – and through the passage of what is commonly known as the “Live Local Act” mandated that certain local zoning ordinances which restrict housing availability must be superseded and preempted by state law. Faced with this clear and unequivocal directive to promote attainable housing in the state, some exclusionary municipalities have chosen to either ignore the law completely or assert positions contrary to the law to delay and thwart its clear intent. This conflict, which is often characterized as a debate between YIMBYs (yes in my backyard) and NIMBYs (not in my backyard), meets its inflection point in this lawsuit,

where BHS asks this Court to have the historically exclusionary Village of Bal Harbour follow the clear mandate of the law and require the Village to process, review and approve its pending Live Local-compliant application for administrative development approval and reject as a matter of law some of the pretextual grounds upon which the Village seeks to effectively nullify the law, including but not limited to a contemplated (and illegal) moratorium targeting BHS's project.

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 (i) Section 26.012 of the Florida Statutes; (ii) Chapter 86 of the Florida Statute; (iii) Article V, Section 5(b), Florida Constitution; and (iv) Rule 1.630, Florida Rules of Civil Procedure.

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 and the Village's Commercial Zoning District

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

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

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

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

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

13. Adjacent to the Business District, and directly across the street from the Shops, is the Village's only high-rise, high-density residential district, the "Ocean Front District," which extends the entire length of the Village's eastern boundary on the Atlantic Ocean. According to the Village Zoning Code, the Ocean Front District's "intended development characteristics include primarily **high-rise luxury residential development** with ancillary commercial and recreational

uses, **exclusively** for the use of the residents of the residential development.” § 21-293, Village Code (emphasis added).

14. The Village has a long history of approving luxury, high-rise condominiums and hotel structures. The ultra-luxurious, 475-room Americana Hotel opened in 1956, and numerous high-rise luxury towers reaching at least twenty stories followed suit, including: Balmoral (completed in 1977), Palace at Bal Harbour (completed in 1994), Majestic Tower (completed in 1998), Bellini Bal Harbour (completed in 2005), St. Regis Bal Harbour (completed in 2012), Oceana (completed in 2016), and Rivage (approved in 2022).

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

16. The remaining residential zoning districts in the Village are low density or single-family and are also completely built out with little to no remaining development capacity.

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

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

19. The Village’s Code has not and does not provide any affordable housing incentives or guidelines.

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

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

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

B. The Expansion and the Development Agreement

23. In 2017, after more than 50 years without any significant expansion and in the face of a rapidly changing retail marketplace, BHS sought to expand the Shops and submitted an

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

application for site plan approval, which was approved pursuant to Resolution 2017-1077 (the "2017 Site Plan").

24. As part of the 2017 Site Plan approval, the Village required BHS to enter into a "Development Agreement" which was approved by Village Resolution 2017-1077 (the "DA"). A copy of the DA dated July 27, 2017, is attached hereto as **Exhibit A** and incorporated herein.

25. The DA is tied to a specific site plan and provided BHS with assurances that the Village could not apply future changes to the Village's Code, Charter, or Comprehensive Plan that would adversely affect the approved 2017 Site Plan.

26. Under the DA, BHS expressly reserved the right to develop additional density, intensity and height on the BHS Property if subsequently enacted laws and regulations permitted additional development capacity. (§ 34.2, DA).

27. In exchange for the Village's approval of the 2017 Site Plan and the ability to exercise BHS's right to develop its property, the Village required, as an express condition of its approval, the following "contributions" and tax benefits and fees to the Village, totaling over \$122 million in Village benefits (Ex. F, DA):

Land and Improvements:	Value
Fairfield Property	\$16,000,000.00
SunTrust Land Only	\$12,750,000.00
Perpetual Easement on Shops Sidewalks	\$3,607,000.00
New Village Hall w/ Parking	\$15,600,000.00
Pedestrian Area Beautification	\$9,375,000.00
Waterfront Park	\$3,500,000.00
Art in Public Places	\$1,000,000.00
Traffic, Gate, LPR Improvements	\$155,000.00
Total:	\$61,987,000.00
Rents, Taxes and Fees:	
Present Value of Increased Resort Tax	\$13,501,000.00
Present Value of SunTrust Rent	\$12,608,000.00

Present Value of Increased Business Tax	\$9,238,000.00
Present Value of Multimodal Fund Contributions	\$8,710,000.00
Present Value of Increased Ad Valorem Tax	\$8,656,000.00
Present Value of Police Department Free Rent	\$4,216,000.00
Present Value of Off Duty Police Fees	\$3,889,000.00
Total	\$60,818,000.00
TOTAL COMBINED ECONOMIC BENEFITS	\$122,805,000.00

28. The mitigation exacted by the Village in the DA far exceeded the reasonable or expected impacts of the proposed expansion on public infrastructure or facilities. BHS was forced to agree to the Village’s extortionate and unconstitutional demands because that was the only way the Village would approve the 2017 expansion.

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

30. BHS has at all times complied with the terms of the DA and has conducted itself in good faith with respect to its terms. BHS intends to continue to comply with the terms of the DA and has diligently pursued and developed the 2017 Site Plan.²

31. Despite all of BHS’s contributions, the Village has routinely failed to fulfill its legal obligations (express and implied) under the DA to expedite permit approvals. (§ 21.2, DA).

32. In 2021, BHS continued its efforts to develop the BHS Property and provide the Village with additional hotel options. At the time, a feasible hotel required an amendment to a Village Charter provision that limited the Shops’ maximum height to 56 feet (that Charter

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

provision was initiated and approved by Village residents in 2006 to restrict development on the BHS Property through height restrictions).

33. At the election held on January 26, 2021, the residents rejected BHS’s referendum by a vote of nearly 90%, reflecting a clear bias against any further development on the BHS Property.

C. NIMBYism and Florida’s Legislative Response—The Live Local Act

34. As the Supreme Court of Florida acknowledged in *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 472 (Fla. 1993), it is well known that zoning at the local level can be subject to political influence and “neighborhoodism” which has the effect of seeking to preserve the *status quo* of a community and avoid changes to its existing land use regulations. Richard Babcock, an eminent land use attorney who decried this fact, also aptly noted that “no one likes single-family zones except the people who live there.”³ This trend is so common that an entire vocabulary has emerged to describe this tendency of local residents who oppose all uses which are not single-family uses and elected officials fearful of such uses – NIMBY (Not In My Back Yard) and NIMTOO (Not in My Term Of Office).

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

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

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

36. While opposition to multi-family residential uses have continued, the stock of affordable housing in Florida has dropped considerably, creating a social crisis in the state. In 2022, the nation’s top housing official declared Miami as the “epicenter of the housing affordability crises in this country.”⁵ As of November 2023, Miami remained the least affordable housing market in the United States, with an average family needing to spend 81.96% of their income on mortgage payments and property taxes.⁶

37. The Florida Legislature has taken action to resolve this issue through various legislative acts which limit the temptation of local governments and their elected officials to ignore property rights and succumb to the “will of the people.” For example, in 2023 the Legislature enacted Senate Bill 718 to ensure that voters no longer had the ability to limit development through local referenda. *See* §163.3167, Fla. Stat. (2023) (“An initiative or referendum process in regard to any land development regulation is prohibited.”).

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

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

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

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

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

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

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

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

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

administratively approve a proposed project if the zoning code and comprehensive plan provisions applicable to multifamily development are met.

D. The Live Local Application

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

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

45. SOM designed the proposed multi-family development in compliance with the Live Local Act and, where applicable, the Village's zoning ordinances.

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

47. On January 9, 2024, the Shops filed an application (the “Application”) with the Village that sought administrative site plan approval pursuant to the Live Local Act (and specifically Section 166.04151(7) of the Florida Statutes).

48. The BHS Property qualifies for multifamily residential development under the Act because the property is located within the Village’s only commercially zoned district, the Business District, and at least 40 percent of the residential units will be “affordable.” § 166.04151(7)(a),

Fla. Stat. (“A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004.”).

49. The project’s height and density are consistent with the highest height within one mile and the greatest density allowed in the Village, which is found in the Village’s Ocean Front District (“OF”). See §§ 166.04151(7)(c-d), Fla. Stat.; §§ 21-285, 21-293, Village Code.

50. The Ocean Front District, with a generous 300-foot maximum height that extends the entire eastern border of the Village, is located directly across Collins Avenue, placing the proposed development in context and compatible with existing development in the Village. This is demonstrated by a rendering of the project shown below, with the existing Ocean Front high rises shown on the Atlantic Ocean:



51. The residential community is designed to complement the Shops’ existing retail uses and capture a segment of the Village’s workforce as permanent residents (including Village

employees and first responders) in a dynamic and high-quality “live, work, and play” environment that will serve as the foundation for the continued success of the Village.

E. Instead of Administratively Processing the Application, the Village Holds a Public Meeting and has Promised its Residents a Moratorium

52. Instead of properly reviewing the Application for administrative approval, the Village leadership published comments pre-judging the Application, creating their own exemptions, constraints and limitations found nowhere in the text of the Act, and communicating their position to a Building Official who is required to make decisions free of political influence.

53. Mayor Freimark, in a classic example of attempted nullification of the law, went on record with a statement contrary to the plain language of the Act: “I question whether it’s really the intent of the legislation to impose the Live Local Act on a barrier island where you are limited with challenges from sea level rise, climate change, and flooding.”⁸ The Act does not create an exemption for barrier islands.

54. Next, the Village Council placed on their January 16, 2023 agenda a Resolution “authorizing the Village Manager to expend resources to take all necessary steps to protect the Village in response to the Bal Harbour Shops’ 2024 submission to further expand its project.” A copy of the Resolution as introduced and approved by the Village, together with a related Staff Memorandum (“Staff Memo”) are attached hereto and incorporated herein as **Composite Exhibit**

B.

55. The Staff Memo concluded that additional funds were needed to “take whatever steps are necessary to ensure that the Village’s quality of life is protected.” The Staff Memo and Resolution make clear that the Village leadership considers the construction of workforce housing

⁸ <https://www.bizjournals.com/southflorida/news/2024/01/11/mayor-concerned-about-bal-harbour-shops-plans.html>.

in the Village as anathema to its “quality of life,” and a risk to: (i) their “standing as a unique and elegant community,” (ii) their “role as a luxury destination,” and (iii) “the safety and security of our residents and neighborhood.” *See* Composite Exhibit B.

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

57. Also, during the January 16th meeting, the Village Council unanimously voted to approve funds to hire lobbyists and lawyers to fight the Application, and also instructed the Village Attorney to investigate and pursue a moratorium to prohibit future development on the BHS Property (the “Moratorium”).

58. As it relates to the Moratorium, the Village Attorney confirmed “that this is a moratorium that is focused on your business zoning district. This is the only area in which this issue will arise. And it is focused on development that is seeking [] to proceed under the live local act.”

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

COUNT I – WRIT OF MANDAMUS

60. The allegations set forth in paragraphs 1 through 59 are hereby incorporated into this Count.

61. Under well settled Florida law, a writ of mandamus against a governmental agency is appropriate if the following elements are satisfied: (1) the petitioner has a clear and certain legal

right to the performance of a particular duty by a government or a representative of the government, (2) whose performance of that duty is ministerial and not discretionary, (3) who has failed to perform despite an adequate request, and (4) who has left the petitioner with no other legal method for obtaining relief.

62. Mandamus is a well-recognized remedy “to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” *Puckett v. Gentry*, 577 So. 2d 965, 967 (Fla. 5th DCA 1991); *see also Fair v. Davis*, 283 So. 2d 377, 378 (Fla. 1st DCA 1973) (holding that “mandamus is a remedy by which administrative officials or agencies may be coerced to perform ministerial duties which they have a clear legal duty to perform”). A duty or act is ministerial “when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Shea v. Cochran*, 680 So. 2d 628, 629 (Fla. 4th DCA 1996) (quoting *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996)).

63. As a matter of law, certain types of applications, like those for building permits and platting, are deemed to be ministerial. “[W]here all of the legal requirements for platting land have been met there is no residual discretion to refuse plat approval and mandamus will lie. **The same reasoning applies to approval of site plans.**” *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 242 (Fla. 4th DCA 1983) (emphasis added).

64. Florida’s Live Local Act imposes an unequivocal ministerial duty on the Village such that “[a] proposed development authorized under this subsection **must be administratively approved and no further action by the governing body of the municipality is required** if the development satisfies the municipality’s land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan,

with the exception of provisions establishing allowable densities, height, and land use.” *See* 166.04151(7), Fla. Stat. (emphasis added).

65. The Live Local Act provides the Village with no discretion with respect to processing and approving an application that complies with the Act.

66. Unlike many municipalities throughout the State, and as further evidence of its animus towards affordable housing, the Village elected *not* to adopt any ordinances or publish any guidance relating to processing applications submitted pursuant to the Live Local Act.

67. Section 21-31 of the Village Code of Ordinances imposes a duty on the Village’s Building Official to enforce the Village’s zoning code.

68. Pursuant to Section 21-322, the Village Manager or designee shall review site plan applications.

69. The Application complies with both the letter and the spirit of the Act and, as such, BHS has a clear legal right to its administrative processing by the Village Manager and Building Official without further delay or political interference. Upon information and belief such interference has already occurred.

70. Pursuant to Section 468.604, the Building Official’s review, processing, and approval of the Application must be free from any interference from any person, including the Village’s elected officials or administrative officers, such as the Village Manager and/or City Attorney.

71. To comply with applicable Florida law, the Village must process the Application pursuant to section 166.033, Fla. Stat., which imposes on the Village, including its Village Manager and its Building Official, the duty to review and approve, approve with conditions, or deny the applications within 120 days.

72. To the extent that the Village does not agree to process the Application in good faith, BHS should be allowed to seek damages, including its attorney's fees incurred in the filing of this action and the vindication of its rights.

73. The Village's Moratorium is in direct contravention of: (i) the Live Local Act's requirement imposed on local government to administratively process and approve applications complying with the Act, and (ii) the statutorily imposed timeframes for processing development applications. *See* §§ 166.04151(7), 166.033, Fla. Stat.

74. BHS has a clear legal right to have the Application processed and approved by the Village and BHS has no other legal method for obtaining the relief requested.

75. Pursuant to Section 166.04151(7) of the Florida Statutes, the Village has a clear legal ministerial duty to administratively process and approve applications complying with the Live Local Act.

76. Despite requests for review and approval, through the filing of the Application and subsequent meetings and correspondence, the Village responded with public meetings demanding a moratorium and has failed to fulfill its obligations under the Act.

77. Pursuant to Section 166.033 of the Florida Statutes, the Village also has a clear legal ministerial duty to: approve, approve with conditions, or deny the application for a development permit or development order.

WHEREFORE, BHS respectfully requests that this Court enter a writ of mandamus against the Village, requiring an alternative writ compelling the Village to file an answer as to why the Court should not issue a writ of mandamus ordering the Village to comply with its ministerial duties under 166.04151(7) and 166.033, and award any further relief that the Court deems proper,

including an award of its reasonable attorneys' fees and costs incurred in relation to this action, as permitted by Florida law and Section 35.3 of the DA.

COUNT II – DECLARATORY RELIEF

78. The allegations set forth in paragraphs 1 through 59 are hereby incorporated into this Count.

79. 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.

80. BHS seeks a declaration of its rights under the Live Local Act, the DA, and Sections 163.3221 – 163.3243 of the Florida Statutes (the “Development Agreement Statute”).

81. Declaratory relief is necessary, justified, and timely in that BHS has filed a fully compliant application under the Live Local Act and the Village, responding to public opposition, is openly hostile to the very processing of the Application.

82. The Village maintains that: (i) the existence of the DA precludes BHS from developing affordable housing under the Live Local Act; (ii) that the Village can deny the Application based on an alleged and self-defined inconsistency with, or violation of, the DA; (iii) that the DA contains express restrictions, covenants and/or prohibitions against the Application; and (iv) that the Moratorium could be utilized to prohibit or deny BHS's Application.

83. BHS disputes the Village's assertions relating to the impact of the DA and the Moratorium on the Application.

84. BHS maintains that neither the DA nor the Development Agreement Statute restrict or prohibit BHS's Application.

85. Specifically, BHS maintains that the plain language of the DA: (i) does not preclude BHS from taking advantage of later-adopted statutory development rights, and (ii) does not include an express or implied waiver of BHS's right to apply for a new or different development application.

86. BHS maintains that the plain language of the Development Agreement Statute: (i) does not preclude BHS from taking advantage of later-adopted statutory development rights, and (ii) provides the mechanism for enforcement of an alleged violation of the DA that must be followed by the Village to the extent a violation is alleged.

87. The Village disputes BHS's assertions relating to the DA and the Development Agreement Statute set forth in paragraphs 84 through 86.

88. The Village asserts that the Moratorium can be utilized to prohibit projects from being developed within the Village utilizing the Live Local Act.

89. BHS maintains that the Moratorium is preempted by the Live Local Act and that its enactment constitutes a violation of state law.

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

91. 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 neither the Moratorium, the DA nor the Development Agreement Statute prohibit or restrict the Application.

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

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

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

95. The declaration is sought by BHS from this Court not to obtain legal advice, but to obtain a declaration of its rights and the Village's rights relating to the impact of the DA or the Moratorium on the Application.

96. Section 35.3 of the DA sets forth a prevailing party attorneys' fees provision.

97. Accordingly, Plaintiff requests that the Court enter the following declarations: (a) that the DA does not restrict or prohibit the Application, (b) the Development Agreement Statute does not restrict or prohibit the Application, and (c) the Moratorium is in direct contravention with, and preempted by, Florida Statute sections 166.04151(7) and 166.033.

WHEREFORE, Plaintiff respectfully request that this Court enter judgment in their favor and against Defendant and enter declarations (a) – (c) as stated in paragraph 97, and enter all such relief that it deems equitable and just, including but not limited to, the award of Plaintiff's reasonable attorneys' fees and costs as permitted by Florida law and Section 35.3 of the DA. Plaintiff hereby reserves any and all rights it possesses now or in the future to pursue claims, challenges, damages, or other remedies provided pursuant to local, or state law.

Reservation of Rights Under Federal Law

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

Dated: January 23, 2024

Respectfully Submitted,

SHUBIN LAW GROUP, P.A.
Counsel for Bal Harbour Shops, LLC
100 SE 2nd Street, Suite 4020
Miami, Florida 33131
Tel.: (305) 381-6060
Fax: (305) 381-9457
jshubin@shubinlawgroup.com
rlincoln@shubinlawgroup.com
idemello@shubinlawgroup.com
mgrafton@shubinlawgroup.com
eservice@shubinlawgroup.com

By: /s/ John K. Shubin
John K. Shubin
Fla. Bar No. 771899
Robert K. Lincoln
Fla. Bar No. 0006122
Ian E. DeMello
Fla. Bar No. 105097
Mark E. Grafton
Fla. Bar No. 118233

Exhibit A

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:
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12-2226-006-0061
12-2226-006-0070
12-2226-002-2343
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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 27th, 2017

TABLE OF CONTENTS

1. **Recitals**.....2

2. **Exhibits**2

 2.1. **Exhibit A – Legal Description of Existing Shops Property**.....2

 2.2. **Exhibit B – Legal Description of Church Site**2

 2.3. **Exhibit C – Legal Description of Fairfield Property**2

 2.4. **Exhibit D – Legal Description of SunTrust Property**2

 2.5. **Exhibit E – Sketch Showing Locations of Buildings**2

 2.6. **Exhibit F – Value of Owner Contributions**.....2

 2.7. **Exhibit G – Second Modification of Police Department Lease**.....2

 2.8. **Exhibit H – Bal Harbour Village Resolution No. 2017-1077**.....2

 2.9. **Exhibit I – Major Site Plan approved by Bal Harbour Village Resolution No. 2017-1077**.....2

 2.10. **Exhibit J – Fairfield Property Title Exceptions**.....2

 2.11. **Exhibit K – SunTrust Property Title Exceptions**2

 2.12. **Exhibit L – Public Use Areas**2

 2.13. **Exhibit M – Project Encroachments**.....2

 2.14. **Exhibit N – Grant of Park Drive Utility Easement**2

3. **Defined Terms**.....2

 3.1. **Attorneys’ Fees**.....2

 3.2. **Building Department**2

 3.3. **Business Day**.....2

 3.4. **CO**.....2

 3.5. **Development Approvals**.....3

 3.6. **Effective Date**3

 3.7. **Expansion GFA**.....3

 3.8. **FDOT. The Florida Department of Transportation**.....3

 3.9. **Final Approval Date**.....3

 3.10. **Final CO**3

 3.11. **Final TCO**3

 3.12. **Force Majeure**3

3.13.	Governmental Approval	3
3.14.	Governmental Authority	3
3.15.	Governmental Requirement.....	3
3.17.	Public Records	3
3.18.	Reasonable.....	3
3.19.	Substantial Completion.	3
3.20.	Substantial Compliance.....	3
3.21.	TCO.....	4
3.22.	Village Manager	4
4.	Owner's Representation	4
5.	Description of the Project.....	4
5.1.	Shops Expansion.....	4
5.2.	Traffic Improvements.....	4
5.3.	Parking Improvements	4
6.	Summary of Owner Contributions	4
6.1.	New Village Hall	4
6.2.	New Village Hall Parking Garage	4
6.3.	Conveyance of SunTrust Property	4
6.4.	Infrastructure and Beautification Improvements.....	5
6.5.	Waterfront Park.	5
6.6.	Art in Public Places Contribution.....	5
6.7.	Modification of Police Department Lease in Bal Harbour Shops.....	5
7.	Development Approvals	5
7.1.	ARB Review	5
7.2.	Comprehensive Plan Amendment for Church Site	5
7.3.	LPA Recommendation	5
7.4.	Major Site Plan Approval.....	5
7.5.	Text Amendments	5
8.	Comprehensive Plan Amendments Based on the Evaluation and Appraisal Report.....	5
9.	New Village Hall	6

9.1.	New Village Hall Timeline.....	6
9.1.1.	Preliminary Design	6
9.1.2.	Construction Plans	6
9.1.3.	Design and Construction Standards.....	6
9.1.4.	Preliminary Prep Work.	7
9.1.5.	Use of Fairfield Property for Staging.....	7
9.1.6.	Commencement of Construction	7
9.1.7.	Duration of Construction.....	7
9.1.8.	Failure to Timely Complete New Village Hall	7
9.2.	Cost of New Village Hall	7
9.2.1.	Owner's New Village Hall Cost.	8
9.2.2.	Items Included in Owner's NVH Cost.....	8
9.2.3.	Items Not Included in Owner's New Village Hall Cost.....	8
9.2.4.	Finalization of New Village Hall Cost.....	8
9.2.5.	NVH Cost and Construction Information.....	9
9.2.6.	Reduction in New Village Hall Cost.	9
9.3.	Construction Contract for New Village Hall.....	9
9.4.	Construction of Improvements	9
9.5.	Village Representative	9
9.6.	Change Orders.....	10
9.6.1.	Village-initiated Change Orders	10
9.6.2.	Owner-initiated Change Orders	10
9.7.	Resolution of New Village Hall Design and Construction Disputes.....	10
9.7.1.	Negotiation	10
9.7.2.	Mediation.....	10
9.7.3.	Litigation	11
9.7.4.	Time is of the Essence	11
10.	New Village Hall Garage.....	11
10.1.	Timing of New Village Hall Garage. Owner will construct	11
10.2.	NVH Garage Cost	11

10.3.	Cost Savings on NVH Garage	11
10.4.	Excess Parking Spaces in NVH Garage	11
10.5.	Temporary Parking.....	11
11.	Conveyance of Fairfield Property, New Village Hall, and NVH Garage	11
11.1.	Timing of Conveyance	12
11.2.	Title Commitment	12
11.3.	Due Diligence	12
11.4.	Closing Deliveries	12
11.5.	Cross Easements for Ingress, Egress and Access.....	13
12.	Conveyance of SunTrust Property.....	13
12.1.	Timing of Conveyance	13
12.2.	Title Commitment	13
12.3.	Due Diligence	13
12.4.	Maintenance of SunTrust Property	13
12.5.	SunTrust Lease	14
12.6.	Closing Deliveries	14
13.	Waterfront Park Contribution and Site Plan.....	14
13.1.	Contribution	14
13.2.	Site Plan.....	14
13.3.	Construction of Waterfront Park.....	15
14.	Parking Surcharge	15
14.1.	Payment of Parking Surcharge to Village	15
14.2.	Owner Retention of Portion of Parking Surcharge.....	15
15.	Traffic Improvements.....	16
15.1.	Realignment of Collins Avenue.....	16
15.2.	First Set of Traffic Improvements.....	16
15.2.1.	AIA Crosswalk.....	16
15.2.2.	Collins / Harding Signal Removal.....	16
15.2.3.	Loading Area and Service Driveway	16
15.3.	Second Set of Traffic Improvements	17

	15.3.1. Signalized Driveway at North End of Shops.....	17
	15.3.2. Premium Valet Parking Entry	17
	15.3.3. Premium Valet Parking Exit.....	17
	15.3.4. AIA Crosswalk.....	17
	15.3.5. Retiming of Traffic Signals.....	17
15.4.	During All Phases.....	17
15.5.	Additional Traffic Improvements after Project Completion	17
	15.5.1. Harding Avenue / 96 th Street Intersection	17
	15.5.2. Collins Avenue / 96 th Street Intersection.....	18
	15.5.3. 96 th Street at 500 Block	18
16.	Infrastructure Improvements.	18
17.	Collins Plaza Public Space	18
	17.1. Design of Collins Plaza.....	18
	17.2. Use by Owner.....	18
	17.3. Use of Collins Plaza by Village	18
18.	Public Improvements.....	19
	18.1. Art in Public Places	19
	18.2. Residential Gate	19
19.	Public Use Areas	19
	19.1. Sidewalks.....	19
	19.2. Encroachments.....	19
	19.3. Easement, Encroachment, and Maintenance Agreement	19
	19.4. Pedestrian Access during Construction.	20
	19.4.1. Collins Avenue.....	20
	19.4.2. 96 th Street.....	20
	19.5. Park Drive.....	20
20.	Public Safety.	20
	20.1. Safety During Construction	20
	20.2. Off-Duty Police Services	21
	20.3. Construction Staging and Parking.....	21

20.4.	LPR Cameras	21
20.5.	Noise Meters	22
21.	Building Department Fees and Services.....	22
21.1.	Payments in Lieu of Building Permit Fees.....	22
21.1.1.	Voluntary Contribution Based on Estimated Construction Cost.....	23
21.1.2.	Items not included in Voluntary Contribution.....	23
21.1.3.	True-up of Voluntary Contribution.....	23
21.2.	Expedited Plan Review and Inspections	23
21.3.	Use of Private Provider.....	23
22.	Security for Owner's Obligations	23
23.	Taxes	24
23.1.	Minimum Ad Valorem Taxes	24
23.2.	Minimum Resort Taxes.....	24
24.	Transfer Fee.....	25
24.1.	Definition of Transfer	25
24.1.1.	Sale of Fee Simple Interest	25
24.1.2.	Sale of Controlling Interest.....	25
24.2.	Calculation of Transfer Fee.....	25
24.2.1.	Prior to Building Permits for 50% of the GFA	25
24.2.2.	Prior to Building Permits for All of the GFA	25
24.2.3.	Prior to Final TCO	25
24.2.4.	Prior to Fifth Anniversary of the Final TCO	26
24.2.5.	More than Five Years After Final TCO	26
24.3.	Events Not Constituting a Transfer.....	26
24.3.1.	Transfers of Entity Interests	26
24.3.2.	Mortgages	26
24.3.3.	Deed in Lieu.....	26
24.3.4.	Transfers by Secured Party.....	26
24.3.5.	Family Transfers	26
24.3.6.	Transfers for Estate Planning	26

	24.3.7. Transfers to Affiliates	26
	24.3.8. Eminent Domain.....	26
25.	“Look Back” Reporting and Mitigation.	26
	25.1. First Look Back Reports	27
	25.2. First Look Back Mitigation	27
	25.3. Second Look Back Reports.....	27
	25.4. Second Look Back Mitigation Required	27
26.	Indemnification.....	27
	26.1. Owner’s Obligation to Indemnify.	27
	26.1.1. Approvals	28
	26.1.2. Work on Village Property.....	28
	26.1.3. Negligence.....	28
	26.1.4. Damage to Third Parties.....	28
	26.1.5. Failure to Perform	28
	26.1.6. Material Breach.....	28
	26.2. Legal Action.....	28
	26.3. Limitation	28
	26.4. Survival.....	28
27.	Insurance	29
	27.1. Evidence of Insurance.....	29
	27.2. Cancellations and Renewals	29
28.	Default, Opportunity to Cure, and Remedies.....	29
	28.1. Defaults Generally.....	29
	28.2. Defaults by Owner.....	29
	28.3. Defaults by Village.....	29
29.	Notices	30
	29.1. Notice to Owner	30
	29.2. Notice to Village	31
30.	Multiple Ownership of Shops Property.....	31
31.	Term of Agreement.....	32

32.	Enforcement of Agreement	32
33.	Authorization to Withhold Permits and Inspections.....	32
34.	Development Rights.....	32
	34.1. Permitted Development Uses, Building Intensities and Heights	32
	34.2. Reservation of Development Rights	33
35.	Miscellaneous Provisions.....	33
	35.1. Adjustment of Deadlines.....	33
	35.2. Amendments	33
	35.3. Attorneys' Fees.....	33
	35.4. Authority	34
	35.5. Compliance with Governmental Requirements.....	34
	35.6. Conditions of Resolution No. 2017-1077; Site Plan.	34
	35.7. Construction of Agreement.	34
	35.8. Counterparts	34
	35.9. Entire Agreement	34
	35.10. Force Majeure	34
	35.11. Governing Law.....	34
	35.12. Recording	34
	35.13. Sections and Subsections	34
	35.14. Severability.....	34
	35.15. Successors and Assigns.....	35
36.	Waiver of Jury Trial.....	35

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 96th 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 96th 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 96th 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 96th 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 96th 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 / 96th 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 96th Street can be transferred to Harding Avenue to reduce southbound delays and stops.

- 15.5.2. **Collins Avenue / 96th 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 / 96th Street Intersection, and to transfer unused green signal time from 96th Street to northbound Collins Avenue.
 - 15.5.3. **96th Street at 500 Block.** Addition of a two-stage pedestrian crossing to provide a safer crossing of 96th Street by pedestrians and to reduce delays to traffic on 96th 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 96th Street and Collins Avenue, as well as portions of the publicly dedicated rights-of way along 96th 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. **96th Street.** Owner may partially close pedestrian access to the sidewalk on 96th 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 96th 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, LLP
9700 Collins Avenue
Bal Harbour, Florida 33154
Attention: Matthew Whitman Lazenby
Telephone: 305 403 9200
Email: mwl@whitmanfamilydevelopment.com

and

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

With a copy to:

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

and

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

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

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

With a copy to:

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

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

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

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

34.2. Reservation of Development Rights.

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

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

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

35. Miscellaneous Provisions.

35.1. Adjustment of Deadlines. Any deadlines for performance by either Owner or Village set forth in this Agreement may be adjusted by mutual agreement of the parties. Changes to deadlines must be confirmed in a writing signed by both parties, and the Village Manager is authorized to sign on behalf of the Village. The Village Manager, in his sole discretion, may bring proposed changes to deadlines to the Village Council for approval. If the Village Manager or the Village Council is willing to adjust any deadline set forth in this Agreement, either the Village Manager or the Village Council shall determine the procedure for adopting the deadline adjustment, and either the Village Manager or the Village Council may require a formal amendment to this Agreement adopting the changed deadlines, which amendment will require two public hearings in accordance with Section 163.3225, Florida Statutes.

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

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

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

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

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

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

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

Witnesses:

Signature

A. Huber

Print name:

Amy E. Huber

Signature:

T. Massey

Print name:

T. N. Massey

OWNER:

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

By

M. Whitman Lazenby
Matthew Whitman Lazenby, General Partner

Date:

7/27/17

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

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

NOTARY SEAL



D. Dante

Notary Public, State of Florida

Print name:

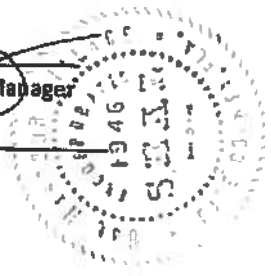
Dwight S. Dante

My commission expires:

11/26/18

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

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



ATTEST:
D S Danie
Dwight Danie, Village Clerk

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

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

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

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

NOTARY SEAL



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

Exhibit A

Legal Description of Existing Shops Property

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

Exhibit B

Legal Description of Church Site

THE COMMUNITY CHURCH PARCEL

ORIGINAL COMMUNITY CHURCH TRACT

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

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

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

AND

ADDITIONAL COMMUNITY CHURCH TRACT

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

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

Exhibit C

Legal Description of Fairfield Parcel

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

Exhibit D

Legal Description of SunTrust Property

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

Exhibit E

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

(see following page)

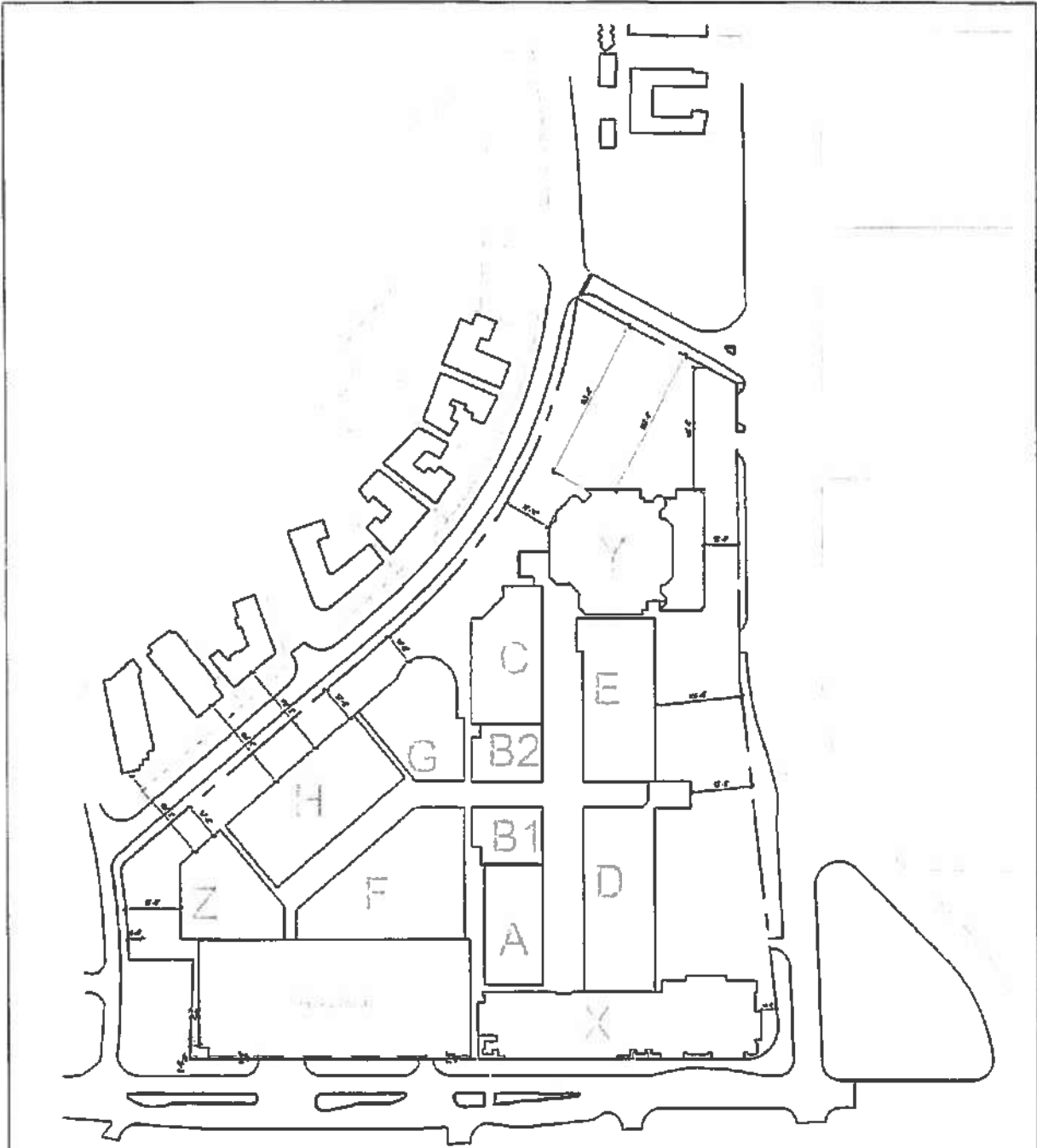


Exhibit E - Building Locations

1120-Bal Harbour Shops

Scale = 1" = 200'-0"

July 20, 2017

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**ZYSCOVICH
ARCHITECTS**

10011 Duneside Blvd. 2nd Fl.
Miami, FL 33157-2204
(305) 372-5025 / (305) 577-4321

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

Exhibit F

Value of Owner's Contributions

Land	Value
Fairfield Property	\$16,000,000.00
SunTrust Land Only	\$12,750,000.00
Perpetual Easement on Shops Sidewalks	\$3,607,000.00
Improvements	
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
Rents, Taxes and Fees	
Present Value of Increased Resort Tax	\$13,501,000.00
Present Value of SunTrust Rent	\$12,608,000.00
Present Value of Increased Business Tax	\$9,238,000.00
Present Value of Multimodal Fund Contributions	\$8,710,000.00
Present Value of Increased Ad Valorem Tax	\$8,656,000.00
Present Value of Police Department Free Rent	\$4,216,000.00
Present Value of Off Duty Police Fees	\$3,889,000.00
TOTAL OF ECONOMIC BENEFITS	\$122,805,000.00

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 96TH 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 96th Street and Collins Avenue and on a vacant parcel previously occupied by Church By The Sea (the "Church Site") (collectively, the "Expanded Shops Property"); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General Conditions

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

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

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

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

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

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

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

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

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

Construction Conditions

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

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

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

Landscape/Buffer Conditions

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

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

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

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

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

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

Traffic Flow Conditions

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

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

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

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

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

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

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

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

Pedestrian/Public Realm Conditions

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

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

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

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

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

Loading and Service Areas

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

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

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

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

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

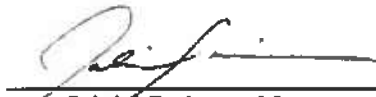
6. With the exception of deliveries to Neiman Marcus, Barney's and food establishments, deliveries from the Collins Avenue entrance shall take place only between 8:30am and 5:00pm. These restrictions shall not apply to the 96th Street delivery entrance.

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

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

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

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



Gabriel Groisman, Mayor

ATTEST:




Dwight S. Danie, Village Clerk

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



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

Exhibit 1

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

(see following pages)

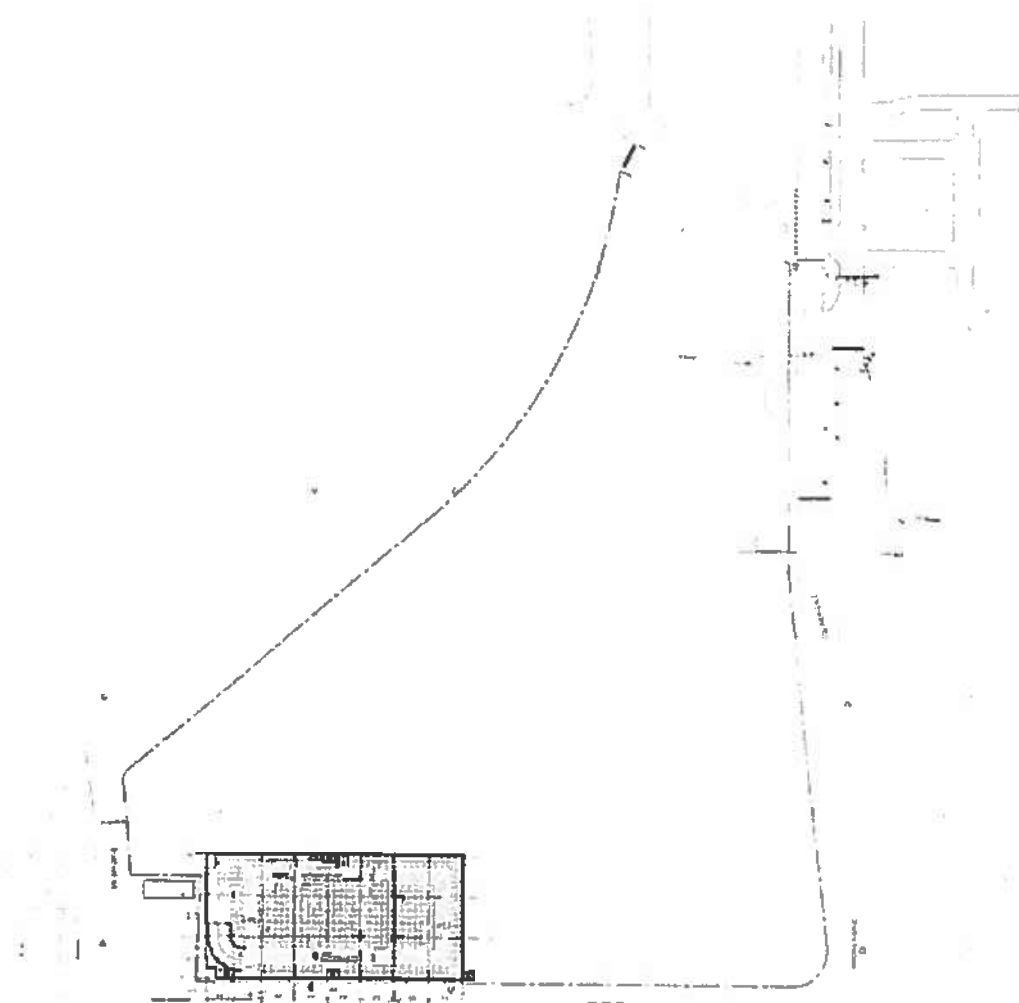


Exhibit I - Major Site Plan

Approved by Bal Harbour Village Resolution No. 2017-1077

<p>EXHIBIT I</p> <p><small>As shown on the attached site plan, the proposed development is located on the site shown on the attached site plan. The proposed development is located on the site shown on the attached site plan. The proposed development is located on the site shown on the attached site plan.</small></p>	<p>Major Site Plan</p>	<p>Bal Harbour, FL</p> <p>ZYSCOVICH</p> <p><small>ARCHITECTS</small></p>	<p>July 20, 2017</p>
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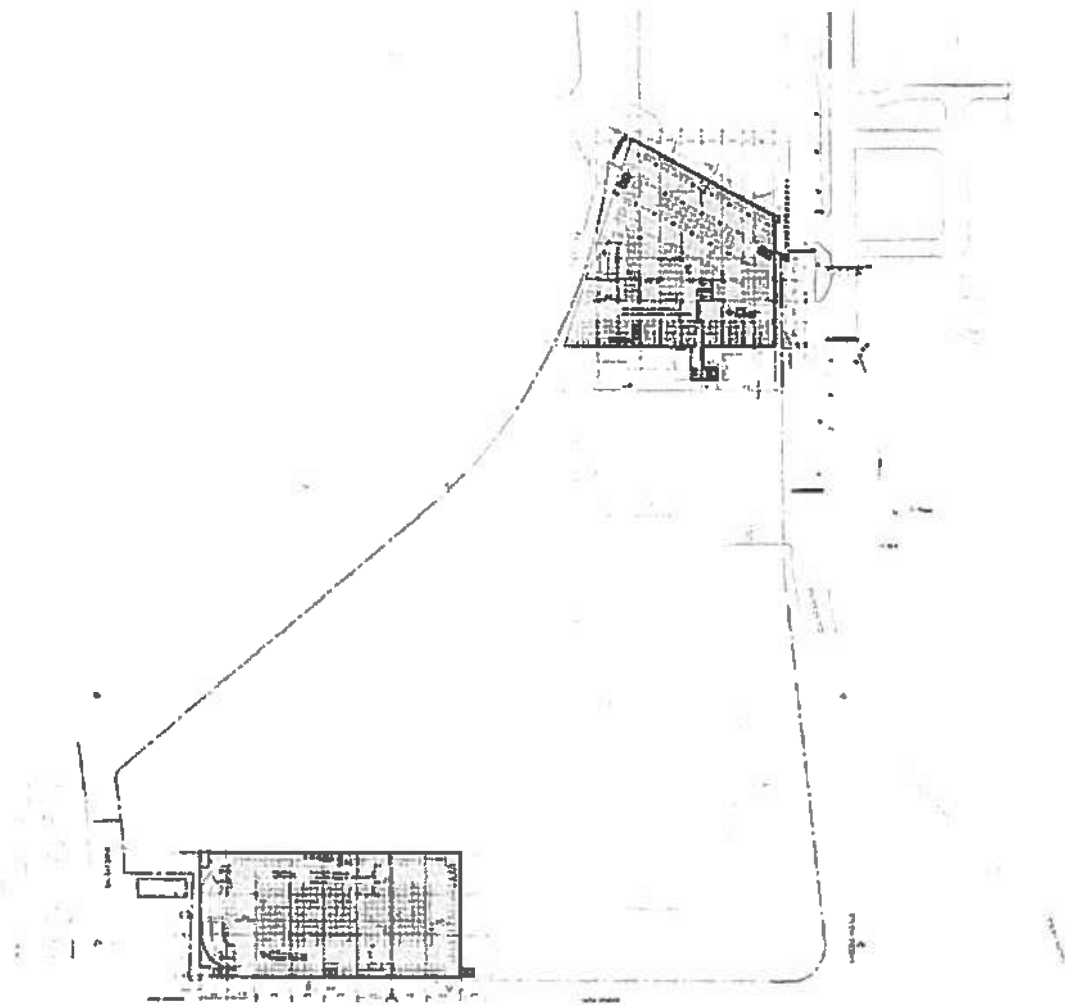


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

EXHIBIT I	Bal Harbour Shops	Bal Harbour, FL	July 26, 2017
<small> 2 copies (unintentional reproduction or alteration prohibited) of 1/17 2 copies of 2017-1077 Resolution No. 2017-1077 to be made with all the original copies of the original of 2017-1077 Resolution No. 2017-1077. All changes noted in all these drawings are property of Zyscovich Architects. All copyright reserved © 2017 </small>		ZYSKOVICH ARCHITECTS <small> 2017 B. W. 1077 1000 N. 1077 St BAL HARBOUR FL 33154 </small>	<small> 1000 N. 1077 St BAL HARBOUR FL 33154 </small>

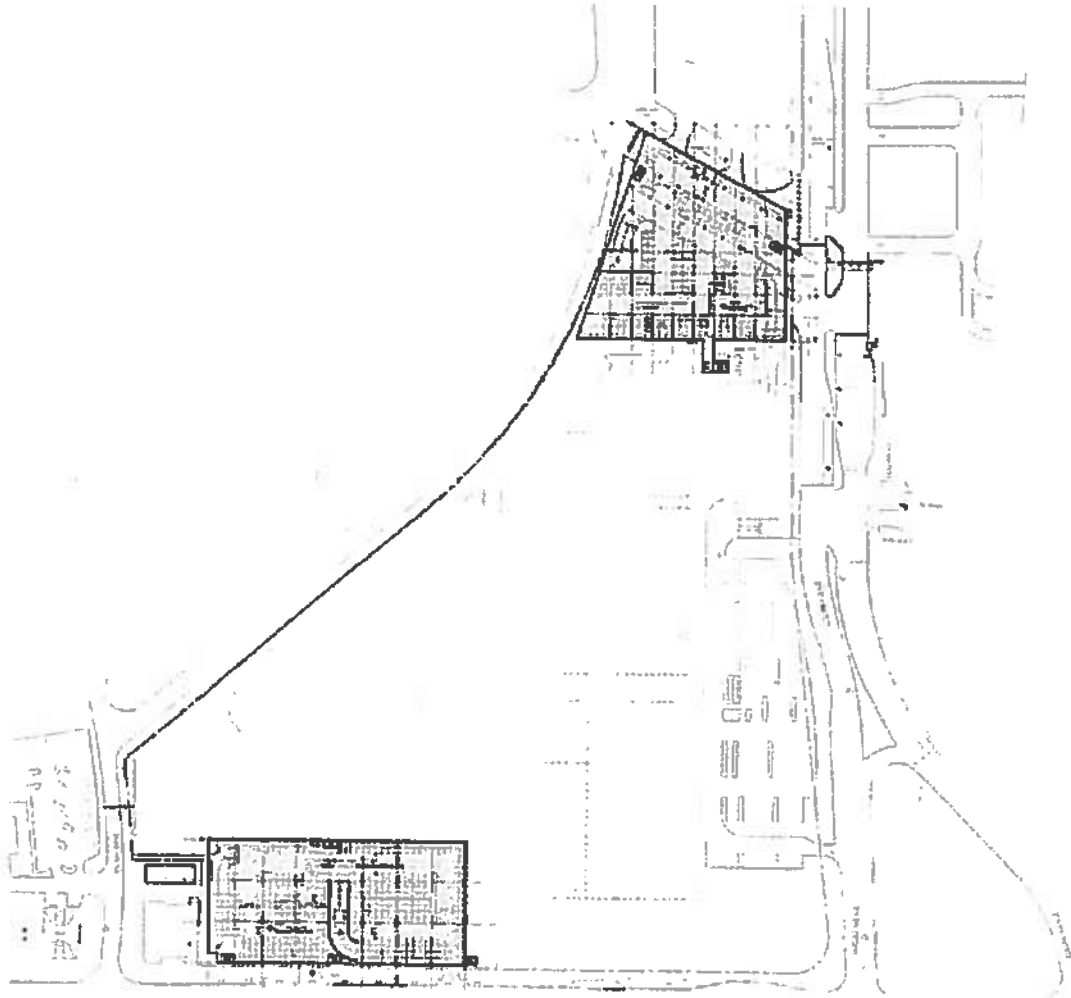


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

EXHIBIT I	BR&H Food Shops	Bal Harbour, FL	July 20, 2017
<small>In reply to the request submitted, or pending receipt of any other of their requests in writing or report be made without delay and under supervision of Zyscovich Architects, 4375 West 15th Avenue, Miami, Florida 33185, to the City of Bal Harbour, Florida, at the City Hall, 10001 Collins Avenue, Bal Harbour, Florida 33154.</small>	ZYSCOVICH ARCHITECTS	<small>2017B-000001-0001 Tel: 305.224.2244 33155 SW 15th Miami, FL 33185</small>	<small>10001 Collins Avenue Bal Harbour, FL 33154</small>

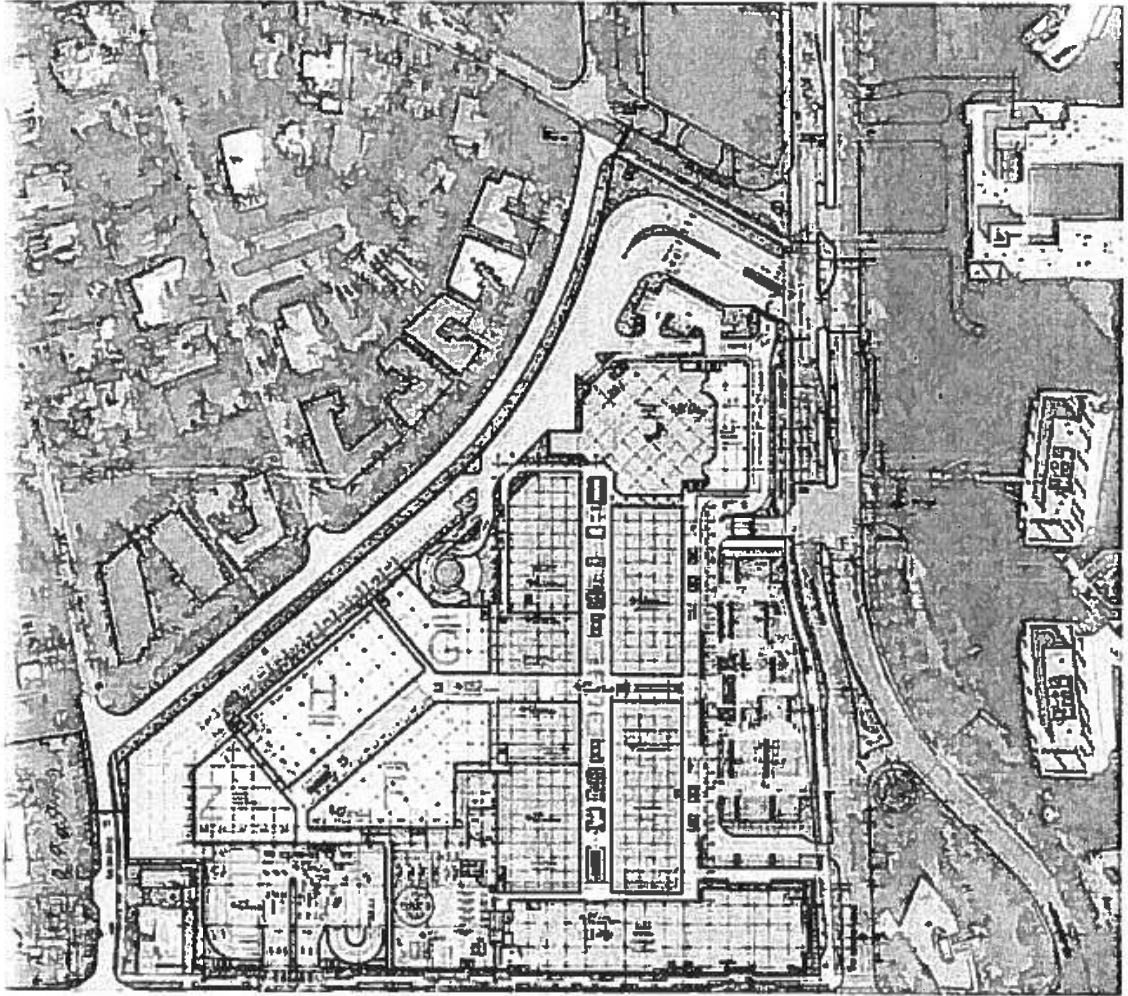


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

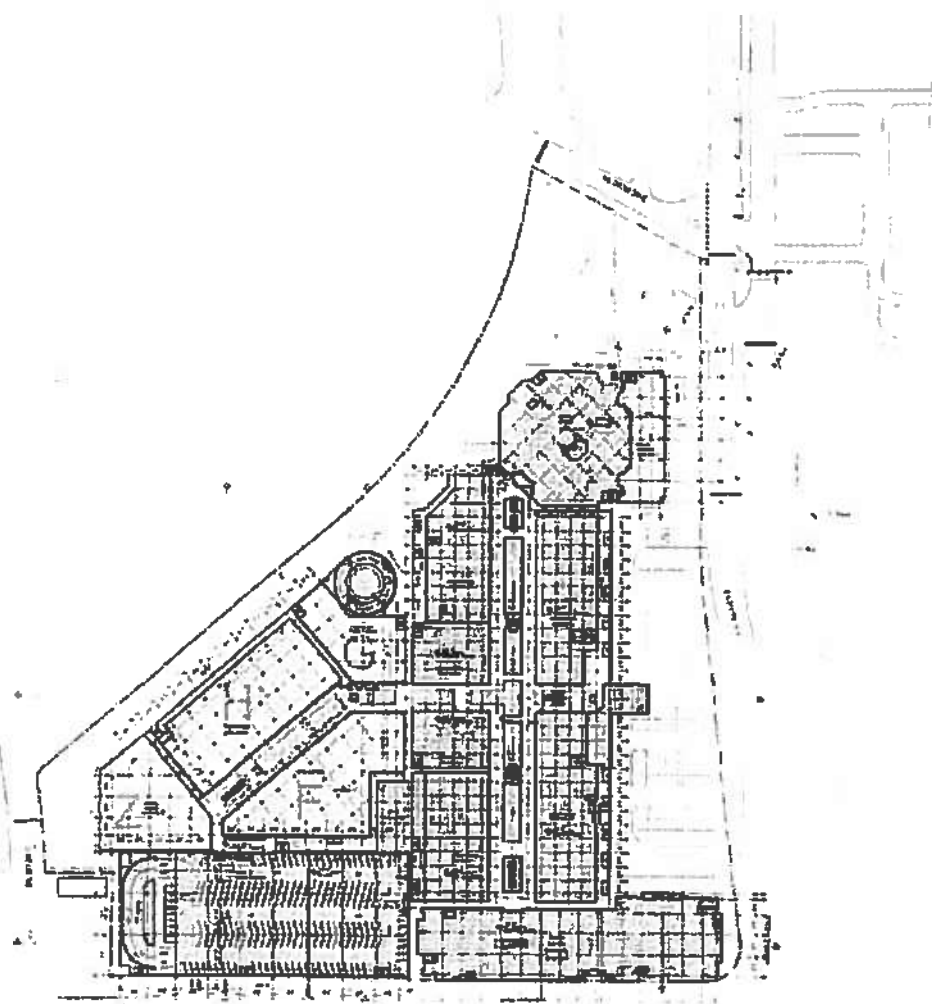


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

<p>EXHIBIT I</p> <p>THIS EXHIBIT I IS A PART OF THE SUBMITTALS OF AN APPLICATION FOR A DEVELOPMENTAL VARIANCE TO THE BAL HARBOUR VILLAGE ZONING ORDINANCE AND IS SUBJECT TO THE BAL HARBOUR VILLAGE ZONING ORDINANCE AND THE BAL HARBOUR VILLAGE COMPREHENSIVE ZONING ORDINANCE. ALL RIGHTS RESERVED BY THE APPLICANT AND THE BAL HARBOUR VILLAGE. ALL RIGHTS RESERVED BY THE APPLICANT AND THE BAL HARBOUR VILLAGE. ALL RIGHTS RESERVED BY THE APPLICANT AND THE BAL HARBOUR VILLAGE.</p>	<p>Bal Harbour Shop</p>	<p>Bal Harbour, FL</p> <p>ZYSCOVICH</p> <p>ARCHITECTS</p> <p>20100 South Pine Street Suite 300, Miami, FL 33134 Phone: 305.279.1111 Fax: 305.279.1111</p>	<p>July 30, 2017</p>
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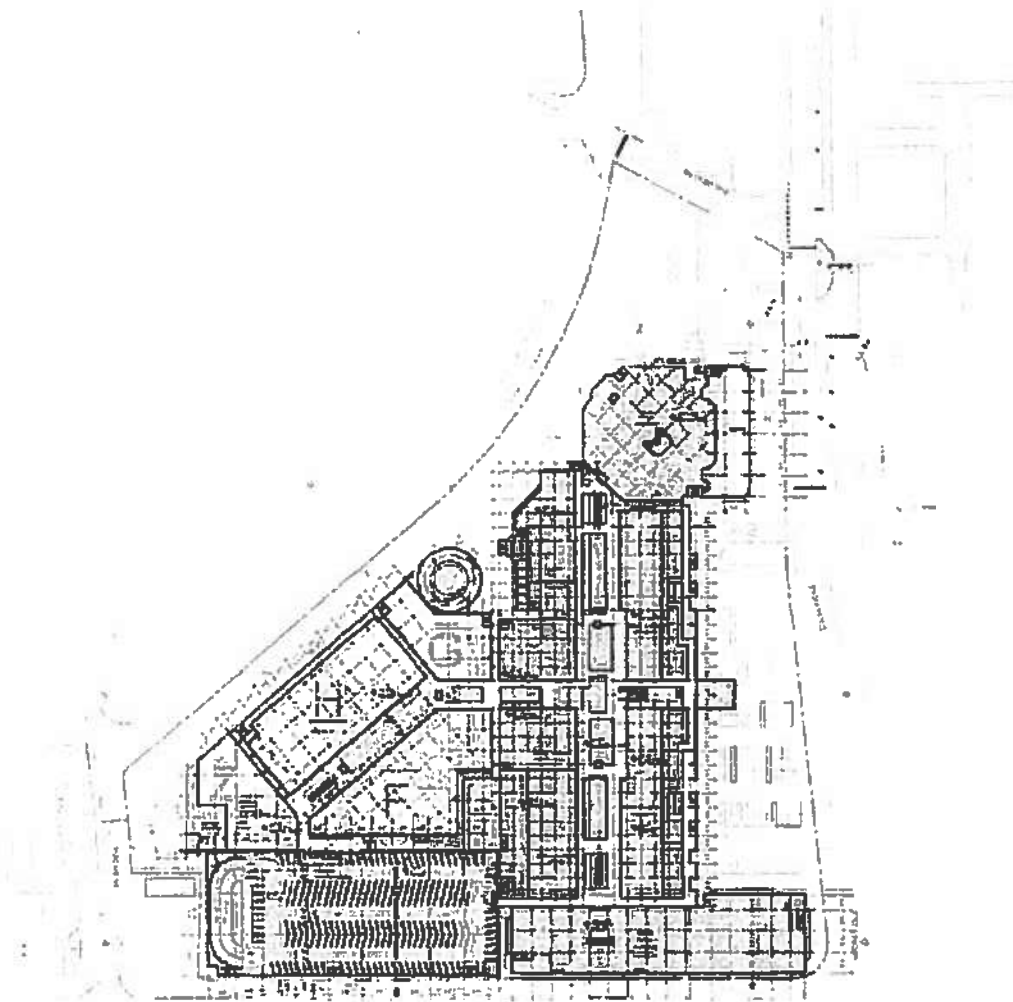


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

<p>PROJECT: Bal Harbour Shops</p>	<p>Location: Bal Harbour, FL</p>	<p>Date: July 20, 2017</p>
<p>ZYSCOVICH ARCHITECTS, INC.</p> <p>10000 BAYVIEW BLVD., SUITE 1000, BAL HARBOUR, FL 33154 TEL: 305.441.1111 FAX: 305.441.1112 WWW.ZYSCOVICH.COM</p>		

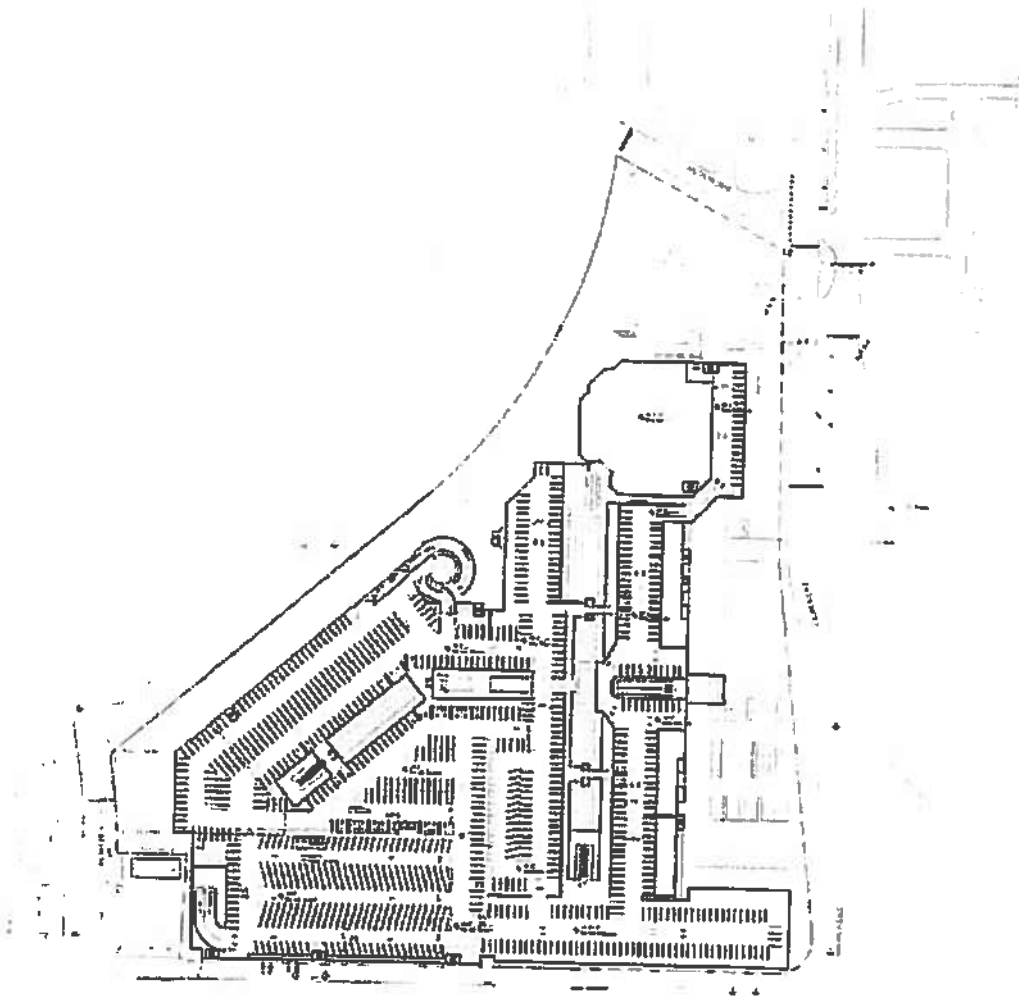


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

EXHIBIT I - Major Site Plan
 To verify the structure, improvements or proposed layout of the subject of these exhibits is to be shown to the public in the presence of the Village of Bal Harbour. All details shown in these exhibits are the property of the architect and are not to be used without the written consent of the architect.

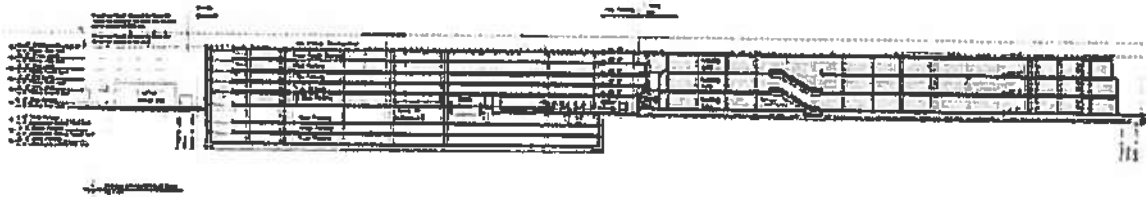
Bal Harbour Shop

Bal Harbour, FL

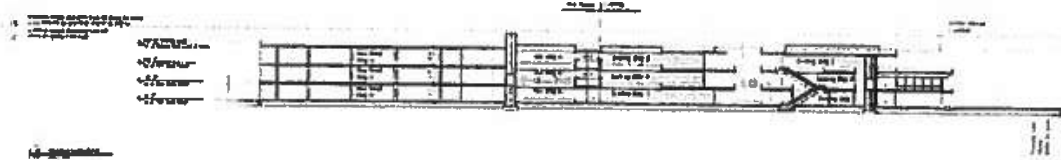
July 20, 2017

ZYSCOVICH
 ARCHITECTS
 10000 BAYVIEW BLVD
 SUITE 1000
 BAL HARBOUR, FL 33154
 (305) 591-1111

www.zyscovich.com



← 0'-0" (0.000000)



← 0'-0" (0.000000)

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

<p>EXHIBIT I</p> <p>Major Site Plan</p> <p>Architectural drawings prepared by the architect for the project of the Bal Harbour Village. The drawings are subject to the approval of the Village Board. The drawings are not to be used for any other purpose without the written consent of the architect.</p>	<p>Bal Harbour Shops</p>	<p>Bal Harbour, FL</p> <p>ZYSCOVICH</p> <p>Architects</p> <p>10000 Collins Avenue, Suite 1000 Bal Harbour, FL 33154 Tel: 305.234.1100 Fax: 305.234.1101</p>	<p>July 26, 2017</p> <p>Project No. 17-0001</p>
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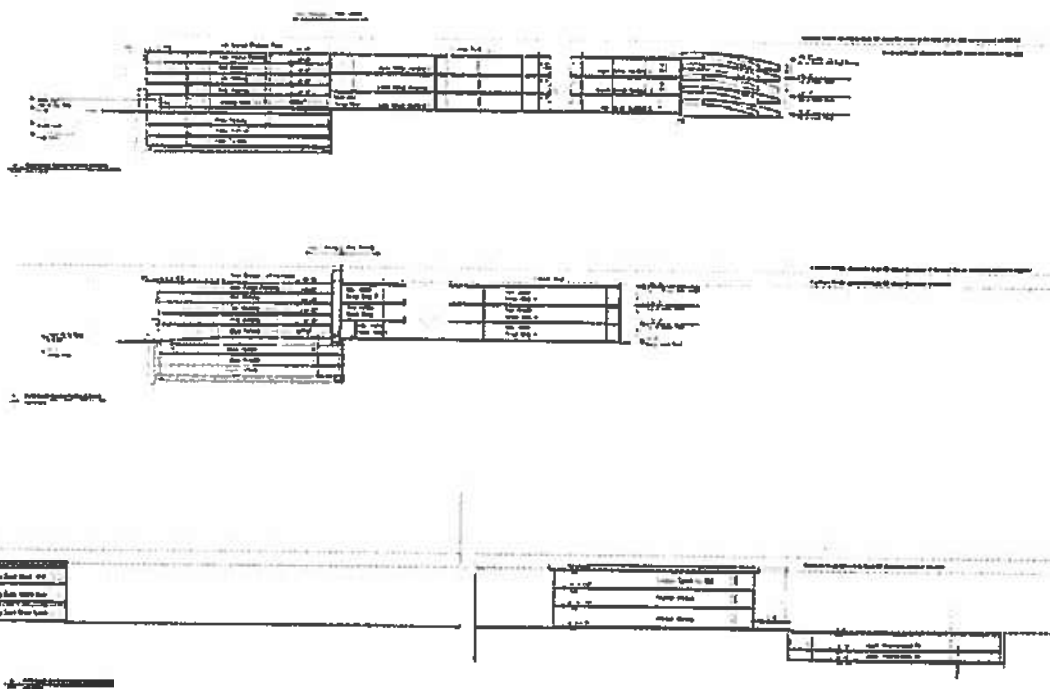
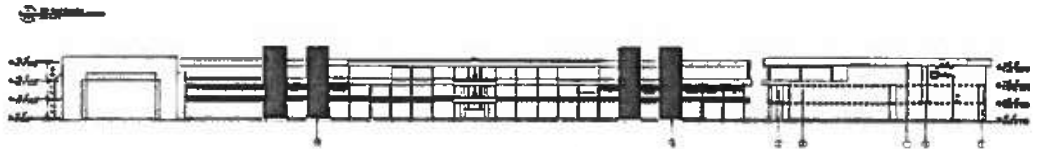
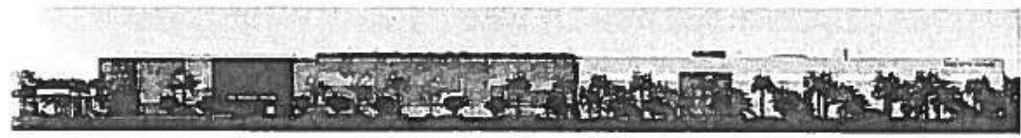


Exhibit I - Major Site Plan
Approved by Bal Harbour Village Resolution No. 2017-1077

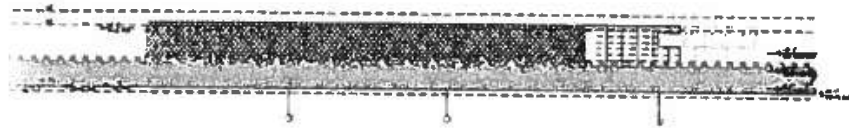


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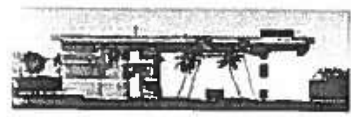
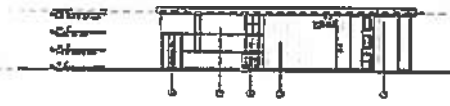
Exhibit I - Major Site Plan

Approved by Bal Harbour Village Resolution No. 2017-1077

<p style="font-size: small;">The content of this document is the property of the architect and is not to be used for any other project without the written consent of the architect. All designs indicated in these drawings are the property of the architect. All copyright reserved © 2017.</p>	<p style="font-size: small;">Bal Harbour Shops</p> <p style="font-size: small;">Bal Harbour, FL</p> <p style="font-size: x-large; font-weight: bold;">ZYSCOVICH</p> <p style="font-size: small;">ARCHITECTS</p>	<p style="font-size: small;">4251 N.W. 11th Street, Suite 100 Miami, FL 33142 Tel: 305.555.1111 Fax: 305.555.1112 www.zyscovich.com</p> <p style="font-size: small;">July 20, 2017</p>
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SECTION



SECTION

SECTION

LEGEND	
1	EXISTING BUILDING
2	NEW BUILDING
3	EXISTING DRIVE
4	NEW DRIVE
5	EXISTING SIDEWALK
6	NEW SIDEWALK
7	EXISTING LANDSCAPE
8	NEW LANDSCAPE
9	EXISTING UTILITIES
10	NEW UTILITIES
11	EXISTING PAVEMENT
12	NEW PAVEMENT
13	EXISTING FENCE
14	NEW FENCE
15	EXISTING SIGNAGE
16	NEW SIGNAGE

Exhibit I - Major Site Plan

Approved by Bal Harbour Village Resolution No. 2017-1077

<p>Bal Harbour Shops</p> <p>Bal Harbour, FL</p> <p>2017</p>	<p>ZYSCOVICH</p> <p>ARCHITECTS</p> <p>2017</p>	<p>July 20, 2017</p>
--	---	----------------------

Exhibit J

Fairfield Property Title Exceptions

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

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

Exhibit K

SunTrust Property Title Exceptions

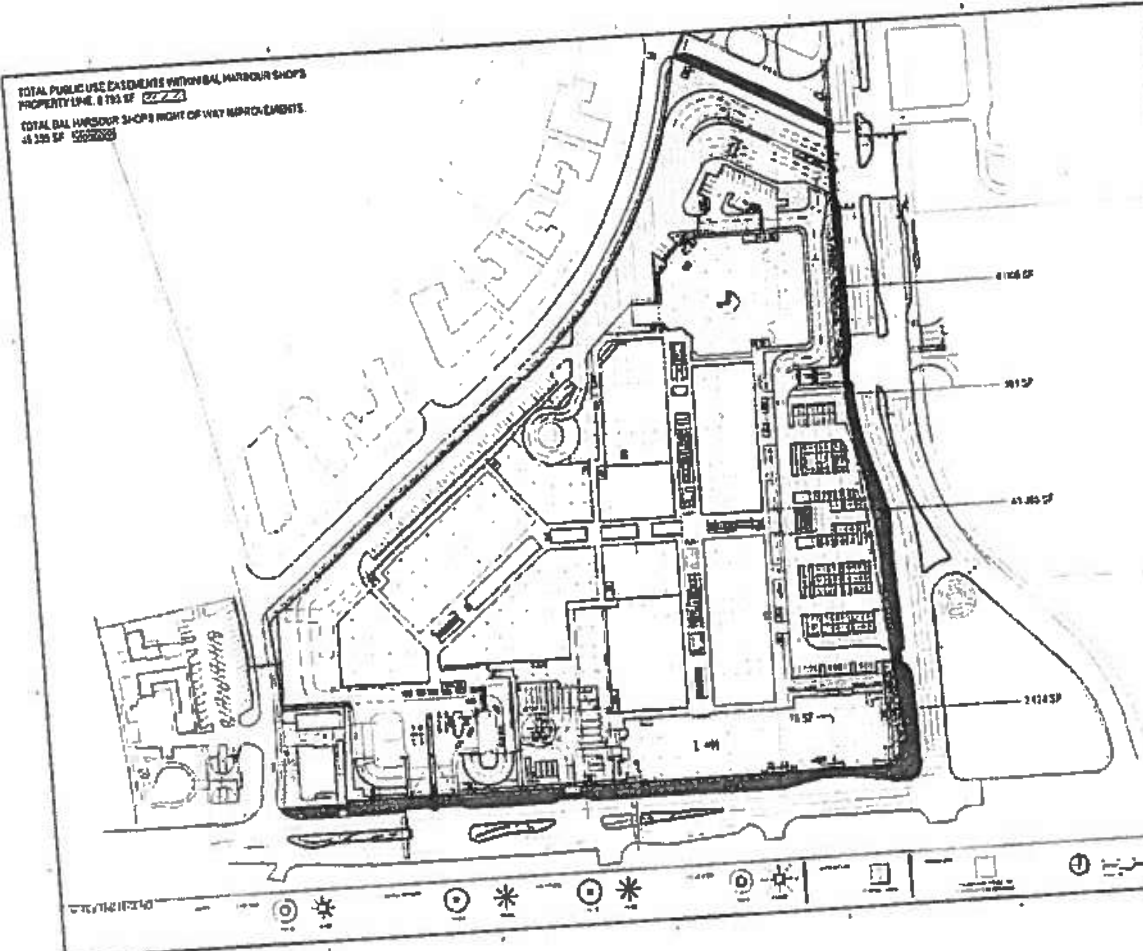
1. Taxes and assessments for 2017 and subsequent years.
2. Building, zoning and subdivision laws, ordinances, state and federal regulations;
3. Covenants, conditions, restrictions and declarations filed in the public real estate records;
4. Any lien provided by County Ordinance or by Chapter 159, Florida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

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

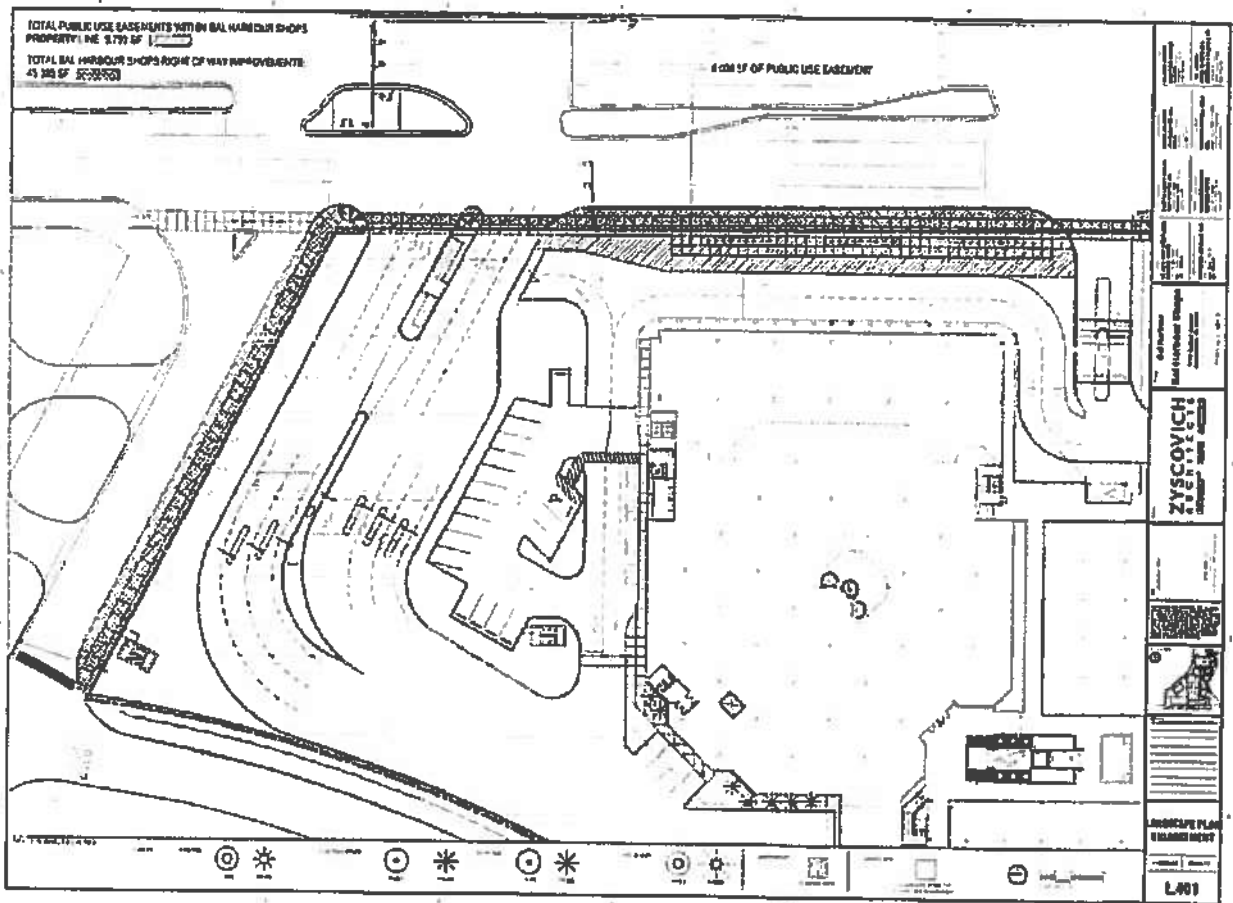
All recording references to the Public Records of Miami-Dade County, Florida.

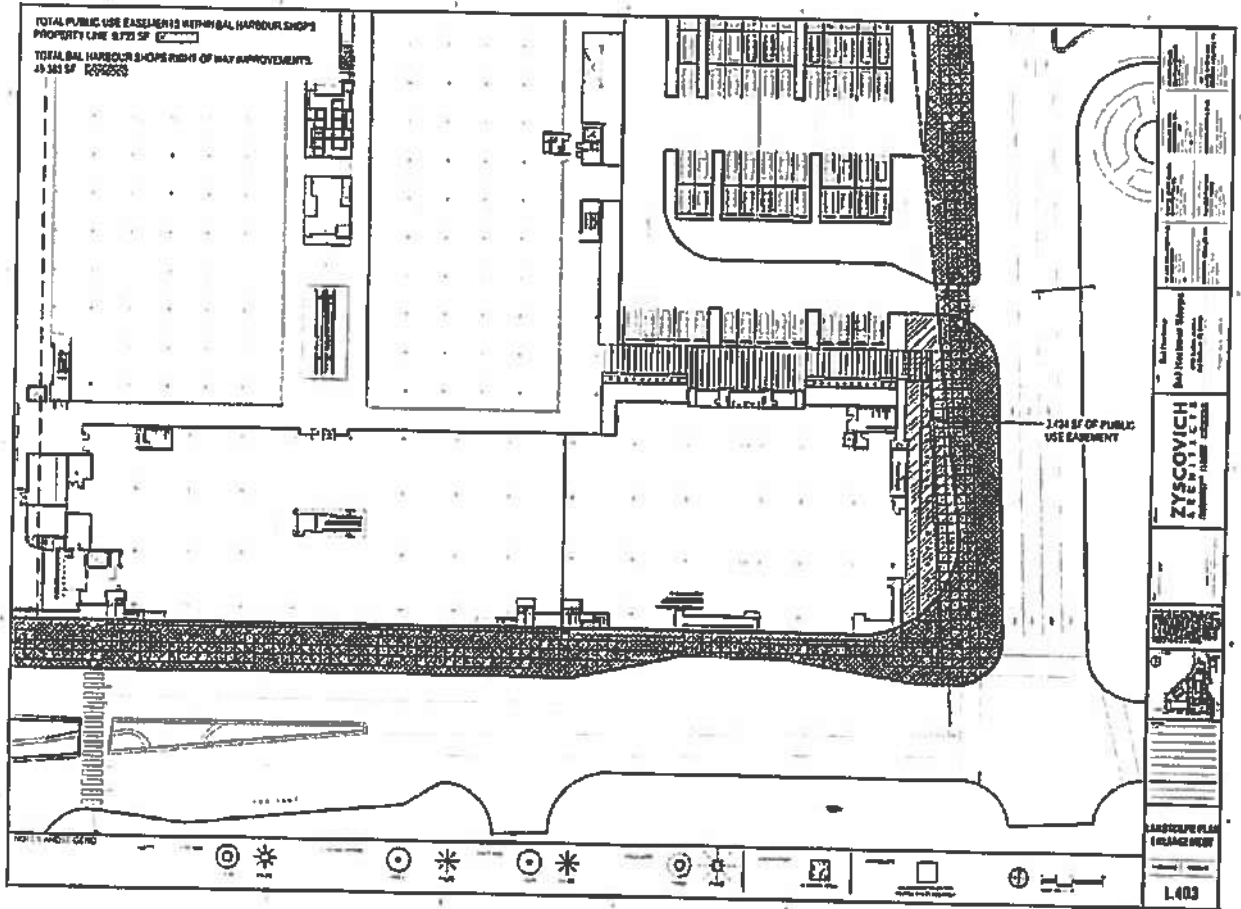
Exhibit L
Public Use Areas
(see following pages)

TOTAL PUBLIC USE EXHIBENTS WITHIN BAL. HARBOUR SHOPS
 PROPERTY LINE: 8 793 SF
 TOTAL BAL. HARBOUR SHOPS RIGHT OF WAY IMPROVEMENTS
 48 336 SF



<p>ZYSOVICH ARCHITECTS 1000</p>	
<p>ARCHITECTS PLAN DRAWINGS</p>	
<p>L401</p>	





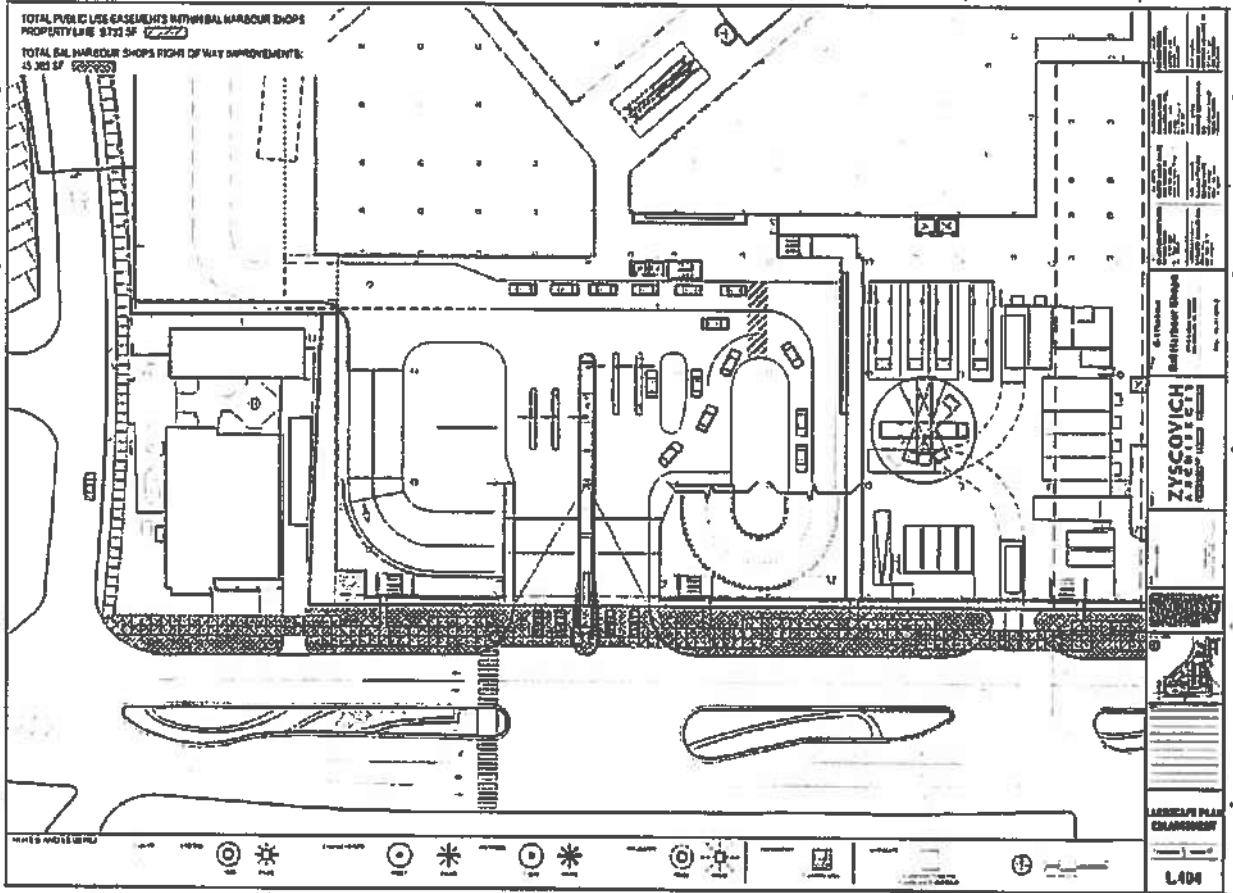
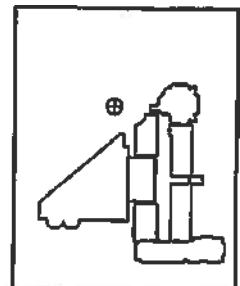


Exhibit M
Project Encroachments
(see following pages)

EXISTING ENCROACHMENTS

Encroachment Diagram 1

—●— PROPERTY LINE AREAS OF ENCROACHMENT SURVEY



1120-Bal Harbour Shops

1" = 30'

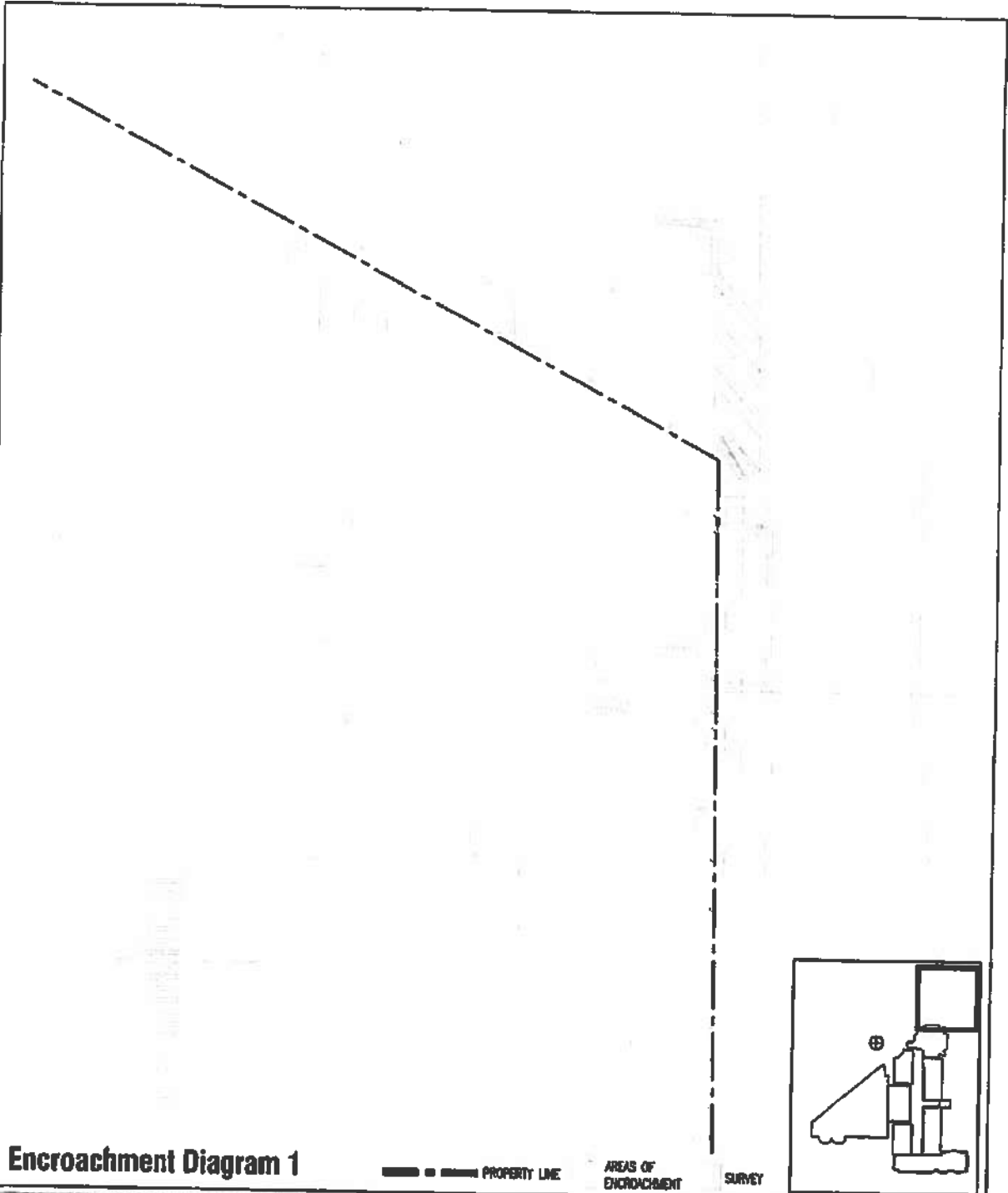
May 10, 2017

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ARCHITECTS

100 N. Bayshore Blvd. 27th Fl
Miami, FL 33139 8394
1 305 372 5222 | 305 577 4571

zinfo@zyscovich.com
or www.zyscovich.com

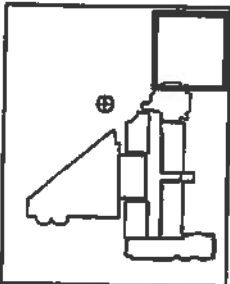


Encroachment Diagram 1

— — — — — PROPERTY LINE

AREAS OF ENCROACHMENT

SURVEY



1120-Bal Harbour Shops

1" = 30'

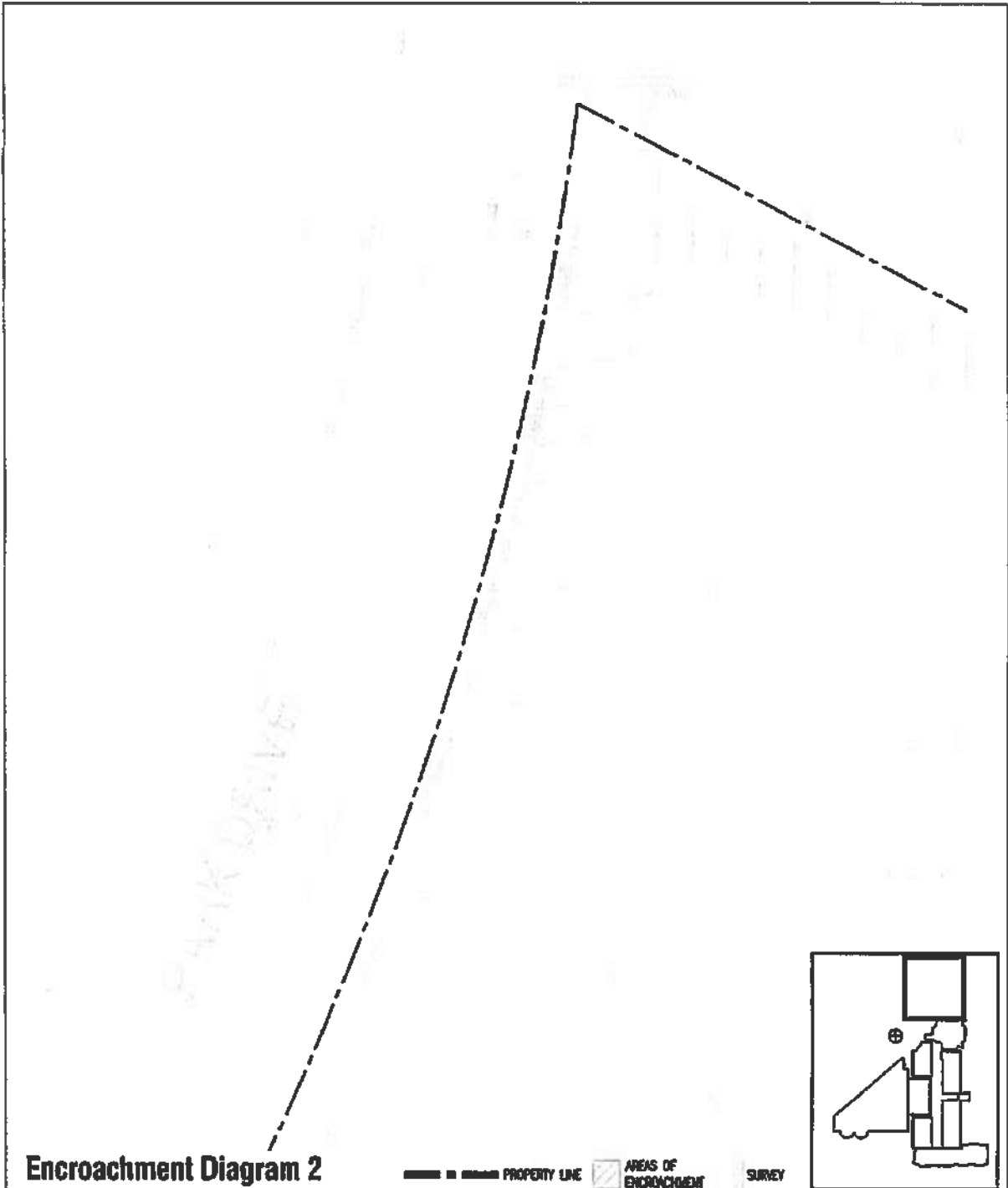
May 9, 2017

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100 N. Broadway Blvd. 21st Fl.
Miami, FL 33132-2204
1.305.372.8222 1.305.577.4521

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



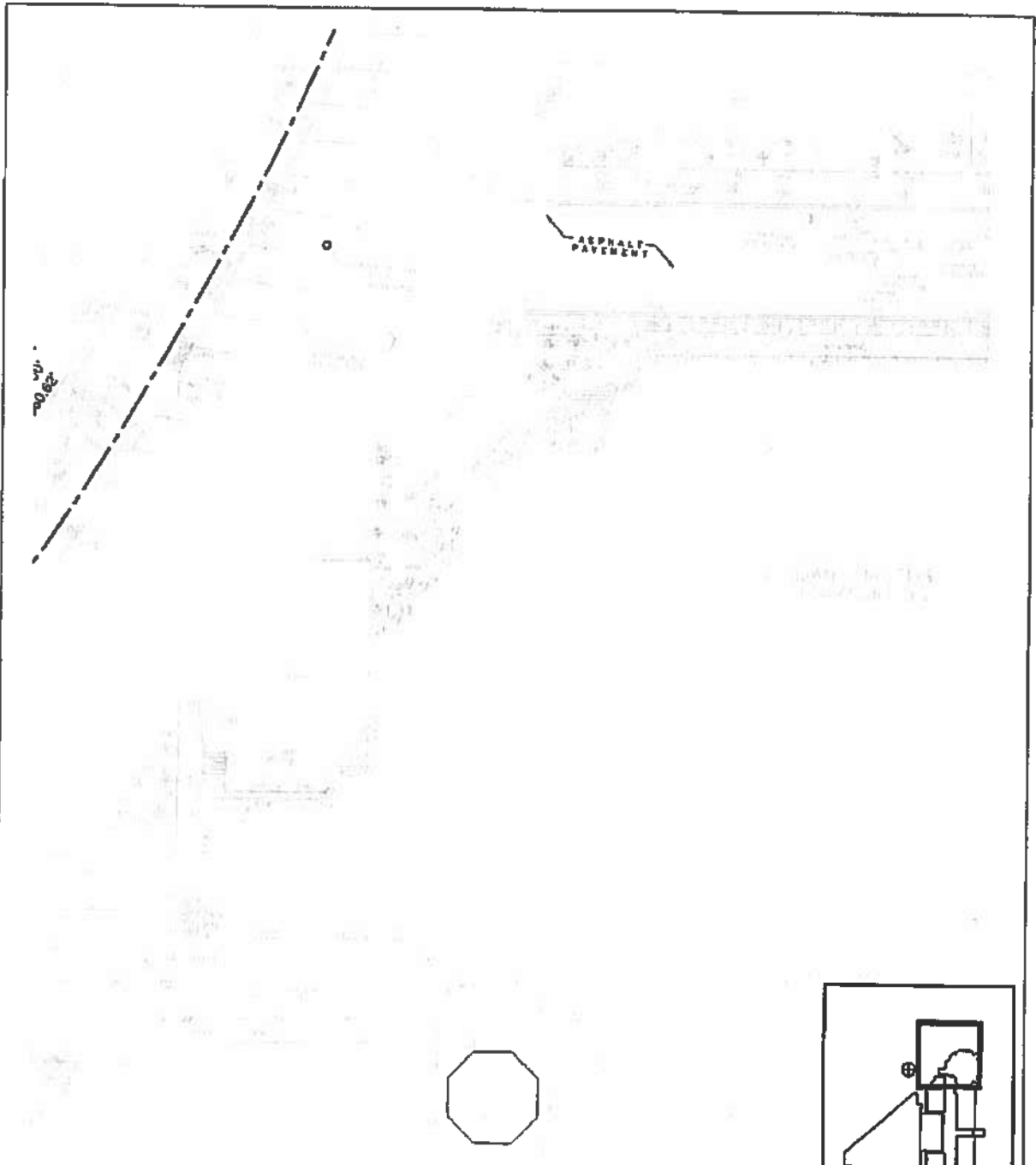
1120-Bal Harbour Shops

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Miami, FL 33132-2304
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Encroachment Diagram 4

1120-Bal Harbour Shops

1" = 30'

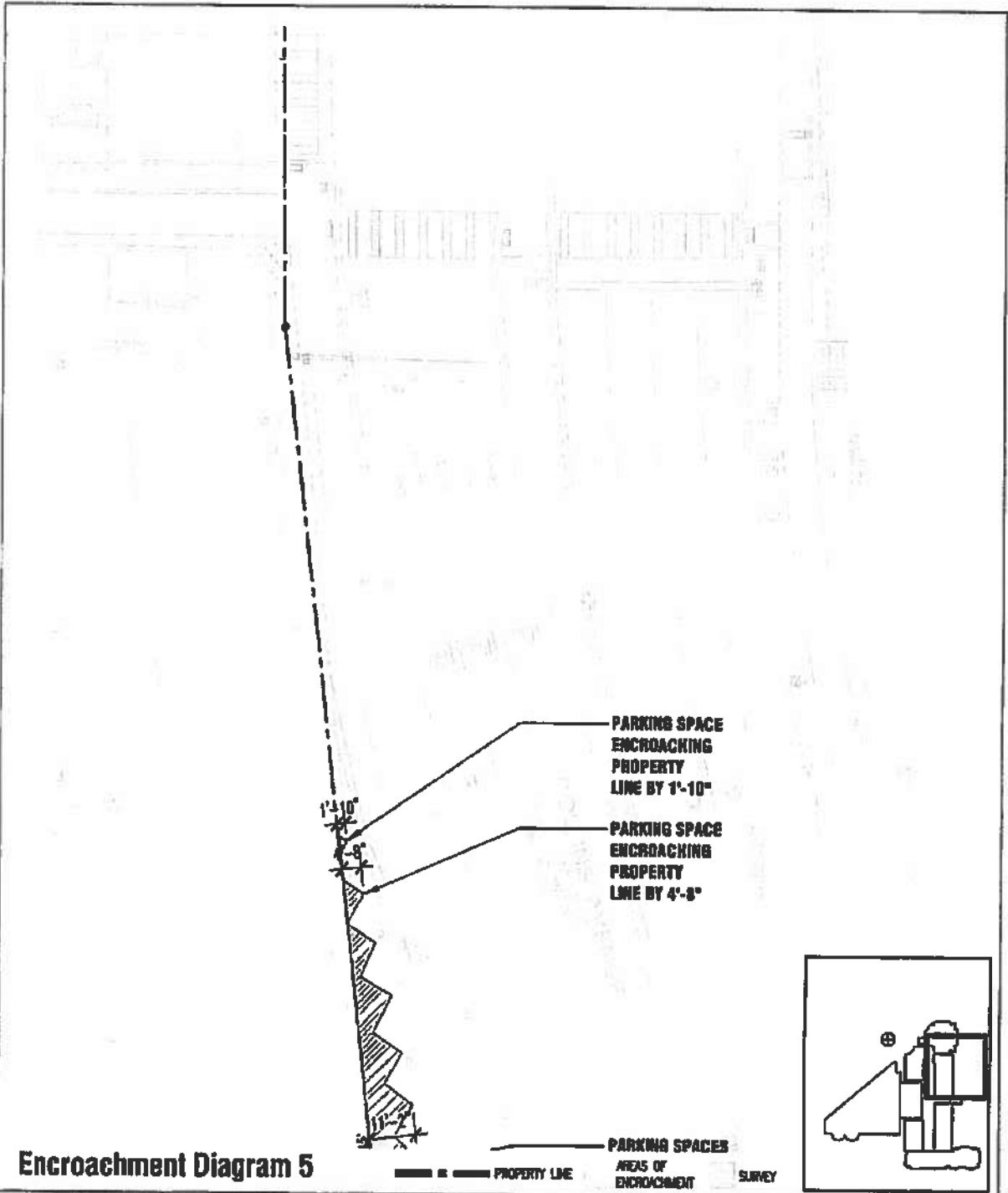
May 9, 2017

All notes, specifications, related sheets, or drawings forming part of any contract shall be read in conjunction with the drawings and specifications of Zyscovich Architects. All drawings included in these drawings are property of Zyscovich Architects. All copyrights reserved © 2017

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info@zyscovich.com
www.zyscovich.com



Encroachment Diagram 5

1120-Bal Harbour Shops

1"=30'

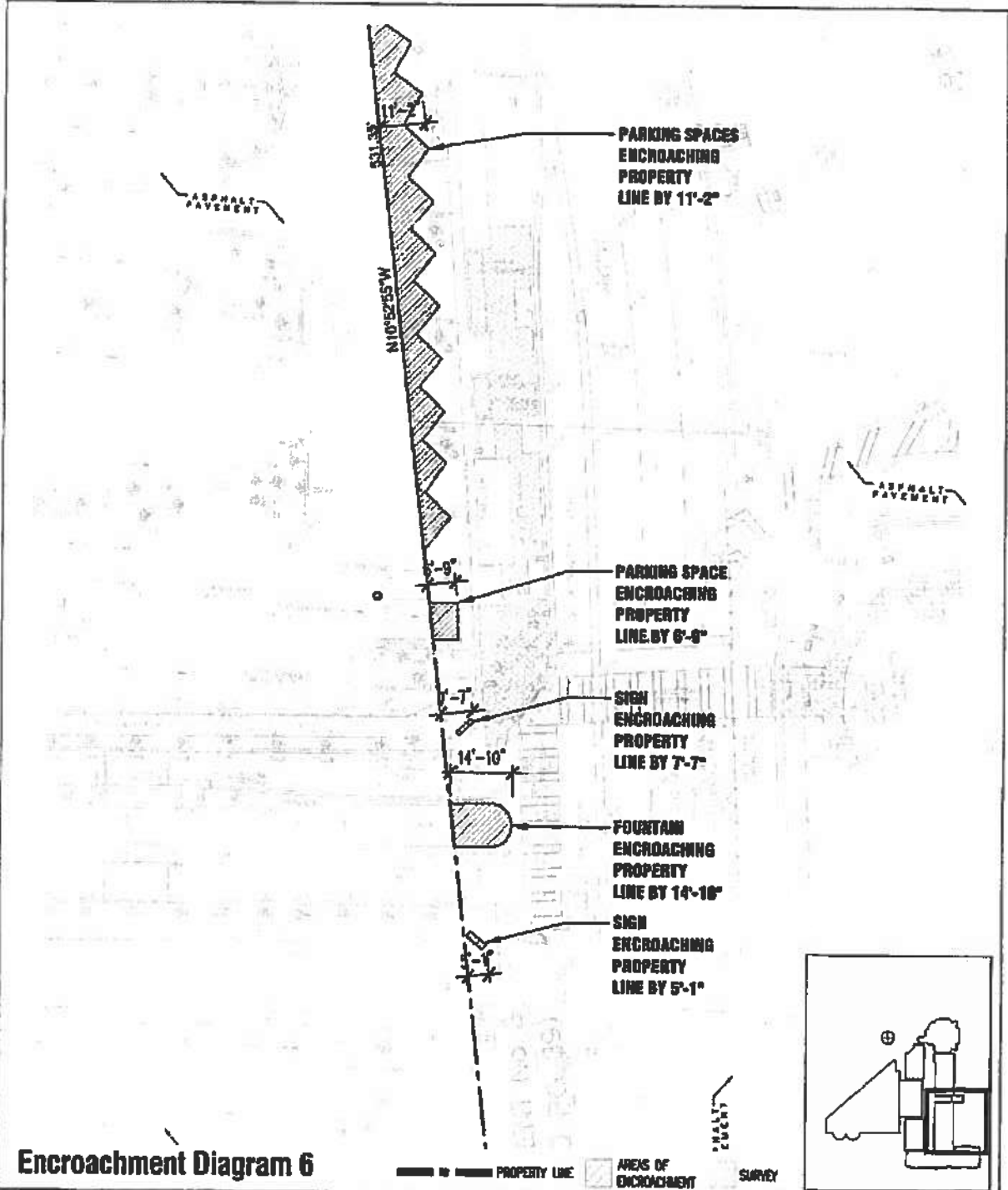
May 9, 2017

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Encroachment Diagram 6

1120-Bal Harbour Shops

1" = 30'

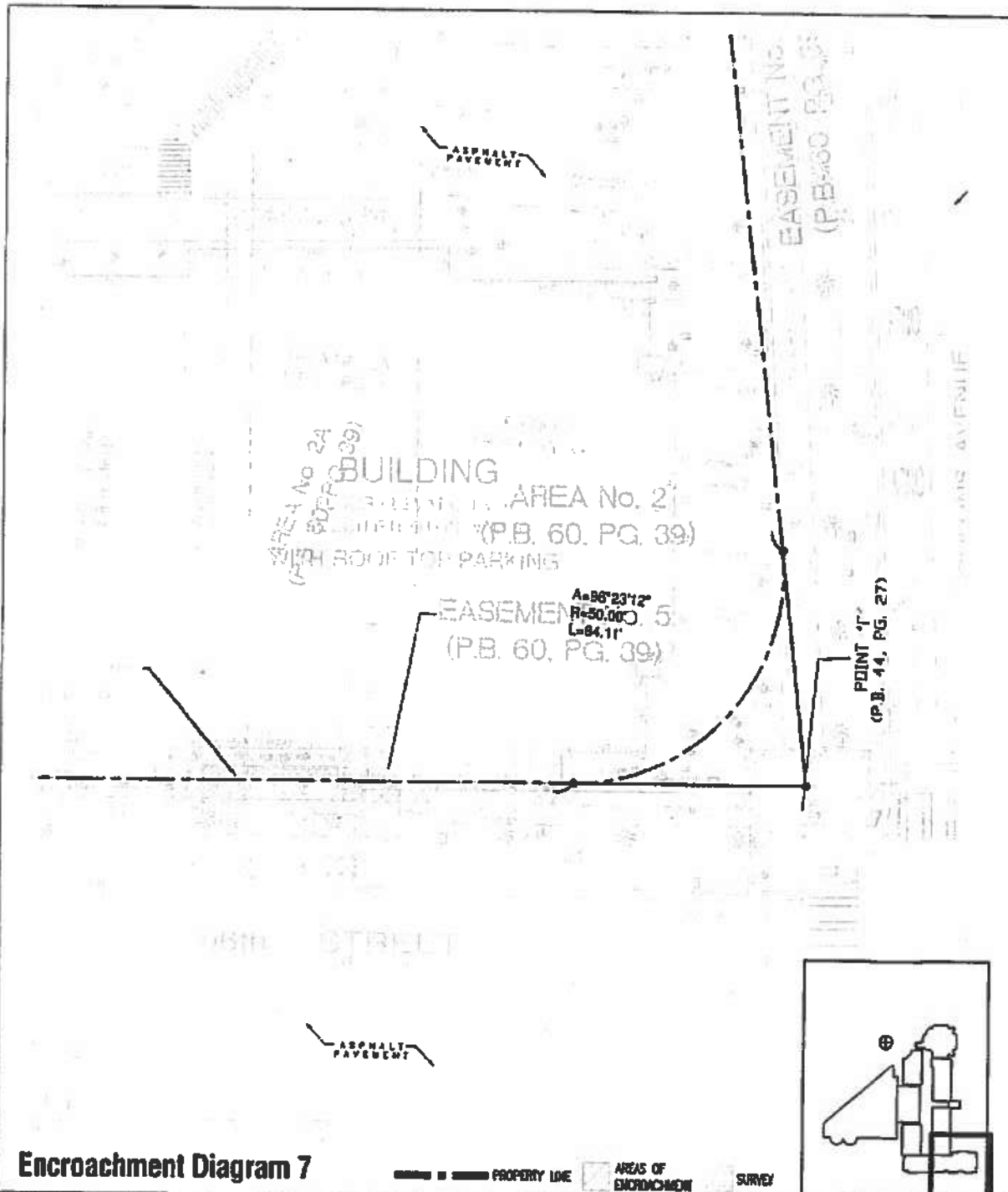
May 9, 2017

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Encroachment Diagram 7

1120-Bal Harbour Shops

1"=30'

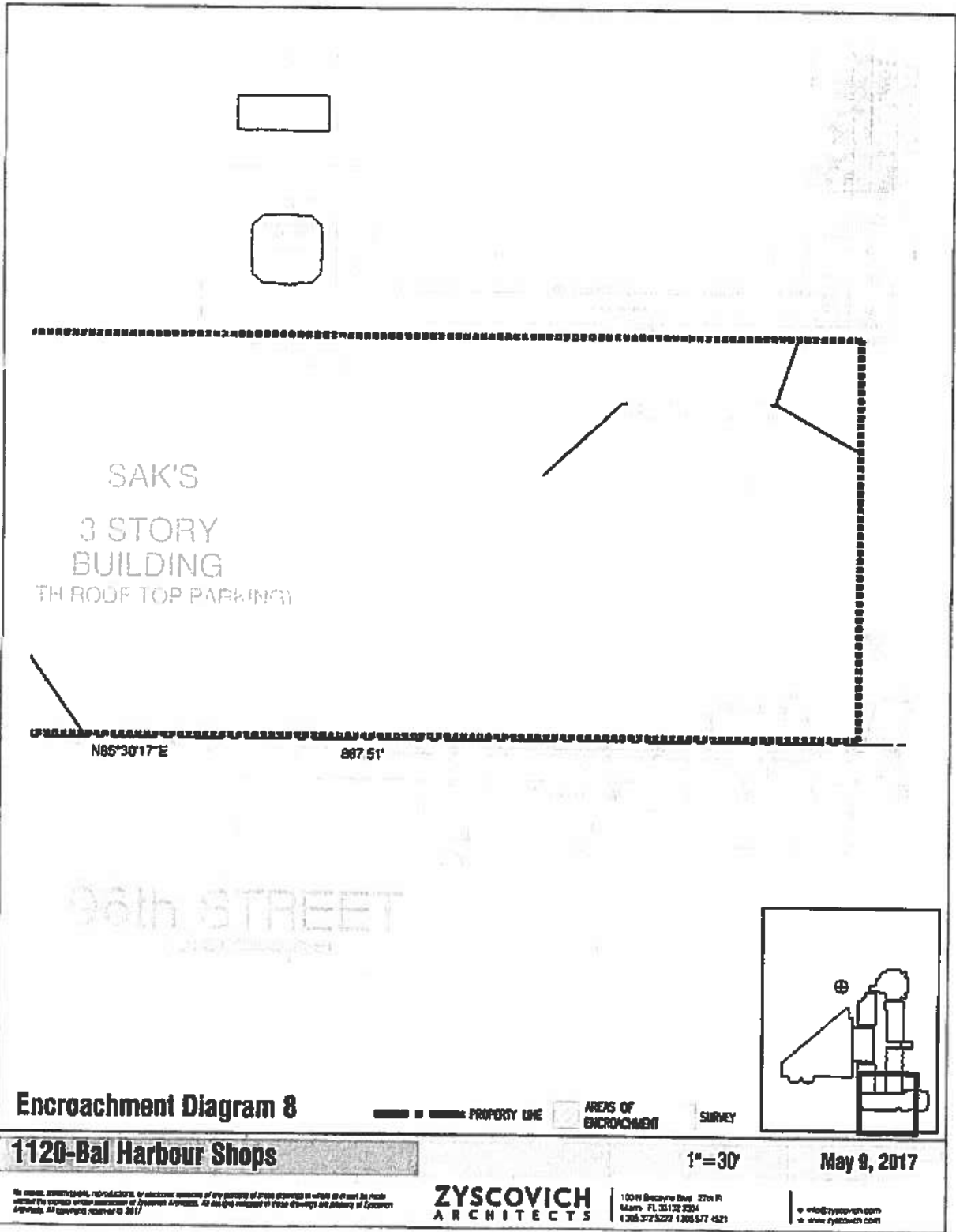
May 9, 2017

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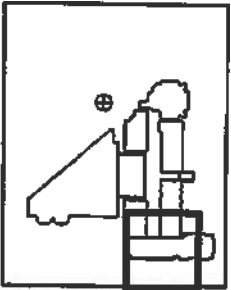


SAK'S
3 STORY
BUILDING
TH ROOF TOP PARKING

N65°30'17\"/>

887.51'

96th STREET



Encroachment Diagram 8

PROPERTY LINE
 AREAS OF ENCROACHMENT
 SURVEY

1120-Bal Harbour Shops

1"=30'

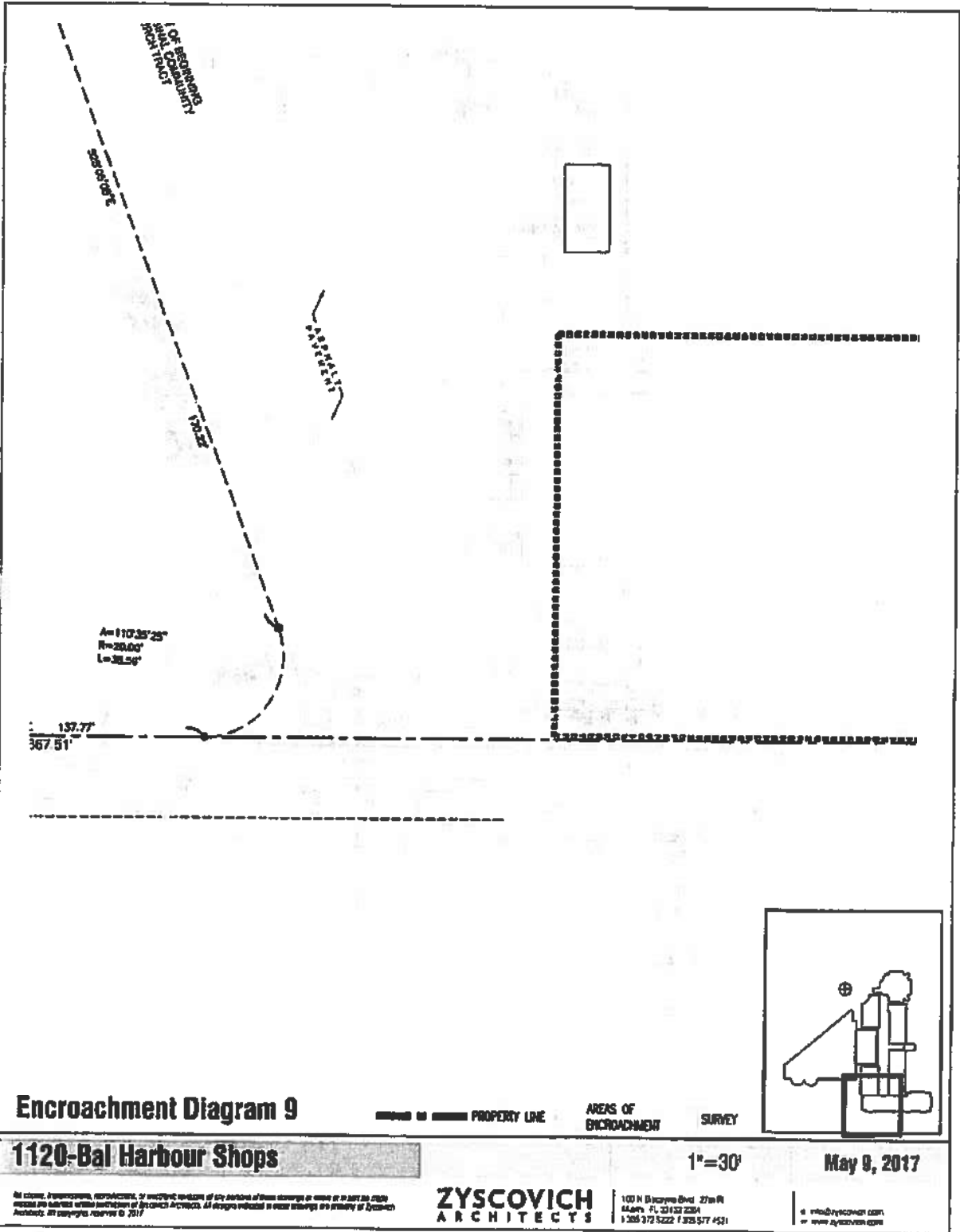
May 9, 2017

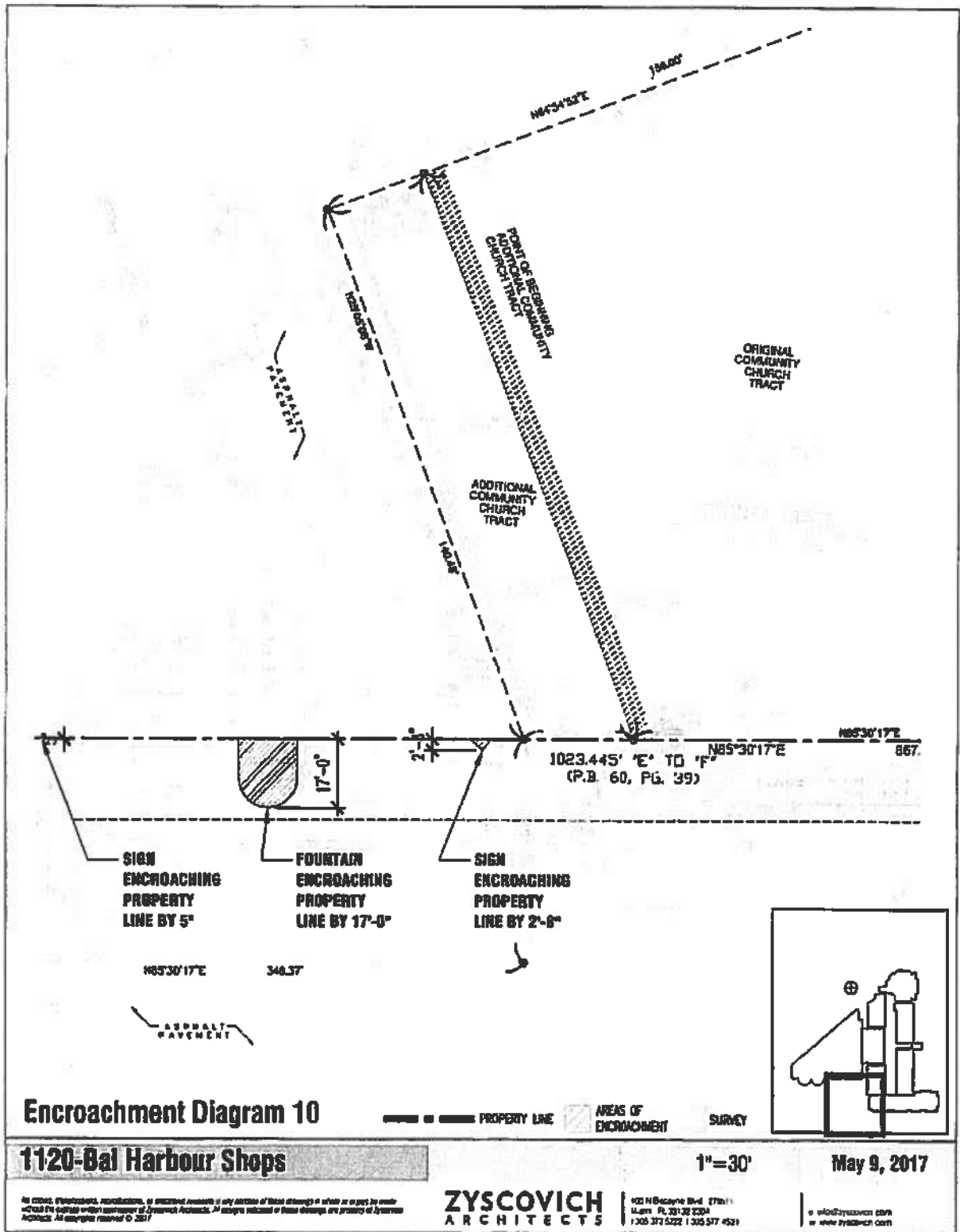
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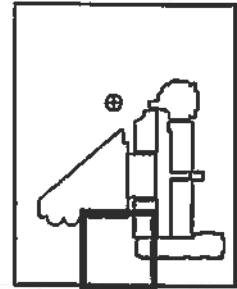
Encroachment Diagram 10

1120-Bal Harbour Shops

1"=30'

May 9, 2017

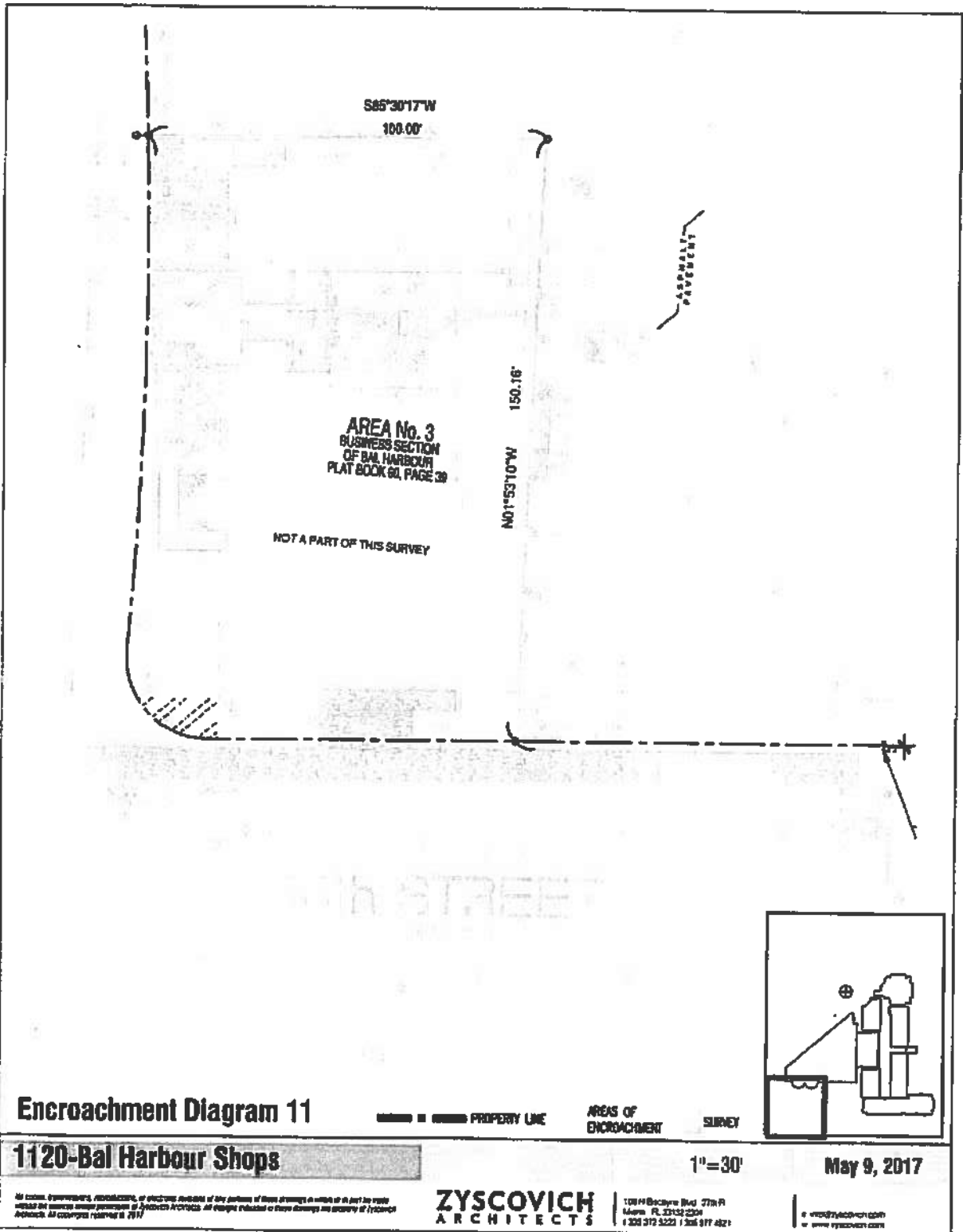
— — — — — PROPERTY LINE ▨ AREAS OF ENCROACHMENT SURVEY



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Encroachment Diagram 11

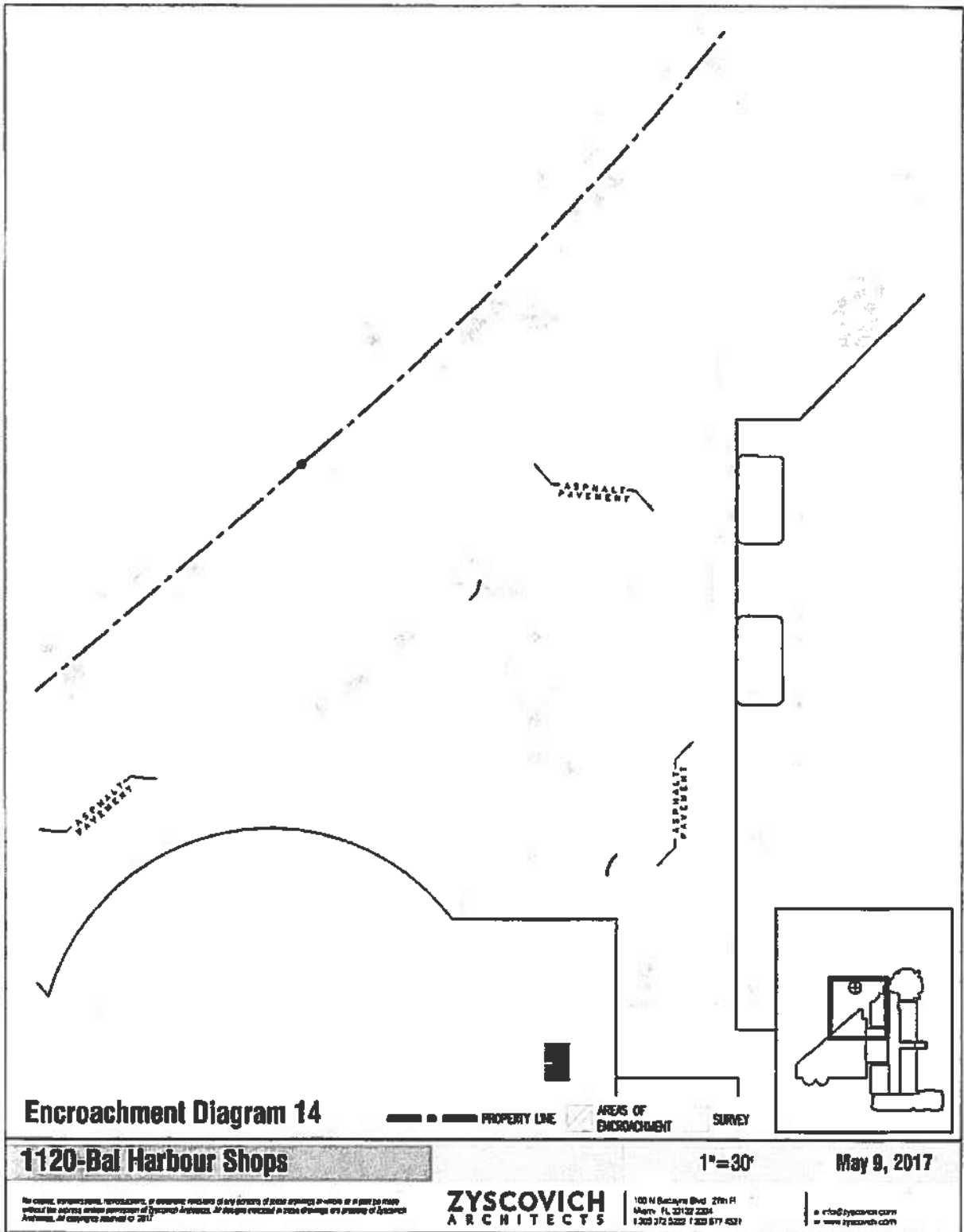
1120-Bal Harbour Shops

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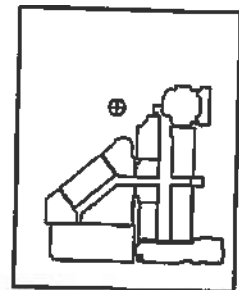
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PROPOSED ENCROACHMENTS

PROPERTY LINE AREAS OF ENCROACHMENT SURVEY



1120-Bal Harbour Shops

1"=30'

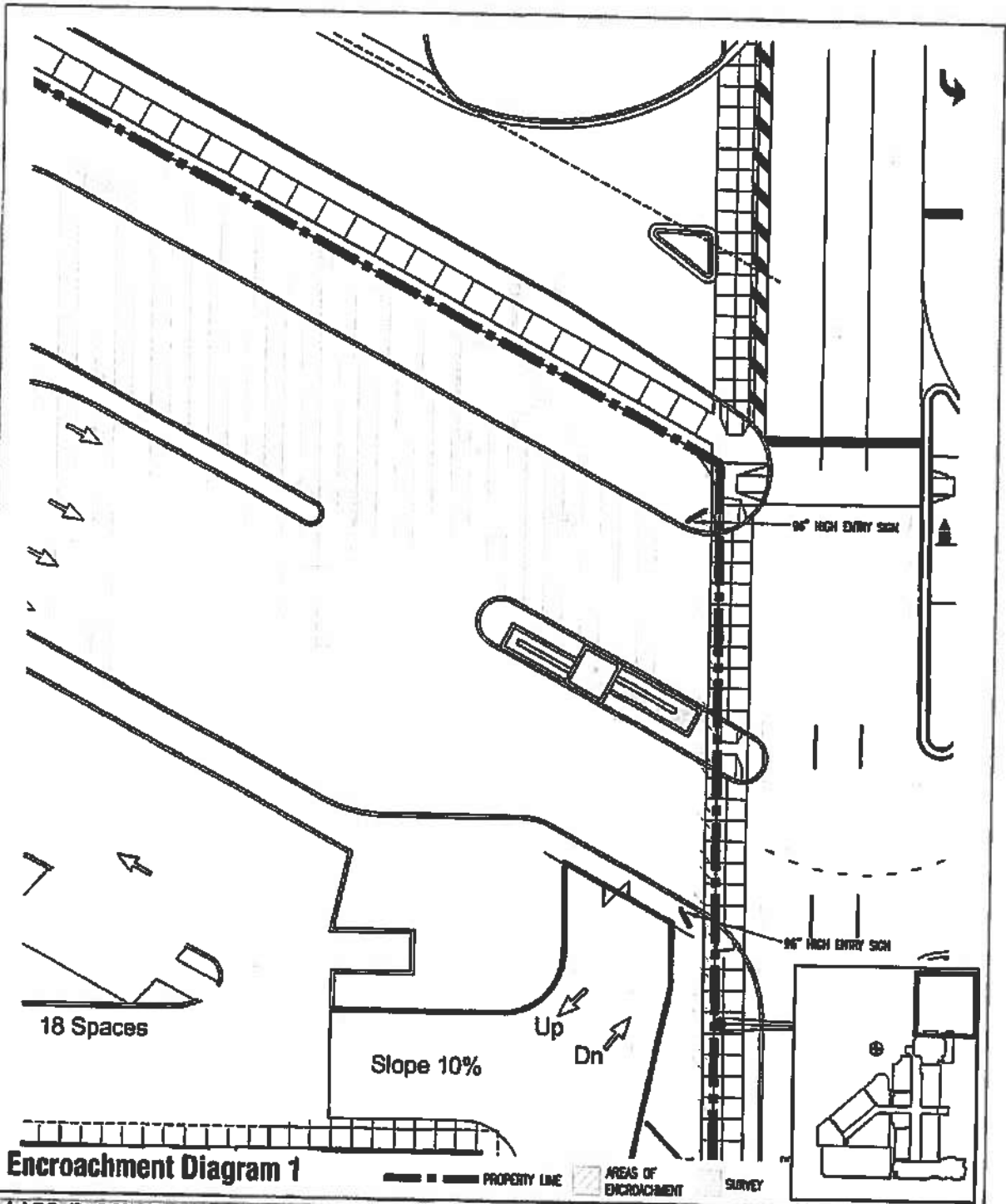
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Encroachment Diagram 1

PROPERTY LINE
 AREAS OF ENCROACHMENT
 SURVEY

1120-Bal Harbour Shops

1"=30'

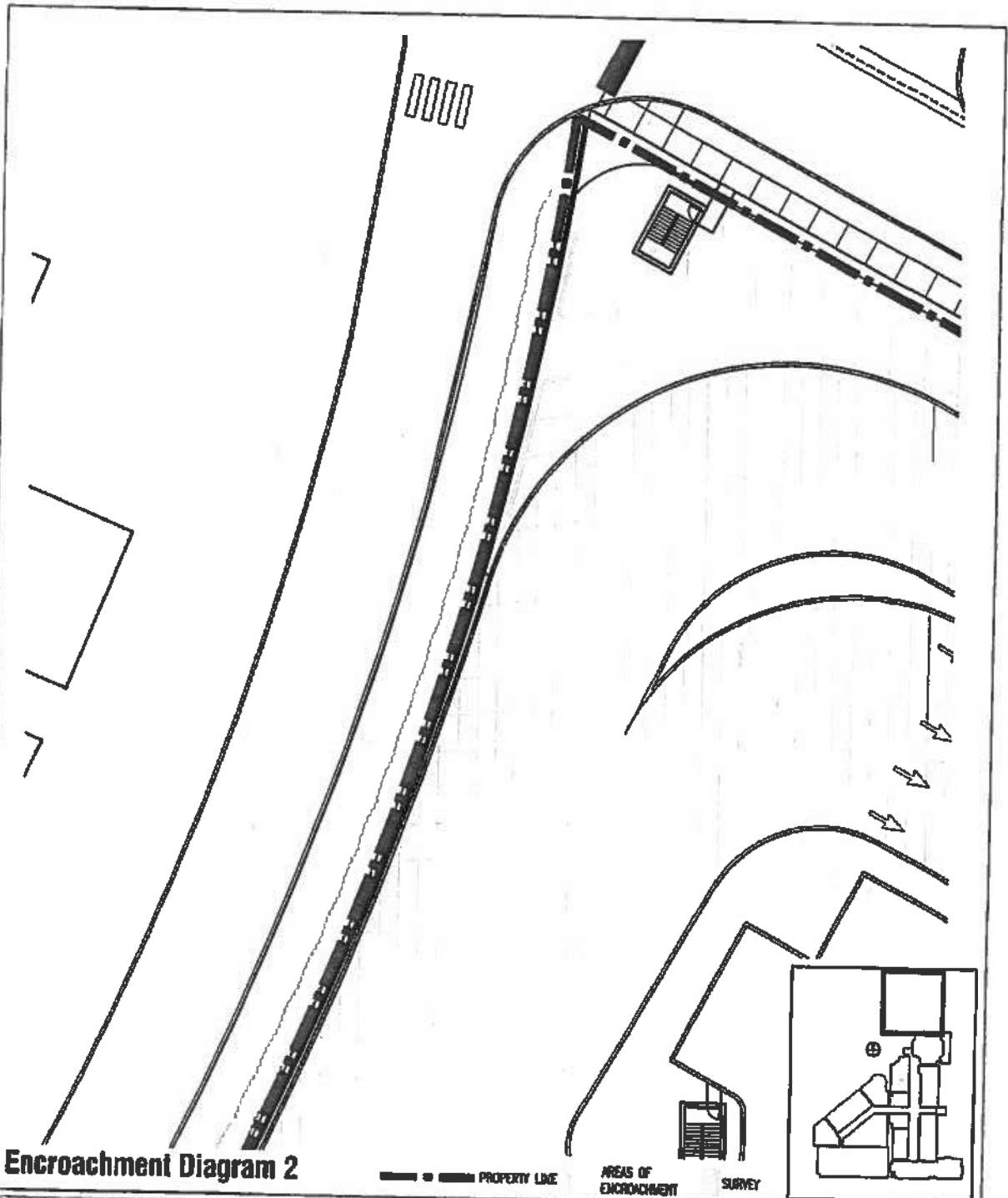
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Encroachment Diagram 2

1120-Bal Harbour Shops

1"=30'

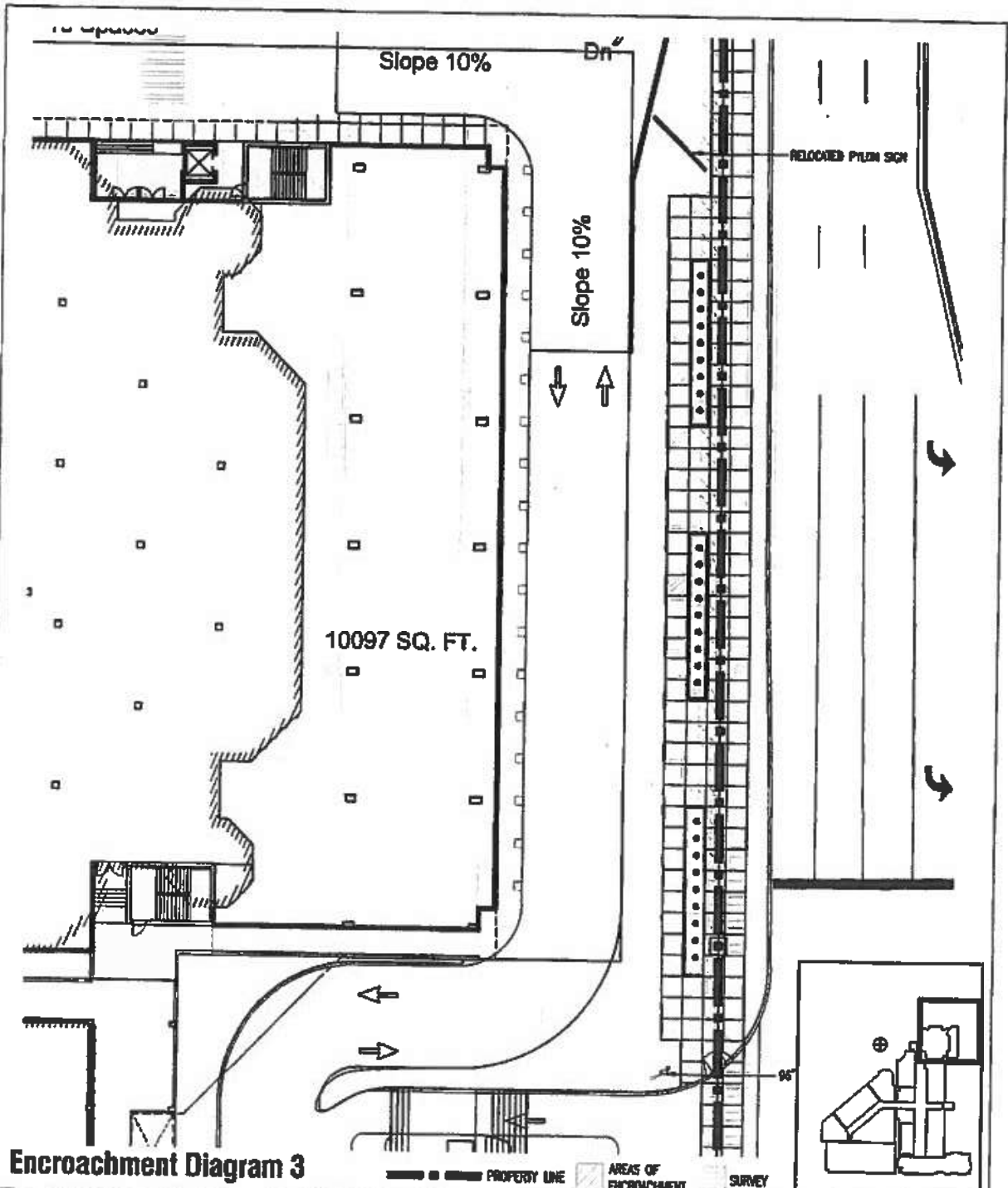
May 10, 2017

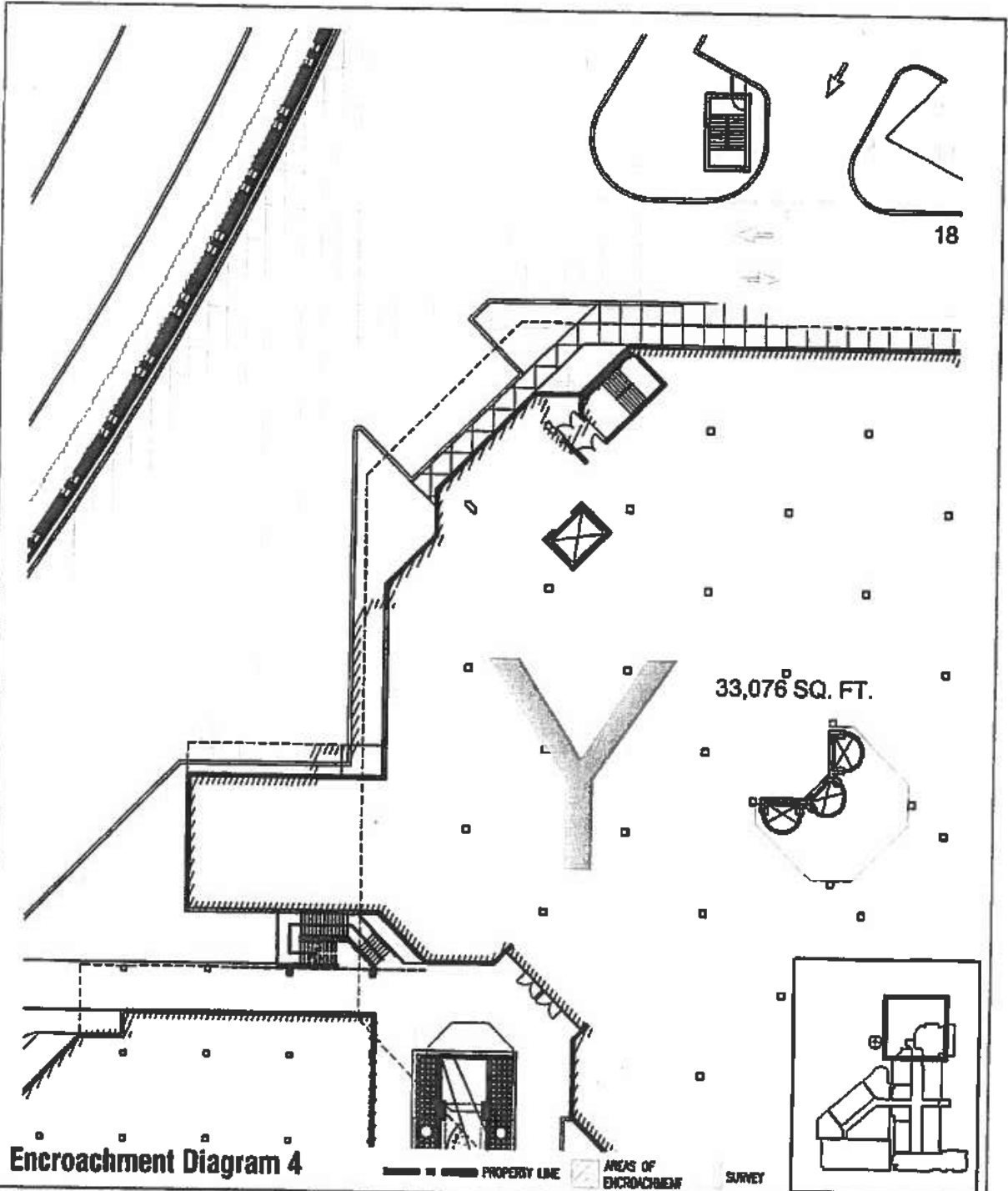
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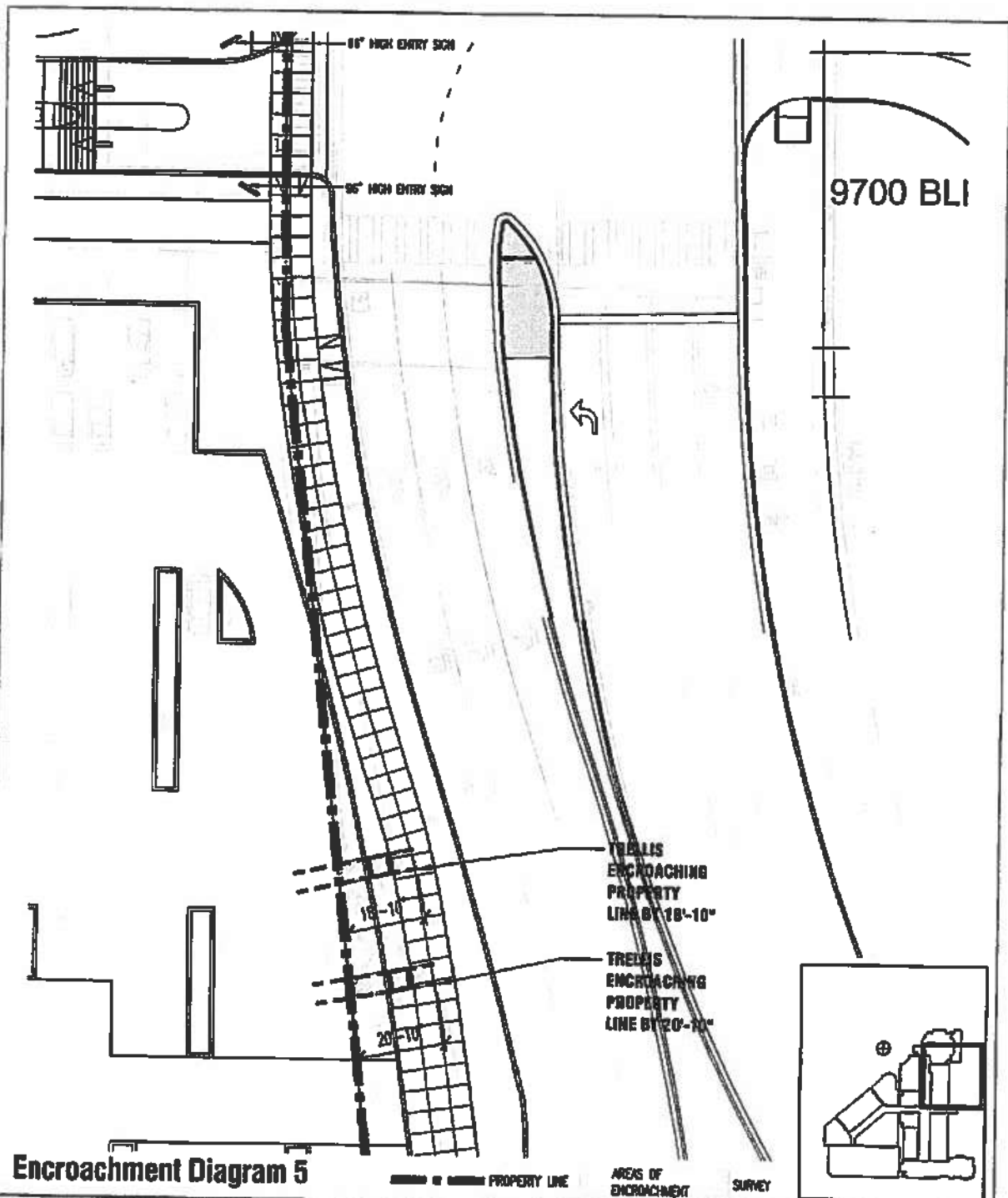
1120-Bal Harbour Shops

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Encroachment Diagram 5

1120-Bal Harbour Shops

1"=30'

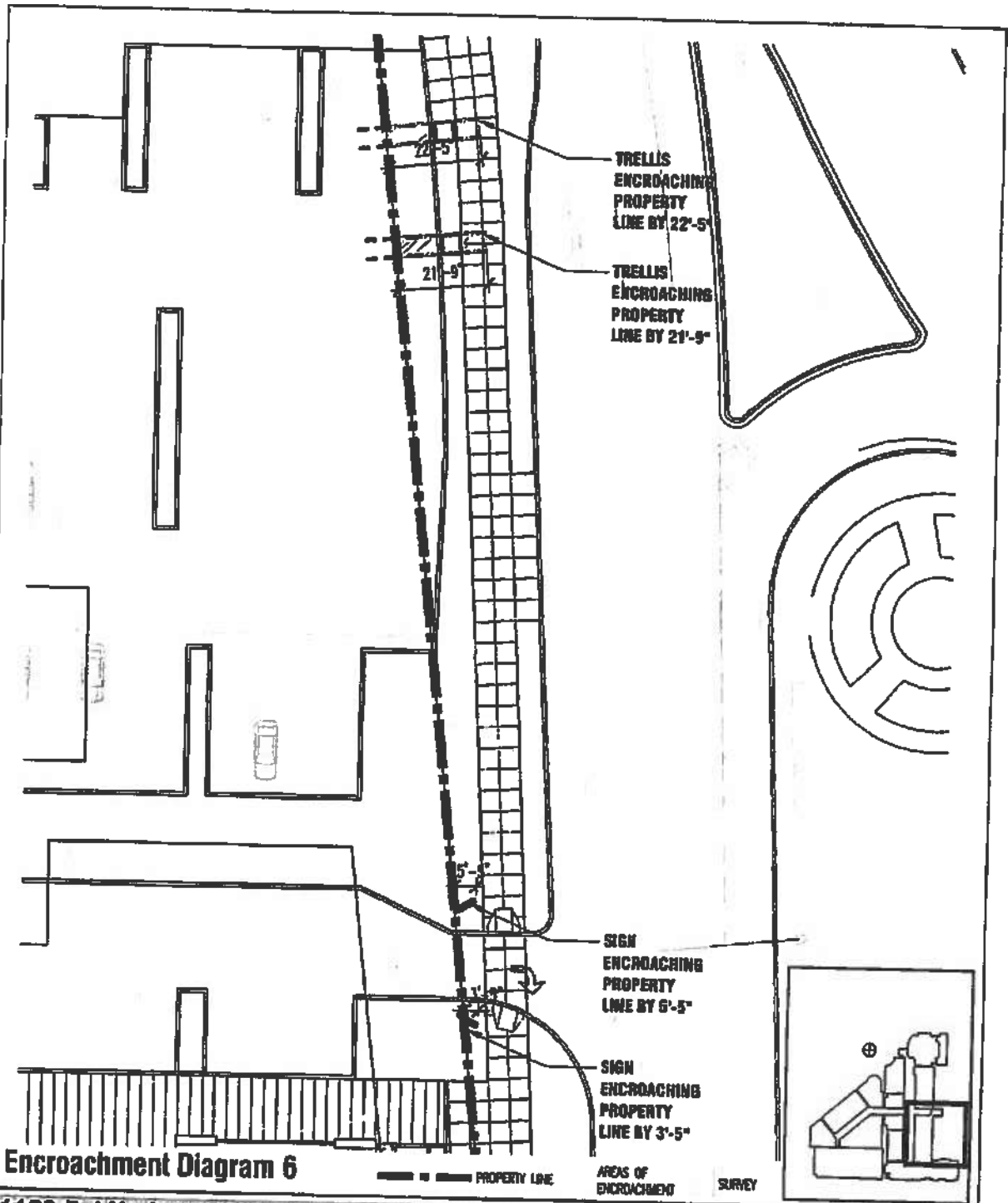
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Encroachment Diagram 6

1120-Bal Harbour Shops

1"=30'

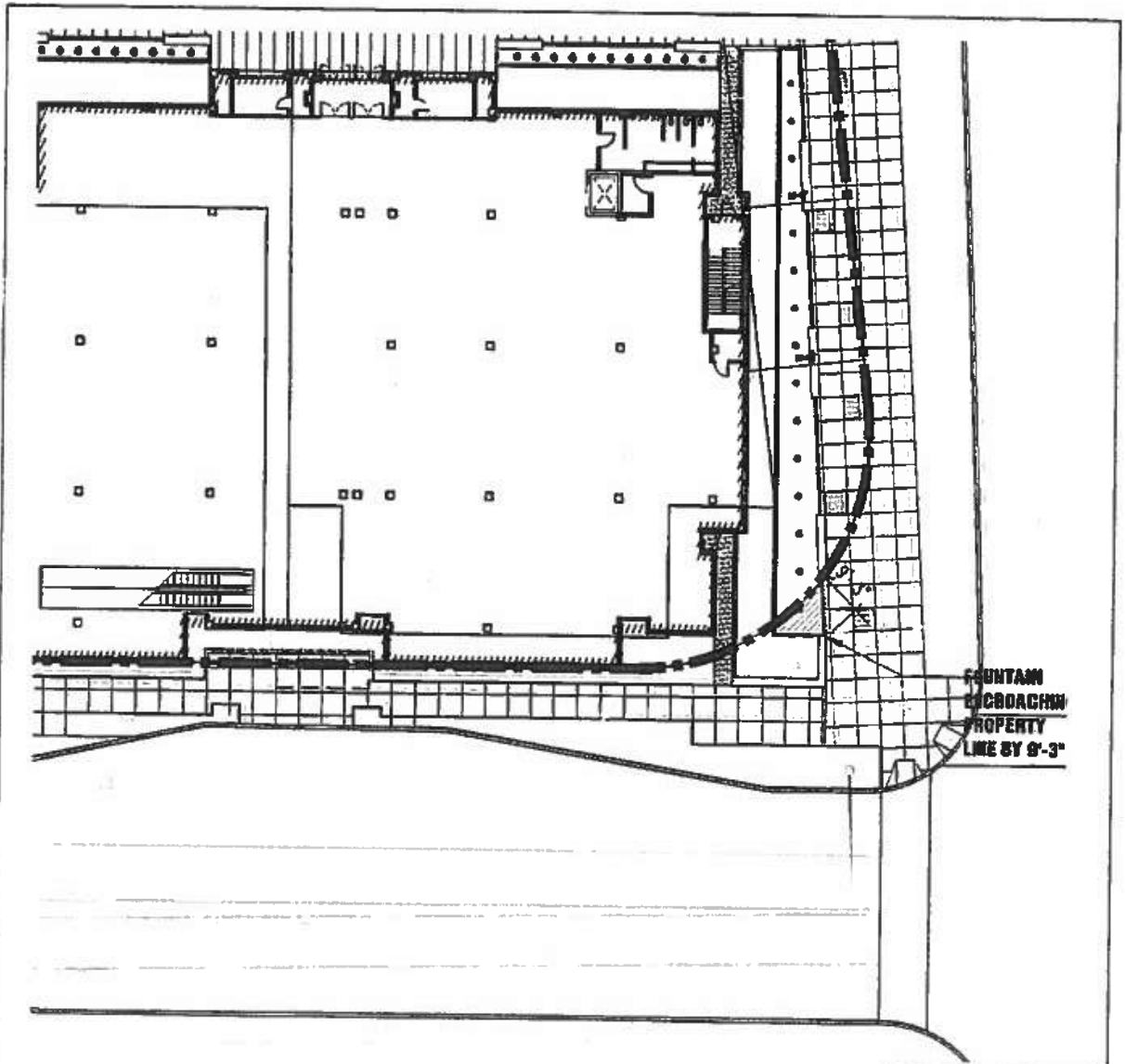
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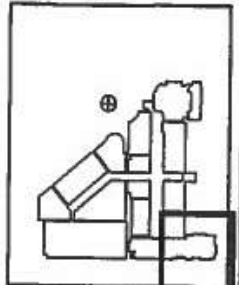
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FURNITURE
ENCROACHMENT
PROPERTY
LINE BY 9'-3"

Encroachment Diagram 7

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



1120-Bal Harbour Shops

1"=30'

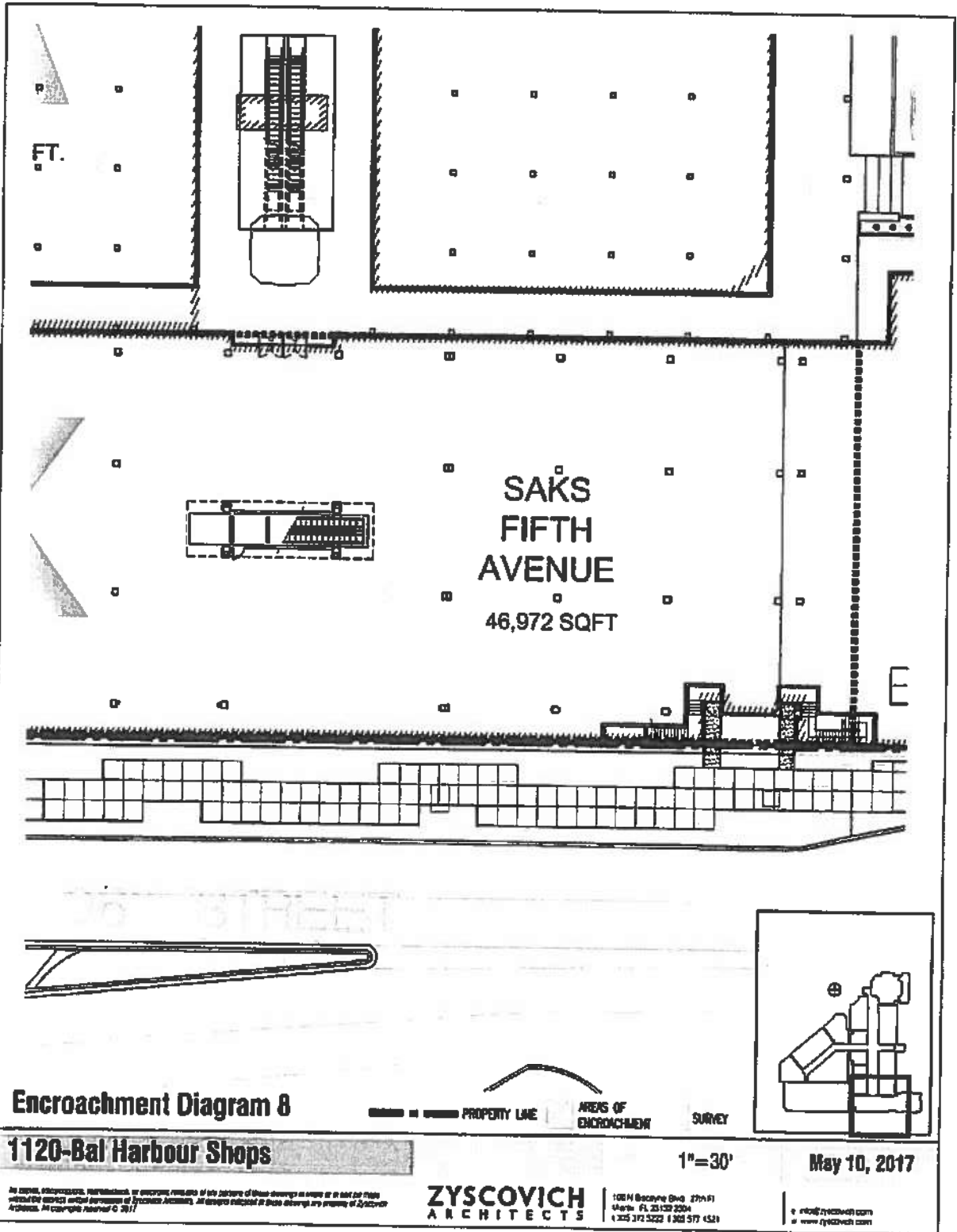
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Encroachment Diagram 8

1120-Bal Harbour Shops

1"=30'

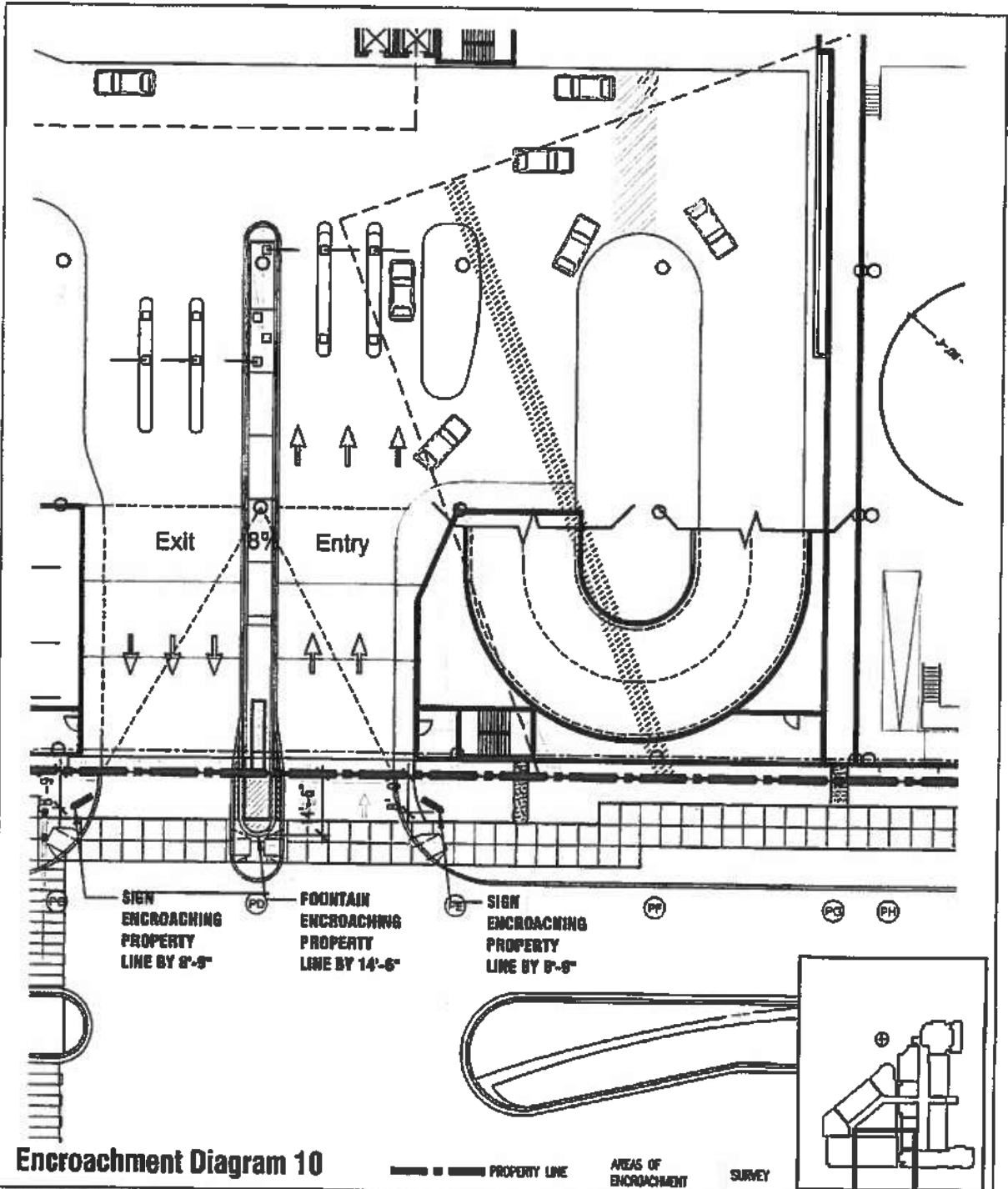
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Encroachment Diagram 10

1120-Bal Harbour Shops

1"=30'

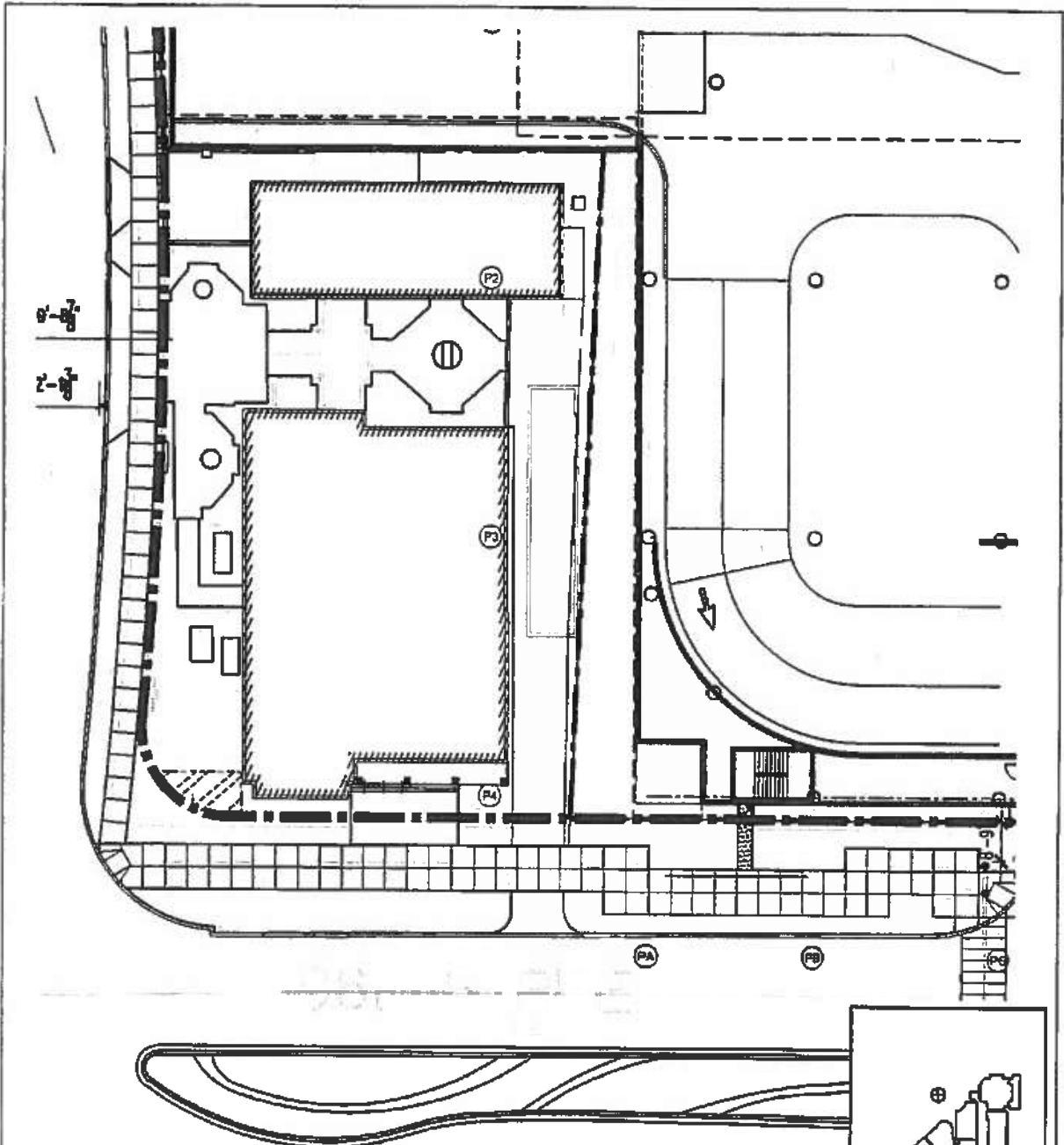
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Encroachment Diagram 11

PROPERTY LINE
 AREAS OF ENCROACHMENT
 SURVEY

1120-Bal Harbour Shops

1"=30'

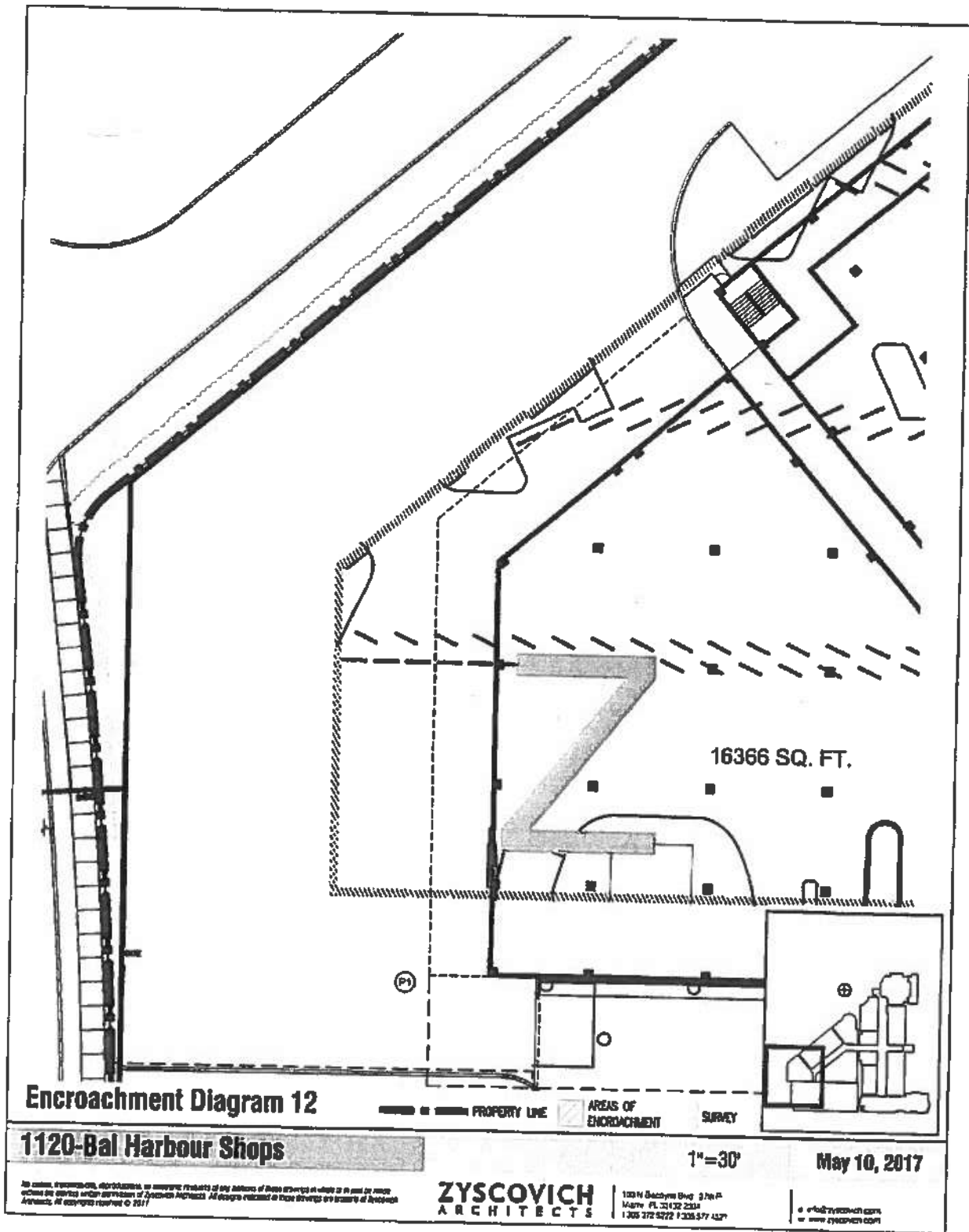
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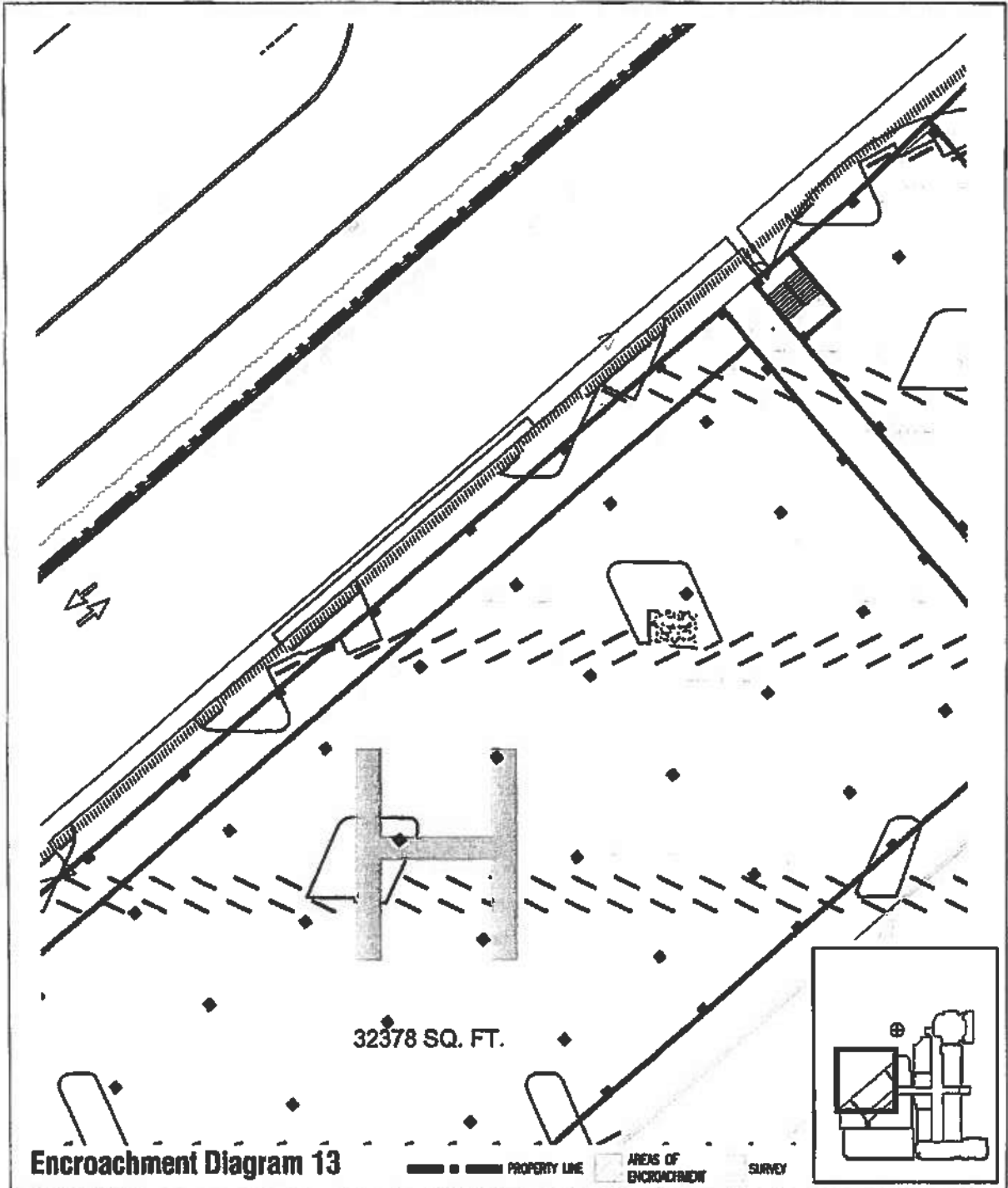
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1120-Bal Harbour Shops

1"=30'

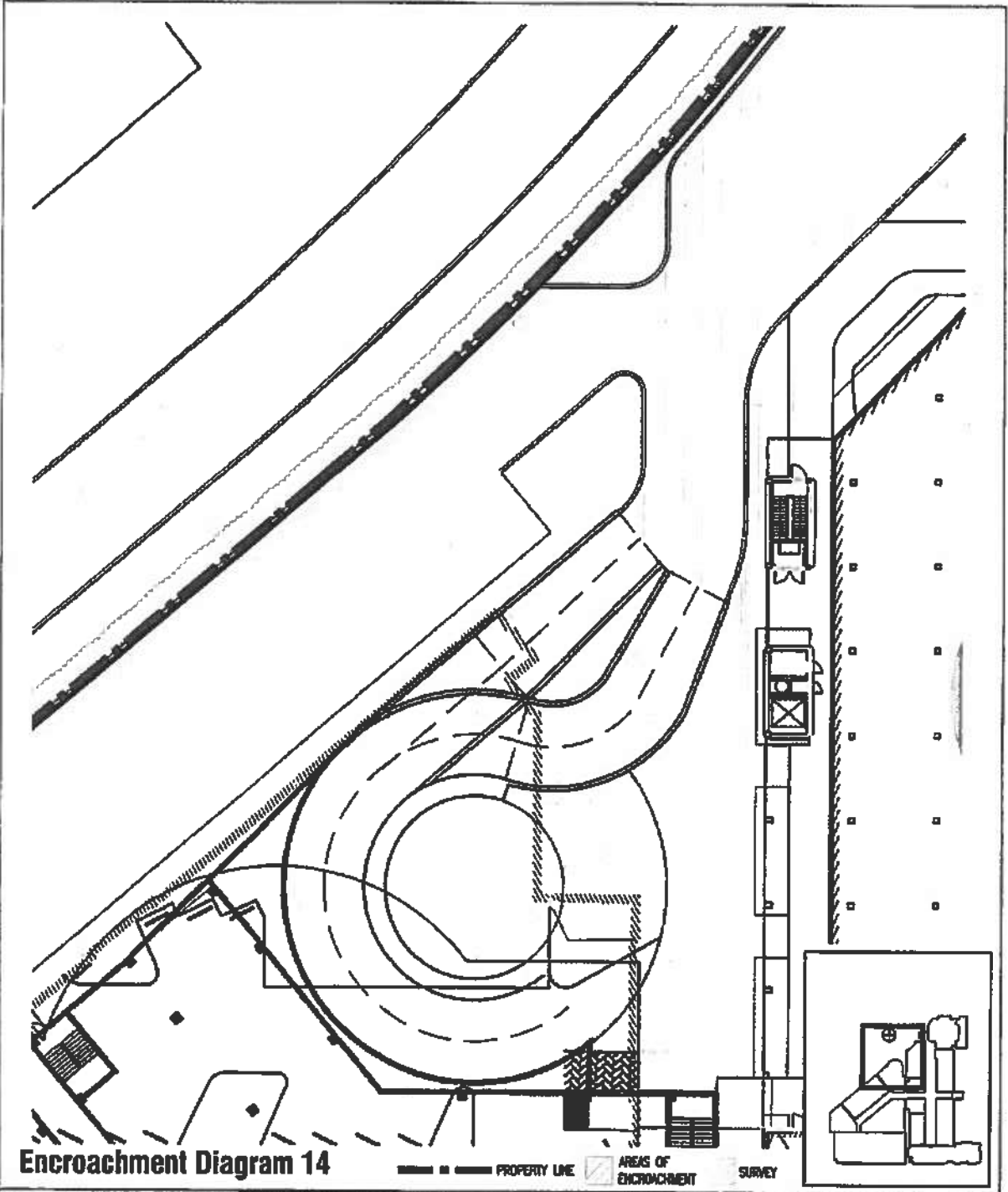
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Encroachment Diagram 14

1120-Bal Harbour Shops

1"=30'

May 10, 2017

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Exhibit N
Park Drive Utility Easement
(see following pages)

This instrument prepared by:

Gail D. Serota, Esq.
Welss 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.

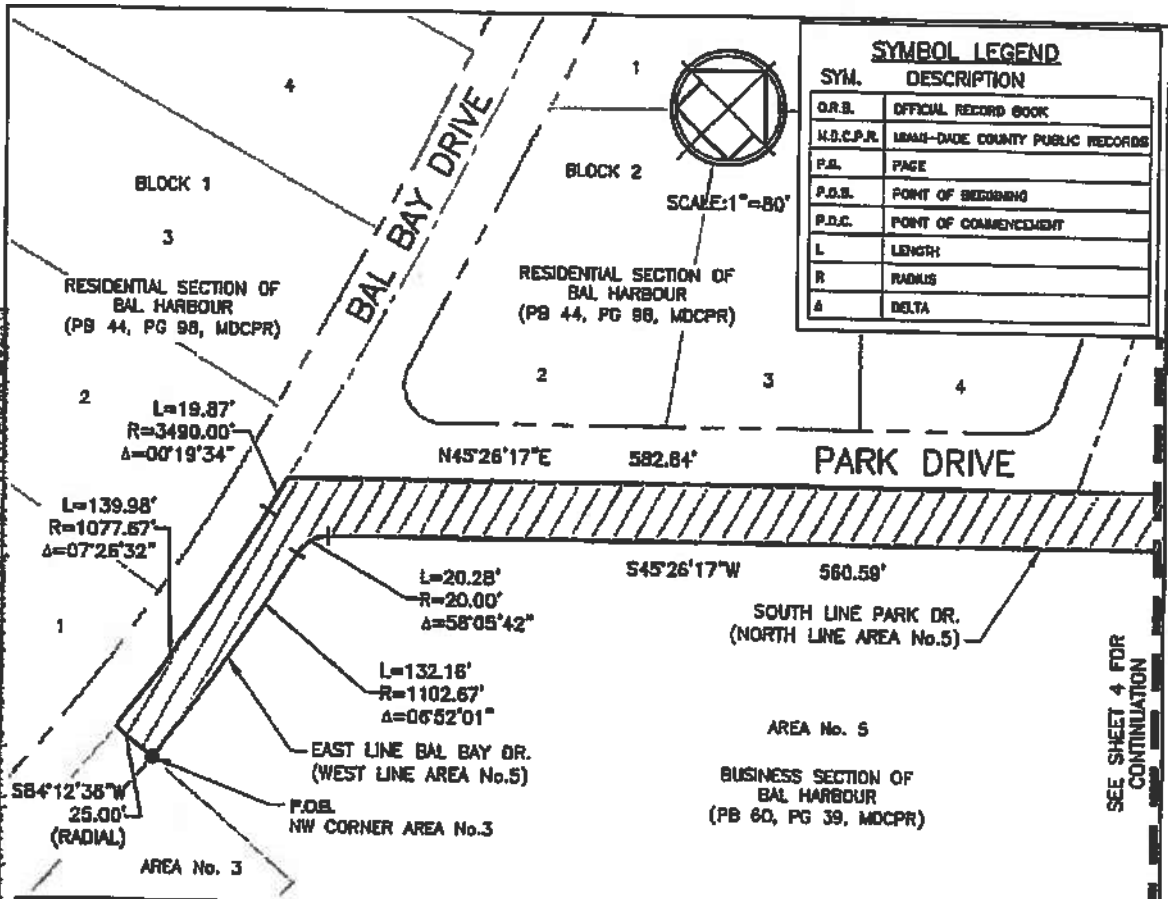
NOTARY SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

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



SURVEYOR'S NOTES:

1. REPRODUCTIONS OF THIS DOCUMENT ARE NOT VAID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.
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 USUALLY TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 17S-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

FOR THE FIRM

ROBERT D. KEENER
PROFESSIONAL SURVEYOR AND MAPPER #4846

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

SKETCH & DESCRIPTION	UN	03/12/17	N/A	RDR
REVISION	DWN	DATE	FB/PG	CKD
BAL HARBOUR SHOPS EASEMENT DESCRIPTION VILLAGE OF BAL HARBOUR, DADE COUNTY, FL PROJECT NUMBER: 17-1146-0691 FILE NAME: 10-1146-01-SHOPS-EASEM.dwg				
SHEET 3 OF 8				

SEE SHEET 4 FOR CONTINUATION

Exhibit B

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



Composite Exhibit B

RESOLUTION NO. 2024-____

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING THE VILLAGE MANAGER TO EXPEND RESOURCES TO TAKE ALL NECESSARY STEPS TO PROTECT THE VILLAGE IN RESPONSE TO THE BAL HARBOUR SHOPS' 2024 SUBMISSION TO FURTHER EXPAND ITS PROJECT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 9, 2024, Bal Harbour Shops submitted paperwork seeking to obtain Village approval of a further expansion of its project (the "Submission"); and

WHEREAS, the Village Manager advises that Village resources will need to be expended to take all steps necessary and deploy all needed expertise in response to the Submission, and that these resources are likely to exceed his \$20,000 spending authority; and

WHEREAS, the Village Council finds that it is in the best interest and welfare of the residents of the Village to authorize the Village Manager to expend what is necessary to assure that the Village's quality of life is protected.

NOW, THEREFORE, BE IT RESOLVED 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. Authorization of Expenditures. That the Village Council hereby authorizes the Village Manager to expend funds and retain expert consultants as needed to ensure that the Village's interests are fully protected in response to the Bal Harbour Shops' 2024 proposal to further expand its project.

Section 3. Implementation. That the Village Manager is hereby authorized to take all actions necessary to execute and implement this Resolution.

Section 4. Effective Date. That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 16th day of January, 2024.



Mayor Jeffrey P. Freimark

ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

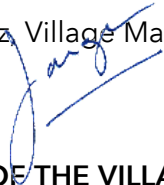
Village Attorney
Weiss Serota Helfman Cole & Bierman P.L.

BAL HARBOUR

- VILLAGE -

COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager 

DATE: January 16, 2024

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING THE VILLAGE MANAGER TO EXPEND RESOURCES TO TAKE ALL NECESSARY STEPS TO PROTECT THE VILLAGE IN RESPONSE TO THE BAL HARBOUR SHOPS' 2024 SUBMISSION TO FURTHER EXPAND ITS PROJECT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Resolution.

BACKGROUND

On January 9, 2024, the Bal Harbour Shops submitted paperwork seeking to obtain Village approval for an expansion that would include 528 residential units. Their proposal said that, under the Florida Live Local Act, certain local zoning regulations could be bypassed in exchange for committing to build 40% of the units as workforce housing, the remainder being luxury housing. Their proposal also included a 70-room upscale luxury hotel. They said that the proposed new towers would rise to approximately 275 feet, similar to the height of the St. Regis Bal Harbour Resort located directly across the street.

It would be an understatement to say that this project, as proposed, would have a profound impact on the Village of Bal Harbour and its residents, in terms of emergency management during natural and manmade disasters, beach and shoreline management, additional traffic congestion, management of impacts from ongoing construction noise and, impact on abutting neighborhoods and buildings, and the need for additional Village Staff resources.

The Village Manager advises that Village resources in excess of \$20,000 will need to be expended for planning, traffic, engineering, legal, and other consultant services to ensure the Village takes all necessary steps to protect the quality of life, health, safety, and welfare of its residents.

Since this authorization is necessary to ensure that essential services and projects continue during this uncertain time, it is recommended that the Village Council adopt this Resolution.

THE BAL HARBOUR EXPERIENCE

The proposed expansion will touch every aspect of The Bal Harbour Experience in the Village's ability to nurture and maintain: a beautiful environment; the safety and security of our residents and neighborhood; our public facilities and infrastructure, our role as a luxury destination; our standing as a unique and elegant community; and our ability to remain a resilient and sustainable community.

CONCLUSION

It is in the best interest and welfare of the residents of the Village to authorize the Village Manager to take whatever steps are necessary to ensure that the Village's quality of life is protected, and therefore, it is recommended that the Village Council adopt this Resolution.